Consumer Compliance Examination Manual

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I. Manual Introduction

Introduction

The Consumer Compliance Examination Manual (Manual) 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 Manual 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 Manual

The Manual is divided into 12 sections as described below and is organized so that information is presented based on regulation rather than process. The Manual incorporates examination policies and procedures in effect as of the most recent update, which is noted in the footnote in each subsection. The Manual 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 Manual concludes by covering the Community Reinvestment Act examination (Section XI) and samples of the various performance evaluations (Section XII) to be used. Each Section of the Manual is discussed below.

- ***I – Manual Introduction*** – This section includes information on how to use the Manual as well as a list of common abbreviations.
- ***II – Consumer Compliance Examinations*** – This section covers the Compliance Examination process beginning with pre-examination planning through determining the rating. Also included is information on documenting examination findings, enforcement actions, appeals, visitations, investigations, and violation codes.
- ***III – Compliance Examination Templates & Samples –*** This section provides sample forms and templates to be used during Compliance Examinations, including Pre-Examination Information Package, a model entry letter, a scoping memorandum, an interview sheet, a Compliance Information Document Request, a sample Bank of Anytown Report of Examination, and a sample Bank of Anytown Public Evaluation.
- ***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 and checklists are included. Procedures for evaluating compliance with the technical, non-discriminatory provisions of ECOA and FHAct are covered in Section V.
- ***V – Consumer Compliance Lending Issues*** – This section covers lending related topics including Truth in Lending, Truth in Lending Questions and Answers, Real Estate Settlement Procedures, Homeownership Counseling, Homeowners Protection, Flood Insurance, Flood Questions and Answers, Equal Credit Opportunity and Fair Housing, Home Mortgage Disclosures, Consumer Leasing, Servicemembers Civil Relief Act, and Talent Amendment. Examination procedures and checklists are included.
- ***VI – Consumer Compliance Depository Issues*** – This section covers deposit function related topics including Expedited Funds including Check 21, Electronic Funds Transfers, and Truth in Savings, and Interest on Deposits**.** Examination procedures and checklists are included.
- ***VII – Unfair and Deceptive Practices*** – This section covers issues relating to unfair and deceptive practices including Unfair and Deceptive Acts, Credit Practices, Preservation of Claims of Consumer Claims and Defenses, and Fair Debt Collection. 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, Children's Online Privacy Protection, Right to Financial Privacy, Controlling the Assault of Non-Solicited Pornography and Marketing, Telephone Consumer Protection, and Fair Credit Reporting. Examination procedures and checklists are included.
- ***IX – Retail Sales*** – This section covers retail sales to consumers for Investment and Insurance Sales. This topic is often referred to as Non-Deposit Products or NDP. Examination procedures and checklists are included.
- ***X – Other Consumer Compliance Issues*** – This section covers Compliance Examination related topics not included in the prior sections. Included are issues relating to Membership Advertising, Branch Closings, E-Sign, and Interstate Banking and Branching. Examination procedures and checklists are included.
- ***XI – Community Reinvestment Act*** – This section covers CRA related examination procedures for all types and asset sizes of institutions as well as the CRA Sunshine Act, and CRA Questions and Answers. Examination procedures and checklists are included.
- ***XII – Community Reinvestment Act Performance Evaluation Templates*** – This section provides samples of Performance Evaluations for all sizes and types of institutions under CRA.

How to Use the Manual

The Manual incorporates existing policies and procedures, adding information, job aids, and references that may assist the reader. Each Section includes pertinent background material,

examination procedures, references, and job aids to assist the examiner in the examination process. Each subtopic covered in the Sections is included independently in the Manual and can be readily removed, replaced, and updated. In addition, the electronic version is divided into corresponding sections and topics. When new examination policies and procedures are released and incorporated into the Manual, they will be available through FDIC.gov.

Abbreviations

ACH – Automated Clearing House

APR – Annual Percentage Rate

APY – Annual Percentage Yield

ARD – Assistant Regional Director

ARCH – Assessment of Risk of Consumer Harm

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

CD – Community Development

CDC – Community Development Corporation

CDFI – Community Development Financial Institution

CFPB – Consumer Financial Protection Bureau

CFR – Code of Federal Regulations

CIDR – Compliance Information and Document Request

CLA – Consumer Leasing Act

CMP – Civil Money Penalty

CMS – Compliance Management System

COPPA – Children's Online Privacy Protection Act

C–PREP – Compliance Pre–Examination Request Package

CRA – Community Reinvestment Act

CSA – Combined Statistical Area

CT – Census Tract

DCP – Division of Depositor and Consumer Protection

DOJ – Department of Justice

DPO – Deposit Production Office

DRD – Deputy Regional Director

E–SIGN – Electronic Signatures in Global and National Commerce Act

EBT – Electronic Benefits Transfer

EC – Economic Community

ECOA – Equal Credit Opportunity Act

EDA – Economic Development Administration

EDC – Economic Development Corporation

EFA – Expedited Funds Availability Act

EFTA – Electronic Fund Transfers Act

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 Agency

FFIEC – Federal Financial Institutions Examination Council

FHA – Federal Housing Administration

FHAct – Fair Housing Act

FHLB – Federal Home Loan Bank

FHLMC – Federal Home Loan Mortgage Company (Freddie Mac)

FIA – –Federal Insurance Administration

FIAP – Formal and Informal Actions Procedures

FIMA – Federal Insurance and Mitigation Administration

FIRM – Flood Insurance Rate Map

FL – Fair Lending

FLSC – Fair Lending Scope and Conclusions Memorandum

FNMA – Federal National Mortgage Association (Fannie Mae)

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 (Ginnie Mae)

HEOA – Higher Education Opportunity Act

HERA – Housing and Economic Recovery Act of 2008

HFIAA – Homeowner Flood Insurance Affordability Act

HMDA – Home Mortgage Disclosure Act

HOC – Homeownership Counseling Act

HOEPA – Home Ownership Equity Protection Act

HOPA – Homeowners Protection Act

HPML – Higher–Priced Mortgage Loan

HUD – Department of Housing and Urban Development

IAP – Institution Affiliated Party

IP – Pre–Examination Information Package

IBBEA – Interstate Banking and Branching Efficiency Act

IRA – Individual Retirement Account

IRS – Internal Revenue Service

ISB – Intermediate–Small Bank (CRA)

LAR – Loan/Application Register

LPMI – Lender–Paid Private Mortgage Insurance

LPO – Loan Production Office

LTD – Loan to Deposit Ratio

LTV – Loan to Value

MD – Metropolitan Division

MFI – Median Family Income

MICR – Magnetic Ink Character Recognition

MMDA – Money Market Demand Account

MOU – Memorandum of Understanding

MPPP – Mortgage Portfolio Protection Program

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 – Non–governmental Entity or Person

NOW – Negotiable Order of Withdrawal

OCC – Office of the Comptroller of the Currency

ODP – Overdraft Program

OMBE – Office of Minority Enterprise

OREO – Other Real Estate Owned

OTS – Office of Thrift Supervision

PCCD – Preservation of Consumers' Claims and Defenses

PE – Performance Evaluation

PEP – Pre–Examination Planning

PMI – Private Mortgage Insurance

POS – Point of Sale

PPFC – Prepaid Finance Charge

Q & As – Questions and Answers

RADD – Regional Automated Document Distribution

RCBAP – Residential Condominium Building Association Policy

RE – Review Examiner

RESPA – Real Estate Settlement Procedures Act

RFPA – Right to Financial Privacy Act

RMS – Division of Risk Management Supervision

RO – Regional Office

ROE – Report of Examination

SAFE – Secure and Fair Enforcement for Mortgage Licensing Act

SARC – Supervision Appeals Review Committee

SBA – Small Business Administration

SBCD – Small Business Development Center

SBIC – Small Business Investment Corporation

SCRA – Servicemembers Civil Relief Act

SE – Supervisory Examiner

SEC – Securities Exchange Commission

SFHA – Special Flood Hazard Area

SFHDF – Standard Flood Hazard Determination Form

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

TPPP – Third Party Payment Processor

UBPR – Uniform Bank Performance Report

UDAAP – Unfair, Deceptive, or Abusive Acts or Practices

UDAP – Unfair or Deceptive Acts or Practices

USC – United States Code

VA – Department of Veterans Affairs

WYO – Write Your Own (policy)

II. Consumer Compliance Examinations

Overview of Compliance Examinations

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 management system; 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 an 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 and/or when 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 where compliance errors present the greatest potential risks of having a negative impact on bank customers, resulting in consumer harm (See the Evaluating Impact of Consumer Harm section of this manual at page II-2.1 for additional information.) 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 products, services, markets , organizational structure, operations, and past supervisory performance;
- assessing the quality of an institution's compliance management system in light of the inherent 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 have a high risk of consumer harm and institution's compliance management efforts appear weak.

Evaluating the Compliance Management System

Compliance examinations start with a top-down, risk-focused process to comprehensively analyze and review an institution's compliance management system. The compliance examiner considers:

Board and Management Oversight

- Commitment to and oversight of the institution's CMS.
- Level of resources dedicated toward compliance functions.
- Due diligence and oversight of third parties to ensure compliance with consumer protection laws and regulations, and appropriate oversight of third parties' compliance responsibilities.
- Anticipation and responsiveness to changes in applicable laws and regulations, market conditions, and products and services offered.
- Due diligence reviews performed in advance of product changes, considering the entire lifecyle of the product or service, and after implementation of changes.
- Comprehension and identification of compliance risks, including emerging risks, in the institution's financial products, services, and other activities.
- Management of identified risk, including self-assessments.

- Identification of and responsiveness to compliance risk management deficiencies and violations of law or regulations, including remediation.

Compliance Program

- Whether the institution's policies and procedures are appropriate to the risk in the products, services, and activities of the institution.
- Adequacy of third-party relationship program management.
- The degree to which compliance training is current and tailored to risk and staff responsibilities.
- The sufficiency of the monitoring and, if applicable, audit to encompass compliance risks throughout the institution
- The responsiveness and effectiveness of the consumer complaint resolution process.

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, thereby resulting in potential consumer harm. 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.

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 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 the size and complexity of its products, services, and markets.

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 and prevent recurrence.

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 Manual include instructions for reviewing the various elements of a compliance management system (CMS), such as written policies and procedures, monitoring and/or audit, and training. 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 all of these 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 formal 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 Manual 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 areas of highest consumer harm risk;
- 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 protection 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 EIC 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 EIC also preliminarily assesses the potential risk of consumer harm based upon the information available at the time of pre-examination planning.

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 management, the compliance officer (or staff assigned), and the internal auditor. Consistent with the FDIC's approach, examination resources are focused on addressing the areas of highest consumer harm risk. Additionally, there may be some cases where the EIC may include additional areas in the examination scope even though consumer harm risk is not exhibited. 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, the identification of potential or actual consumer harm, 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 Manual 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 potential consumer harm; 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 of consumer harm 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 Level 3 or Level 2 violations and relates them to the underlying root causes as well as 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 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.

Distinguishing Between Laws, Regulations, and Supervisory Guidance

Supervisory communications should distinguish clearly and accurately between the requirements of laws and regulations, which are legally binding and enforceable, and supervisory guidance, which is not itself enforceable but sets forth information including the factors the FDIC considers when exercising its supervisory authority.

As articulated in the *Interagency Statement Clarifying the Role of Supervisory Guidance dated September 17, 2018 (FIL-49-2018)*, unlike a law or regulation, supervisory guidance does not have the force and effect of law, and the agencies do not take enforcement actions based on supervisory guidance. Rather, supervisory guidance outlines the agencies' supervisory expectations or priorities and articulates the agencies' general views regarding appropriate practices for a given subject area.

Examiners will not criticize a supervised financial institution for a "violation" of supervisory guidance. Rather, any citations will be for violations of law, regulation, or non-compliance with enforcement orders or other enforceable conditions. During examinations and other supervisory activities, examiners may identify deficiencies in compliance risk management, or other areas that do not constitute violations of law or regulation. In some situations, examiners may reference (including in writing) supervisory guidance to provide examples of appropriate consumer protection practices, and other actions for addressing compliance with laws or regulations.

References

FIL-49-2018: *Statement Clarifying the Role of Supervisory Guidance*

Evaluating Impact of Consumer Harm

Introduction

The FDIC has a risk-focused consumer compliance examination approach, based on the potential for compliance errors to have an adverse impact on banking customers. The following guidance is provided to assist compliance examiners in understanding the impact of consumer harm[1] on examination and supervisory responsibilities. In addition, this guidance communicates to examiners information about bank activities or omissions that can frequently result in consumer harm. Examination activities promote and confirm FDIC-supervised institutions' compliance with federal consumer protection and fair lending laws, the Community Reinvestment Act, and the regulations that implement these requirements. Effective supervision focuses on the areas requiring elevated supervisory attention and promotes the efficient use of resources.

What is Consumer Harm?

The FDIC's consumer compliance examination process is risk-focused based on the potential for consumer harm. "Consumer Harm" is an actual or potential injury or loss to a consumer, whether such injury or loss is economically quantifiable (e.g., overcharge) or non-quantifiable (e.g., discouragement). It may be caused by a financial institution's violation of a federal consumer protection law or regulation directly or through a third party or reflects weaknesses in a financial institution's compliance management system. . Consumer Harm may occur in a variety of ways, including:

1. **Quantifiable harm** – Economic harm to a consumer where the injury or loss can be measured. For example, a consumer may suffer monetary harm as a result of deceptive marketing practices that entices a consumer to purchase a product without having accurate information regarding the benefits, costs, or terms of the product in violation of Section 5 of the Federal Trade Commission Act. Similarly, if a bank employs a pricing structure that allows significant discretion, without effective monitoring or controls, resulting in a protected class of borrowers being charged higher prices on average than similarly situated non-protected borrowers in violation of the Equal Credit Opportunity Act, then the higher prices paid by the protected class of borrowers over similarly situated non-protected borrowers is quantifiable consumer harm.

2. **Non-quantifiable harm** – Injury or loss to the consumer that cannot be measured, or is very difficult to measure, yet the consumer may suffer some form of economic or other harm. For example, a consumer could be injured economically when a financial institution unfairly denies the consumer credit or discourages an application on a prohibited basis in violation of the Equal Credit Opportunity Act, however calculating a monetary value for the injury may be challenging. Another example may be a bank that imposes additional, unlawful requirements on consumers before the bank is willing to consider the consumers' billing disputes or requirements that are not accurately divulged in the bank's error resolution disclosures. The practices could discourage a consumer from filing a dispute. Consumer harm exists, but may be difficult to identify and/or quantify.

3. **Potential harm** – Involves financial institution activities (or failure to take action) that create the possibility that a consumer may be harmed. An example of potential consumer harm is a violation of the regulations that implement the National Flood Insurance Act of 1968 where the financial institution failed to require flood insurance on a residence at loan closing. The consumer has not suffered actual loss but is exposed to potential economic loss should a flood occur.

Consumer harm is a broad concept and the examples provided here are not exhaustive. Among key points are that consumer harm is not limited to monetary loss, can be quantifiable or non-quantifiable, can be actual harm or potential harm, and may be caused by activities conducted through third-party relationships.

How does Consumer Harm Impact Examination Activities?

The concept of consumer harm is an important consideration in all examination and enforcement efforts, including examination strategies, examination scoping activities, assessment of the CMS, content of examination reports, supervisory actions, and communications with bankers. The FDIC's mission of promoting public confidence in the financial system is best served through a supervisory approach focused on identifying, addressing, and preventing consumer harm.

- *Identification* – Supervisory and examination activities are driven by a focus on identifying the inherent risk of consumer harm that may occur in a financial institution's business activity. Inherent risk is the compliance risk associated with product and service offerings, practices, or other activities that could directly or indirectly result in significant consumer harm or noncompliance with consumer protection rules and regulations. For example, a new loan product, a change to deposit account terms, or a third party relationship all represent inherent risk.

- *Addressing identified risks* – When inherent risks of consumer harm are identified, examiners will ensure the

[1] Regarding Consumer Harm as discussed in this manual, "consumers" include persons, as well as commercial customers (e.g., corporations, partnerships, trusts, etc.) which may be eligible for protections under certain laws and regulations (e.g., Section 5 of the FTC Act, the Flood Act, ECOA, etc.). "Consumer Harm" is an actual or potential injury or loss to these consumers, whether such injury or loss is economically quantifiable (e.g., an overcharge) or non-quantifiable (e.g., discouragement).

institution takes appropriate action to address or mitigate these risks. Corrective action for violations of law and regulations should remediate consumer harm when it occurs and remove underlying incentives to engage in practices harmful to consumers. Where there is a violation of law or regulation, the extent and severity of consumer harm informs the type and scope of enforcement action sought to correct the violation.

- *Prevention* –Mitigating factors are the strength of the compliance management system (CMS) to mitigate inherent risk. Examples of mitigating factors include strong management controls, effective training programs, and on-going monitoring efforts. Supervisory efforts should encourage institutions to have an effective CMS to avoid and mitigate risks of consumer harm. To support that effort, examination and other staff communicate information and best practices in a variety of settings to assist institutions in managing risks of consumer harm when conducting their business. Identifying, addressing, and preventing consumer harm is an important consideration in all examination and enforcement activities, as identified in the following diagram and discussed below.

Supervisory Strategies

The FDIC's supervisory strategies are designed to promote compliance with consumer protection laws and regulations in FDIC-supervised institutions. Activities used to implement FDIC supervisory strategies include examinations, targeted reviews, visitations, investigations, and offsite analysis of how the bank manages its consumer compliance responsibilities. The timing and frequency of these activities can be adjusted based upon indications of risk of consumer harm, such as consumer complaints, referral from other divisions or agencies, changes in the institutions' products, services, or markets, or reliance on third parties to offer products and services to consumers. Supervisory strategies should be flexible to respond to indications of increasing or decreasing risk of consumer harm.

Examination Scoping Activities

All applicable federal consumer compliance laws and regulations are considered in connection with any bank compliance examination through the risk scoping process. However, the FDIC's supervisory approach apportions resources to areas of higher risk for consumer harm rather than to uncovering technical issues in meeting regulatory requirements. This approach also results in the identification of the most serious violations of federal consumer compliance laws and regulations during the examination. If financial institutions understand the potential for consumer harm and choose to develop and implement institution-specific plans, policies, and processes to prevent and mitigate consumer harm based on their risk profiles, it may assist institutions in avoiding risk and promoting compliance with the federal consumer protection regulations.

Examiners have several tools available to assist them in identifying risks of consumer harm. Examiners evaluate risks of consumer harm through an analysis of an institution's historical CMS, the products and services currently offered, the markets served, and existing and new third-party relationships. Examiner judgment is the most critical aspect of properly evaluating an institution's risk profile. The FDIC's approach tailors the examination to focus primarily on those areas that present the highest risk of consumer harm, as examiners are unable to review all aspects of an institution's CMS at any given examination. The pre-examination planning process, which includes review of the pre-exam questionnaire with bank management and preparation of the automated Compliance Information and Document Request (CIDR), guides examiners in requesting the information necessary to identify areas of the greatest risk of potential consumer harm.

In scoping examinations, examiners consider the inherent risks associated with product and service offerings or other activities that could directly or indirectly result in consumer harm. Inherent risk refers to the risk that a product, service, practice, or other activity would pose if no controls or other mitigating factors were in place. Examiners also focus on whether a bank is effectively and independently managing or mitigating the risk of consumer harm that comes from the products and services the institution offers and markets in which they serve. After considering an institution's inherent risks, and the strength of its CMS, residual risk exposure may remain.

Residual risk refers to the risk exposure that remains after identifying the level of inherent risk and factoring in the strength of the mitigating factors to control that risk. The guiding principle is a risk scoping formula: inherent risk – mitigating factors = residual risk. For example, a bank introduces a new overdraft program with no due diligence, no monitoring or auditing, and numerous customer inquiries. This example represents a high risk product without effective CMS elements to mitigate inherent risk; therefore, a higher level of residual risk remains, and this product warrants review and transaction testing during an examination. As part of the examination scoping process, examiners focus on areas where residual risk is elevated and not on areas where risk is well-controlled and residual risk of consumer harm is low.

Examination Procedures

Examination procedures are drafted and implemented in a manner to guide examiners in assessing the risk of consumer harm in the conduct of the examination. Well-crafted examination procedures that are focused on risks and potential for consumer harm promote the efficient use of resources, identification of root causes of deficiencies, and allocation of resources to areas presenting the highest risk, while avoiding unnecessary review of areas with little or no risk of consumer harm. As an example, examination procedures regarding overdraft programs differentiate the type and extent of review based on the type of overdraft program offered (e.g., automated versus ad hoc) and further reserves more detailed transaction testing to situations where examiners have identified specific risks or weaknesses.

Consumer Compliance Examination Ratings

The Federal Financial Institutions Examination Council's Uniform Interagency Consumer Compliance Rating System (CC Rating System), which is a supervisory policy for evaluating financial institutions' adherence to consumer compliance requirements, includes a section titled *Violations of Law and Consumer Harm*.[2] The CC Rating System emphasizes the importance of institution' compliance management systems, with emphasis on compliance risk management practices designed to manage consumer compliance risk, support compliance, and prevent consumer harm. Examiners consider this section as they assess institutions' compliance with the federal consumer protection laws and regulations.

Report Presentation

The Report of Examination plays an important role in communicating the FDIC's assessment of the CMS to the institution. The FDIC classifies violations of federal consumer laws based, in part, on the level of risk of consumer harm. In the event violations are identified in the Report of Examination, this classification process serves to communicate to banks the FDIC's conclusions about the severity, extent, or potential consumer harm caused by the violation. The expectation is that FDIC-supervised institutions will prioritize corrective action and on-going management of their CMS to correct errors and mitigate risks of consumer harm.

Supervisory Actions

Effective supervision includes requiring institutions to take corrective action when weaknesses in the CMS or violations are identified. Appropriate corrective action considers the overall effectiveness of the institution's CMS, the root cause(s) of the deficiencies as well as the extent and impact of consumer harm. When there is a violation of law or regulation that results in consumer harm, the FDIC will seek corrective action, which may include restitution to consumers as part of an appropriate enforcement action. Civil money penalties (CMPs) may also be assessed to sanction an institution or an institution-affiliated party according to the degree of culpability. Other factors examiners consider include intent and severity of the violation of law or regulation, breach of fiduciary duty, and/or whether a practice is unsafe or unsound. CMPs are also assessed to deter future misconduct.

Communication and Technical Assistance

Communication and technical assistance to supervised institutions is an important component of the FDIC's supervisory approach in preventing consumer harm by supporting institutions' efforts to maintain an effective CMS.

Communication is especially important during periods of regulatory change and transition. The FDIC communicates through a number of channels, including national and regional bankers' teleconferences on emerging topics; speaking engagements at national, regional, state, and local conferences and conventions; a web-based regulatory calendar; *Supervisory Insights Journal* articles; regional newsletters; banker and bank director trainings and online technical assistance videos; meetings with industry trade groups; and issuance of guidance through Financial Institution Letters. Communicating the focus of FDIC examination efforts and supervisory priorities through these diverse channels assists bankers in identifying and reviewing key areas of concern and addressing deficiencies promptly, prior to and unrelated to a specific examination activity. In addition, examiners can provide certain types of technical assistance to community bankers during the course of an examination that may enable an institution to reduce the risk of consumer harm in the operation of its business. These communication and technical assistance efforts provide bankers with tools to address issues that may pose risk of consumer harm.

[2] Section II-13.1 – Consumer Compliance Ratings

References

FIL-75-2016: Final Guidance on the Uniform Interagency Consumer Compliance Rating System

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 (CMS) that is integrated into the overall risk management strategy of the institution. Ultimately, consumer 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 (Board) and management oversight and the consumer compliance program.

Compliance Management System

A CMS is how an institution:

- learns about its consumer 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 CMS is commonly comprised of two interdependent elements:

- Board and management oversight; and
- Consumer compliance program

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

Financial institutions are required to comply with federal consumer protection laws and regulations, and are ultimately responsible for such compliance including the use of third-party providers. Noncompliance can result in monetary penalties, litigation, and formal enforcement actions. The responsibility for ensuring that an institution and its third-party providers are in compliance appropriately rests with the Board and management of the institution. Therefore, every FDIC-supervised institution must have an effective CMS adapted to its unique business strategy.

Board and Management Oversight

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

- demonstrating clear and unequivocal expectations about consumer compliance, not only within the institution, but also to third-party providers;
- 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;
- anticipating and evaluating changes in the institution's operating environment and implementing responses across impacted lines of business;
- identifying compliance risk in the institution's products, services, and other activities, and responding to deficiencies and violations;
- conducting periodic compliance audits; and
- providing for recurrent reports by the compliance officer to the Board.

Leadership on consumer compliance by the Board and management sets the tone in an organization. The Board and 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 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 Board and 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, Board and 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 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 that corrective actions are implemented in a timely fashion and are effective at preventing recurrence.

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's Board and management are responsible for identifying and controlling compliance risks arising from third-party relationships, to the same extent as if the third-party activity was handled within the institution.

If an institution engages the services of a third party, the Board and management must ensure that the third-party operations, products, services, and activities are reviewed for compliance with consumer protection laws and regulations. An effective compliance risk management process will vary depending on the complexity and risk potential of the third-party relationship, but generally includes risk assessment, due diligence in selecting the third-party provider, appropriate contract structuring and review, and sufficient oversight of third-party activities, including adequate quality control over products or services provided.

Consumer 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 and/or Audit
- 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 and provide cost efficiencies, and is a sound business step. However, a compliance program is not static. The compliance program must be dynamic and constantly amended on an ongoing basis to focus resources where they are needed most based upon risks to the institution.

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);

- complexity of products and services offered;
- staff experience and training;
- type and extent of third-party relationships;
- 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 consumer 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

Consumer 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. Similarly, contracts with third parties should set clear expectations for adherence to relevant laws and regulations, and management should ensure that sufficient policies and procedures are in place to control the risks associated with a particular third party.

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, both directly and through the use of third-party providers. 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, management, and staff is essential to maintaining an effective compliance program. Line management and staff should receive timely, 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, where appropriate. 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 applicable consumer credit protection laws and regulations.

Monitoring and/or Audit

Monitoring is a proactive approach by the institution to identify procedural or training weaknesses in an effort to preclude regulatory violations.

An audit is an independent assessment and validation of an institution's system of internal controls, operations, and compliance risk management framework. It complements the institution's monitoring system. Audits can be performed internally or by an external entity, as long as the individuals that perform audit activities are independent of the areas being audited.

Every institution should have monitoring and/or audit functions that are appropriate for their size, complexity, and risk profile. Each function plays an important but different role in supporting a strong CMS. It should not be assumed that if an institution has a strong monitoring function in place, risks are appropriately mitigated. For many institutions, it is necessary to have both.

Monitoring:

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 update and revise the applicable laws and regulations to management and staff.

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.

Changes to regulations or changes in business operations, products, or services should trigger a review of established consumer 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 established internal consumer 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.

Audit:

The Board 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, including a review of agreements signed or made between the institution and vendors;
- 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 consumer compliance, and that the audit program is based on current law and regulation, as well as comprehensive in scope. Generally, a strong consumer 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 or a committee of the Board. A written consumer compliance audit report should include:

- scope of the audit (including departments, branches, product types and third-party relationships 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 management response to the audit report should be prompt. The compliance officer should receive a copy of all consumer 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.

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.

Examiners should also discuss with management how complaints are identified and defined, as consumer inquiries may also highlight areas with increased risk of consumer harm and/or regulatory compliance concerns.

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.

An institution should also monitor complaints to and/or about third parties that are providing services on behalf of the institution.

Pre-Examination Planning

Introduction

The objective of the pre-examination planning process is to collect necessary information to understand the institution and the risks of consumer harm prior to the on-site phase of the examination. This information allows the Examiner-in-Charge (EIC) and the examination team to plan and conduct the off-site and on-site phases of the examination, to develop the scope of the examination, and to accomplish supervisory objectives in an efficient and effective manner.

This chapter discusses the three phases of the pre-examination planning process and usage of the Pre-Examination Planning System (PEP System), which is a web-based automated system used to generate the various pre-examination planning documents. The pre-examination planning process involves the following three phases:

1. Information Package (IP)
2. Pre-Examination Planning Phase 1 (PEP-1)
3. Pre-Examination Planning Phase 2 (PEP-2)

Information Package (IP)

The examination planning process begins with the Field Supervisor (FS) or the Supervisory Examiner (SE) calling the institution's management to inform them of the scheduled examination, followed by sending the IP. The IP is designed to increase banker awareness of the examination process prior to the examination; promote open communications with examination staff; and ensure that the institution's management team knows what to expect during the examination and where to go in the event their expectations are not met. The IP module in the PEP System is used to produce the IP package.

The IP consists of a standardized introductory letter that provides an overview of the examination process; discusses various resources available that explain the examination process; identifies the appropriate communication channels for any concerns about the examination process or the resultant ratings; and provides contact information for the FS and/or the SE. In addition, the IP discusses various resources available on the FDIC's website and includes a sample list of interview questions for the institution's management team to review prior to the EIC's pre-examination interview.

The FS, SE, or designee submits the IP to the institution no less than **75 calendar days** prior to the scheduled on-site date of the examination. To facilitate efficient and secure exchange of information between institution management and the FDIC, the FS or SE should determine the institution's willingness to use the FDIC*connect* Business Center. When the institution is willing to use FDIC*connect*, the FS, SE, or designee should initiate an Enterprise File Exchange (EFX) session and electronically submit the IP to the institution. When the institution is unwilling to use FDIC*connect*, the FS, SE, or designee should use an alternative delivery method (e.g., encrypted e-mail, express mail courier service) that meets the security measures discussed in the FDIC's policies for the exchange, use, and storage of electronic information. The IP letter has been standardized and automated within the PEP System and should be consistently used by all field offices without changes. A sample IP letter is included in this Manual (see Section III). If submitting the IP electronically, the FS, SE, or designee should convert the IP letter to an Adobe portable document format (.pdf) and use any of Adobe's three "Fill & Sign" signature options to sign the document electronically.

Data Validations: For the largest Home Mortgage Disclosure Act (HMDA) reporters (over 500 LAR lines) and/or Community Reinvestment Act (CRA) reporters, validation testing should be conducted in advance of scheduled fair lending and CRA examinations. This approach will allow the institution to resolve any data errors so the examination can proceed without significant delay. In addition, validation testing must be conducted for HMDA Outlier reviews prior to the start of the on-site review. For examinations of all other reporters, the validation testing will generally be conducted during the on-site review. However, a Field Office has the option to perform a data validation for other institutions before the on-site review if the Field Office has sufficient resources to complete the validation prior to the on-site examination date. The HMDA validations should be conducted following the FDIC HMDA validation procedures, considering the scale and complexity of the institution's mortgage lending activities and an overall assessment of the institution's prior practices and compliance risk profile.

A HMDA/CRA Validation Letter is to be provided to institutions when data validations occur prior to any examination. A data validation letter has been standardized and included in the IP module of the PEP System and should be used consistently. This letter is either sent with or after the IP to allow sufficient time for

the data validation process. The letter should be sent using the same secure delivery method established for providing the IP.

Pre-Examination Planning Phase 1 (PEP-1)

The risk assessment of the institution begins during PEP-1. Every institution has inherent risk based on strategic plans, products, past supervisory actions, business activity, and other factors. PEP-1 starts the process of identifying and documenting risk based on the institution's structure, supervisory history, operations, and market area. The various activities performed during PEP-1 are meant to promote critical thinking about the possible inherent risks in the institution being examined.

PEP-1 consists of the following activities:

- Gathering information about the institution from both internal and external sources;
- Contacting the institution to conduct the pre-examination interview (PEP interview);
- Preparing and sending the Entry Letter to the institution along with the Compliance Information and Document Request (CIDR) that primarily requests CMS-related information and documents; and
- Beginning Section 1 of the Assessment of Risk of Consumer Harm (ARCH) and Section 1 of the Fair Lending Scope and Conclusions memo (FLSC).

PEP-1 should begin no less than **45 calendar days** prior to the scheduled on-site date of the examination. However, institutions must have at least 30 days to complete the CIDR and provide requested documents. Longer time periods may be necessary based on the institution's size, resources, and complexity. The EIC should communicate with the institution's management during the PEP interview to determine a sufficient amount of time to provide the requested materials. This timeframe is also discussed in the Entry Letter.

A. <u>Gathering Available Information</u>

Examiners should first concentrate on gathering as much of the information as possible from FDIC records and databases and from publicly available sources before obtaining information 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.

FDIC Records and Databases

- Data Gathering Tool, which compiles institution, examination, supervisory, and financial information from multiple FDIC systems and databases
- Prior ARCH, FLSC, and other information from the System of Uniform Reporting of Compliance and CRA Examinations (SOURCE) or Regional Automated Document Distribution (RADD)
- Previous Reports of Examination (ROEs) and supporting workpapers for compliance, risk management, trust, and information systems
- Prior corrective actions (such as restitution) and responses to ROEs
- Supervisory plans (for large and/or complex institutions, or others, as available)
- CRA Performance Evaluations
- Demographic data for CRA assessment area(s) or market area(s)
- Uniform Bank Performance Reports (UBPR) and Call Reports
- FDIC monitoring reports
- Complaint and correspondence files
- Applications in process

External Sources

- Previous years' HMDA and CRA data disclosure reports
- Content of the financial institution's website
- Public records, such as securities filings
- Newspaper or website articles that raise examination-related issues
- Community contacts (for CRA evaluations)

B. <u>PEP Interview</u>

The PEP interview questions are maintained in the Compliance Pre-Examination Request Package (C-PREP) module of the PEP System and updated on a periodic basis. The EIC will contact the institution and arrange a PEP interview to be conducted either by telephone or through an in-person discussion. The interview questions are provided to the institution with the IP discussed previously. Staff cannot require the institution to provide written answers to the interview questions in advance. If the institution elects to provide written answers, examiners are still expected to conduct an interview to verify and clarify responses received. While examiners

cannot add, revise, or delete interview questions in the PEP System, examiners should tailor interview questions based on what is learned about the institution through the internal and external data gathering process. This demonstrates that the examiner has performed research to become familiar with the institution. Examiners should also ask any necessary follow-up or additional questions during the PEP interview to understand the institution's profile and to determine inherent risk.

The interview responses must be input to the PEP System to ensure that the CIDR is tailored to request only what is necessary to conduct the examination. The EIC should also use the interview as an opportunity to answer the institution's questions about the examination process and to discuss the timing and logistics of the on-site examination. Additionally, the EIC should determine the applicability of the FDIC's e-Exam Policy, should confirm previously discussed electronic document/data access requirements and delivery method(s) with the institution's management; and determine off-site examination capabilities. It also provides an opportunity to identify the institution's staff members who will need to be available to the examination team during the on-site portion of the examination. This will allow the institution to take steps to ensure, to the extent possible, that those persons are available when needed.

Director Involvement: During the PEP interview, the EIC should also inform management that members of the institution's board of directors are welcome to participate in regularly scheduled meetings with examiners or to schedule individual meetings with the EIC, if desired. 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."

C. <u>CIDR and Entry Letter</u>

The C-PREP module in the PEP System is used to produce the Entry Letter and Electronic Data Download Instructions and the CIDR. These documents must be tailored, as appropriate, for each institution.

After conducting the information gathering and PEP interview outlined above, the EIC (or a designee with whom he or she communicates closely) is required to use C-PREP to customize and create the CIDR based on an institution's risk profile, size, complexity, and type of products or services offered. C-PREP filters the CIDR to make available certain items based on the institution's responses to the PEP interview questions. Time periods should be specified when seeking periodic reports, administrative changes, etc., to avoid receiving data not relevant to the examination. Additional information about how to use C-PREP can be obtained from the user guide available within the PEP System.

The CIDR developed during PEP-1 primarily requests CMS-related information and documents. As discussed later in this chapter, the majority of transaction-level documentation will be requested during PEP-2 after completing the ARCH and identifying more than minimal inherent fair lending risk. The initial CIDR will provide the EIC with enough information to properly scope the examination and to identify products, services, and markets (PSMs) on the ARCH that exhibit inherent risk not sufficiently mitigated by the institution's CMS (i.e., residual risks). These residual risks will be the basis for requesting transaction testing related documentation (e.g., disclosures, loan files) during PEP-2. Also, requesting fair lending-related information through the CIDR will allow the examiner conducting the fair lending review to complete the majority of Section 1 of the FLSC prior to the onsite portion of the examination. Thus, the EIC should ensure all applicable fair lending-related information is requested through the CIDR so the examiner conducting the fair lending review has access to this information during the scoping process.

The Entry Letter and CIDR should be provided to the institution in either a paper-based or electronic format, using the secure delivery method previously established for the examination process. As discussed previously, if providing the Entry Letter electronically, the EIC (or designee) should convert it to an Adobe portable document file (.pdf) and use Adobe's "Fill & Sign" feature to sign the document electronically.

The Entry Letter instructs the institution on how to deliver the materials to the EIC or examination team and in what format. As previously discussed, institutions must have at least 30 days to complete the CIDR and provide requested documents. 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 and with supervisor approval, the EIC may visit the institution prior to the

formal on-site date to either pick up the documents or review on-site any documents that are too bulky to duplicate or that are confidential. FDIC*connect* may be used for secure requests and transmission of electronic examination files and is the preferred method for transmitting examination information.

D. ARCH and FLSC – Sections 1

The ARCH is used to document the scope of the examination and assists with prioritization of efforts, time, and resources toward those PSMs with the highest residual risk of consumer harm. Examiners use the FLSC to document the fair lending review conducted in accordance with the Federal Financial Institutions Examination Council's Fair Lending Examiner Procedures. The EIC (and/or an assigned examiner) will begin Sections 1 of the ARCH and FLSC during PEP-1 using available information gathered. Additional information about preparing the ARCH is included in this Manual (see Section II – Review and Analysis). A sample ARCH template is included in this Manual (see Section III). Examiners can also find information about how to use the ARCH and FLSC modules in the user guides available within the PEP System.

ARCH and FLSC Sections 1 start the process of identifying and documenting inherent risk during PEP-1 based on the institution's structure, supervisory history, operations, and market area(s). In an effort to make the PEP process more efficient, Sections 1 of the ARCH and FLSC have been coordinated with and linked to the PEP interview. Several responses for Sections 1 of the ARCH and FLSC will pre-populate based on what is entered into the C-PREP module of the PEP System from the PEP interview. In other words, completing the PEP interview in the C-PREP module should result in completing portions of Sections 1 of the ARCH and FLSC, to the extent possible. However, examiners should review the pre-populated questions and answers to ensure they are correctly completed.

Pre-Examination Planning Phase 2 (PEP-2)

During PEP-2, examiners will conduct an initial assessment of the institution's CMS, which may or may not mitigate the inherent risks identified during PEP-1. Examiners will analyze how effective the CMS is in identifying, addressing, and mitigating the potential for consumer harm. This information will primarily be obtained from the institution's responses to the pre-examination interview and the CIDR. The areas that indicate a moderate or high level of potential consumer harm risk not mitigated by the strength of the CMS will potentially require further evaluation during the on-site examination. In PEP-2, examiners will finalize the ARCH examination scope and establish specific areas for on-site review or transaction testing.

PEP-2 consists of the following activities:

- Reviewing the CIDR responses and requested items;
- Completing the ARCH and completing the majority of FLSC Section 1;
- Requesting additional documents for PSM transaction testing or the fair lending review; and
- Getting the ARCH approved.

Supervisors will ensure sufficient time is scheduled prior to the on-site date of the examination for PEP-2. The amount of time needed to complete PEP-2 will vary based on the size and complexity of the institution. Each Field Office will establish procedures to ensure that PEP-2 starts early enough to provide sufficient time for the institution to gather additional documents for transaction testing.

A. Review CIDR Responses and Requested Items

The EIC and examination team will review the information and documents provided by the institution in response to the CIDR. If documents necessary to complete the ARCH or to assess fair lending risk, such as Board minutes or monitoring/audit reports, are not provided in response to the CIDR, examination team members may go on-site during PEP-2 to review this information as time, resources, and travel requirements permit. Follow-up contact with the institution's personnel during PEP-2 is encouraged to properly answer any questions and to determine the most appropriate examination scope.

B. ARCH Completion and Completing Majority of FLSC Section 1

Based on the information provided by the institution, the EIC (and/or an assigned examiner) will complete the ARCH. This will involve finalizing Section 1 of the ARCH, as necessary, but will primarily involve completing Section 2; the "Decision Point"; and Section 3. The EIC will identify the PSMs that warrant transaction testing and any additional documentation needed for the on-site examination. Also, based on the fair lending-related information obtained through the CIDR, the examiner conducting the fair lending review

will be able to complete the majority of Section 1 of the FLSC prior to the on-site portion of the examination. Additional information about completing the ARCH is included in this Manual (see Section II – Review and Analysis).

C. Transaction Testing (TT) Request

The EIC will prepare and send a TT Request to the institution based on the scope of the examination. The fair lending examiner may work with the EIC to determine if additional fair lending-related documents need to be requested. If the ARCH scope is changed to add a PSM subsequent to sending the TT Request, the examiner has the option to request necessary documents for the additional PSM(s) once on-site instead of sending another TT Request. If, however, a PSM is deleted, the EIC should discuss why the area will not be reviewed in the entrance meeting.

Documents requested during PEP-2 will largely be transaction-level documentation such as loan files, account disclosures, system parameters, etc. that will assist with further evaluating the effectiveness of the institution's CMS or performing CRA, HMDA, or fair lending reviews, as applicable. The documents requested should be consistent with the approved scope of the examination or the anticipated fair lending review. These items will generally be held at the institution for the on-site portion of the examination, unless alternative arrangements, such as the usage of FDIC*connect* or other off-site examination tools, are agreed to by the institution and the EIC.

In order to facilitate preparation of this TT Request, the C-PREP module of the PEP System will allow examiners to develop the separate TT Request list. The TT Request should specify the review time periods when seeking loan and/or deposit records, periodic statements, disclosures, etc., to avoid receiving data not relevant to the examination.

The EIC will provide the TT Request to the institution's designated contact, using the secure delivery method previously established for the examination process. Based on the size, complexity, and resources of the institution, examiner judgment should be exercised regarding the approximate number of days the institution needs to gather the requested documents. Additionally, it is important that examiners communicate to the institution which documents are needed at the start of the examination. This communication will help prioritize the TT Request and allow the institution additional time to gather lower priority documents during the examination.

D. ARCH Approval

The EIC will finalize the ARCH using information obtained during PEP-2 to determine residual consumer harm risk and to establish the scope of the compliance examination. The completed ARCH will be submitted to the supervisor for approval. Each Field Office will establish procedures to ensure that the ARCH is approved by the FS or SE prior to the examination start date.

PEP Record Retention

To ensure consistency in record retention, PEP documents should be maintained as follows:

- The IP and Entry letters should be stored in the correspondence folder in RADD;
- PEP interview questions and answers should be completed within C-PREP and maintained as an examination workpaper in RADD;
- The completed CIDR should be retained as an examination workpaper in RADD;
- The final, approved ARCH should be stored as an examination document in SOURCE;
- The TT Request list should be retained as an examination workpaper in RADD; and
- The final, approved FLSC should be stored as an examination document in SOURCE. *Note: Any supporting documents used in the fair lending review should be retained in accordance with DCP Bulletin 2018.07.25 – Job Aid: SOURCE vs. RADD Minimum Documentation Requirements.*

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 Information and Document Request (CIDR) in order to develop the 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 Board and management 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 Scope Memorandum

The goal of a risk-focused, process-oriented examination is to direct resources toward areas with higher degrees of risk of consumer harm. 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. This process is documented by the examiner in a scoping memorandum, the Assessment of Risk of Consumer Harm (ARCH) that is reviewed and approved by the supervisor. The ARCH is developed during the pre-examination planning process and utilizes historical data, information obtained from the interview with the bank, and documents and information submitted by the bank. The ARCH describes the focus of the examination, including issues to be investigated and the products, services, or markets that exhibit inherent risk not sufficiently mitigated by the institution's CMS. The identified areas with residual risk will be further reviewed or transaction tested during the on-site portion of the examination.

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.

The final ARCH 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.

A sample ARCH template is included in this Manual (see Section III).

Developing a Risk Profile

Every bank has inherent risk based on strategic plans, products, past supervisory actions, business activity, and other factors. The ARCH will document the identified areas of inherent risk by considering the following:

Bank Structure:

- Significant Factors or Changes
- Mergers or Acquisitions
- Significant Growth since Prior Examination
- De Novo Status

Supervisory History:

- Current & Past Enforcement Actions
- Reimbursement History
- History of Compliance with fair lending Laws and Regulations.
- Current and Prior Regulator Ratings and Recommendations
- Consumer-Related Litigation
- Consumer Complaints

Operational Areas - Regulation Risk:

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

Operational Areas - Product/Service/Market (PSM) Risk:

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

Supervisory History: The financial institution's past compliance performance is an important consideration when developing its risk profile. Historic effectiveness of the CMS, 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).

Operational Areas is a critical consideration in the identification of inherent risk. Regulation or Product/Service/Market risks can exist in the following operational areas:

- Lending
- Deposits
- Non-Deposit Products
- Third Party Relationships
- Other Products or Issues
- UDAP

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/Service/Market (PSM) Risk: The institution's products, services, and markets 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 can present heightened risk, particularly for product delivery, but also for any operation, product, service, or activity provided or conducted by a third party on behalf of the institution. Finally, the institution's strategic plan for growth and for the introduction of new products, services, or markets should also be taken into account.

In order to properly assess a financial institution's risk, the EIC or designee also reviews the following aspects of the CMS, which may or may not mitigate the identified inherent risks;

- Board and management Oversight
- Compliance Program
    - Policies and Procedures
    - Training
    - Monitoring and/or Audit Procedures
    - Complaint Response

Taking into consideration the conclusions drawn in each of the preceding components, and any other pertinent information, the examiner should identify and assess the inherent risk within the institution's PSMs. When the institution's inherent risk is not sufficiently mitigated by its CMS, residual risk is present. To develop a risk profile of the institution and set the examination scope, the examiner should keep the risk scoping formula in mind (Inherent Risk – Mitigating Factors = Residual Risk). The areas with residual risk should be further reviewed or transaction tested during the on-site examination. The result of the EIC's assessment of risk and the specific issues to be investigated and areas to be targeted with transaction testing should be addressed in the ARCH, 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. It is important to accurately identify inherent risk and weight any mitigating factors that reduce the risk. This process requires the use of sound examiner judgment.

Developing a Scope Memorandum

The EIC should start the Scope Memorandum, the ARCH, using the information gathered prior to conducting the pre-examination interview. The EIC uses information such as prior compliance and risk management reports of examination, correspondence, and available complaint information to prepare for initial contact with the institution, and may complete some parts of the ARCH during this time. Once the information is received during pre-examination planning, the remainder of the ARCH should be completed. Follow-up contact with bank personnel is encouraged, if warranted to properly determine the most appropriate examination scope.

Examiner judgment is a critical aspect of properly evaluating an institution's risk profile. The ARCH allows examiners to use their judgment to focus and prioritize resources on areas (products, services, or markets) that present the highest risk of consumer harm. A series of questions guides examiners through the analysis of documenting inherent risk, mitigating factors, and the residual risk of consumer harm. ARCH is divided into four sections and has a midpoint decision summary. The ARCH requires summaries within each section to document elements that present higher risk of consumer harm.

The questions in the ARCH do not cover every potential risk but rather set out a basic framework to assist examiners in assessing and documenting an institution's risk of consumer harm. Examiners are not limited to these questions and should consider all relevant facts when evaluating the bank's risk profile.

The ARCH 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 consumer harm risk will dictate the intensity of transaction testing, as examination resources are focused in areas where residual risk is identified, either prior to or during the examination. If limited risk is identified or if the bank has mitigated the identified risk, then no transaction testing would be required.

On-Site Review and Analysis

Throughout the on-site review and analysis phase of the examination, the examiner should have discussions with 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 CMS 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, including the use of information collected during the pre-examination and its impact on the scope of the examination.
- 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 of consumer harm 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 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 CMS

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 CMS, 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 CMS is effective at facilitating compliance.
- Identify potential deficiencies in the CMS and areas of greatest risk of consumer harm.
- 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 CMS 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, and any pertinent outstanding FDIC guidance regarding the regulatory or policy requirements of each area under review.

NOTE: The Examination Checklists/Workpapers are not to be given to institution management to complete.

Applicable Statutes and Regulations

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

Lending

Truth in Lending

Real Estate Settlement Procedures

Homeowners Protection

Equal Credit Opportunity

Fair Housing

Home Mortgage Disclosure

Flood Insurance

Preservation of Consumers' Claims and Defenses

Homeownership Counseling

Servicemembers Civil Relief

Consumer Leasing

Military Lending Act

Secure and Fair Enforcement for Mortgage Licensing

Deposits

Truth in Savings

Electronic Fund Transfers

Expedited Funds Availability

Part 360 – Resolution and Receivership Rules

Non-Deposit Products

Investment Sales/Recordkeeping

Broker/Dealer Rules and Exemptions (Regulation R)

Consumer Protection in Sales of Insurance

Other Products or Issues

Advertisement of Membership

Electronic Banking

Privacy of Consumer Financial Information

Fair Credit Reporting Act, including FACTA

Right to Financial Privacy

Garnishment of Accounts Containing Federal Benefit Payments

Children's Online Privacy Protection

Unfair or Deceptive Acts or Practices

Telephone Consumer Protection

Controlling the Assault of Non-Solicited Pornography and Marketing

Third Parties

Overdraft Payment Programs

Community Reinvestment Act

CRA Technical Requirements

Branch Closings

Interstate Banking and Branching

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, Risk Management, and specialty examinations (with a focus on the management component of each);
- Minutes of the meetings of the Board, compliance committee, discount committee, etc.;
- New, modified or amended compliance-related policies, procedures, and other internal memoranda;
- 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 managed by the FDIC's Consumer Response Center;
- Written management and Board response and follow-up to internal monitoring and audit and external audits, if applicable;
- Agreements with third parties to provide products or services such as with an outside vendor to provide compliance services and educational materials, or with a networking broker/dealer to provide brokerage services;
- Institution organizational chart and management résumés; and
- Examiner notes from discussions with the compliance officer, managers, etc.

Procedures

1. Review Board and committee meeting 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 by the institution and, as applicable, by third party providers.
- Training of Directors and 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, if applicable.
- 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 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 CMS?
- 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 third party product or service providers, such as 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 CMS?

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

Evaluating the Compliance Program

Policies and Procedures

Examiners are to determine whether the institution's policies and procedures are appropriate to the risk in the products, services, and markets of the institution. 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, third party relationships, etc.;
- Compliance-related policies and other written compliance procedures;
- Board minutes, compliance committee minutes, and other committee minutes, as applicable; 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 that has one or more branch locations to maintain a branch closing

policy.

- Truth in Lending Policy – Applicable to institutions as defined under section 1503(3) of the SAFE Act, 12 U.S.C. 5102(3). These may be incorporated into the loan policy or as stand -alone policies. For these institutions, written policies and procedures must be appropriate to the nature, size, complexity, and scope of the mortgage lending activities of the depository institution and its subsidiaries. They specifically must address lender compensation, prohibition on steering, and the requirements under the SAFE Act.

- Fair Credit Reporting Act – Policies and procedures must provide adequate guidance for the adequate reporting of consumer information, complaint resolution of consumer information, and safeguarding of consumer information.

- Overdraft Programs – Institutions providing overdraft programs should adopt written policies and procedures adequate to address the credit, operational, and other risks associated with these types of programs.

In order to ensure an accurate assessment of the institution's CMS, 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

Examiners will determine whether compliance training is current and tailored to risk of the institution and staff responsibilities. 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, 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?

- Do third party service providers receive appropriate training?

- 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

Examiners should determine the sufficiency of the monitoring and, if applicable, audit to encompass compliance risks throughout the institution. 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, 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 product or 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?

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, compliance committee minutes, and other committee minutes, as applicable; and
- Examiner notes from discussions with audit staff, compliance officer, managers, etc.

Consumer Complaint Response

Examiners are to determine the responsiveness and effectiveness of the consumer complaint resolution process. 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, compliance committee minutes, and other committee minutes, as applicable; and
- Examiner notes from discussions with the compliance officer, 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 about the institution and, as applicable, third party providers?
- 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 CMS, does the type or quantity of complaints suggest any other areas in need of in-depth review?
- Does the institution review complaints to determine whether improvements or changes to products or operations should be made?

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, or weak? On what is this assessment based?

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 and of significant third party relationships?
- 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 inherent risks, the EIC must identify PSMs with residual risks and 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 PSMs. For example, if there is a weakness in monitoring the calculation of Annual Percentage Rates 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 requirements.

The severity of CMS weakness and inherent 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 conduct a limited review of a couple of transactions to support a favorable conclusion. 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 for PSMs exhibiting higher levels of residual risk, the examiner should tailor the actual sample and test to the identified weakness. If an inherent risk is sufficiently mitigated by the strength of the CMS, then minimal residual risk of consumer

harm exists and on-site transaction testing is not considered necessary. ARCH comments should summarize how the CMS elements reduce the inherent risk of each applicable PSM.

Consultation Policy

Consultations and communication between Field, Regional, and Washington staff members help maintain the quality and consistency of compliance, fair lending, and CRA examinations and supervision. Information communicated informally or through consultations alerts senior DCP officials to significant, unusual or emerging 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.

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 DCP 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 or CRA PE is consistent with the final outcome.

Communicating Findings

At the conclusion of an FDIC risk-focused, on-site consumer compliance and Community Reinvestment Act (CRA) examination, visitation or review, compliance examination staff communicates supervisory findings to institutions describing the strengths and weaknesses of an institution's compliance management system (CMS), assessing adherence to the consumer protection laws and regulations, and describing potential or actual consumer harm. Typically, such findings are conveyed during a closing meeting with the institution's management and/or the Board of Directors/Trustees (Board) at the conclusion of a consumer compliance examination, and also in the Report of Examination (ROE).

Examiners communicate Matters Requiring Board Attention (MRBAs) when significant issues are identified requiring an institution's Board and management to take prompt corrective action on behalf of the institution and elevated supervisory attention is necessary. Examiners also provide recommendations to management when issues are identified that have a lower risk of consumer harm and are correctable by management in the normal course of business. If institutions take recommended actions, their CMS generally improves, and subsequent supervisory attention may not be necessary.

Closing Management Meeting

A closing meeting is held with management at the conclusion of on-site compliance and CRA examination or reviews.[1] When practical, at least two FDIC representatives are present at the closing meeting. Attendance by financial institution representatives other than management is at the discretion of management. These participants may include: consultants, agents, counsel, accountants, holding company officers, directors, and employees who work directly with consumer protection laws or CRA. The presence of the aforementioned representatives should only be during segments that pertain to their area of responsibility. Third party participants must be under contract with the bank, with appropriate confidentiality language, in order to attend the closing meeting.

During concurrent examinations with Risk Management Supervision (RMS), DCP's Examiner-in-Charge (EIC) coordinates with RMS examiners to schedule the closing management and Board meetings in an effort to ensure that all necessary attendees are present and that the bank's and FDIC staff's time is used efficiently. Reasonable requests from management, such as for separate meetings, are considered and accommodated, if practical.

Examination findings, including compliance and 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. Prior to the closing meeting, Regional Offices generally consult with examiners and approve enforcement action recommendations.

[1] An on-site review includes: Consumer complaint investigations; Visitations; or Other Special Reviews.

The closing meeting is used to:

- Summarize review or examination findings. All critical issues are discussed. If significant issues arise subsequently, they are discussed with management either in person or by telephone. If management presents significant, new information at the closing meeting, additional review by the examiner may be required. In such instances, the examination process is left open for further review of applicable regulatory issues and the institution's records. A second meeting with management may be necessary to discuss any additional matters.
- Discuss, when appropriate, positive findings to acknowledge the effectiveness of the institution's compliance or CRA efforts.
- Provide recommendations to address noted weaknesses or deficiencies.
- Obtain management's response(s) and commitment(s) for corrective action for deficiencies identified in the CMS and for cited violations and the resulting consumer harm.
- Advise management of recommended compliance and CRA ratings, as well as any recommendations for formal or informal enforcement actions.
- Recommend actions that would strengthen or enhance the financial institution's CMS, as applicable.

The agenda for the closing meeting lists the discussion items in the order of their significance in relation to the overall conclusions. The agenda also includes a tentative listing of Level 3 and 2 violations, and to the extent possible, draft copies of the pertinent violation sections of the ROE. At the closing meeting, examiners also provide management with a copy of the Level 1 violations, if applicable. A copy of the agenda is provided to management and included in the examination 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 are conducted after the closing meeting with management, and are planned for regularly scheduled Board meetings, whenever possible. When significant issues requiring consultation with the Regional Office are present, the Consultation Policy is followed prior to scheduling the Board meeting.

Board meetings are 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 attend, as deemed appropriate.

Board meetings are required under one or more of the following circumstances:

- Examiners identify significant problems that require consultations with the Regional Office;

- 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 requests such a meeting.

A Board meeting is not required for:

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

Report of Examination

Introduction

The ROE is a compliance examination's principal document of record. It communicates the results of an examination to the Board and management of the financial institution. The ROE highlights the strengths and weaknesses of a financial institution's CMS and cites violations (if any) in order of significance. The ROE may also include pages that inform the institution about matters requiring Board attention (MRBA), compliance with enforcement actions, or other matters. The ROE offers recommendations for addressing deficiencies and improving future compliance management performance, which could also include informal suggestions such as best practices.[2] Compliance examiners develop the ROE's content and its findings based on bank information reviewed during the supervisory process, FDIC examination policies and procedures, and examiner experience and professional judgment. For additional information, see the instructions for the Bank of Anytown provided on page III-2.1 in this manual.

Format of the Report of Examination

The Report of Examination is a standalone document that is organized as follows:

- Transmittal Letter
- Cover Page
- Examiner's Comments and Conclusions
  - Scope of the Examination
  - Consumer Compliance Rating
  - Compliance Management System
    - Board and Management Oversight
    - Compliance Program
  - Violations of Law and Consumer Harm
  - Optional headers to address significant findings (if applicable), such as Third Party Oversight, Fair Lending, etc.
  - Enforcement Action(s) (if applicable, including proposed enforcement actions)
  - Community Reinvestment Act Evaluation (if applicable)
  - Meeting with Management (and the Board if applicable)
- Matters Requiring Board Attention (if applicable)
- Compliance with Enforcement Actions (if applicable)
- Violations Page(s) (if applicable)
- Other Matters (if applicable)
- Supervisory Comments (if applicable)

Transmittal Letter

A transmittal letter accompanies a written ROE to a financial institution's Board. The letter is used, in part, to require appropriate follow-up concerning the examination with the Regional Office. The transmittal letter requires the institution, within a timeframe established by the applicable Regional Office, to:

- Address each MRBA;
- Develop appropriate corrective actions for any Level 3 or Level 2 violation that was not adequately corrected prior to the completion of the examination; and
- Send a letter or letters to the appropriate FDIC office notifying it, in sufficient detail, of the actual resolution of the MRBAs and Level 3 and Level 2 violations.

Appropriate staff at the Regional Office level reviews an institution's response letter(s) and determines whether the response sufficiently addresses the issues in a timely manner. The Regional Office maintains a tracking system to ensure responses are received and corrective actions are completed in a timely manner. In cases where an enforcement action is pursued against an institution, examination staff will follow established monitoring procedures.

Content of the Report of Examination

The guiding principle for completing the ROE is that it contains all information that is necessary and useful for the institution's Board and management to understand the scope and conclusions of the examination, and any corrective actions that may be necessary to achieve compliance or address consumer harm. The ROE should aid the Board and

[2] Best practices may be communicated to an institution verbally or in writing. There is no supervisory expectation that an institution should implement suggested best practices.

management in developing an action plan to address any findings or supervisory concerns. Examiners exercise judgment and discretion when determining the amount of information and detail to include in the ROE. Examiners use the instructions and template for the Bank of Anytown at page III-2.1 in this manual when writing the following sections and pages of the ROE.

Scope of the Examination

This section of the ROE provides information regarding the date, type, and coverage of the examination.

Fair lending matters are incorporated into the ROE. Fair lending is specifically noted in the Scope of the Examination section, and the examiner's findings are incorporated into the CMS section of the ROE (described below), as appropriate. If warranted, a separate fair lending section may be included in the ROE.

Consumer Compliance Rating

This section of the ROE discloses and supports the consumer compliance rating. The introductory sentences disclose and support the consumer compliance rating, using the applicable rating definition as follows:

- 1: "A Consumer Compliance Rating of '1' is assigned. An institution in this category maintains a strong CMS and takes action to prevent violations of law and consumer harm."
- 2: "A Consumer Compliance Rating of '2' is assigned. An institution in this category maintains a CMS that is satisfactory at managing compliance risks in the institution's products and services and at substantially limiting violations of law and consumer harm."
- 3: "A Consumer Compliance Rating of '3' is assigned. An institution in this category reflects a CMS deficient at managing consumer compliance risk in the institution's products and services and at limiting violations of law and consumer harm."
- 4: "A Consumer Compliance Rating of '4' is assigned. An institution in this category reflects a CMS seriously deficient at managing consumer compliance risk in the institution's products and services and/or at preventing violations of law and consumer harm."
- 5: "A Consumer Compliance Rating of '5' is assigned. An institution in this category reflects a CMS critically deficient at managing consumer compliance risk in the institution's products and services and/or at preventing violations of law and consumer harm."

Compliance Management System

This section of the ROE includes the EIC's comments and conclusions regarding the overall quality of the institution's CMS and the Board and management's ability to effectively meet its compliance responsibilities. This section discusses the EIC's comments and conclusions relative to each of the two elements of a CMS: Board and management oversight, and the Compliance Program. Both positive and negative aspects of the institution's management of its compliance responsibilities are discussed.

Violations of Law and Consumer Harm

This section of the ROE summarizes the relationship between violations identified and the deficiencies in the CMS. This section also summarizes the consumer harm that resulted from such deficiencies. Generally, examiners consider the collective significance and frequency of all infractions and any mitigating factors.

Violations are categorized as Level 3/High Severity, Level 2/Medium Severity, and Level 1/Low Severity. Only violations at Levels 3 and 2 that are of High or Medium Severity are discussed in this section of the ROE. Level 1 violations will not be mentioned in the examiner's comments and conclusions pages of the report.

This section may include information about reimbursements related to Truth in Lending, administrative enforcement actions, or potential civil liability. In the case of reimbursement (or restitution of any type), this section briefly states the total reimbursable amount when reliable estimates have been determined, or estimates based upon the examiner's calculations, including the assumptions on which the estimate is based.

Enforcement Actions

Include a brief comment summarizing any proposed enforcement actions and/or the institution's actions with regard to any outstanding enforcement action(s). For outstanding enforcement action(s), assess the adequacy of the steps taken by the institution to comply with each provision on separate "Compliance with Enforcement Actions" pages.

Community Reinvestment Act

If a concurrent CRA evaluation was conducted, this section of the report includes the CRA rating and a reference to the CRA Performance Evaluation.

Meeting with Management

This section of the ROE describes the exit meeting(s) with management.

Meeting with the Board

This section of the ROE describes the meeting with the Board, if applicable. If a meeting is held with the Board, this section includes the same elements that are discussed under "Meeting with Management" in the Bank of Anytown as it relates to the meeting with the Board members.

Matters Requiring Board Attention

The MRBA page is only included in the ROE for items that are significant and require prompt corrective action and elevated supervisory attention. MRBAs are intended to

clearly convey to an institution's Board and management issues of the highest degree of supervisory concern. MRBA could include violations of consumer protection laws, CMS weaknesses that if left unaddressed could adversely affect the institution, activities that resulted in consumer harm, or emerging issues that impact the institution and require proactive attention to mitigate risks.

When an EIC recommends an informal or formal enforcement action against an institution, the provisions of the proposed enforcement action as well as the reasons for the recommendation should be discussed with Board and management and documented in the Meeting with Management and Meeting with the Board sections of the Examiner's Comments and Conclusions pages in the ROE. If a matter that requires Board and management's attention is included as a provision in a proposed enforcement action, it should not be duplicated on the MRBA page.

Compliance with Enforcement Actions

The Compliance with Enforcement Actions page is only included when applicable and discusses how management has addressed weaknesses identified in the action. The guidance in this section applies to both formal and informal actions. The page will start with a brief overview of the facts leading to the issuance of an action. At the first examination /visitation after the issuance of a formal or informal administrative action, the provisions of the action will generally appear verbatim on this page.

Each provision should be followed with the examiner's assessment of the adequacy of the steps taken by the institution to comply with the provision. For example, an assessment of a new policy might say "The updated Compliance Policy is comprehensive and tailored to the bank's product offerings." Examiners should not use conclusory statements of opinion such as "The institution is in compliance/noncompliance with this provision." Comments should indicate whether any time limits set forth in actions have been met. At subsequent examinations/visitations, the examiner need only address provisions of an ongoing nature and those that remain outstanding. In all cases, a summary of the institution's actions with regard to the enforcement action will be included on the examiner's comments and conclusions page along with the examiner's recommendation to terminate, continue, or change the enforcement action.

Violations Page(s)

The violations page(s) in the ROE, when applicable, serve as the institution's official record of violations identified during an examination.

Violations of Highest Concern -Level 3/High Severity:

Violations that have resulted in significant harm to consumers or members of a community are classified as Level 3/High Severity. These violations typically result in a request or a requirement that the institution provide restitution in excess of $10,000 (in aggregate), and other examples include pattern or practice violations of anti-discrimination provisions, including redlining or widespread discouragement.

Violations of Moderate Concern - Level 2/Medium Severity:

Violations reflecting systemic, recurring, or repetitive errors that represent a failure of the bank to meet a key purpose of an underlying regulation or statute are classified as Level 2/Medium Severity. These violations may have had a small, but negative impact on consumers or have the potential to have a negative impact if uncorrected. Level 2 Violations may also include those resulting in potential restitution in an amount below the Level 3 threshold.

Violations of Lowest Concern- Level 1/Low Severity:

Violations that are isolated or sporadic, or systemic violations that are unlikely to affect consumers or the underlying purposes of an applicable regulation or statute are classified as Level 1/Low Severity. These violations are typically due to individual instances of failure to follow established procedures or minor errors in the implementation of reasonable procedures to comply with the obligations of a regulation or statute.

Violations Pages:

Level 3 and Level 2 violations are described in the ROE and are listed in order of severity with management's response to each violation. Level 1 violations are recorded as a list on the Level 1 Violations page. The Level 1 Violations page is left with management at the conclusion of the exit meeting but is not included in the ROE or mentioned in the examiner's comments and conclusions pages of the report.

Descriptions of the Level 3 and Level 2 violations in the violations pages readily call attention to the general nature and magnitude of these matters. Examiner's recommendations to address the violations along with management's responses will be included on the violations pages. Where no violation was found for a particular level of violation, the associated violations page is omitted.

The FDIC relies on examiner professional judgment in categorizing the level of violations. Examiners make reasonable efforts to appropriately categorize violations; however, the key purpose of the categorization system is to communicate to institutions the FDIC's level of concern regarding each of the violations cited, and for institutions to appropriately prioritize efforts to correct violations cited.

Violations that have been self-identified by a bank and fully corrected before the start of the examination (including

remedial action, if appropriate) generally are **not** cited on the violations pages or recorded in SOURCE.[3] Examiners confirm that the bank identified the root cause of the violation and that the corrective action gives reasonable assurance that the violation will not recur.

Other Matters

The Other Matters page, if used, discusses matters that arise during an examination that may not rise to the level of a violation of law or regulation regarding which the FDIC has examination authority. Other matters may include violations that are referred to another agency, or details to support a potential risk that is included on the examiner's comments and conclusions pages.

Supervisory Comments

The purpose of the Supervisory Comments page 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;
- Tentative plans or strategies that are not widely known in the institution that may affect the frequency or scope of future compliance examinations; and
- Matters requiring consultation with the Regional Office or Washington Office.
- An explanation as to why civil money penalties are not imposed for Flood violations.
- Bank's compliance with the Interstate Banking and Branching Efficiency Act of 1994.

This page is omitted when there are no issues to discuss, or all information is accessible in SOURCE, or the examination workpapers.

[3] SOURCE is FDIC's system of record for all compliance and CRA examination activities. It stores both examination data and documents including the Compliance Report of Exam and the CRA Performance Evaluation.

Review of the Report of Examination

The EIC or Review Examiner, as directed by regional policy, completes and uploads the following documents into SOURCE for review:

- Transmittal Letter;
- Cover Page;
- Page 1 – Examiner's Comments and Conclusions;
- CRA Performance Evaluation (if applicable);
- Matters Requiring Board Attention (if applicable);
- Compliance with Enforcement Actions (if applicable);
- Level 1, Level 2, and Level 3 Violations Pages (if applicable);
- Other Matters (if applicable)
- Supervisory Comments (if applicable);
- Final examination scoping documents for compliance and fair lending.

The EIC ensures that all SOURCE submission requirements are met, which includes completing all applicable screens and recording the appropriate violation code for all levels of violations cited during the examination or visitation.

During the review process, Review Examiners identify any gaps, inconsistencies, or unsupported or unexplained conclusions contained in the ROE or any other document informing the institution of a FDIC material supervisory determination. The assigned Review Examiner and the EIC shall fully support the facts identified with supporting information before the ROE or document is submitted to the institution.

Generally, examiners conduct Board meetings before forwarding the examination report to FDIC's Regional or Washington Office for review. However, in special circumstances, examiners may conduct the meeting after forwarding the report for review. If this occurs, the EIC will prepare a memorandum to the Regional Director summarizing the pertinent issues from the Board's discussion for inclusion in the ROE.

The FDIC communicates with the financial institution if, during the review process, the examiner's recommended rating is downgraded or the examiner's conclusions are changed in a way that adversely affects the financial institution.

After the ROE is signed, it is delivered to the Board of the financial institution.

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, including Level 3 and Level 2 violations.

It is vitally important that appropriate, relevant workpapers are maintained within the applicable storage medium to support:

- Review of the report of examination;
- Expanded explanations of Level 3 and Level 2 violations 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. The Assessment of Risk of Consumer Harm (ARCH) is used to identify and documents inherent risk. Some areas of risk will be eliminated from further review during pre-examination planning based on their low level of inherent and/or residual risk. Sections 1 and 2 and the Decision Point section of the ARCH should explain why areas are eliminated from on-site review. Comments should be concise but specific enough to indicate why consumer harm risk is low and how CMS factors mitigate the inherent risk.
2. The ARCH also is also used to identify and documents the areas with moderate or high level of potential consumer harm risk that are not mitigated by the strength of the CMS. .Section 3 of the ARCH documents the examination scope and establishes specific products, services, or markets (PSMs) for on-site review or transaction testing. As mentioned previously, PSMs are based on residual consumer harm risk and only PSMs exhibiting such residual risk would be presented here

   There may be certain situations in which transaction testing or other review procedures will be necessary but is not predicated upon residual consumer harm risk. Training and development needs are one example. These areas should also be addressed in Section 3 of the ARCH but in the "Other Areas for Review" section rather than as a PSM.

   An Examiner Summary workpaper should be prepared for each area selected for transaction testing or other review procedures. The Examiner Summary should support examination findings, conclusions, and recommendations and discuss applicable strengths and weaknesses relevant to inherent risk and how effectively the bank is identifying, addressing, and preventing consumer harm. The Examiner Summary, in conjunction with the ARCH and the ROE, 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 Summaries should include (1) significant findings and their impact on the CMS rating and (2) any deficiencies or violations noted during the examination that are not contained in the ROE.

   - 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 areas may be aggregated. For instance, it may be appropriate to combine all mortgage loan-related areas in one Examiner Summary.

Again, Examiner Summaries are only necessary for areas selected for transaction testing or other review procedures. The ARCH will be used to provide a summary of the other areas not reviewed.

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 required. The examiner is required to download the most current version of the standardized workpaper prior to the start of the current examination. 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 violation codes, regardless of whether or not they were detailed in the ROE, 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 documents supporting 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.
- 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 $200 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. Additionally, any violations cited in the ROE that contain examples of specific transactions should have corresponding evidence in the examination file. Furthermore, any violation that results in the imposition of a civil money penalty should be supported with all applicable documentation.

General Procedures

1. The EIC, or designee, should upload workpapers into the electronic storage database:
   - Check to make sure that you are not overwriting a more current version of the document;
   - Do a quality control check to ensure that the documents are legible and that all pages have been included (front and back).
2. Workpapers are generally not changed after the conclusion of an examination. However, if revising a workpaper in any manner after the completion of an examination is necessary, such revisions should be clearly documented on the workpaper.
3. Some checklists in this manual have been incorporated into the national standardized workpapers and are required to be completed in conjunction with the review of an area. In situations where the national standardized workpapers have not incorporated the checklists within the manual, or if a checklist is obtained elsewhere, the completion of these checklists is 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.
4. Documents added into the electronic storage database are only those not required to be uploaded to SOURCE.

Filing Workpapers

1. The EIC is responsible for ensuring that all appropriate documents are uploaded according to National Standardized Workpapers filing schema for the areas reviewed during the examination and ensuring the documents are complete and legible. The EIC can assign this responsibility to team members, as appropriate (e.g. the examiner reviewing an area could be assigned responsibility to upload the appropriate documents in that specific review).

2. The EIC (or designee) 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 mandatory workpapers are appropriately organized and uploaded to electronic storage.
   - Close the examination in the electronic storage database after the EIC has been informed that the RE review process is complete.

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;
    - Cover Page;
    - The ROE, including Level 1, Level 2, and Level 3 Violations Pages (if any);
    - CRA Performance Evaluation;
    - Supervisory Comments (if applicable);
    - Level 1, Level 2, and Level 3 Violations Pages (if any);
    - Final examination scoping documents for compliance and fair lending.
- 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 required dates, such as the examination On-Site Date, as soon as possible.

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.

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.

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. Any change must be carefully documented, and the bank should be notified of the change and the basis for it.

General Visitation Procedures

1. Perform appropriate off-site review and analysis procedures prior to the commencement of the on-site visitation. Review should include documents in electronic storage facilities that have been received from the bank since the previous examination activity, such as Progress Reports. Tailor the visitation to address the compliance deficiencies or concerns identified, or the matters under review. An Assessment of Risk and Consumer Harm (ARCH) 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.
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 Report of Visitation

1. Prepare Report of Visitation — Compliance (required). Examiners use the Report of Visitation template page when writing comments and conclusions. Additional pages may include, as applicable:
   - Matters Requiring Board Attention
   - Compliance with Enforcement Action(s)
     - 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.
   - Violations Page(s)
   - Other Matters
   - Supervisory Comments (Page A – Supervisory Section)
     - Include recommendation to the Regional Office on whether to remove or retain reporting requirements contained within outstanding formal or informal enforcement actions (if not in-

cluded on the report).

2. Forward the Report of Visitation to the review staff designated by Regional Office management.
3. Update all appropriate SOURCE data fields, and ensure that all SOURCE submission requirements are met.
4. 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

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

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.

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(s) to be taken. It is of note that formal enforcement actions are publicly available records.

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 laws or regulations 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), including an individual officer or director of an institution, 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. If an institution voluntarily agrees to the entry of a Cease - and- Desist Order, it is entitled a "Consent Order."
- Order for Restitution: Section 8(b)(6): Issued to require an institution or IAP to disgorge any unjust enrichment to consumers and/or take other affirmative action to redress consumer harm.
- 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): CMPs are assessed to sanction an institution, IAP, or an individual for a violation, breach of a fiduciary duty, and/or practice. They are also assessed to deter future occurrences. In the case of a CMP assessed to an institution or IAP, twelve factors that measure the breadth and severity of the problem are considered, including consumer harm, cooperation, and supervisory history. Additionally, the asset size of the institution is taken into account. In the case of a CMP assessed to an individual, a similar analysis is performed. The FDIC utilizes separate matrices for institutions and individuals. In both cases, the CMP matrices are guidance intended to promote consistency in the assessment of CMPs. The matrices aid the examiner in determining the appropriateness and/or level of CMPs. Each CMP matrix is included at the end of this section

References

Federal Deposit Insurance Act, Section 8

12 CFR §308 (Rules of Procedure; multiple subparts)

Interagency Policy Regarding the Assessment of Civil Money Penalties by the Federal Financial Institutions Regulatory Agencies

Interagency Notification and Coordination of Enforcement Actions by the Federal Banking Regulatory Agencies

Joint statement of Policy: Administrative Enforcement of the Truth in Lending Act – Restitution

MATRIX for CMPs AGAINST INSTITUTIONS

Factors to be Considered	0	1	2	3	4	Assigned Level	Weight Factor	Weight X Level
Consumer harm and/or harm to public confidence; unsafe or unsound banking practice; violation (6) (12)	Neither any actual harm nor any likelihood of harm to public confidence or to consumers; no unsafe/unsound practices	Minimal harm to consumers or public confidence; and/or technical violations	Moderate actual harm to public confidence or to consumers, or the likelihood of moderate harm to public confidence or consumers; and/or minimal number of substantive violations	Significant actual harm to public confidence or to consumers, or the likelihood of significant harm to consumer confidence or consumers; and/or moderate number of substantive violations	Substantial actual harm to public confidence or to consumers, or the likelihood of substantial harm to public confidence or consumers; and/or unsafe/unsound practices exist; and/or significant number of substantive violations. Violations of a final or temporary order or condition imposed in writing in granting an application or other request by an institution		10	
Intent (1)	No intent – occurred despite reasonable efforts and systems	Careless – made reasonable efforts but error due to inadequate diligence	Should have known – should have been aware of the risk	Reckless or willful disregard – put on specific notice, but institution did nothing	Deliberate – intentional misconduct		9	
Concealment (5)	Institution (or IAP) provides all the information requested by FDIC promptly.	Institution (or IAP) provides information requested by FDIC, after delay, but does not seriously impair FDIC ability to make determination.	Institution (or IAP) provides information requested by FDIC, after a significant delay, or cannot provide documents because it failed to keep records.	Institution (or IAP) recklessly/deliberately failed to keep records, or otherwise deliberately obstructs or complicates issues.	Institution (or IAP) falsifies or destroys documents or information or fails to produce all documents or provide all information.		8	
History of previous supervisory action/commitment to prevent misconduct (last 2 exams) (9) (13)	No history of previous supervisory actions or commitments	Institution's written commitment	Board Resolution	Memorandum of Understanding	Formal Enforcement Action		8	
Continuation after Notification (3)	Institution (or IAP) self- identifies misconduct and misconduct ceases 2 months or less after notification or as soon as reasonably practicable	FDIC or other party identifies misconduct and misconduct ceases 2 months or less after notification or as soon as reasonably practicable	FDIC, Institution (or IAP), or other party identifies misconduct and misconduct ceased more than 2 months to 4 months after notification	FDIC, Institution (or IAP), or other party identifies misconduct and misconduct ceased More than 4 months to 6 months after notification	FDIC, Institution (or IAP), or other party identifies misconduct and misconduct continued more than 6 months after notification		5	
Duration of misconduct prior to notification or discovery (2) (12)	0 to 6 months	Over 6 months to 12 months	Over 12 months to 18 months	Over 18 months to 24 months	Over 24 months		5	

Frequency of misconduct prior to notification or discovery (2) (12)	N/A	The misconduct/ violation is isolated	The misconduct/ violation is a pattern or practice or system wide with minimal impact	The misconduct/ violation is a pattern or practice or system wide with moderate impact	The misconduct/violation is a pattern or practice or system wide with significant impact		5	
Financial gain and/or other benefit (7) and/or loss or risk of loss to the institution (6)	None	Financial benefit or actual loss is 0.025% or less of total assets; and/or minimal other benefit; and/or risk of minimal loss	Financial benefit or actual loss is > 0.025% but ≤0.050% of total assets; and/or moderate other benefit; and/or risk of moderate loss	Financial benefit or actual loss is >0.050% but ≤0.075% of total assets; and/or significant other benefit; and/or risk of significant loss	Financial benefit or , actual loss is >0.075% of total assets; and/or substantial other benefit		5	
Previous Misconduct or Criticism (last 2 exams) (10)	None	Same or similar criticism	Different misconduct, same root cause	Same root cause, similar misconduct	Same root cause, same misconduct		4	
Effectiveness of compliance programs (CP) and internal controls (IC) (11)	Institution has a fully effective CMS/IC	CMS is generally effective with weaknesses noted in only the Compliance Program; ICs are generally effective and any weaknesses noted are minor	CMS exists but is only moderately effective with weaknesses noted in both areas of the CMS, or weakness in management alone; ICs are present but need improvement	CMS exists but is minimally effective with significant weaknesses noted in both areas of the CMS; ICs are weak and require significant enhancements	No CMS exists, or one exists but is not implemented or is completely ineffective; ICs are ineffective or nonexistent		3	
SUBTOTAL 1								
Restitution or other remedial action (8)	No remedial action or restitution provided	Limited remedial action or partial restitution	Written commitment to provide full restitution and remedial action	Full restitution and remedial action	At least substantial restitution and remedial action before notification by a regulator; or a written commitment to provide restitution and remedial action beyond regulatory requirements.		(5)	
Cooperation (4)	Resists or fails to provide information, intentionally provides partial or incomplete answers, holds back evidence, or is otherwise uncooperative	Cooperation but with significant delays	Cooperation with few minor delays	Full and prompt cooperation	Institution identifies and notifies regulator of potential violation or proactively cooperates to resolve the violation during the examination		(5)	
SUBTOTAL 2								
TOTAL (subtract 2 from 1)								

Matrix for CMPs Against Institutions (continued)

Points from Matrix	Base Penalty Range	Formula
0 - 80	None	None
81 - 100	$40,000 - $110,000	Total Assets / 1 billion x penalty
101 - 120	$110,000 - $220,000	Total Assets / 1 billion x penalty
121 - 140	$220,000 - $370,000	Total Assets / 1 billion x penalty
141 - 160	$370,000 - $560,000	Total Assets / 1 billion x penalty
161 - 180	$560,000 - $790,000	Total Assets / 1 billion x penalty
181 - 200	$790,000 - $1,050,000	Total Assets / 1 billion x penalty
201 - 220	$1,050,000 - $1,360,000	Total Assets / 1 billion x penalty
221 – 240	$1,360,000 - $1,710,000	Total Assets / 1 billion x penalty
241 - 250	$1,710,000 - $1,900,000	Total Assets / 1 billion x penalty

NOTE: The Matrix for CMPs Against Institutions is offered only as guidance; it should not be a substitute for experience and sound supervisory judgment. The matrix in no way limits the discretion of the FDIC to factor in the precise facts and circumstances of each case, or other factors as justice requires, into the CMP determination. Also, to determine a CMP against an individual, refer to the Instructions and Matrix for Civil Money Penalties Against Individuals. The CMP amount may not exceed the statutory maximum set forth in section 8(i)(2) of the FDI Act, as adjusted by 12 C.F.R. § 308.132.

Matrix for CMPs Against Individuals

FACTORS	0	1	2	3	4	Assigned Level	Weight Factor	Final Figure
Intent	None / Good Faith		Negligence	Continuing or Willful Disregard	Clear Intent / Personal Dishonesty / Bad Faith		6	
Pecuniary Gain or Other Benefit to IAP or Related Interest	No Direct/Indirect Gain/Benefit ($0)	Intangible Benefit	Direct/Indirect Gain/Benefit between $0 and $50,000	Direct/Indirect Gain/Benefit between $50,000 and $100,000	Direct/Indirect Gain/Benefit greater than $100,000		6	
History, Including Previous Administrative Action or Criticism	None	History or Criticism of Unrelated Instance(s) of Misconduct	History or Criticism of Similar Instance(s) of Misconduct	History of Repeated Instances of Misconduct or Criticism of Same Misconduct	Violation of 8(b), 8(c), Agreement, Condition in Writing or Prior Assessment on Point		5	
Loss or Risk of Loss to Institution	No Actual/Risk of Loss ($0)	No Actual Loss ($0) / Risk of Loss ($0 - $50,000)	Actual Loss ($0-$50,000) / Risk of Loss ($50,000-$100,000)	Actual Loss ($50,000-$100,000)/ Risk of Loss ($100,000 and $250,000)	Actual Loss (greater than $100,000) / Risk of Loss (greater than $250,000)		6	
Number of Instances of Misconduct at Issue	None	1- 3 instances	4-6 instances	7-10 instances	More than 10 instances		2	
Duration of Misconduct Prior to Notification or Discovery	0 - 3 Months	>3- 6 Months	>6 -9 Months	>9 -12 Months	>12-Months		2	
Continuation after Notification	Immediately Ceased	>0-1 months	1-3 months	3-6 months	More than 6 months		3	
Concealment	None		Lack of Voluntary Disclosure or Failure to Escalate to Appropriate Authority	Efforts To Obscure Nature of Transaction	Active Concealment		5	
Impact Other than Loss to the Bank	No Impact on Institution, Banking Industry or Harm to Consumers	Minimal or Moderate Impact on Institution or Minimal Consumer Harm. No Impact on Banking Industry	Substantial Impact on Institution or Moderate Consumer Harm. No Impact on Banking Industry	Moderate Impact on Banking Industry or on Public Perception of Banking Industry or Substantial Consumer Harm	Substantial Impact on Banking Industry or on Public Perception or Substantial Consumer Harm related to a Significant Business Line		6	
IAP Has Responsibility for Presence or Absence of Internal Control Environment and its Effectiveness	IAP Has No Responsibility, and/or Adequate Programs and Policies Exist in Area Where Wrongdoing Occurred	IAP Has Responsibility for Inadequate Monitoring and Reporting of Exceptions, Despite Adequate Programs and Policies	IAP Has Responsibility for Inadequate Programs and Policies, but IAP Has Cooperated in Management's Responsiveness to Supervisory Recommendations	IAP Has Responsibility for Absence of any Programs and Policies in Area Where Wrongdoing Occurred	IAP Has Responsibility for Inadequate Programs and Policies, and IAP Has Not Been Responsive to Supervisory Recommendations		4	
SUBTOTAL 1								
Restitution and Corrective Actions	No Restitution or Corrective Action	Partial Restitution or Substantial Corrective Action	Complete Restitution Under Compulsion	Complete Restitution Immediately After Notification	Complete Restitution Voluntarily, Before Notification		3	
Cooperation and Disclosure	None	Limited Disclosure and Limited Cooperation After Notification	Full Disclosure and Limited Cooperation or Limited Disclosure and Full Cooperation After Notification	Full Disclosure and Cooperation After Notification	Individual Voluntarily Fully Discloses to Management or Regulator and Fully Cooperates		4	
SUBTOTAL 2								
TOTAL (SUBTRACT 2 FROM 1)								

Matrix for CMPs Against Individuals (continued)

Recommended Penalty Ranges Based on CMP Matrix Point Totals

Points	Suggested Action
0-30	Consider not making referral
31-40	Consider sending supervisory letter
41-50	Consider assessing from $1,000 to $7,000
51-60	Consider assessing more than $7,000 (up to $15,000)
61-80	Consider assessing more than $15,000 (up to $35,000)
81-90	Consider assessing more than $35,000 (up to $70,000)
91-100	Consider assessing more than $70,000 (up to $105,000)
101-110	Consider assessing more than $105,000 (up to $140,000)
111-120	Consider assessing more than $140,000 (up to $175,000)
Over 120	Consider assessing more than $175,000

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 restitutions or if there are any unresolved issues pending, such as a formal request for relief from restitution.

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 restitution calculations and worksheets from the financial institution are accurate and conform with violations cited.
   - Verify that restitutions 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 Truth in Lending (TIL) / Regulation Z violations subject to restitution cited at the previous compliance examination.

1. Identify the person(s) responsible for making the calculations and providing restitution.

2. Discuss the method used to determine which loans were subject to restitution.

3. Determine that an appropriate file search and any subsequent restitutions 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 restitution documentation for accuracy.

6. Review restitution documentation for the following items:
   - Restitution calculations;
   - Canceled restitution 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 restitution exceptions, maintained in the prior Compliance Examination workpapers, with the file search and actual restitutions made by the financial institution.

8. If either the file search or restitutions 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 restitution calculations.

References

Joint Statement of Policy: Administrative Enforcement of the Truth in Lending Act—Restitution

FIL 19-97: Requests for Relief from Reimbursement under the Truth in Lending Act

FIL 20-98: Reimbursable Violations of the Truth in Lending Act

Attachment to FIL 20-98: Interagency Questions and Answers Regarding Corrective Action Time Periods under the Truth in Lending Act Policy Guide

Appeals

Introduction

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Public Law 103-325, 108 Stat.2160) (Riegle Act) required the Federal Deposit Insurance Corporation (FDIC) to establish an independent intra-agency appellate process to review material supervisory determinations made at insured depository institutions that it supervises. The Guidelines for Appeals of Material Supervisory Determinations ("guidelines") describe the types of determinations that are eligible for review and the process by which appeals will be considered and decided. The procedures set forth in these guidelines establish an appeals process for the review of material supervisory determinations by the Supervision Appeals Review Committee ("SARC").

The following individuals comprise the three (3) voting members of the SARC: (1) One inside FDIC Board member, either the Chairperson, the Vice Chairperson, or the FDIC Director (Appointive), as designated by the FDIC Chairperson (this person would serve as the Chairperson of the SARC); and (2) one deputy or special assistant to each of the inside FDIC Board members who are not designated as the SARC Chairperson. The General Counsel is a non-voting member of the SARC. The FDIC Chairperson may designate alternate member(s) to the SARC if there are vacancies so long as the alternate member was not involved in making or affirming the material supervisory determination under review. A member of the SARC may designate and authorize the most senior member of his or her staff within the substantive area of responsibility related to cases before the SARC to act on his or her behalf.

Institutions Eligible To Appeal

The guidelines apply to the insured depository institutions that the FDIC supervises (i.e., insured State nonmember banks, insured branches of foreign banks, and state savings associations) and to other insured depository institutions with respect to which the FDIC makes material supervisory determinations.

Determinations Subject To Appeal

An institution may appeal any material supervisory determination pursuant to the procedures set forth in these guidelines. Material supervisory determinations include:

a. CAMELS ratings under the Uniform Financial Institutions Rating System;
b. IT ratings under the Uniform Interagency Rating System for Data Processing Operations;
c. Trust ratings under the Uniform Interagency Trust Rating System;
d. CRA ratings under the Revised Uniform Interagency Community Reinvestment Act Assessment Rating System;
e. Consumer compliance ratings under the Uniform Interagency Consumer Compliance Rating System;
f. Registered transfer agent examination ratings;
g. Government securities dealer examination ratings;
h. Municipal securities dealer examination ratings;
i. Determinations relating to the adequacy of loan loss reserve provisions;
j. Classifications of loans and other assets in dispute the amount of which, individually or in the aggregate, exceed 10 percent of an institution's total capital;
k. Determinations relating to violations of a statute or regulation that may affect the capital, earnings, or operating flexibility of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution;
l. Truth in Lending (Regulation Z) restitution;
m. Filings made pursuant to 12 CFR 303.11(f), for which a Request for Reconsideration has been granted, other than denials of a change in bank control, change in senior executive officer or board of directors, or denial of an application pursuant to section 19 of the Federal Deposit Insurance Act ("FDI Act"), 12 U.S.C. §1829 (which are contained in 12 CFR §308, subparts D, L, and M, respectively), if the filing was originally denied by the DCP Director, Deputy Director or Associate Director; and
n Decisions to initiate informal enforcement actions (such as memoranda of understanding):
o. Determinations regarding the institution's level of compliance with formal enforcement action; however, if the FDIC determines that the lack of compliance with an existing formal enforcement action requires additional enforcement action, the proposed new enforcement action is not appealable;
p. Matters requiring board attention; and
q. Any other supervisory determination (unless otherwise not eligible for appeal) that may affect the capital, earnings, operating flexibility, or capital category for prompt corrective action purposes of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution.

Material supervisory determinations do not include:

a. Decisions to appoint a conservator or receiver for an insured depository institution;
b. Decisions to take prompt corrective action pursuant to section 38 of the FDI Act, 12 U.S.C.§1831o;

c. Determinations for which other appeals procedures exist (such as determinations of deposit insurance assessment risk classifications and payment calculations); and
d. Formal enforcement-related actions and decisions, including determinations and the underlying facts and circumstances that form the basis of a recommended or pending formal enforcement action.

A formal enforcement-related action or decision commences, and becomes unappealable, when the FDIC initiates a formal investigation under 12 U.S.C. §1820(c) or provides written notice to the institution of a recommended or proposed formal enforcement action under applicable statutes or published enforcement-related policies of the FDIC, including written notice of a referral to the Attorney General pursuant to the Equal Credit Opportunity Act ("ECOA") or a notice to the Secretary of Housing and Urban Development ("HUD") for violations of the ECOA or the Fair Housing Act ("FHA"). For the purposes of these Guidelines, remarks in a Report of Examination do not constitute written notice of a recommended or proposed enforcement action. A formal enforcement-related action or decision does not affect the appeal of any material supervisory determination that is pending under these Guidelines.

Additional SARC Rights

a. In the case of any written notice from the FDIC to the institution of a recommended or proposed formal enforcement action, including a draft consent order, is not pursued within 120 days of the written notice, SARC appeal rights will be made available pursuant to these guidelines. The FDIC may extend this 120-day period, with the approval of the SARC Chairperson, if the FDIC notifies the institution that the relevant Division Director is seeking formal authority to take an enforcement action.

b. In the case of a referral to the Attorney General for violations of the ECOA, if the Attorney General returns the matter to the FDIC and the FDIC does not initiate an enforcement action within 120 days of the date the referral is returned, SARC appeal rights will be made available pursuant to these guidelines.

c. In the case of providing the notice to HUD for violations of the ECOA or the FHA, if the FDIC does not initiate an enforcement action within 120 days of the date the notice is provided, SARC appeal rights will be made available under these guidelines.

d. Written notification of SARC rights will be provided to the institution within 10 days of a determination that such rights have been made available.

e. The FDIC and an institution may mutually agree to extend the timeframes in paragraphs (a), (b), and (c) if the parties deem it appropriate in order to reach a mutually agreeable solution.

Good Faith Resolution

An institution should make a good faith effort to resolve any dispute concerning a material supervisory determination with the on-site examiner and/or the appropriate Regional Office. The on-site examiner and the Regional Office will promptly respond to any concerns raised by an institution regarding a material supervisory determination. Informal resolution of disputes with the on-site examiner and/or the appropriate Regional Office is encouraged, but seeking such a resolution is not a condition to filing a request for review with the Division of Depositor and Consumer Protection or an appeal to the SARC under these guidelines.

Filing a Request for Review With the FDIC Division of Depositor and Consumer Protection

An institution may file a request for review of a material supervisory determination with the Director, Division of Depositor and Consumer Protection, 550 17th Street, NW, Room F-4076, Washington, DC 20429, 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. A request for review must be in writing and must include:

a. A detailed description of the issues in dispute, the surrounding circumstances, the institution's position regarding the dispute and any arguments to support that position (including citation of any relevant statute, regulation, policy statement or other authority), how resolution of the dispute would materially affect the institution, and whether a good faith effort was made to resolve the dispute with the on-site examiner and the Regional Office; and
b. A statement that the institution's board of directors has considered the merits of the request and has authorized that it be filed.

The Division Director will review the appeal for consistency with the policies, practices, and mission of the FDIC and the overall reasonableness of, and the support offered for, the positions advanced. The Division Director will issue a written determination on the request for review, setting forth the grounds for that determination, within 45 days of receipt of the request. No appeal to the SARC will be allowed unless an institution has first filed a timely request for review with the appropriate Division Director.

Appeal to the SARC

An institution that does not agree with the written determination rendered by the Division Director must appeal that determination to the SARC within 30 calendar days from

the date of that determination. The 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. Failure to file within the 30-day time limit may result in denial of the appeal by the SARC. If the Division Director recommends that an institution receive 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. The Division Director may also request guidance from the SARC Chairperson as to procedural or other questions relating to any request for review.

Filing with the SARC

An appeal to the SARC will be considered filed if the written appeal is received by the FDIC within 30 calendar days from the date of the Division Director's written determination or if the written appeal is placed in the U.S. mail within that 30-day period. If the 30th day after the date of the Division Director's written determination is a Saturday, Sunday, or Federal holiday, filing may be made on the next business day. The appeal should be sent to the address indicated on the Division Director's determination being appealed.

Contents of Appeal

The appeal should be labeled to indicate that it is an appeal to the SARC and should contain the name, address, and telephone number of the institution and any representative, as well as a copy of the Division Director's determination being appealed. If oral presentation is sought, that request should be included in the appeal. Only matters previously reviewed at the division level, resulting in a written determination or direct referral to the SARC, may be appealed to the SARC. Evidence not presented for review to the Division Director may be submitted to the SARC only if authorized by the SARC Chairperson. The institution should set forth all of the reasons, legal and factual, why it disagrees with the Division Director's determination. Nothing in the SARC administrative process shall create any discovery or other such rights.

Burden of Proof

The burden of proof as to all matters at issue in the appeal, including timeliness of the appeal if timeliness is at issue, rests with the institution.

Oral Presentation

The SARC may, in its discretion, whether or not a request is made, determine to allow an oral presentation. The SARC generally grants a request for oral presentation if it determines that oral presentation is likely to be helpful or would otherwise be in the public interest. Notice of the SARC's determination to grant or deny a request for oral presentation will be provided to the institution. If oral presentation is held, the institution will be allowed to present its positions on the issues raised in the appeal and to respond to any questions from the SARC. The SARC may also require that FDIC staff participate as the SARC deems appropriate.

Dismissal and Withdrawal

An appeal may be dismissed by the SARC if it is not timely filed, if the basis for the appeal is not discernable from the appeal, or if the institution moves to withdraw the appeal. An appeal may be rejected if the right to appeal has been cut off.

Scope of Review and Decision

The SARC will review the appeal for consistency with the policies, practices and mission of the FDIC and the overall reasonableness of and the support offered for the positions advanced. The SARC will notify the institution, in writing, of its decision concerning the disputed material supervisory determination(s) within 45 days from the date the SARC meets to consider the appeal, which meeting will be held within 90 days from the date of the filing of the appeal. SARC review will be limited to the facts and circumstances as they existed prior to, or at the time the material supervisory determination was made, even if later discovered, and no consideration will be given to any facts or circumstances that occur or corrective action taken after the determination was made. The SARC may reconsider its decision only on a showing of an intervening change in the controlling law or the availability of material evidence not reasonably available when the decision was issued.

Publication of Decisions

SARC decisions will be published as soon as practicable, and the published decisions will be redacted to avoid disclosure of exempt information. In cases in which redaction is deemed to be insufficient to prevent improper disclosure, published decisions may be presented in summary form. Published SARC decisions may be cited as precedent in appeals to the SARC. Annual reports on Division Directors' decisions with respect to institutions' requests for review of material supervisory determinations also will be published.

SARC Guidelines Generally

Appeals to the SARC will be governed by these guidelines. The SARC will retain the discretion to waive any provision of the guidelines for good cause. The SARC may adopt supplemental rules governing its operations; order that material be kept confidential; and consolidate similar appeals.

Limitation on Agency Ombudsman

The subject matter of a material supervisory determination for which either an appeal to the SARC has been filed, or a final SARC decision issued is not eligible for consideration by the Ombudsman.

Coordination With State Regulatory Authorities

In the event that a material supervisory determination subject to a request for review is the joint product of the FDIC and a State regulatory authority, the Director, Division of Depositor and Consumer Protection, will promptly notify the appropriate State regulatory authority of the request, provide the regulatory authority with a copy of the institution's request for review and any other related materials, and solicit the regulatory authority's views regarding the merits of the request before making a determination. In the event that an appeal is subsequently filed with the SARC, the SARC will notify the institution and the State regulatory authority of its decision. Once the SARC has issued its determination, any other issues that may remain between the institution and the State authority will be left to those parties to resolve.

Effect on Supervisory or Enforcement Actions

The use of the procedures set forth in these guidelines by any institution will not affect, delay, or impede any formal or informal supervisory or enforcement action in progress or affect the FDIC's authority to take any supervisory or enforcement action against that institution.

Effect on Applications or Requests for Approval

Any application or request for approval made to the FDIC by an institution that has appealed a material supervisory determination that relates to, or could affect the approval of, the application or request will not be considered until a final decision concerning the appeal is made unless otherwise requested by the institution.

Prohibition on Examiner Retaliation

The FDIC has an experienced examination workforce and is proud of its professionalism and dedication. FDIC policy prohibits any retaliation, abuse, or retribution by an agency examiner or any FDIC personnel against an institution. Such behavior against an institution that appeals a material supervisory determination constitutes unprofessional conduct and will subject the examiner or other personnel to appropriate disciplinary or remedial action. Institutions that believe they have been retaliated against are encouraged to contact the Regional Director for the appropriate FDIC region. Any institution that believes or has any evidence that it has been subject to retaliation may file a complaint with the Director, Office of the Ombudsman, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429, explaining the circumstances and the basis for such belief or evidence and requesting that the complaint be investigated and appropriate disciplinary or remedial action taken. The Office of the Ombudsman will work with the appropriate Division Director to resolve the allegation of retaliation.

References

FIL-42-2017: Revised Guidelines for Appeals of Material Supervisory Determinations

FIL-51-2016: Reminder on FDIC Examination Findings

FIL-113-2004: Guidelines for Appeals of Material Supervisory Determinations Guidelines for Appeals of Deposit Insurance Assessment Determinations.

Examination and Visitation Frequency

Institutions supervised by the FDIC are examined at intervals established by FDIC policy. Generally, newly chartered insured institutions or institutions that change charters and are newly supervised by the FDIC will receive a visitation within the first 12 months of operation/conversion and a full scope examination within the first 24 months. After the first examination, they will follow the standard intervals for all other institutions. All other institutions are examined at intervals outlined in the Standard Examination Frequency Schedule which sets examination intervals by an institution's size and the ratings assigned during the most recent previous compliance examination and CRA evaluation.

When scheduling an examination, the objectives are to:

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

Examination and Visitation Frequency

The Initial Examination Frequency Schedule is presented below in Table 1. The Standard Examination Frequency Schedule for institutions with total assets of $250 million or less is presented below in Table 2. The Standard Examination Frequency Schedule for institutions with total assets of greater than $250 million is presented below in Table 3. Visitations may be scheduled at the discretion of Regional Office Management. In addition, examinations may be scheduled earlier than the general schedule when warranted.

Concurrent Examinations

Concurrent compliance/CRA, risk management, and specialty examinations should be conducted to accommodate the preferences of the bank, unless doing so would be impractical or inefficient. Examinations of banks subject to Consumer Financial Protection Bureau (CFPB) supervision will be coordinated in accordance with the requirements of Section 1025(e) of the Dodd-Frank Act.

Examination Frequency

Table 1 — Initial Examination Frequency Schedule for Newly Chartered and Insured Institutions and Charter Conversions

Months In Operation	Compliance Examination/ CRA Evaluation	Compliance Only Examination	Visitation
0 – 12			✔
12 – 24	✔		
24 +	Use the appropriate Standard Examination Frequency Schedule		

Table 2 — Standard Examination Frequency Schedule, Institutions with Total Assets of $250 Million or Less CRA/Compliance Examination Frequency (in months)

CRA Rating	Outstanding	Satisfactory	Needs to Improve	Substantial Noncompliance
Compliance Rating 1	60 – 72 (CRA) 30 – 36 (Compliance)	60 – 72 (CRA) 30 – 36 (Compliance)	12 – 24	12
2	60 – 72 (CRA) 30 – 36 (Compliance)	60 – 72 (CRA) 30 – 36 (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 3 — Standard Examination Frequency Schedule, Institutions with Total Assets of Greater Than $250 Million CRA/Compliance Examination Frequency (in months)

CRA Rating	Outstanding	Satisfactory	Needs to Improve	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 Ratings

Introduction

The FDIC assigns consumer compliance ratings to institutions it supervises pursuant to the Uniform Interagency Consumer Compliance Rating System (CC Rating System) approved by the Federal Financial Institutions Examination Council (FFIEC) in 2016 and effective on March 31, 2017. The CC Rating System is a supervisory policy for evaluating financial institutions' adherence to consumer protection requirements. It is composed of guidance and definitions which are contained in this section of the manual.

The primary purpose of the CC Rating System is to ensure that regulated financial institutions are evaluated in a comprehensive and consistent manner and that supervisory resources are appropriately focused on areas exhibiting risk of consumer harm and on institutions that warrant elevated supervisory attention. The CC Rating System serves as a useful tool for summarizing the compliance position of individual institutions.

Under the CC Rating System, each financial institution is assigned a consumer compliance rating. The CC Rating System is based upon a scale of 1 through 5 in increasing order of supervisory concern.

FFIEC Guidance on the Uniform Interagency Consumer Compliance Rating System [1]

FFIEC member agencies (Agencies) promote compliance with federal consumer protection laws and regulations through supervisory and outreach programs.[2] The Agencies engage in consumer compliance supervision to assess whether a financial institution is meeting its responsibility to comply with these requirements.

The CC Rating System provides a general framework for assessing risks during the supervisory process using certain compliance factors and assigning an overall consumer compliance rating to each federally regulated financial institution.[3] The primary purpose of the CC Rating System is to ensure that regulated financial institutions are evaluated in a comprehensive and consistent manner, and that supervisory resources are appropriately focused on areas exhibiting risk of consumer harm and on institutions that warrant elevated supervisory attention.

The CC Rating System is composed of guidance and definitions. The guidance provides examiners with direction on how to use the definitions when assigning a consumer compliance rating to an institution. The definitions consist of qualitative descriptions for each rating category and include compliance management system (CMS) elements reflecting risk control processes designed to manage consumer compliance risk and considerations regarding violations of laws, consumer harm, and the size, complexity, and risk profile of an institution. The consumer compliance rating reflects the effectiveness of an institution's CMS to ensure compliance with consumer protection laws and regulations and reduce the risk of harm to consumers.

Principles of the Interagency CC Rating System

The Agencies developed the following principles to serve as a foundation for the CC Rating System.

Risk-based. Recognize and communicate clearly that CMS vary based on the size, complexity, and risk profile of supervised institutions.

Transparent. Provide clear distinctions between rating categories to support consistent application by the Agencies across supervised institutions. Reflect the scope of the review that formed the basis of the overall rating.

Actionable. Identify areas of strength and direct appropriate attention to specific areas of weakness, reflecting a risk-based supervisory approach. Convey examiners' assessment of the effectiveness of an institution's CMS, including its ability to prevent consumer harm and ensure compliance with consumer protection laws and regulations.

Incent Compliance. Incent the institution to establish an effective consumer compliance system across the institution and to identify and address issues promptly, including self-identification and correction of consumer compliance weaknesses. Reflect the potential impact of any consumer harm identified in examination findings.

Five-Level Rating Scale

The CC Rating System is based upon a numeric scale of 1 through 5 in increasing order of supervisory concern. Thus, 1 represents the highest rating and consequently the lowest degree of supervisory concern, while 5 represents the lowest rating and the most critically deficient level of performance,

[1] Uniform Interagency Consumer Compliance Rating System, 81 Fed. Reg. 79473, (Nov. 14, 2016).

[2] The FFIEC members are the Board of Governors of the Federal Reserve System, the Consumer Financial Protection Bureau (CFPB), the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the State Liaison Committee.

[3] The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3302(3)) defines financial institution. Additionally, as a member of the FFIEC, the CFPB will also use the CC Rating System to assign a consumer compliance rating, as appropriate for nonbanks, for which it has jurisdiction regarding the enforcement of Federal consumer financial laws as defined under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (12 U.S.C. 5481 *et seq.)*.

and therefore, the highest degree of supervisory concern.[4] Ratings of 1 or 2 represent satisfactory or better performance. Ratings of 3, 4, or 5 indicate performance that is less than satisfactory. Consistent with the previously described Principles, the rating system incents a financial institution to establish an effective CMS across the institution, to self-identify risks, and to take the necessary actions to reduce the risk of non-compliance and consumer harm.

- The highest rating of 1 is assigned to a financial institution that maintains a strong CMS and takes action to prevent violations of law and consumer harm.
- A rating of 2 is assigned to a financial institution that maintains a CMS that is satisfactory at managing consumer compliance risk in the institution's products and services and at substantially limiting violations of law and consumer harm.
- A rating of 3 reflects a CMS deficient at managing consumer compliance risk in the institution's products and services and at limiting violations of law and consumer harm.
- A rating of 4 reflects a CMS seriously deficient at managing consumer compliance risk in the institution's products and services and/or at preventing violations of law and consumer harm. "Seriously deficient" indicates fundamental and persistent weaknesses in crucial CMS elements and severe inadequacies in core compliance areas necessary to operate within the scope of statutory and regulatory consumer protection requirements and to prevent consumer harm.
- A rating of 5 reflects a CMS critically deficient at managing consumer compliance risk in the institution's products and services and/or at preventing violations of law and consumer harm. "Critically deficient" indicates an absence of crucial CMS elements and a demonstrated lack of willingness or capability to take the appropriate steps necessary to operate within the scope of statutory and regulatory consumer protection requirements and to prevent consumer harm.

CC Rating System Categories and Assessment Factors

CC Rating System – Categories

The CC Rating System is organized under three broad categories:

1. Board and Management Oversight,
2. Compliance Program, and
3. Violations of Law and Consumer Harm.

The *Consumer Compliance Rating Definitions* below list the assessment factors considered within each category, along with narrative descriptions of performance.

The first two categories, *Board and Management Oversight* and *Compliance Program*, are used to assess a financial institution's CMS. As such, examiners should evaluate the assessment factors within these two categories commensurate with the institution's size, complexity, and risk profile. All institutions, regardless of size, should maintain an effective CMS. The sophistication and formality of the CMS typically will increase commensurate with the size, complexity, and risk profile of the entity.

Additionally, compliance expectations contained within the narrative descriptions of these two categories extend to third-party relationships into which the financial institution has entered. There can be certain benefits to financial institutions engaging in relationships with third parties, including gaining operational efficiencies or an ability to deliver additional products and services, but such arrangements also may expose financial institutions to risks if not managed effectively. The prudential agencies, the CFPB, and some states have issued guidance describing expectations regarding oversight of third-party relationships.[5] While an institution's management may make the business decision to outsource some or all of the operational aspects of a product or service, the institution cannot outsource the responsibility for complying with laws and regulations or managing the risks associated with third-party relationships.

As noted in the *Consumer Compliance Rating Definitions*, examiners should evaluate activities conducted through third-party relationships as though the activities were performed by the institution itself. Examiners should review a financial institution's management of third-party relationships and servicers as part of its overall compliance program.

The third category, *Violations of Law and Consumer Harm*, includes assessment factors that evaluate the dimensions of any identified violation or consumer harm. Examiners should weigh each of these four factors – root cause, severity, duration, and pervasiveness – in evaluating relevant violations of law and any resulting consumer harm.

Board and Management Oversight – Assessment Factors

Under Board and Management Oversight, the examiner should assess the financial institution's board of directors and management, as appropriate for their respective roles and responsibilities, based on the following assessment factors:

[4] The Agencies do not consider an institution's record of performance under the Community Reinvestment Act (CRA) in conjunction with assessing an institution under the CC Rating System since institutions are evaluated separately under the CRA.

[5] For FDIC guidance describing potential risks arising from third-party relationships and outlining risk management principles that may be tailored to suit the complexity and risk potential of a financial institution's significant third-party relationships, see FIL-44-2008.

- oversight of and commitment to the institution's CMS;
- effectiveness of the institution's change management processes, including responding timely and satisfactorily to any variety of change, internal or external, to the institution;
- comprehension, identification, and management of risks arising from the institution's products, services, or activities; and
- self-identification of consumer compliance issues and corrective action undertaken as such issues are identified.

Compliance Program – Assessment Factors

Under Compliance Program, the examiner should assess other elements of an effective CMS, based on the following assessment factors:

- whether the institution's policies and procedures are appropriate to the risk in the products, services, and activities of the institution;
- the degree to which compliance training is current and tailored to risk and staff responsibilities;
- the sufficiency of the monitoring and, if applicable, audit to encompass compliance risks throughout the institution; and
- the responsiveness and effectiveness of the consumer complaint resolution process.

Violations of Law and Consumer Harm – Assessment Factors

Under Violations of Law and Consumer Harm, the examiner should analyze the following assessment factors:

- the root cause, or causes, of any violations of law identified during the examination;
- the severity of any consumer harm resulting from violations;
- the duration of time over which the violations occurred; and
- the pervasiveness of the violations.

As a result of a violation of law, consumer harm may occur. While many instances of consumer harm can be quantified as a dollar amount associated with financial loss, such as charging higher fees for a product than was initially disclosed, consumer harm may also result from a denial of an opportunity. For example, a consumer could be harmed when a financial institution denies the consumer credit or discourages an application in violation of the Equal Credit Opportunity Act,[6] whether or not there is resulting financial harm.

This category of the *Consumer Compliance Rating Definitions* defines four factors by which examiners can assess violations of law and consumer harm.

Root Cause. The Root Cause assessment factor analyzes the degree to which weaknesses in the CMS gave rise to the violations. In many instances, the root cause of a violation is tied to a weakness in one or more elements of the CMS. Violations that result from critical deficiencies in the CMS evidence a critical absence of management oversight and are of the highest supervisory concern.

Severity. The Severity assessment factor of the *Consumer Compliance Rating Definitions* weighs the type of consumer harm, if any, that resulted from violations of law. More severe harm results in a higher level of supervisory concern under this factor. For example, some consumer protection violations may cause significant financial harm to a consumer, while other violations may cause negligible harm, based on the specific facts involved.

Duration. The Duration assessment factor considers the length of time over which the violations occurred. Violations that persist over an extended period of time will raise greater supervisory concerns than violations that occur for only a brief period of time. When violations are brought to the attention of an institution's management and management allows those violations to remain unaddressed, such violations are of the highest supervisory concern.

Pervasiveness. The Pervasiveness assessment factor evaluates the extent of the violation(s) and resulting consumer harm, if any. Violations that affect a large number of consumers will raise greater supervisory concern than violations that impact a limited number of consumers. If violations become so pervasive that they are considered to be widespread or present in multiple products or services, the institution's performance under this factor is of the highest supervisory concern.

Self-Identification of Violations of Law and Consumer Harm

Strong compliance programs are proactive. They promote consumer protection by preventing, self-identifying, and addressing compliance issues in a proactive manner. Accordingly, the CC Rating System provides incentives for such practices through the definitions associated with a 1 rating.

The Agencies believe that self-identification and prompt correction of violations of law reflect strengths in an institution's CMS. A robust CMS appropriate for the size, complexity and risk profile of an institution's business often will prevent violations or will facilitate early detection of

[6] 15 U.S.C. 1691 *et seq.*

potential violations. This early detection can limit the size and scope of consumer harm. Moreover, self-identification and prompt correction of serious violations represents concrete evidence of an institution's commitment to responsibly address underlying risks. In addition, appropriate corrective action, including both correction of programmatic weaknesses and full redress for injured parties, limits consumer harm and prevents violations from recurring in the future. Thus, the CC Rating System recognizes institutions that consistently adopt these strategies as reflected in the *Consumer Compliance Rating Definitions*.

Evaluating Performance Using the CC Rating Definitions

The consumer compliance rating is derived through an evaluation of the financial institution's performance under each of the assessment factors described above. The consumer compliance rating reflects the effectiveness of an institution's CMS to identify and manage compliance risk in the institution's products and services and to prevent violations of law and consumer harm, as evidenced by the financial institution's performance under each of the assessment factors.

The consumer compliance rating reflects a comprehensive evaluation of the financial institution's performance under the CC Rating System by considering the categories and assessment factors in the context of the size, complexity, and risk profile of an institution. It is not based on a numeric average or any other quantitative calculation. Specific numeric ratings will not be assigned to any of the 12 assessment factors. Thus, an institution need not achieve a satisfactory assessment in all categories in order to be assigned an overall satisfactory rating. Conversely, an institution may be assigned a less than satisfactory rating even if some of its assessments were satisfactory.

The relative importance of each category or assessment factor may differ based on the size, complexity, and risk profile of an individual institution. Accordingly, one or more category or assessment factor may be more or less relevant at one financial institution as compared to another institution. While the expectations for compliance with consumer protection laws and regulations are the same across institutions of varying sizes, the methods for accomplishing an effective CMS may differ across institutions.

The evaluation of an institution's performance within the Violations of Law and Consumer Harm category of the CC Rating Definitions considers each of the four assessment factors: Root Cause, Severity, Duration, and Pervasiveness. At the levels of 4 and 5 in this category, the distinctions in the definitions are focused on the root cause assessment factor rather than Severity, Duration, and Pervasiveness. This approach is consistent with the other categories where the difference between a 4 and a 5 is driven by the institution's capacity and willingness to maintain a sound consumer compliance system.

In arriving at the final rating, the examiner must balance potentially differing conclusions about the effectiveness of the financial institution's CMS over the individual products, services, and activities of the organization. Depending on the relative materiality of a product line to the institution, an observed weakness in the management of that product line may or may not impact the conclusion about the institution's overall performance in the associated assessment factor(s). For example, serious weaknesses in the policies and procedures or audit program of the mortgage department at a mortgage lender would be of greater supervisory concern than those same gaps at an institution that makes very few mortgage loans and strictly as an accommodation. Greater weight should apply to the financial institution's management of material products with significant potential consumer compliance risk.

An institution may receive a less than satisfactory rating even when no violations were identified, based on deficiencies or weaknesses identified in the institution's CMS. For example, examiners may identify weaknesses in elements of the CMS in a new loan product. Because the presence of those weaknesses left unaddressed could result in future violations of law and consumer harm, the CMS deficiencies could impact the overall consumer compliance rating, even if no violations were identified.

Similarly, an institution may receive a 1 or 2 rating even when violations were present, if the CMS is commensurate with the risk profile and complexity of the institution. For example, when violations involve limited impact on consumers, were self-identified, and resolved promptly, the evaluation may result in a 1 or 2 rating. After evaluating the institution's performance in the two CMS categories, *Board and Management Oversight* and *Compliance Program*, and the dimensions of the violations in the third category, the examiner may conclude that the overall strength of the CMS and the nature of observed violations viewed together do not present significant supervisory concerns.

Assignment of Ratings by Supervisor(s)

The prudential regulators will continue to assign and update, as appropriate, consumer compliance ratings for institutions they supervise, including those with total assets of more than $10 billion.[7] As a member of the FFIEC, the CFPB will also use the CC Rating System to assign a consumer compliance rating, as appropriate, for institutions with total assets of more than $10 billion, as well as for nonbanks for which it has

[7] Section 1025 of the Dodd-Frank Act (12 U.S.C. 5515) applies to federally insured institutions with more than $10 billion in total assets. This section granted the CFPB exclusive authority to examine insured depository institutions and their affiliates for compliance with Federal consumer financial laws. The prudential regulators retained authority for examining insured depository institutions with more than $10 billion in total assets for compliance with certain other laws related to consumer financial protection, including the Fair Housing Act, the Servicemembers Civil Relief Act, and section 5 of the Federal Trade Commission Act.

jurisdiction regarding the enforcement of *Federal consumer financial laws* as defined under the Dodd-Frank Act.[8] The prudential regulators will take into consideration any material supervisory information provided by the CFPB, as that information relates to covered supervisory activities or covered examinations.[9] Similarly, the CFPB will take into consideration any material supervisory information provided by prudential regulators in appropriate supervisory situations.

State regulators maintain supervisory authority to conduct examinations of state-chartered depository institutions and licensed entities. As such, states may assign consumer compliance ratings to evaluate compliance with both state and federal laws and regulations. States will collaborate and consider material supervisory information from other state and federal regulatory agencies during the course of examinations.

[8] 12 U.S.C. 5481 *et seq.* A financial institution with assets over $10 billion may receive a consumer compliance rating by both its primary prudential regulator and the CFPB. The rating is based on each agency's review of the institution's CMS and compliance with the federal consumer protection laws falling under each agency's jurisdiction.

[9] The prudential regulators and the CFPB signed a Memorandum of Understanding on Supervisory Coordination dated May 16, 2012 (MOU) intended to facilitate the coordination of supervisory activities involving financial institutions with more than $10 billion in assets as required under the Dodd-Frank Act.

Violation Code	Description

Consumer Compliance Examinations Violation Codes

Advertisement of Membership

ADV-MEM 328.2(a)

The Federal Deposit Insurance Act (12 U.S.C. §§ 1818(a), 1819(a)(Tenth), and 1828(a)), as implemented by the Advertisement of Membership rule, 12 C.F.R. § 328.2(a), requires a financial institution to display the official sign continuously at each station or window where insured deposits are usually and normally received in the institution's principal place of business and in all its branches, except as permitted in § 328.2(a)(1)(ii), (a)(2), and (a)(3).

ADV-MEM 328.3(b)-(c)

The Federal Deposit Insurance Act (12 U.S.C. §§ 1818(a), 1819(a)(Tenth), and 1828(a)), as implemented by the Advertisement of Membership rule, 12 C.F.R. § 328.3(b) and (c), requires a financial institution to use the official advertising statement, as defined in § 328.3(b), which shall be of such size and print to be clearly legible. The official advertising statement shall be used, in all advertisements that either promote deposit products and services or promote non-specific banking products and services offered by the institution, except as provided in § 328.3(d).

ADV-MEM 328.3(e)

The Federal Deposit Insurance Act (12 U.S.C. §§ 1818(a), 1819(a)(Tenth), and 1828(a)), as implemented by the Advertisement of Membership rule, 12 C.F.R. § 328.3(e), prohibits a financial institution from including the official advertising statement, or any other statement or symbol implying or suggesting the existence of Federal deposit insurance, in any advertisement relating solely to non-deposit products and hybrid products. In mixed advertisements, a financial institution must clearly segregate the official advertising statement as provided in § 328.3(e)(4).

ADV-MEM 328.4

The Federal Deposit Insurance Act (12 U.S.C. §§ 1818(a), 1819(a)(Tenth), and 1828(a)), as implemented by the Advertisement of Membership rule, 12 C.F.R. § 328.4, prohibits a financial institution from receiving deposits at any teller station or window where a noninsured institution receives deposits or similar liabilities, except for deposits received at a Remote Service Facility.

Branch Closing

BR-CLOSING 42(No Subsection)

Section 42 of the Federal Deposit Insurance Act of 1950 (12 U.S.C. § 1831r-1) requires that all insured depository institutions adopt written policies for branch closings. Financial institutions are also required to give notice to the appropriate federal agency and customers no later than 90 days before they close a branch. The notice provided to the appropriate Federal banking agency must include a detailed statement of the reasons for the decision to close the branch and statistical or other information in support of such reasons. The notice provided to customers must be included in a regular account statement or a separate mailing, and in the case of an interstate bank that proposes to close a branch in a low- or moderate-income area, the notice must include the mailing address of the FDIC and a statement that comments on the

Violation Code	Description
	proposed closing may be mailed to the FDIC. Further, this section requires institutions to post a notice in a conspicuous manner on the premises of the branch proposed to be closed not less than 30 days before the proposed closing.
Children's Online Privacy Protection	
COPPA 312.4(a)	The Children's Online Privacy Protection Act of 1998 (15 U.S.C. § 6501 et seq.), as implemented by the Children's Online Privacy Protection Rule, 16 C.F.R. § 312.4(a), requires an operator to provide a notice and obtain verifiable parental consent prior to collecting, using, or disclosing personal information from children. The notice must be clearly and understandably written, complete, and must not contain unrelated, confusing, or contradictory materials.
COPPA 312.4(b)-(d)	The Children's Online Privacy Protection Act of 1998 (15 U.S.C. § 6501 et seq.), as implemented by the Children's Online Privacy Protection Rule, 16 C.F.R. § 312.4(b) through (d), requires an operator: to make reasonable efforts to ensure that a parent of a child receives direct notice of the practices with regard to the collection, use, or disclosure of personal information from children, including notice of any material change in the collection, use, or disclosure practices to which the parent has previously consented as provided in § 312.4(b); to provide a direct notice to the parent that meets the content requirements of § 312.4(c); and to post a prominent and clearly labeled link to an online notice of its information practices with regard to children, on the home or landing page or screen of its Web site or online service, and at each area of the Web site or online service where personal information is collected from children as prescribed by § 312.4(d). As set out in § 312.3, actual knowledge of a violation of this provision is considered an unfair and deceptive act or practice under section 5 of the Federal Trade Commission Act (15 U.S.C. § 45(a)).
COPPA 312.5	The Children's Online Privacy Protection Act of 1998 (15 U.S.C. § 6501 et seq.), as implemented by the Children's Online Privacy Protection Rule, 16 C.F.R. § 312.5, requires an operator to obtain verifiable parental consent, as prescribed by § 312.5(b), before any collection, use, or disclosure of personal information from children, and give the parent the option to consent to the collection and use of the child's personal information without consenting to disclosure of his or her personal information to third parties. As set out in § 312.3, actual knowledge of a violation of this provision is considered an unfair and deceptive act or practice under section 5 of the Federal Trade Commission Act (15 U.S.C. § 45(a)).
COPPA 312.6	The Children's Online Privacy Protection Act of 1998 (15 U.S.C. § 6501 et seq.), as implemented by the Children's Online Privacy Protection Rule, 16 C.F.R. § 312.6, requires an operator to provide, upon request of a parent whose child has provided personal information to a Web site or online service, a description of specific types or categories of personal information collected; the opportunity, at any time, to refuse to permit the operator's further use or future online collection of information from that child and to direct the operator to delete the child's information; and a means of reviewing any personal information collected

Violation Code	Description
	from the child that is not unduly burdensome to the parent. The means employed by the operator must ensure that the requester is a parent of the child, taking into account available technology. As set out in § 312.3, actual knowledge of a violation of this provision is considered an unfair and deceptive act or practice under section 5 of the Federal Trade Commission Act (15 U.S.C. § 45(a)).
COPPA 312.7	The Children's Online Privacy Protection Act of 1998 (15 U.S.C. § 6501 et seq.), as implemented by the Children's Online Privacy Protection Rule, 16 C.F.R. § 312.7, prohibits an operator from conditioning a child's participation in a game, the offering of a prize, or another activity on the child's disclosing more personal information than is reasonably necessary to participate in such activity. As set out in § 312.3, actual knowledge of a violation of this provision is considered an unfair and deceptive act or practice under section 5 of the Federal Trade Commission Act (15 U.S.C. § 45(a)).
COPPA 312.8	The Children's Online Privacy Protection Act of 1998 (15 U.S.C. § 6501 et seq.), as implemented by the Children's Online Privacy Protection Rule, 16 C.F.R. § 312.8, requires an operator to establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children. In addition, the operator must take reasonable steps to release children's personal information only to service providers and third parties who are capable of maintaining the confidentiality, security, and integrity of such information, and who provide assurances that they will maintain the information in such a manner. As set out in § 312.3, actual knowledge of a violation of this provision is considered an unfair and deceptive act or practice under section 5 of the Federal Trade Commission Act (15 U.S.C. § 45(a)).
COPPA 312.10	The Children's Online Privacy Protection Act of 1998 (15 U.S.C. § 6501 et seq.), as implemented by the Children's Online Privacy Protection Rule, 16 C.F.R. § 312.10, requires an operator to retain personal information collected online from a child for only as long as is reasonably necessary to fulfill the purpose for which the information was collected, and to delete such information using reasonable measures to protect against unauthorized access to, or use of, the information in connection with its deletion.
Community Reinvestment Act	
CRA 345.41	The Community Reinvestment Act (12 U.S.C. § 2901 et seq.), as implemented by the FDIC Rules and Regulations, 12 C.F.R. § 345.41, requires a financial institution to delineate one or more assessment areas within which the FDIC evaluates the bank's record of helping to meet the credit needs of its community, in accordance with the requirements of § 345.41(a) through (g), as applicable.

Violation Code	Description

CRA 345.42(a)-(b)

The Community Reinvestment Act (12 U.S.C. § 2901 et seq.), as implemented by the FDIC Rules and Regulations, 12 C.F.R. § 345.42 (a) and (b), requires a financial institution to collect, and maintain in machine readable form until the completion of its next CRA examination, the following data for each small business or small farm loan originated or purchased:
(1) a unique number or symbol to identify the relevant loan file;
(2) the loan amount at origination;
(3) the loan location; and
(4) an indicator of whether the loan was to a business or farm with gross annual revenues of $1 million or less.

A financial institution that is not a small bank and was not a small bank during the prior calendar year is required to report annually by March 1 to the FDIC, the loan information detailed in § 345.42(b)(1) through (b)(3) for the prior calendar year, in machine readable form.

CRA 345.42(g)

The Community Reinvestment Act (12 U.S.C. § 2901 et seq.), as implemented by the FDIC Rules and Regulations, 12 C.F.R. § 345.42(g), requires a financial institution that is not a small bank and was not a small bank during the prior calendar year to report to the FDIC annually by March 1 a list of each assessment area showing the geographies within the area.

CRA 345.43(a)

The Community Reinvestment Act (12 U.S.C. § 2901 et seq.), as implemented by the FDIC Rules and Regulations, 12 C.F.R. § 345.43(a), requires a financial institution to maintain a public file that includes the following information:
(1) all written comments received from the public for the current year and each of the prior two calendar years, along with the financial institution's response specifically related to the bank's performance in helping to meet community credit needs;
(2) a copy of the public section of the most recent CRA Performance Evaluation, which must be placed in the public file within 30 business days after receipt from the FDIC;
(3) a list of its branches, their street addresses and geographies;
(4) a list of branches opened or closed during the current year and each of the prior two calendar years, their street addresses, and geographies;
(5) a list of services (including hours of operation, available loan and deposit products, and transaction fees) generally offered and descriptions of material differences in the availability or cost of services at branches, if any;
(6) a map of each assessment area showing the boundaries of the area and identifying the geographies contained within the area, either on the map or in a separate list; and
(7) any other information the bank chooses.

CRA 345.43(b)(1)

The Community Reinvestment Act (12 U.S.C. § 2901 et seq.), as implemented by the FDIC Rules and Regulations, 12 C.F.R. § 345.43(b)(1), requires a financial institution, that is not a small bank and was not a small bank in the prior calendar year, to include in its public file, regarding consumer loans considered under the lending test, information contained in § 345.43(b)(1)(i)(A) through (b)(1)(i)(C). A financial

Violation Code	Description
	institution, that is not a small bank and was not a small bank in the prior calendar year, is required to include its CRA Disclosure Statement in the public file within three business days of its receipt from the FDIC.
CRA 345.43(b)(2)	The Community Reinvestment Act (12 U.S.C. § 2901 et seq.), as implemented by the FDIC Rules and Regulations, 12 C.F.R. § 345.43(b)(2), requires a financial institution that reports HMDA data, to include in its public file a written notice that its HMDA Disclosure Statement may be obtained on the Consumer Financial Protection Bureau's ("Bureau's") Web site at www.consumerfinance.gov/hmda. In addition, a financial institution that elected to have the FDIC consider the mortgage lending of an affiliate must include in its public file the name of the affiliate and a written notice that the affiliate's HMDA Disclosure Statement may be obtained at the Bureau's Web site. The financial institution must place the written notice(s) in its public file within three business days after receiving notification from the Federal Financial Institutions Examination Council that the disclosure statements are available.
CRA 345.43(b)(3)	The Community Reinvestment Act (12 U.S.C. § 2901 et seq.), as implemented by the FDIC Rules and Regulations, 12 C.F.R. § 345.43(b)(3), requires a financial institution, that is a small bank or was a small bank in the prior calendar year, to include its loan-to-deposit ratio for each quarter of the prior calendar year in its public file. If the small financial institution has elected to be evaluated under the lending, investment, and services tests, the small institution must also include the information required for other banks as detailed in § 345.43(b)(1).
CRA 345.43(b)(4)	The Community Reinvestment Act (12 U.S.C. § 2901 et seq.), as implemented by the FDIC Rules and Regulations, 12 C.F.R. § 345.43(b)(4), requires a financial institution that is approved to be assessed under a strategic plan to include a copy of that plan in its public file.
CRA 345.43(b)(5)	The Community Reinvestment Act (12 U.S.C. § 2901 et seq.), as implemented by the FDIC Rules and Regulations, 12 C.F.R. § 345.43(b)(5), requires a financial institution that received a less than satisfactory rating during its most recent examination to include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. The financial institution is required to update the description quarterly.
CRA 345.43(c)	The Community Reinvestment Act (12 U.S.C. § 2901 et seq.), as implemented by the FDIC Rules and Regulations, 12 C.F.R. § 345.43(c), requires a financial institution to make all information in the public file available for public inspection upon request and at no cost, at the main office and, if an interstate bank, at one branch office in each state. A financial institution is also required to make available the following information at each branch: (i) a copy of the public section of its most recent CRA Performance Evaluation and a list of services provided by the branch, and (ii) all of the information in the public file relating to the assessment area in which the branch is located within five calendar days of the request.

Violation Code	Description
CRA 345.43(d)	The Community Reinvestment Act (12 U.S.C. § 2901 et seq.), as implemented by the FDIC Rules and Regulations, 12 C.F.R. § 345.43(d), requires a financial institution, upon request, to provide copies, either on paper or in another form acceptable to the person making the request, of the information in its public file. A reasonable fee may be charged that does not exceed the cost of copying and mailing (if applicable).
CRA 345.43(e)	The Community Reinvestment Act (12 U.S.C. § 2901 et seq.), as implemented by the FDIC Rules and Regulations, 12 C.F.R. § 345.43(e), requires a financial institution to ensure that all applicable information in its public file is current as of April 1 of each year, except as otherwise provided in this section.
CRA 345.44	The Community Reinvestment Act (12 U.S.C. § 2901 et seq.), as implemented by the FDIC Rules and Regulations, 12 C.F.R. § 345.44, requires a financial institution to provide in the public lobby of its main office and each of its branches, the appropriate public notice set forth in Appendix B of this part.
Consumer Leasing	
C-LEASING 1013.3	The Consumer Leasing Act (15 U.S.C. §§ 1667-1667f), as implemented by Regulation M, 12 C.F.R. § 1013.3, requires a lessor to make the disclosures required by § 1013.4, as applicable. The disclosures should be clear and conspicuous, in writing, and in a form the consumer may keep. The disclosures should also meet the requirements outlined in § 1013.3(a) through (d) regarding form, segregation, timing, language of disclosures, multiple lessors or lessees, and use of estimates.
C-LEASING 1013.4	The Consumer Leasing Act (15 U.S.C. §§ 1667-1667f), as implemented by Regulation M, 12 C.F.R. § 1013.4, requires the lessor to disclose the specific information outlined in § 1013.4(a) through (t), as applicable.
C-LEASING 1013.5	The Consumer Leasing Act (15 U.S.C. §§ 1667-1667f), as implemented by Regulation M, 12 C.F.R. § 1013.5, requires a lessor to provide new disclosures when a consumer lease is renegotiated, or extended for more than six months, except as permitted by § 1013.5(d).
C-LEASING 1013.7(b)	The Consumer Leasing Act (15 U.S.C. §§ 1667-1667f), as implemented by Regulation M, 12 C.F.R. § 1013.7(b), requires a financial institution to make clear and conspicuous advertising disclosures. If an advertisement states any of the triggering terms in § 1013.7(d)(1) then the advertisement must contain the additional disclosures prescribed by § 1013.7(d)(2), with an exception for merchandise tags in § 1013.7(e). In addition, if the financial institution advertises through television or radio and states any of the triggering terms in § 1013.7(d)(1), the financial institution must meet the requirements of § 1013.7(f).

Violation Code	Description

C-LEASING 1013.8

The Consumer Leasing Act (15 U.S.C. §§ 1667-1667f), as implemented by Regulation M, 12 C.F.R. § 1013.8, requires a financial institution to retain evidence of compliance with Regulation M, other than the advertising requirements under § 1013.7, for a period of not less than two years after the date the disclosures are required to be made or an action is required to be taken.

Controlling the Assault of Non-Solicited Pornography and Marketing Act

CAN-SPAM 4(a)(1)

Section 4(a)(1) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (18 U.S.C. § 1037(a)(1)-(5)), prohibits anyone who, in or affecting interstate or foreign commerce, knowingly:
(1) accesses a protected computer without authorization, and intentionally initiates the transmission of multiple commercial electronic mail messages from or through such computer;
(2) uses a protected computer to relay or retransmit multiple commercial electronic mail messages, with the intent to deceive or mislead recipients, or any Internet access service, as to the origin of such messages;
(3) materially falsifies header information in multiple commercial electronic mail messages and intentionally initiates the transmission of such messages;
(4) registers, using information that materially falsifies the identity of the actual registrant, for five or more electronic mail accounts or online user accounts or two or more domain names, and intentionally initiates the transmission of multiple commercial electronic mail messages from any combination of such accounts or domain names; or
(5) falsely represents oneself to be the registrant or the legitimate successor in interest to the registrant of 5 or more Internet Protocol addresses, and intentionally initiates the transmission of multiple commercial electronic mail messages from such addresses, or conspires to do so. Note, such person shall be punished as provided in Section 4(b) of this Act.

CAN-SPAM 5(a)

Section 5(a) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (15 U.S.C. § 7704(a)), prohibits a person from using false or misleading transmission information; using deceptive subject headings; initiating e-mail messages that do not contain a functioning e-mail return address or comparable mechanism; continuing to initiate commercial e-mail messages after receipt of a request not to receive such messages; and initiating a commercial e-mail message unless the message provides clear and conspicuous identification that the message is an advertisement or solicitation, a notice of the opportunity to decline further messages, and a physical address of the sender.

CAN-SPAM 5(b)

Section 5(b) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (15 U.S.C. § 7704(b)), prohibits a person from obtaining e-mail addresses, by using an automated means, from an Internet Web site or proprietary online service operated by another person; obtaining e-mail addresses, by using an automated means, that generates possible e-mail addresses; using automated means to register for multiple e-mail accounts or online user accounts from which to transmit a commercial e-mail message; and relaying or retransmitting a commercial e-mail message that is unlawful from a computer or computer network without authorization.

Violation Code	Description

CAN-SPAM 5(d)

Section 5(d) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (15 U.S.C. § 7704(d)), requires a person to place the marks or notices, as set forth in the Federal Trade Commission's regulation at 16 C.F.R. § 316.4, in the subject heading and the matter of the message that is initially viewable to the recipient, on commercial e-mail messages containing sexually oriented material, unless the recipient has given prior affirmative consent to receipt of the message as set forth in § (5)(d)(2) of this Act.

CAN-SPAM 6(a)

Section 6(a) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (15 U.S.C. § 7705(a)), prohibits a person from promoting, or allowing the promotion of, that person's trade or business, or goods, products, property, or services in a commercial e-mail message in violation of § 5(a)(1) of this Act under the circumstances set forth in § 6(a)(1) through (a)(3) of this Act.

Electronic Fund Transfers Act/Regulation E – Subpart A – General

EFTA-A 1005.4

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.4, requires a financial institution to provide clear and readily understandable disclosures, in writing, and in a form the consumer may keep, except as permitted under part 1005.

EFTA-A 1005.5

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.5, requires a financial institution to only issue an access device to consumers in response to an oral or written request, or as a renewal or substitution of an accepted access device previously issued, except as permitted under § 1005.5(b).

EFTA-A 1005.6

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.6, requires a financial institution to only hold a consumer liable for unauthorized electronic fund transfers if the disclosures under § 1005.7(b)(1), (b)(2), and (b)(3) have been provided. In addition, financial institutions are prohibited from imposing liability on consumers outside of the prescribed limitations and amounts set out in § 1005.6(b).

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.7, requires a financial institution to provide the disclosures at the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer involving the consumer's account. The financial institution must also disclose the content required under § 1005.7(b)(1) through (b)(11), as applicable. Finally, § 1005.7(c) requires a financial institution to provide new disclosures if an electronic fund transfer service is added to a consumer's account having different terms and conditions than those described in the initial disclosures.

Violation Code	Description

EFTA-A 1005.8(a)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.8(a), requires a financial institution, except as permitted in § 1005.8(a)(2), to 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 § 1005.7(b) if the change would result in increased fees, increased liability, fewer types of available electronic fund transfers, or stricter limitations on the frequency or dollar amount of transfers.

EFTA-A 1005.8(b)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.8(b), requires a financial institution to mail or deliver to the consumer an error resolution notice meeting the requirement of § 1005.8(b) at least once each calendar year or, alternatively, on or with each periodic statement required by § 1005.9(b).

EFTA-A 1005.9(a)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.9(a), requires a financial institution to make a receipt available to the consumer at the time an electronic fund transfer is initiated at an electronic terminal, except for small-value transfers permitted in § 1005.9(e). The receipt shall set forth the following: the amount of the transfer; date; type of transfer; an identifier for the consumer's account or access device; the location of the terminal where the transfer was initiated; and the name of any third party to/from whom funds are transferred, as applicable.

EFTA-A 1005.9(b)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.9(b), requires a financial institution to send a periodic statement for each monthly cycle in which an electronic fund transfer has occurred, or at least quarterly if no transfer has occurred. The periodic statement must include the following, as applicable: transaction information, the account number, the amount of any fees, the account balances, an address and telephone number for inquiries or notice of errors, and a telephone number for preauthorized transfers. For prepaid accounts, a financial institution must also disclose in the periodic statement the amount of any fees assessed against the prepaid account, whether for electronic funds transfers or otherwise, as required by § 1005.18(c)(4) and must display a summary total of all fees assessed for the prior calendar month and for the calendar year to date, as required by § 1005.18(c)(5).

For prepaid accounts, an institution may opt not to send a periodic statement, provided the institution makes available to the consumer account history information in the manner provided under § 1005.18(c)(1) or (c)(2) and the account history includes the information set forth in § 1005.18(c)(3) through (c)(5). If an account history is not made available to the consumer in the manner provided under § 1005.18(c)(1) or (c)(2), the institution must send the consumer the periodic statement with the information set forth under §§ 1005.9(b), 1005.18(c)(4), and 1005.18(c)(5).

EFTA-A 1005.9(c)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.9(c), requires a financial institution to provide a periodic statement for passbook accounts if it does

Violation Code	Description
	not update the passbook upon presentation or enter on a separate document the amount and date of each electronic fund transfer since the passbook was last presented. For accounts other than passbook accounts, a financial institution is required to send a periodic statement at least quarterly.
EFTA-A 1005.10(a)	The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.10(a), requires a financial institution to provide an oral or written notice or a readily available telephone line to the consumer when a preauthorized electronic fund transfer is initiated to the consumer's account at least once every 60 days. The notice must be given within two business days after the transaction has occurred. The telephone number must be included in the initial disclosure and on each periodic statement. In addition, a financial institution shall credit the consumer's account for the transfer as of the date the funds are received.
EFTA-A 1005.10(b)	The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.10(b), requires that preauthorized electronic fund transfers from a consumer's account be authorized only in writing, signed or authenticated by the consumer with a copy provided to the consumer.
EFTA-A 1005.10(c)	The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.10(c), requires a financial institution to stop the payment of a preauthorized electronic fund transfer from a consumer's account when notified by the consumer in accordance with the requirements of § 1005.10(c)(1) and (c)(2).
EFTA-A 1005.10(d)	The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.10(d), requires a financial institution or designated payee to send the consumer a written notice of the amount and date of the preauthorized electronic fund transfer from a consumer's account at least 10 days before the scheduled transfer date when the transfer will vary in amount from the previous transfer under the same authorization or from the preauthorized amount.
EFTA-A 1005.10(e)	The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.10(e), prohibits a financial institution from conditioning an extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers, except for the conditions noted under § 1005.10(e)(1). In addition, a financial institution is prohibited from requiring a consumer to establish an account for the receipt of electronic fund transfers with a particular institution as a condition of employment or receipt of a government benefit.
EFTA-A 1005.11(c)	The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.11(c), requires a financial institution to investigate, determine whether an error occurred, report the results to the consumer, and correct the error within the timeframes provided under this subsection (c).

Violation Code	Description

EFTA-A 1005.11(d)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.11(d), requires a financial institution, when it determines that no error occurred or that an error occurred in a manner or amount different than described by the consumer, to provide a written explanation of its findings and notify the consumer upon debiting the provisionally credited amount, as prescribed under § 1005.11(d)(1) and (d)(2).

EFTA-A 1005.13(b)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.13(b), requires that a financial institution retain evidence of compliance with the requirements of the Act for a period of not less than two years from the date disclosures are required to be made or action is required to be taken. In addition, any financial institution having actual notice that it is the subject of an investigation or an enforcement proceeding by its enforcement agency regarding the Act shall retain the records until final disposition of the matter.

EFTA-A 1005.16

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.16, requires that an automated teller machine operator may only impose a fee on a consumer for initiating an electronic fund transfer or balance inquiry if a notice is provided that a fee will be imposed for initiating an electronic fund transfer or a balance inquiry and the requirements under § 1005.16(c) and (d) are met.

EFTA-A 1005.17(b)(1)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.17(b)(1), prohibits a financial institution holding a consumer's account from assessing a fee or charge on a consumer's account for paying an ATM or one-time debit card transaction under the institution's overdraft service unless the financial institution: provides the consumer with a written notice (or if the consumer agrees, electronically) that is segregated from other information and describes the institution's overdraft service; provides the consumer a reasonable opportunity to affirmatively consent or opt-in; obtains the consumer's affirmative consent or opt-in; and provides the consumer with a confirmation of the consumer's consent in writing (or if the consumer agrees, electronically) informing the consumer of the right to revoke such consent.

EFTA-A 1005.17(b)(2)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.17(b)(2), prohibits a financial institution from conditioning the payment of any overdraft for checks, ACH transactions, and other types of transactions on the consumer affirmatively consenting to the institution's payment of ATM and one-time debit card transactions; or declining to pay checks, ACH transactions, and other types of transactions that overdraw the consumer's account because the consumer has not affirmatively consented to the institution's overdraft service for ATM and one-time debit card transactions.

Violation Code	Description

EFTA-A 1005.17(b)(3)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.17(b)(3), requires a financial institution to provide the same account terms, conditions, and features to consumers who do not affirmatively consent to the institution's overdraft service for ATM and one-time debit card transactions as those offered to consumers who affirmatively consent.

EFTA-A 1005.17(d)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.17(d), requires a financial institution to provide a notice substantially similar to Model Form A-9 including the following items, as applicable: a brief description of the financial institution's overdraft service; the dollar amount of any fees or charges assessed for paying an ATM or one-time debit card transaction; the maximum number of overdraft fees or charges that may be assessed; an explanation of the consumer's right to affirmatively consent to the payment of overdrafts for ATM and one-time debit card transactions; any alternative plans for covering overdrafts mentioned in § 1005.17(d)(5).

EFTA-A 1005.17(f)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.17(f), requires a financial institution to accept a consumer's revocation of consent as soon as reasonably practicable.

EFTA-A 1005.17(g)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.17(g), requires a financial institution to consider a consumer's opt-in or affirmative consent effective until revoked by the consumer or the financial institution terminates the overdraft service.

EFTA-A 1005.18(b)(1)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.18(b)(1), requires a financial institution to provide disclosures required under § 1005.18(b) before a consumer acquires a prepaid account, except as permitted for prepaid accounts acquired in retail locations and orally by telephone, provided that the financial institution complies with the conditions in § 1005.18(b)(1)(ii) or (b)(1)(iii).

EFTA-A 1005.18(b)(2);(b)(5)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.18(b)(2), requires a financial institution to provide a short form disclosure setting forth the fees and information listed in § 1005.18(b)(2)(i) through (b)(2)(xiv) for a prepaid account, as applicable. Additionally, a financial institution providing a short form disclosure must also disclose additional information as prescribed by § 1005.18(b)(5).

EFTA-A 1005.18(b)(3)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.18(b)(3), requires a financial institution to make additional short form disclosures of variable and

Violation Code	Description
	third-party fees, when the amount disclosed pursuant to § 1005.18(b)(2)(i) through (b)(2)(vii) and (b)(2)(ix) of this section could vary. A financial institution is also prohibited from disclosing any finance charges as described in Regulation Z, 12 C.F.R. § 1026.4(b)(11), imposed in connection with a separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 C.F.R. § 1026.61.
EFTA-A 1005.18(b)(4)	The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.18(b)(4), requires a financial institution to provide a long form disclosure setting forth the fees and information listed in § 1005.18(b)(4)(i) through (b)(4)(vii) for a prepaid account, as applicable.
EFTA-A 1005.18(b)(6)	The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.18(b)(6), requires a financial institution to provide written disclosures in a form the consumer may keep and in a tabular format, except as expressly permitted under this subsection.
EFTA-A 1005.18(b)(7)	The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.18(b)(7), requires a financial institution to follow specific formatting requirements regarding the grouping, ordering and segregation of information, as well as the prominence and size of the disclosures, as set out in § 1005.18(b)(7)(i) through (b)(7)(iii).
EFTA-A 1005.18(b)(8)	The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.18(b)(8), requires that fee names and other terms be used consistently across the disclosures.
EFTA-A 1005.18(b)(9)	The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.18(b)(9), requires a financial institution to provide pre-acquisition disclosures in a foreign language under circumstances outlined in § 1005.18(b)(9)(i), and provide the long form disclosures in English upon request, as required by § 1005.18(b)(9)(ii).
EFTA-A 1005.18(c)	The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.18(c), states that if a financial institution provides a periodic statement under § 1005.9(b) or the periodic statement alternative under § 1005.18(c)(1), the institution must disclose any fees assessed against the prepaid account and a summary total of all such fees in accordance with the requirements of § 1005.18(c)(4) and (c)(5).
EFTA-A 1005.18(d)	The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.18(d), requires a financial institution that has provided information under § 1005.18(c)(1) to modify the initial disclosure provided under § 1005.7(b) for prepaid accounts by disclosing account access

Violation Code	Description
	information and a notice concerning error resolution, as permitted by § 1005.18(d)(1). The financial institution must also provide an annual notice concerning error resolution, as permitted by § 1005.8(d)(2).
EFTA-A 1005.18(e)(1)	The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.18(e)(1), requires a financial institution that has provided information under § 1005.18(c)(1) to comply with the error resolution requirements of § 1005.6(b)(3), except that the 60-day period for reporting unauthorized transfers begins on the earlier of: (i) the date the consumer electronically accesses the account provided the account transaction history reflects the unauthorized transfer; or (ii) the date the financial institution sends the consumer a written history of account transactions in which the unauthorized transfers is first reflected.
EFTA-A 1005.18(e)(2)	The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.18(e)(2), requires a financial institution that has provided information under § 1005.18(c)(1) to comply with the requirements of § 1005.11 in response to an oral or written notice of an error from the consumer that is received by the earlier of the following: (i) 60 days after the date the consumer electronically accesses the account provided the account transaction history reflects the unauthorized transfer; or (ii) 60 days after the date the financial institution sends the consumer a written history of account transactions in which the unauthorized transfers is first reflected. A financial institution complies with § 1005.18(e)(2)(i) if it investigates any oral or written error notices from the consumer received within 120 days after the transfer was credited or debited to the consumer's account.
EFTA-A 1005.18(f)(1)	The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.18(f)(1), requires a financial institution to include as part of the initial disclosure required in § 1005.7, all of the information required in its long form disclosure pursuant to § 1005.18(b)(4).
EFTA-A 1005.18(f)(3)	The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.18(f)(3) requires a financial institution to disclose on the prepaid account device the name of the financial institution, the Web site URL, and a telephone number a consumer can use to contact the financial institution about the prepaid account.
EFTA-A 1005.18(g)	The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.18(g), requires a financial institution to provide the same account terms, conditions, and features for prepaid accounts with a covered separate credit feature accessible by a hybrid pre-paid card (defined by Regulation Z, 12 C.F.R. § 1026.61), as it provides for prepaid accounts without such a credit feature, except as provided in § 1005.18(g)(2).

Violation Code	Description

EFTA-A 1005.19(b)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.19(b), requires a financial institution to make submissions of prepaid account agreements to the Consumer Financial Protection Bureau within 30 days after offering, amending, or ceasing to offer any prepaid account agreement containing information prescribed in § 1005.19(b)(1)(i) through (b)(1)(iv), and to meet the applicable requirements of § 1005.19(b)(2) and (b)(3) regarding amended or withdrawn agreements. There is no violation if the financial institution falls under the de minimis or product testing exceptions set out in § 1005.19(b)(4) and (b)(5), respectively.

EFTA-A 1005.19(c)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.19(c), requires an issuer to post and maintain prepaid account agreements offered to the public on its publicly available Web site. Posted agreements must conform to the form and content requirements of § 1005.19(b)(6), be in a prominent and readily accessible public location, and accessible without submitting personally identifiable information. The agreements must be updated as frequently as is required for submission to the Consumer Financial Protection Bureau under § 1005.19(b)(2).

EFTA-A 1005.19(d)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.19(d), requires an issuer to make agreements for all open prepaid accounts available, as required by § 1005.19(d)(1)(i) and (d)(1)(ii), under the form and content requirements of § 1005.19(d)(2).

EFTA-A 1005.19(f)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.19(f), requires an issuer to submit to the Consumer Financial Protection Bureau no later than May 1, 2019 all prepaid account agreements it offers as of April 1, 2019.

EFTA-A 1005.20(c)(1)-(2)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.20(c)(1) and (c)(2), requires a financial institution to provide disclosures under § 1005.20 for gift cards and gift certificates that are clear and conspicuous, in writing or electronically, and in a retainable form, except disclosures required prior to purchase and disclosures on in-store signage, messages during customer service calls, Web sites, and general advertising may be given orally.

EFTA-A 1005.20(c)(3)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.20(c)(3), requires a financial institution to disclose to the consumer the information required by § 1005.20(d)(2), (e)(3), and (f)(1) prior to purchase of the gift certificate, store gift card, or general-use prepaid card. The fees, and the terms and conditions of expiration, required to be disclosed prior to purchase, cannot be changed after purchase.

Violation Code	Description

EFTA-A 1005.20(c)(4)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.20(c)(4), requires a financial institution to disclose to the consumer the information required by § 1005.20(a)(4)(iii), (d)(2), (e)(3), and (f)(2) on the gift certificate or gift card or in the case of a loyalty, award, or promotional gift card, on the card, code, or other device.

EFTA-A 1005.20(d);(e)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.20(d) and (e), prohibits the imposition of a dormancy, inactivity, or service fee on a gift certificate, store gift card, or general-use prepaid card except under the conditions in § 1005.20(d)(1) through (d)(3), and prohibits the sale or issuance of a gift certificate, store gift card, or general-use prepaid card with an expiration date unless the conditions in § 1005.20(e)(1) through (e)(4) are met.

EFTA-A 1005.20(f)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.20(f), requires a financial institution to provide the following disclosures in connection with a gift certificate, store gift card, or general-use prepaid card, as applicable: the type and amount of fee, and conditions under which the fee may be imposed on or with the certificate or card; and a toll-free telephone number and Web site, if maintained, that the consumer can use to obtain information about fees described in § 1005.20(d)(2) and (f)(1) that must be disclosed on the certificate or card.

Electronic Fund Transfers Act/Regulation E – Subpart B – Requirements for Remittance Transfers

EFTA-B 1005.31(a)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.31(a), requires a financial institution to provide clear and conspicuous disclosures that are retainable. Disclosures may be provided in writing, electronically, or orally pursuant to the conditions in § 1005.31(a)(2) through (a)(4). Electronic and oral disclosures for mobile application or text message transactions may be provided pursuant to the conditions in § 1005.31(a)(5) and need not be retainable.

EFTA-B 1005.31(b)-(c)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.31(b), requires a financial institution to provide a pre-payment disclosure, receipt or a single combined disclosure (as an alternative to the pre-payment disclosure and receipt), and the long form error resolution and cancellation notice that satisfy applicable content requirements contained in § 1005.31(b)(1) through (b)(4). The disclosures must meet the specific format requirements under § 1005.31(c)(1) through (c)(4), as applicable, regarding grouping, proximity, prominence and size, and segregation.

EFTA-B 1005.31(d)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.31(d), requires a financial institution to describe estimated disclosures with the term “estimated” or a substantially similar term in close proximity to the estimated term or terms, to the extent the use of an estimated term or amount is permitted by § 1005.32.

Violation Code	Description

EFTA-B 1005.31(e)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.31(e), requires that the pre-payment disclosure and receipt, or a combined disclosure, be provided to the sender within the timing requirements prescribed under § 1005.31(e)(1) and (e)(2), except as permitted under § 1005.36(a) for transfers scheduled before the date of a transfer.

EFTA-B 1005.31(f)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.31(f), requires that disclosures be accurate when a sender makes a payment for the remittance transfer, except to the extent estimates are permitted by § 1005.32 or the transfer is scheduled before the date of a transfer in accordance with the requirements of § 1005.36.

EFTA-B 1005.31(g)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.31(g), requires that the disclosures be made in English and, if applicable, either in the foreign languages used by the remittance transfer provider to advertise the transfer services or the foreign language used by the remittance transfer sender to conduct the transaction, as prescribed by § 1005.31(g)(1)(i) and (g)(1)(ii). Oral, mobile application, or text message disclosures must meet requirements of § 1005.31(g)(2).

EFTA-B 1005.32(a)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.32(a), prohibits a financial institution from using estimates for the amounts required in § 1005.31(b)(1)(iv) through (b)(1)(vii) to be disclosed under § 1005.31(b)(1) through (b)(3) and § 1005.36(a)(1) and (a)(2) unless the institution cannot determine the exact amounts for reasons beyond its control; it is an insured institution; and the transfer is sent from the sender's account with the institution. This subsection expires on July 21, 2020.

EFTA-B 1005.32(b)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.32(b), prohibits financial institutions from using estimates for transfers to certain countries, transfers scheduled before the date of the transfer, and disclosures of non-covered third-party fees and taxes collected by a person other than the provider, for the amounts required to be disclosed under § 1005.31(b)(1)(iv) through (b)(1)(vii), unless the conditions for applicable permanent exceptions under § 1005.32(b)(1) through (b)(3) are met.

EFTA-B 1005.32(c)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.32(c), requires that the use of estimates in remittance disclosures by insured institutions must be based on a specific approach or approaches regarding the exchange rate, the transfer amount in the currency in which the funds will be received, covered third-party fees, and the amount of currency that will be received by the designated recipient, except as otherwise permitted by § 1005.32(c).

Violation Code	Description

EFTA-B 1005.32(d)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.32(d), requires a financial institution to use estimates for transfers scheduled before the date of transfer that are based on the exchange rate, or where applicable, the estimated exchange rate, using the estimation methodologies under § 1005.32(c)(1), or the estimation methodology that the provider would be permitted to use in providing disclosures to a sender requesting such a remittance transfer to be made on the same day.

EFTA-B 1005.33(b)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.33(b), requires a financial institution to meet the timing and content requirements with respect to any oral or written notice of error that is received no later than 180 days after the date of availability of the remittance transfer, enables the provider to identify the sender's and recipient's contact information, and the remittance transfer to which the notice of error applies, and indicates why the sender believes an error exists, as prescribed by § 1005.33(b)(1)(i) through (b)(1)(iii). When a notice of error is based on documentation, additional information, or clarification that the sender previously requested, the sender's notice of error is timely if received within the prescribed timeframes required by § 1005.33(b)(2).

EFTA-B 1005.33(c)-(d)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.33(c), requires a financial institution to investigate promptly and determine whether an error occurred, report the results to the sender, correct the error and provide the appropriate remedy within the prescribed timeframes provided by § 1005.33(c). If the financial institution determines that no error occurred or a different error occurred, it must provide an explanation of the results of the investigation and the copies of the documents on which it relied in making its error determination, as required by § 1005.33(d)(1) and (d)(2).

EFTA-B 1005.33(g)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.33(g), requires a financial institution to develop and maintain written policies and procedures to ensure compliance with error resolution requirements applicable to remittance transfers and the retention of documentation related to error investigations. Such error resolution documentation retention policies and procedures must conform to the minimum requirements of § 1005.33(g)(2).

EFTA-B 1005.34

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.34, requires a financial institution to follow procedures for oral or written requests to cancel a remittance transfer, as prescribed by § 1005.34(a)(1) and (a)(2), except as provided in § 1005.36(c) regarding cancellation of transfers scheduled before the date of the transfer. The financial institution must also comply with the requirements of § 1005.34(b) regarding time limits and amount of refunds.

Violation Code	Description

EFTA-B 1005.36(a)-(b)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.36, requires a financial institution to provide timely, accurate (except to the extent estimates are permitted by § 1005.32), and updated disclosures and receipts, as required by § 1005.36(a) and (b), for a one-time transfer scheduled five or more business days before the date of transfer, or for the first in a series of preauthorized remittance transfers and each subsequent preauthorized transfer.

EFTA-B 1005.36(c)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.36(c), requires a financial institution to comply with any oral or written request to cancel any remittance transfer scheduled by the sender at least three business days before the date of the transfer, provided that the request enables the provider to identify the sender's contact information, the particular transfer to be cancelled, and is received within the timeframe prescribed by § 1005.36(c)(2).

EFTA-B 1005.36(d)

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.36(d), requires a financial institution to provide the additional disclosures for any subsequent transfers in a series of preauthorized remittance transfers required by § 1005.36(d)(1)(i) and (d)(1)(ii). The financial institution must also meet the applicable timing, notice, format, and accuracy requirements prescribed by § 1005.36(d)(2) through (d)(4).

Electronic Signatures Act

E-SIGN 101(c)(1)(A)-(C)

Section § 101(c)(1)(A) through (C) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001), allows a financial institution to use an electronic record to satisfy any statute, regulation, or rule of law requiring that such information be provided in writing, provided the following conditions are met:
(A) the consumer has affirmatively consented and has not withdrawn such consent;
(B) the consumer, prior to consenting, is provided with a clear and conspicuous statement informing the consumer of the following: their right to have the record provided in paper or nonelectronic form and to withdraw consent to have the record provided electronically along with any conditions, consequences or fees of such withdrawal; whether the consent applies to a particular transaction or categories of records; the procedures the consumer must use to withdraw consent and to update information needed to contact the consumer electronically; and how the consumer can obtain a paper copy of an electronic record and whether there are any fees; and
(C) prior to consenting, the consumer is provided a statement of the hardware and software requirements for accessing and retaining electronic records; and the consumer confirms their consent electronically in a manner that reasonably demonstrates that the consumer can access information in the electronic form used to provide the information that is the subject of the consumer's consent.

E-SIGN 101(c)(1)(D)

Section § 101(c)(1)(D) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001), requires that, after a consumer consents in accordance with § 101(c)(1)(A) and if a financial

Violation Code	Description
	institution changes hardware and software needed to access or retain electronic records that create a material risk that the consumer will not be able to access or retain a subsequent electronic record that was the subject of the consent, the financial institution provide the consumer with a statement of the revised hardware and software requirements for accessing and retaining electronic records and of the consumer's right to withdraw consent without the imposition of any fee, condition or consequence that was not disclosed under § 101(c)(1)(B)(i). The financial institution must again also comply with the requirements of § 101(c)(1)(C).
E-SIGN 101(d)	
	Section 101(d) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001), requires a financial institution to maintain electronic records that accurately reflect the information set forth in the contract or other records and that remain accessible to all persons who are entitled to access by statute, regulation, or rule of law for the period required by such statute, regulation, or rule of law, in a form that is capable of being accurately reproduced for later reference, unless the exception in § 101(d)(2) applies.
Equal Credit Opportunity Act	
ECOA 1002.4(a)-(b) AGE	
	The Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), as implemented by Regulation B, 12 C.F.R. § 1002.4(a) and (b), prohibits a creditor from discriminating against or discouraging an applicant in any aspect of a credit transaction on the basis of age, providing that the applicant has the capacity to enter into a binding contract.
ECOA 1002.4(a)-(b) CCPA	
	The Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), as implemented by Regulation B, 12 C.F.R. § 1002.4(a) and (b), prohibits a creditor from discriminating against or discouraging an applicant in any aspect of a credit transaction on the basis of the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act or any state law upon which an exemption has been granted by the Consumer Financial Protection Bureau.
ECOA 1002.4(a)-(b) MARITAL-STATUS	
	The Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), as implemented by Regulation B, 12 C.F.R. § 1002.4(a) and (b), prohibits a creditor from discriminating against or discouraging an applicant in any aspect of a credit transaction on the basis of marital status.
ECOA 1002.4(a)-(b) PUBLIC-ASSIST	
	The Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), as implemented by Regulation B, 12 C.F.R. § 1002.4(a) and (b), prohibits a creditor from discriminating against or discouraging an applicant in any aspect of a credit transaction on the basis of the fact that all or part of the applicant's income derives from any public assistance program.

Violation Code	Description

ECOA 1002.4(a)-(b); 6(b)(9) COLOR

The Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), as implemented by Regulation B, 12 C.F.R. §§ 1002.4(a), (b), and 1002.6(b)(9), prohibits a creditor from discriminating against or discouraging an applicant in any aspect of a credit transaction on the basis of color, or except as otherwise provided by law, considering color in any aspect of a credit transaction.

ECOA 1002.4(a)-(b); 6(b)(9) N-ORIG

The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.), as implemented by Regulation B, 12 C.F.R. § 1002.4(a), § 1002.4(b), and § 1002.6(b)(9), prohibits a creditor from discriminating against or discouraging an applicant in any aspect of a credit transaction based on national origin, or except as otherwise provided by law, considering national origin in any aspect of a credit transaction.

ECOA 1002.4(a)-(b); 6(b)(9) RACE

The Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), as implemented by Regulation B, 12 C.F.R. §§ 1002.4(a), (b), and 1002.6(b)(9), prohibits a creditor from discriminating against, or discouraging an applicant in any aspect of a credit transaction on the basis of race or, except as otherwise provided by law, considering race in any aspect of a credit transaction

ECOA 1002.4(a)-(b); 6(b)(9) REL

The Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), as implemented by Regulation B, 12 C.F.R. §§ 1002.4(a), (b), and 1002.6(b)(9), prohibits a creditor from discriminating against or discouraging an applicant in any aspect of a credit transaction on the basis of religion, or except as otherwise provided by law, considering religion in any aspect of a credit transaction.

ECOA 1002.4(a)-(b); 6(b)(9) SEX

The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.), as implemented by Regulation B, 12 C.F.R. § 1002.4(a), § 1002.4(b), and § 1002.6(b)(9), prohibits a creditor from discriminating against or discouraging an applicant in any aspect of a credit transaction based on sex, or except as otherwise provided by law, considering sex in any aspect of a credit transaction.

ECOA 1002.4(c)

The Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), as implemented by Regulation B, 12 C.F.R. § 1002.4(c), requires the creditor to take a written application for dwelling-related types of credit covered by § 1002.13(a).

ECOA 1002.4(d)

The Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), as implemented by Regulation B, 12 C.F.R. § 1002.4(d), requires a creditor to provide written disclosures or other information required by this part, in a clear and conspicuous manner and, except for the disclosures required by §§ 1002.5 and 1002.13, in a form the applicant may retain. The written disclosures required by this part may be provided to the applicant in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. § 7001 et seq.).

Violation Code	Description

ECOA 1002.4(e)

The Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), as implemented by Regulation B, 12 C.F.R. § 1002.4(e), requires a creditor that provides disclosures in languages other than English, to make the disclosures available in English upon request.

ECOA 1002.5(a)(2)

The Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), as implemented by Regulation B, 12 C.F.R. § 1002.5(a)(2), requires a creditor to collect information for monitoring purposes as required by § 1002.13 for credit secured by the applicant's dwelling.

ECOA 1002.5(b)-(d)

The Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), as implemented by Regulation B, 12 C.F.R. § 1002.5(b) through (d) prohibits a creditor from:
(1) inquiring about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction, except as permitted in §§ 1002.5(b)(1) and (b)(2), or 1002.8 in the case of a special purpose credit program;
(2) requesting any information concerning an applicant’s spouse or former spouse, except as permitted in § 1002.5(c)(2);
(3) requesting the marital status of a person applying for individual, unsecured credit, except as permitted in § 1002.5(d)(1) (for credit other than individual, unsecured, a creditor may inquire about the applicant’s marital status, but must only use the terms "married," "unmarried," and "separate");
(4) inquiring as to whether income stated in an application is derived from alimony, child support, or separate maintenance payments, except as permitted in § 1002.5(d)(2); or
(5) requesting information about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children, except as permitted in § 1002.5(d)(3).

ECOA 1002.6(b)(1)-(4)

The Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), as implemented by Regulation B, 12 C.F.R. § 1002.6(b)(1) through (b)(4), prohibits a creditor from:
(1) using a prohibited basis in any system of evaluating the creditworthiness of applicants, except as permitted by the Act and part 1002;
(2) taking into account an applicant’s age (provided the applicant has the capacity to enter into a binding contract), or whether an applicant’s income derives from any public assistance program, except as permitted by § 1002.6(b)(2)(ii) through (b)(2)(iv);
(3) making assumptions or using aggregate statistics relating to the likelihood that any category of persons will bear or rear children or will, for that reason, receive diminished or interrupted income in the future, when evaluating an applicant’s creditworthiness; or
(4) taking into account whether there is a telephone listing in the name of an applicant for consumer credit when evaluating the applicant’s creditworthiness.

ECOA 1002.6(b)(5)

The Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), as implemented by Regulation B, 12 C.F.R. § 1002.6(b)(5), prohibits a creditor from discounting or excluding income of an applicant or the spouse of the applicant because of a prohibited basis or because the income is derived from part-time employment, or

Violation Code	Description
	from an annuity, pension, or other retirement benefit, and requires the creditor to consider alimony, child support or separate maintenance payments as income to the extent they are likely to be consistently made.
ECOA 1002.6(b)(6)	The Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), as implemented by Regulation B, 12 C.F.R. § 1002.6(b)(6), requires a creditor that considers credit history when evaluating the creditworthiness of similarly qualified applicants for a similar type and amount of credit, to consider the credit history of accounts that the applicant and spouse are permitted to use or for which both are contractually liable, and to consider information presented by the applicant that tends to indicate the credit history being considered does not accurately reflect the applicant's creditworthiness. This section further requires the creditor to consider the credit history of any account reported in the name of the applicant's spouse or former spouse that the applicant can demonstrate accurately reflects the applicant's creditworthiness.
ECOA 1002.6(b)(8)	The Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), as implemented by Regulation B, 12 C.F.R. § 1002.6(b)(8), requires a creditor to evaluate married and unmarried applicants by the same standards. This section also prohibits a creditor from treating applicants differently based on the existence, absence, or likelihood of a marital relationship between the parties, when evaluating joint applications.
ECOA 1002.7(c)(1)	The Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), as implemented by Regulation B, 12 C.F.R. § 1002.7(c)(1), prohibits a creditor, with regards to an existing open-end account, from requiring reapplication except as provided in § 1002.7(c)(2), changing the terms of the account, or terminating the account on the basis of the applicant reaching a certain age or retiring, or on the basis of a change in the applicant’s name or marital status, unless there is evidence of the applicant’s inability or unwillingness to repay.
ECOA 1002.7(d)(1); (d)(5)-(6)	The Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), as implemented by Regulation B, 12 C.F.R. § 1002.7(d)(1), (d)(5), and (d)(6), prohibits a creditor from: (1) requiring the signature of an applicant's spouse or other person (other than a joint applicant) on any credit instrument, if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested; (2) deeming the submission of a joint financial statement or other evidence of jointly held assets as an application for joint credit; requiring the applicant’s spouse be the additional party (cosigner, guarantor, endorser, or similar party), when the personal liability of an additional party is necessary to support the extension of credit requested by the applicant; and (3) imposing requirements upon an additional party that the creditor is prohibited from imposing upon an applicant under this section.
ECOA 1002.7(d)(2)	The Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), as implemented by Regulation B, 12 C.F.R. § 1002.7(d)(2), states that, if an applicant requests unsecured credit and relies in part upon property that the applicant owns jointly with another person to satisfy a creditor’s standards of creditworthiness, a creditor

Violation Code	Description
	may require the signature of the joint owner of property only on the instrument(s) necessary, or reasonably believed to be necessary, under the law of the state in which the property is located, to enable the creditor to reach the property being relied upon in the event of the death or default of the applicant.
ECOA 1002.7(e)	The Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), as implemented by Regulation B, 12 C.F.R. § 1002.7(e), prohibits a creditor from refusing to extend credit or terminating an account because credit life, health, accident, disability, or other credit-related insurance is not available on the basis of the applicant's age.
ECOA 1002.9(a)(1)	The Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), as implemented by Regulation B, 12 C.F.R. §1002.9(a)(1), requires a creditor to notify an applicant of action taken on a credit application within prescribed time limits.
ECOA 1002.9(a)(2); (b)(2)	The Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), as implemented by Regulation B, 12 C.F.R. § 1002.9(a)(2) and (b)(2), requires a creditor to provide an applicant against whom adverse action is taken, a written notice that contains a statement of the action taken; the name and address of the creditor; a statement of the provisions of section 701(a) of the Act; the name and address of the Federal agency that administers compliance with respect to the creditor; and either a statement of specific reasons for the action taken, or a disclosure of the applicant’s right to a statement of specific reasons within 30 days, if the statement is requested within 60 days of the creditor’s notification, along with the name, address, and telephone number of the person or office where the statement of reasons may be obtained. The statement of reasons for adverse action required by this section, must be specific and indicate the principal reason(s) for adverse action.
ECOA 1002.9(a)(3)	The Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), as implemented by Regulation B, 12 C.F.R. § 1002.9(a)(3), requires a creditor to notify business credit applicants of action taken on a credit application and sets out the notification requirements for businesses with gross revenues of $1 million or less (in the preceding fiscal year) and businesses with gross revenues in excess of $1 million (in the preceding fiscal year).
ECOA 1002.9(c)	The Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), as implemented by Regulation B, 12 C.F.R. § 1002.9(c), requires a creditor, within 30 days of receipt of an incomplete application, to either notify an applicant of action taken in accordance with § 1002.9(a) or request the information necessary to complete the application, designating a reasonable period of time for the applicant to provide the information, and informing the applicant that failure to provide the information requested will result in no further consideration.

Violation Code	Description
ECOA 1002.9(g)	The Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), as implemented by Regulation B, 12 C.F.R. § 1002.9(g), requires each creditor taking adverse action to comply with this section, directly or through a third party, when an application is made on behalf of an applicant to more than one creditor and no credit is offered, or if the applicant does not expressly accept or use any credit offered. A notice given by a third party shall disclose the identification of each creditor on whose behalf the adverse action notice is given.
ECOA 1002.10(a)-(b)	The Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), as implemented by Regulation B, 12 C.F.R. § 1002.10(a) and (b), requires the creditor to designate new accounts 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). In addition, creditors are required to designate existing accounts to reflect participation by both spouses, within 90 days after receiving a written request to do so from one of the spouses. Further, this section requires a creditor that furnishes credit information to a consumer reporting agency on accounts designated to reflect the participation of both spouses, to furnish the credit information in a manner that will enable the consumer reporting agency to provide access to the information in the name of either participating spouse.
ECOA 1002.10(c)	The Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), as implemented by Regulation B, 12 C.F.R. § 1002.10(c), requires that if, in response to an inquiry, a creditor furnishes credit information on an account designated to reflect participation of both spouses, the creditor shall furnish the information in the name of the spouse about whom the information is requested.
ECOA 1002.11(c)	The Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), as implemented by Regulation B, 12 C.F.R. § 1002.11(c), prohibits a creditor from aggregating or otherwise combining accounts for the purpose of determining permissible finance charges or loan ceilings under any Federal or state law if married applicants voluntarily apply for and obtain individual accounts with the same creditor.
ECOA 1002.12(b)(1)-(7)	The Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), as implemented by Regulation B, 12 C.F.R. § 1002.12(b)(1) through (b)(7) requires a creditor to retain certain records for prescribed timeframes for consumer and business applications, existing accounts, other applications, investigation or enforcement proceedings for alleged violation of the Act or this part, self-testing, and prescreened credit solicitations.
ECOA 1002.13(a)-(c)	The Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), as implemented by Regulation B, 12 C.F.R. § 1002.13(a) through (c), requires a creditor to request prescribed data on an application for the purchase or refinancing of a dwelling that is occupied or to be occupied by the applicant as a principal residence. If the applicant(s) chooses not to provide the information or any part of it, this section requires the creditor to note this on the form and to the extent possible, note the prescribed data on the basis of visual observation or surname. Further, this section requires a creditor to advise the applicant(s) that the information is being requested by the Federal Government for the purpose of monitoring compliance with Federal statutes and

Violation Code	Description
	that if the applicant(s) chooses not to provide the information, the creditor is required to document the prescribed data based on visual observation or surname.
ECOA 1002.14(a)(1)-(4)	The Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), as implemented by Regulation B, 12 C.F.R. § 1002.14(a)(1) through (a)(4), requires a creditor to provide an applicant, at no charge, a copy of all appraisals and other written valuations developed in connection with an application for credit that is to be secured by a first lien on a dwelling, whether the credit is extended or denied, or the application is incomplete or withdrawn, within prescribed timeframes. A creditor may not provide the required copies of appraisals and other written valuations in electronic form unless the consumer consents and the creditor complies with other applicable provisions of the E-Sign Act (15 U.S.C. § 7001 et seq.). Further, this section requires a creditor, to mail or deliver to an applicant a notice in writing of the applicant's right to receive a copy of all written appraisals developed in connection with the application, within prescribed timeframes.
Expedited Funds Availability Act/Regulation CC	
EFAA 229.10	The Expedited Funds Availability Act (12 U.S.C. § 4001 et seq.), as implemented by Regulation CC, 12 C.F.R. § 229.10, requires a financial institution to make available for withdrawal cash deposits made in person to an employee of the bank, electronic payments, and certain check deposits not later than the business day after the banking day on which the bank received the deposit. The financial institution must make available for withdrawal funds deposited in an account by cash not made in person to an employee of the bank and checks not deposited in person not later than the second business day after the banking day on which the funds are deposited. In addition, the financial institution must make the lesser of the applicable dollar amount provided in § 229.10(c)(1)(vii)(A) or the customer's daily aggregate deposits of checks not subject to the next-day availability rules under § 229.10(c)(1)(ii) through (vi) available on the next business day. As a condition to making the funds available for withdrawal in accordance with this section, the financial institution may require the use of a special deposit slip or envelope for certain checks. If the institution requires the use of such special deposit slip, § 229.10(c)(3)(ii) requires the financial institution to either provide the special deposit slip or deposit envelope to its customers or inform them of how the special deposit slip or envelope may be prepared or obtained. Financial institutions must make the special deposit slip or envelope reasonably available.
EFAA 229.12	The Expedited Funds Availability Act (12 U.S.C. § 4001 et seq.), as implemented by Regulation CC, 12 C.F.R. § 229.12(b), requires a financial institution to make funds deposited in an account for local and certain other checks available for withdrawal not later than the second business day following the banking day on which funds are deposited. The Federal Reserve Board of Governors adopted check-processing requirements that have effectively eliminated the distinction in the requirements for the availability of funds for withdrawal between local and non-local checks. Thus, local and nonlocal checks should be treated the same in terms of funds availability under Regulation CC except as permitted in § 229.12(d) through (f).

Violation Code	Description
EFAA 229.13	The Expedited Funds Availability Act (12 U.S.C. § 4001 et seq.), as implemented by Regulation CC, 12 C.F.R. § 229.13, requires a financial institution to follow certain procedures for exceptions related to new accounts, large deposits, redeposited checks, repeated overdrafts, reasonable cause to doubt collectability, and emergency conditions as prescribed by § 229.13(a) through (f). When the financial institution extends the time of deposits subject to exceptions in § 229.13(b) through (e), the financial institution must provide the depositor with a notice in accordance with § 229.13(g)(1) through (g)(4). The financial institution must also retain a record of each notice provided pursuant to the reasonable cause exception under § 229.13(e) with a brief statement of the facts giving rise to the financial institution's reason to doubt the collectability of the check in accordance with § 229.13(g)(5). Finally, § 229.13(h) requires that, if a financial institution imposes one of the exceptions in § 229.13(b) through (f), the times periods may be extended only in accordance with the "reasonable period of time" parameters outlined in § 229.13(h)(1) through (h)(4).
EFAA 229.14	The Expedited Funds Availability Act (12 U.S.C. § 4001 et seq.), as implemented by Regulation CC, 12 C.F.R. § 229.14, requires a financial institution to begin to accrue interest on funds deposited into interest-bearing accounts no later than the business day on which the financial institution receives provisional credit for the funds.
EFAA 229.15(a)-(b)	The Expedited Funds Availability Act (12 U.S.C. § 4001 et seq.), as implemented by Regulation CC, 12 C.F.R. § 229.15 (a) and (b), requires a financial institution to provide disclosures clearly and conspicuously in writing. The disclosures must be in a form the consumer can keep apart from the exceptions in § 229.15(a) (these exceptions are otherwise covered in § 229.18). The disclosures shall be grouped together and not contain information unrelated to the disclosures required by subpart B of Regulation CC. In addition, the disclosure must contain uniform references to the day of availability.
EFAA 229.16(a)-(c)	The Expedited Funds Availability Act (12 U.S.C. § 4001 et seq.), as implemented by Regulation CC, 12 C.F.R. § 229.16(a) through (c), requires a financial institution to provide a disclosure before opening a new account and upon request as required by §§ 229.17 and 229.18(d), describing the financial institution's policy as to when funds deposited in an account are available for withdrawal, reflecting the policy followed by the financial institution in "most cases." The specific availability policy disclosure must include, as applicable, the items listed under § 229.16(b)(1) through (b)(5). A financial institution that has a policy of making deposited funds available for withdrawal sooner than required must meet the disclosure and notice requirements of § 229.16(c).
EFAA 229.17	The Expedited Funds Availability Act (12 U.S.C. § 4001 et seq.), as implemented by Regulation CC, 12 C.F.R. § 229.17, requires a financial institution to provide a potential customer with the applicable specific availability policy disclosure in § 229.16 before opening a new account.

Violation Code	Description
EFAA 229.18	The Expedited Funds Availability Act (12 U.S.C. § 4001 et seq.), as implemented by Regulation CC, 12 C.F.R. § 229.18, requires a financial institution to provide additional disclosures on preprinted deposit slips, at locations where employees accept consumer deposits, on automated teller machines, and upon request, as required by § 229.18(a) through (d). In addition, the financial institution must send a notice to consumers regarding changes in policy pursuant to the timeframes prescribed under § 229.18(e).
EFAA 229.19(a)-(b)	The Expedited Funds Availability Act (12 U.S.C. § 4001 et seq.), as implemented by Regulation CC, 12 C.F.R. § 229.19(a) and (b), requires that a financial institution follow certain availability schedules for funds mailed to the depository institution; funds deposited at an ATM, night depository, lock box, or similar facility; or funds deposited at a staffed facility or contractual branch if such deposits are made by certain times.
EFAA 229.19(f)	The Expedited Funds Availability Act (12 U.S.C. § 4001 et seq.), as implemented by Regulation CC, 12 C.F.R. § 229.19(f), requires a financial institution to establish procedures to ensure that it complies with the requirements of Subpart A of Regulation CC, and must provide each employee who performs duties subject to the requirements of Subpart A with a statement of the procedures applicable to that employee.
EFAA 229.21(g)	The Expedited Funds Availability Act (12 U.S.C. § 4001 et seq.), as implemented by Regulation CC, 12 C.F.R. § 229.21(g), requires a financial institution to retain evidence of compliance with the requirements imposed by Subpart A for at least two years.
EFAA 229.51(b)	The Expedited Funds Availability Act (12 U.S.C. § 4001 et seq.), as implemented by Regulation CC, 12 C.F.R. § 229.51(b), requires a financial institution that is the reconverting bank to ensure that a substitute check bears all indorsements applied by parties that previously handled the check in any form for forward collection or return; identifies the converting financial institution in a manner that preserves any previous reconverting-financial institution's identifications; and identifies the financial institution that truncated the original check.
EFAA 229.52	The Expedited Funds Availability Act (12 U.S.C. § 4001 et seq.), as implemented by Regulation CC, 12 C.F.R. § 229.52, requires that a financial institution that transfers, presents, or returns a substitute check (or a paper or electronic representation of a substitute check) for which it receives consideration, warrants to the parties listed under § 229.52(b) that: the substitute check meets the requirements for legal equivalence outlined under § 229.51(a)(1) and (a)(2); and no financial institution will receive presentment or return of, or otherwise be charged for, the substitute check, the original check, or a paper or electronic representation of the substitute check such that that person will be asked to make a payment based on a check that it has already paid. Under § 229.52(b), a financial institution that rejects a check submitted for deposit or returns a substitute check to its customers provides these warrants regardless of whether or not the bank received consideration.

Violation Code	Description
EFAA 229.53	The Expedited Funds Availability Act (12 U.S.C. § 4001 et seq.), as implemented by Regulation CC, 12 C.F.R. § 229.53(a), requires a financial institution that transfers, presents, or returns a substitute check or a paper or electronic representation of a substitute check for which it receives consideration, to indemnify the recipient and any subsequent recipient for any loss incurred by any recipient of a substitute check if that loss occurred due to the receipt of a substitute check instead of the original check. In addition, the financial institution must meet the indemnity amount requirements under § 229.53(b).
EFAA 229.54(b)	The Expedited Funds Availability Act (12 U.S.C. § 4001 et seq.), as implemented by Regulation CC, 12 C.F.R. § 229.54(b), requires a financial institution to ensure that if the consumer cannot submit his or her claim by the time specified under § 229.54(b)(1)(i) because of extenuating circumstances, the financial institution shall extend the 40-calendar-day period by an additional reasonable amount of time. In addition, if the consumer fails to provide all the required information under § 229.54(b)(2)(i), the financial institution must inform the consumer that the claim is not complete and identify the information that is missing. The financial institution holding the account subject to the consumer's claim may require the consumer to submit the information required by § 229.54(b)(3) in writing and, if so, the financial institution must follow the requirements of § 229.54(b)(3)(i) through (b)(3)(iii).
EFAA 229.54(c)-(e)	The Expedited Funds Availability Act (12 U.S.C. § 4001 et seq.), as implemented by Regulation CC, 12 C.F.R. § 229.54(c), requires a financial institution in evaluating a consumer's claim to follow the procedures outlined under § 229.54(c)(1) through (c)(4) regarding recrediting the consumer's account, sending the consumer notice, recrediting a pending investigation, and reversing the recredit, as appropriate. The financial institution must also meet next-day availability requirements under § 229.54(d)(1), unless it meets the safeguard exceptions provided by § 229.54(d)(2), in which case the financial institution may not impose an overdraft fee with respect to drafts drawn by the consumer on such recredited funds until the timeframe prescribed under § 229.54(d)(3). In addition, the financial institution must meet the notice requirements of § 229.54(e) regarding recredits, invalid claims, and reversal of recredits.
EFAA 229.57(a)-(b)	The Expedited Funds Availability Act (12 U.S.C. § 4001 et seq.), as implemented by Regulation CC, 12 C.F.R. § 229.57(a) and (b), requires a financial institution to provide a brief disclosure to consumer customers that describes that a substitute check is the legal equivalent of an original check 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. The financial institution must provide the disclosures according to requirements under § 229.57(b) to consumers who receive paid checks with periodic account statements and consumers who receive substitute checks on an occasional basis.

Violation Code	Description

Fair Credit Reporting Act/Regulation V

FCRA 604(b)(2)-(3)

Section 604(b)(2) and (3) of the Fair Credit Reporting Act (15 U.S.C. § 1681b(b)(2) and (3)), requires the user of a consumer report for employment purposes to disclose in writing to the consumer, before the report is procured or caused to be procured, that a consumer report may be obtained for employment purposes. The user of such consumer reports must obtain the consumer's written authorization to procure the consumer report. Additionally, before taking any adverse action, based in whole or in part on the consumer report, this section requires the user of a consumer report to provide the consumer a copy of the report and a written description of the rights of the consumer under the Act.

FCRA 604(f)

Section 604(f) of the Fair Credit Reporting Act (15 U.S.C. § 1681b(f)), prohibits the user of a consumer report from using or obtaining a consumer report for any purpose other than a purpose for which the consumer report is authorized to be furnished and that purpose is certified in accordance with the Act.

FCRA 604(g)(2); 1022.30(b)

Section 604(g)(2) of the Fair Credit Reporting Act (15 U.S.C. § 1681b(g)(2)), as implemented by Regulation V, 12 C.F.R. § 1022.30(b), prohibits a creditor from obtaining or using medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit, except as provided in § 604(g)(3)(C) of the Fair Credit Reporting Act or § 1022.30(d) of Regulation V.

FCRA 605(g)

Section 605(g) of the Fair Credit Reporting Act (15 U.S.C. § 1681c(g)) prohibits any person that accepts credit or debit cards for the transaction of business from printing more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction. This prohibition applies only to electronically printed receipts and not to transactions in which the sole means of recording a credit card or debit card account number is by handwriting or by an imprint or copy of the card.

FCRA 605A(h)(1)(B)

Section 605A(h)(1)(B) of the Fair Credit Reporting Act (15 U.S.C. § 1681c-1(h)(1)(B)), prohibits a prospective user of a consumer report that includes an initial fraud alert or an active duty alert in accordance with this section, from establishing a new credit plan or extension of credit, other than under an open-end credit plan (as defined in § 103(j) of the Truth in Lending Act (15 U.S.C. § 1602(j)), in the name of the consumer, or issue an additional card on an existing credit account requested by a consumer, or grant any increase in credit limit on an existing credit account requested by a consumer, unless the user utilizes reasonable policies and procedures to form a reasonable belief that the user knows the identity of the person making the request. If a consumer requesting the fraud or active duty alert has specified a telephone number to be used for identity verification purposes, before authorizing any new credit plan or extension in the name of such consumer, a user of such consumer report must contact the consumer using that telephone

Violation Code	Description
	number or take such other reasonable steps to verify the consumer's identity and confirm that the application for a new credit plan is not the result of identity theft.
FCRA 606(a)-(b)	Section 606(a) and (b) of the Fair Credit Reporting Act (15 U.S.C. § 1681d(a) and (b)), prohibits any person from procuring or requesting an investigative consumer report to be prepared unless it is disclosed to the consumer in writing that an investigative consumer report may be made and that the consumer has a right to request additional disclosures as provided under the Act. This disclosure is required to be mailed, or otherwise delivered, not later than three days after the date on which the report was first requested, and must include a written summary of the rights of the consumer prepared pursuant to § 609(c) of the Fair Credit Reporting Act (15 U.S.C. § 1681g(c)). The person, who procures or requests the investigative consumer report, must certify to the consumer reporting agency that the disclosures under this section were made within prescribed timeframes and that it will comply with the requirements related to requests for additional information from the consumer. If the consumer submits a request for additional information in the manner provided under this section, the person who procures or requests the investigative consumer report must mail or otherwise deliver a complete and accurate written disclosure of the nature and scope of the investigation requested to the consumer not later than five days after the date on which the request for the disclosure was received from the consumer or the report was first requested, whichever is the later.
FCRA 607(e)(1)-(2)	Section 607(e)(1) and (e)(2) of the Fair Credit Reporting Act (15 U.S.C. § 1681e(e)(1)–(2)), prohibits any person from procuring a consumer report for purposes of reselling the report (or any information in the report) unless the person: (1) discloses to the credit reporting agency that furnished the report the identity of the end user of the report; (2) certifies the permissible purpose for which the report is being furnished; (3) certifies the report will be used for no other purposes; and (4) takes reasonable steps to ensure that the identifications and certifications are accurate before the information is sold.
FCRA 609(e)(1)-(2)	Section 609(e)(1) and (e)(2) of the Fair Credit Reporting Act (15 U.S.C. § 1681g(e)(1)-(2)), requires that, within 30 days of receiving a written request from an alleged victim of identity theft, a business entity that has otherwise entered into a commercial transaction for consideration with a person who has allegedly made unauthorized use of a victim's identity, must provide a copy of all documents and transaction records, evidencing any transaction alleged to be the result of identity theft to: (A) the victim; (B) any Federal, State, or local government law enforcement agency or officer specified by the victim in such a request; or (C) any law enforcement agency investigating the identity theft and authorized by the victim to take receipt of records provided under this subsection. Prior to providing any documents or records required under § 609(e)(1) (15 U.S.C. § 1681g(e)(1)), the business entity must comply with the verification of identity and claim requirements under § 609(e)(2) (15 U.S.C. § 1681g(e)(2)), unless the business entity, at its discretion, otherwise has a high degree of confidence that it knows the identity of the victim making the request.

Violation Code	Description

FCRA 609(g)(1)

Section 609(g)(1) of the Fair Credit Reporting Act (15 U.S.C. § 1681g(g)(1)), requires any person, who makes or arranges loans and who uses a consumer credit score as defined in subsection (f) of this section in connection with an application for a consumer closed-end or open-end loan that is secured by a 1 to 4 unit residential real property, to provide the credit score and certain other information required by subsection (f) of this section including the "NOTICE TO THE HOME LOAN APPLICANT," as soon as is reasonably practicable.

FCRA 615(a)

Section 615(a) of the Fair Credit Reporting Act (15 U.S.C. § 1681m(a)), requires the user of a consumer report to provide oral, written, or electronic notice of any adverse action taken against a consumer, if such action is based in whole or in part on any information contained in the consumer report. The notice must contain all of the following:
(1) the name, address, and telephone number of the consumer reporting agency (including a toll-free number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis) that furnished the report, and 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;
(2) an advisement of the consumer's right to obtain a free copy of a consumer report within the specified 60 day time period, and to dispute with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency; and
(3) a written or electronic disclosure of a numerical score as defined in § 609(f)(2)(A) (15 U.S.C. § 1681g(f)(2)(A)), that was used by the person taking any adverse action based in whole or in part on any information in a consumer report, and the information as set forth in subparagraphs (B) through (E) of § 609(f)(1) (15 U.S.C. § 1681g(f)(1)).

FCRA 615(b)(1)

Section 615(b)(1) of the Fair Credit Reporting Act (15 U.S.C. § 1681m(b)(1)), requires that, whenever credit for personal, family, or household purposes is denied or the cost increased based on information received from a third party other than a consumer reporting agency, a creditor must disclose the nature of the third-party information within a reasonable period of time of a written request from the consumer.

FCRA 615(d); 1022.54

Section 615(d) of the Fair Credit Reporting Act (15 U.S.C. § 1681m(d)) and § 1022.54 of Regulation V, 12 C.F.R. § 1022.54, require the user of a consumer report, in connection with any credit or insurance transaction that is not initiated by the consumer and that consists of a firm offer of credit or insurance, to provide, with each written solicitation made to the consumer, a clear and conspicuous statement containing the information set forth in § 615(d)(1)(A) through (E) of the Fair Credit Reporting Act (15 U.S.C. § 1681m(d)(1)(A)-(E)), including, but not limited to, the following: that information contained in the consumer's credit report was used in connection with the transaction; that the consumer received the offer because the consumer satisfied the criteria for the offer; and that the consumer may prohibit information in the consumer's credit file from being used in unsolicited credit or insurance offers in the future. The user must also provide a prescreen opt-out notice in both a short form and a long form, which must be in the same language as the offer of credit or insurance. The notices must be clear and conspicuous and simple

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	and easy to understand, and must conform to the requirements set forth in 12 C.F.R. § 1022.54(c)(1) and (c)(2).
FCRA 615(g)	Section 615(g) of the Fair Credit Reporting Act (15 U.S.C. § 1681m(g)), requires a debt collector acting on behalf of a third party that is a creditor or other user of a consumer report, is notified that any information relating to a debt that the debt collector is attempting to collect may be fraudulent or may be the result of identity theft, that person must: (1) notify the third party that the information may be fraudulent or may be the result of identity theft; and (2) upon request of the consumer to whom the debt purportedly relates, provide to the consumer all information to which the consumer would otherwise be entitled if the consumer were not a victim of identity theft, but wished to dispute the debt under provisions of law applicable to that person.
FCRA 623(a)(1)-(5); (8); 1022.42	Section 623(a)(1) through (a)(5) and § 623(a)(8) of the Fair Credit Reporting Act (15 U.S.C. § 1681s-2(a)), requires furnishers of information to consumer reporting agencies to provide accurate information relating to the consumer, and to follow certain procedures set forth in § 623(a), as applicable, to correct and update such information. Further, § 1022.42 of Regulation V, 12 C.F.R. § 1022.42, requires a financial institution that meets the definition of "furnisher" to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a consumer reporting agency. Each furnisher must consider and appropriately incorporate the guidelines in Appendix E of Regulation V in developing its policies and procedures, and must periodically review its policies and procedures and update them as necessary to ensure their continued effectiveness.
FCRA 623(a)(6)	Section 623(a)(6) of the Fair Credit Reporting Act (15 U.S.C. § 1681s-2(a)(6)), requires furnishers of information to consumer reporting agencies to have in place reasonable procedures to respond to any notification it receives from a consumer reporting agency regarding information resulting from identity theft to prevent that furnisher from refurnishing such blocked information under § 605B (15 U.S.C. § 1681c-2). In addition, if a consumer properly submits an identity theft report to the furnisher of information, that furnisher may not furnish such information that purports to relate to the consumer to any consumer reporting agency, unless the furnisher subsequently knows or is informed by the consumer that the information is correct.
FCRA 623(a)(7)	Section 623(a)(7) of the Fair Credit Reporting Act (15 U.S.C. § 1681s-2(a)(7)), requires any financial institution that extends credit, and regularly and in the ordinary course of business furnishes information to a nationwide consumer reporting agency, to provide a notice to customers in writing, when negative information about the customer is provided to the nationwide consumer reporting agency. This notice must be provided before negative information is furnished, or within 30 days after furnishing the negative information. After the notice is provided, a financial institution may submit additional negative information to a nationwide consumer reporting agency with respect to the same transaction, extension of credit, account, or customer without providing additional notice to the customer. A financial institution is not liable for failing to provide the required notice if, at the time of the failure, the financial institution

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	maintained reasonable policies and procedures to comply with the requirements of this section or reasonably believed it was prohibited by law from contacting the consumer.
FCRA 623(b); 1022.43	Section 623(b) of the Fair Credit Reporting Act (15 U.S.C. § 1681s-2(b)), requires furnishers of information to consumer reporting agencies to follow certain procedures set forth in § 623(b) upon notice of a dispute with regard to the completeness or accuracy of any information provided to a consumer reporting agency. Further, § 1022.43 of Regulation V, 12 C.F.R. § 1022.43, requires a financial institution that meets the definition of "furnisher" and that receives a direct dispute from a consumer to conduct a reasonable investigation of the direct dispute if it relates to the information specified in § 1022.43(a)(1) through (a)(4), unless specifically exempted by § 1022.43(b). The financial institution must conduct the investigation in accordance with the requirements in § 1022.43(e). If the financial institution determines that the dispute is frivolous or irrelevant, it must notify the consumer of that determination not later than five business days after making the determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the furnisher. The notice must include the reasons for such determination and identify any information required to investigate the disputed information.
FCRA 1022.21(a)(1);24(a);25(a)	The Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.), as implemented by Regulation V, 12 C.F.R. §§ 1022.21(a)(1), 1022.24(a), and 1022.25(a), prohibits a financial institution, unless an exception set forth in § 1022.21(c) applies, from using eligibility information about a consumer that the institution receives from an affiliate, to make a solicitation for marketing purposes to the consumer, unless: (i) It is clearly and conspicuously disclosed to the consumer in writing or, if the consumer agrees, electronically, in a concise notice that the institution may use eligibility information about that consumer received from an affiliate to make solicitations for marketing purposes to the consumer; (ii) The consumer is provided a reasonable and simple opportunity and method to “opt out,” or prohibit the institution from using eligibility information to make solicitations for marketing purposes to the consumer; and (iii) The consumer has not opted out.
FCRA 1022.21(a)(3)	The Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.), as implemented by Regulation V, 12 C.F.R. § 1022.21(a)(3), requires that the notice in § 1022.21(a)(1) be provided: (i) By an affiliate that has or has previously had a pre-existing business relationship with the consumer; or (ii) As part of a joint notice from two or more members of an affiliated group of companies, provided that at least one of the affiliates on the joint notice has or has previously had a pre-existing business relationship with the consumer.
FCRA 1022.22(a)(5)	The Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.), as implemented by Regulation V, 12 C.F.R. § 1022.22(a)(5), requires a financial institution to give a consumer a new opt-out notice if, after all continuing relationships with the financial institution or its affiliate(s) are terminated, the consumer subsequently establishes another continuing relationship with the financial institution or its affiliate(s) and the consumer’s eligibility information is to be used to make a new solicitation. The new opt-out notice must apply, at a minimum, to eligibility information obtained in connection with the new continuing relationship. Consistent with § 1022.22(b), the consumer’s decision not to opt out after receiving the new

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	opt-out notice would not override a prior opt-out election by the consumer that applies to eligibility information obtained in connection with a terminated relationship, regardless of whether the new opt-out notice applies to eligibility information obtained in connection with the terminated relationship.
FCRA 1022.22(b)	The Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.), as implemented by Regulation V, 12 C.F.R. § 1022.22(b), requires that the election of a consumer to opt out must be effective for a period of at least five years beginning when the consumer's opt-out election is received and implemented, unless the consumer revokes the opt-out in writing or, if the consumer agrees, electronically.
FCRA 1022.23(a)(1)	The Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.), as implemented by Regulation V, 12 C.F.R. § 1022.23(a)(1), requires that an opt-out notice be clear, conspicuous, and concise, and accurately disclose the information detailed in § 1022.23(a)(1)(i) through (a)(1)(viii).
FCRA 1022.23(a)(2)	The Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.), as implemented by Regulation V, 12 C.F.R. § 1022.23(a)(2), requires that if two or more consumers jointly obtain a product or service, the opt-out notice must explain how an opt-out direction by a joint consumer will be treated. An opt-out direction by a joint consumer may be treated as applying to all of the associated joint consumers, or each joint consumer may be permitted to opt out separately. If each joint consumer is permitted to opt out separately, one of the joint consumers must be permitted to opt out on behalf of all joint consumers and the joint consumers must be permitted to exercise their separate rights to opt out in a single response. Further, it is impermissible to require all joint consumers to opt out before implementing any opt-out direction.
FCRA 1022.26(a)	The Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.), as implemented by Regulation V, 12 C.F.R. § 1022.26(a), requires the opt-out notice be provided so that each consumer can reasonably be expected to receive actual notice.
FCRA 1022.27(a)-(d)	The Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.), as implemented by Regulation V, 12 C.F.R. § 1022.27(a) through (d), prohibits solicitations based on eligibility information an institution receives from an affiliate to a consumer who previously opted out after the expiration of the opt-out period unless the consumer has been given a renewal notice that complies with the requirements of §§ 1022.24 through 1022.26, a reasonable and simple method to renew the opt-out, and the consumer does not opt out, or an exception of § 1022.21(c) applies. The renewal notice must be provided by the affiliate that provided the previous opt-out notice, or its successor, or as part of a joint renewal notice from two or more members of an affiliated group of companies, or their successors, that jointly provided the previous opt-out notice. The renewal opt-out notice must be clear, conspicuous, and concise, accurately disclose the required information listed in §1022.27(b)(1) through (b)(8), and follow the timing requirements noted in § 1022.7(c). The opt-out period may not be shortened by sending a renewal notice to the consumer before expiration of the opt-out-period, even if the consumer does not renew the opt-out.

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FCRA 1022.31(b)

The Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.), as implemented by Regulation V, 12 C.F.R. § 1022.31(b), prohibits a person from disclosing medical information about a consumer, received from a consumer reporting agency or its affiliate, 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.

FCRA 1022.72(a)-(d)

The Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.), as implemented by Regulation V, 12 C.F.R. § 1022.72(a) through (d), requires a person to provide a risk-based pricing notice to a consumer, as determined under § 1022.72(a) and (b), in the form and manner required by this subpart unless an exception set forth in § 1022.74 applies. Additionally, such a person must provide a risk-based pricing notice to a consumer in the form and manner required by this subpart if the person uses a consumer report in connection with a review of credit that has been extended to the consumer, and based in whole or in part on the consumer report, the annual percentage rate is increased.

FCRA 1022.73(a)

The Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.), as implemented by Regulation V, 12 C.F.R. § 1022.73(a), requires the risk-based pricing notice required by § 1022.72(a) or (c) to include the information specified in § 1022.73 (a)(1)(i) through (a)(1)(ix), and the risk-based pricing notice required by § 1022.72(d) to include the information specified in paragraphs § 1022.73(a)(2)(i) through (a)(2)(ix).

FCRA 1022.73(b)-(c)

The Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.), as implemented by Regulation V, 12 C.F.R. § 1022.73(b) and (c), requires that the risk-based pricing notice required by § 1022.72(a), (c), or (d), be clear and conspicuous; and provided to the consumer in oral, written, or electronic form. Such a notice shall be provided in accordance with the timing requirements specified in § 1022.73(c)(1) through (c)(3).

FCRA 1022.75(a)

The Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.), as implemented by Regulation V, 12 C.F.R. § 1022.75(a), states that a consumer is entitled to receive no more than one risk-based pricing notice under § 1022.72(a) or (c), or one notice under § 1022.74(d), (e), or (f), for each grant, extension, or other provision of credit; however, a risk-based pricing notice must be provided whenever the conditions set forth in § 1022.72(d) have been met, even if a consumer has previously received a risk-based pricing notice in connection with a grant, extension, or other provision of credit.

FCRA 1022.75(b)

The Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.), as implemented by Regulation V, 12 C.F.R. § 1022.75(b), requires the person to whom a credit obligation is initially payable, to provide the risk-based pricing notice described in § 1022.74(a) or (c), or satisfy the requirements for, and provide the notice required under one of the exceptions in § 1022.74(d), (e), or (f), even if that person immediately assigns the credit agreement to a third party and is not the source of funding for the credit.

Violation Code	Description
FCRA 1022.75(c)	The Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.), as implemented by Regulation V, 12 C.F.R. § 1022.75(c), requires a person to provide a risk-based pricing notice to each consumer in a transaction involving two or more consumers who are granted, extended, or otherwise provided credit in order to satisfy the requirements of § 1022.72(a) or (c), or the exceptions in § 1022.74(d), (e), or (f). Whether the consumers have the same address or not, the person must provide a separate notice to each consumer, if a notice includes a credit score(s). Each separate notice must contain only the credit score(s) of the consumer to whom the notice is provided, and not the credit score(s) of the other consumer. If the consumers have the same address, and the notice does not include a credit score(s), a person may satisfy the requirements of § 1022.75(c)(1) by providing a single notice addressed to both consumers.
FCRA 1022.82(c)	The Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.), as implemented by Regulation V, 12 C.F.R. § 1022.82(c), requires a user of consumer reports to develop and implement reasonable policies and procedures designed to enable the user to form a reasonable belief that a consumer report relates to the consumer about whom it has requested the report, when the user receives a notice of address discrepancy.
FCRA 1022.82(d)	The Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.), as implemented by Regulation V, 12 C.F.R. § 1022.82(d), requires a user to develop and implement reasonable policies and procedures for furnishing an address for the consumer that the user has reasonably confirmed is accurate to the consumer reporting agency from whom it received the notice of address discrepancy when the user: (i) can form a reasonable belief that the consumer report relates to the consumer; (ii) establishes a continuing relationship with the consumer; and (iii) regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which the notice of address discrepancy was obtained. Further, the policies and procedures must provide that the user will furnish the consumer's address to the consumer reporting agency as part of the information it regularly furnishes for the reporting period in which it establishes a relationship with the consumer.
FCRA 334.91(c)	The Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.), as implemented by part 334 of the FDIC Rules and Regulations, 12 C.F.R. § 334.91(c), requires a card issuer to establish and implement reasonable policies and procedures to assess the validity of a change of address if it receives notification of a change of address for a consumer's debit or credit card account and, within a short period of time afterwards (during at least the first 30 days after it receives notification), the card issuer receives a request for an additional or replacement card for the same account. Under these circumstances, the card issuer may not issue an additional or replacement card, until the card issuer: (1) notifies the cardholder of the request at the cardholder’s former address or by other means of communication that the card issuer and the cardholder have previously agreed to, and provides the cardholder with a reasonable means of reporting incorrect address changes; or (2) otherwise assesses the validity of the change of address in accordance with its policies and procedures that the cardholder has established pursuant to § 334.90 of this part.

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FCRA 334.91(e)

The Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.), as implemented by part 334 of the FDIC Rules and Regulations, 12 C.F.R. § 334.91(e), requires that any written or electronic notice the card issuer provides must be clear and conspicuous and provided separately from its regular correspondence with the cardholder.

Fair Debt Collection Practices Act

FDCPA 804(No Subsection)

Section 804 of the Fair Debt Collection Practices Act (15 U.S.C. § 1692b), requires debt collectors to adhere to procedures detailed in § 804(1) through (6) when communicating with any person other than the consumer for the purpose of acquiring location information about the consumer.

FDCPA 805(a); (c)

Section 805(a) and (c) of the Fair Debt Collection Practices Act (15 U.S.C. § 1692c(a) and (c)), prohibits a debt collector from communicating with a consumer in connection with the collection of any debt under the circumstances detailed in § 805(a)(1) through (a)(3) unless the debt collector has the prior consent of the consumer or the express permission of a court of competent jurisdiction. This section also requires a debt collector to cease further communication with a consumer when notified in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease communication, except for the limited purposes permitted under § 805(c)(1) through (c)(3).

FDCPA 805(b)

Section 805(b) of the Fair Debt Collection Practices Act (15 U.S.C. § 1692c(b)), prohibits a debt collector from communicating with any person other than the consumer, the attorney of the consumer, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector, in connection with the collection of any debt without the prior consent of the consumer or the express permission of a court of competent jurisdiction.

FDCPA 806(No Subsection)

Section 806 of the Fair Debt Collection Practices Act (15 U.S.C. § 1692d), prohibits a debt collector from engaging in conduct which is to harass, oppress, or abuse any person, which includes but is not limited to engaging in the conduct described in § 806(1) through (6), in connection with the collection of a debt.

FDCPA 807(No Subsection)

Section 807 of the Fair Debt Collection Practices Act (15 U.S.C. § 1692e), prohibits a debt collector from using any false, deceptive, or misleading representation or means, which includes but is not limited to the conduct described in § 807(1) through (16), in connection with the collection of any debt.

Violation Code	Description

FDCPA 808(No Subsection)

Section 808 of the Fair Debt Collection Practices Act (15 U.S.C. § 1692f), prohibits a debt collector from using unfair or unconscionable means, which includes but is not limited to the conduct described under § 808(1) through (8), to collect a debt.

FDCPA 809(a)

Section 809(a) of the Fair Debt Collection Practices Act (15 U.S.C. § 1692g(a)), requires the debt collector to send the consumer a written notice containing prescribed information under § 809(a)(1) through (a)(5), within five days after the initial communication with a consumer in connection with the collection of a debt, unless the consumer has paid the debt or the information is contained in the initial communication.

FDCPA 811(a)

Section 811(a) of the Fair Debt Collection Practices Act (15 U.S.C. § 1692i(a)), requires a debt collector who brings legal action to follow the prescribed venue requirements specified in § 811(a)(1) and (a)(2).

FDCPA 812(a)

Section 812(a) of the Fair Debt Collection Practices Act (15 U.S.C. § 1692j(a)), prohibits any person from designing, compiling, furnishing, and using deceptive forms in the collection of or in an attempt to collect a debt from a consumer.

Fair Housing Act

FHA 338.3

The Fair Housing Act (42 U.S.C. §§ 3601-3619), as implemented by the FDIC's Fair Housing regulations, 12 C.F.R. § 338.3, requires a bank that advertises loans covered by the Fair Housing Act to prominently indicate in its advertising that the bank makes such loans without regard to race, color, religion, national origin, sex handicap, or familial status. A bank may satisfy this requirement by including the Equal Housing Lender or Equal Housing Opportunity logotype and legend in written advertisements and the statement "Equal Housing Lender" or "Equal Opportunity Lender" in oral advertisements. Further, this section prohibits the use of words, symbols, models or other forms of communication that express, imply, or suggest a discriminatory preference or policy of exclusion in violation of the provisions of the Fair Housing Act or the Equal Credit Opportunity Act.

FHA 338.4

The Fair Housing Act (42 U.S.C. §§ 3601-3619), as implemented by the FDIC's Fair Housing regulations, 12 C.F.R. § 338.4, requires banks that make loans covered by the Fair Housing Act to display the Equal Housing Lender or Equal Housing Opportunity poster, which conforms to size and text specifications, in a central location within the bank where deposits are received or loans covered by the Fair Housing Act are made. The poster must be clearly visible to the general public entering the area where the poster is displayed.

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FHA 338.9	The Fair Housing Act (42 U.S.C. §§ 3601-3619), as implemented by the FDIC's Fair Housing regulations, 12 C.F.R. § 338.9, requires a bank which refers any applicants to a controlled entity as defined in § 338.6(b), and which purchases any home loans originated by the controlled entity, to require the controlled entity to enter into a written agreement with the bank. The agreement must provide that the entity will: (a) comply with the requirements of §§ 338.3, 338.4 and 338.7, and, if otherwise subject to Regulation C (12 C.F.R. part 1003), also comply with § 338.8; (b) open its books and records to examination by the FDIC; and (c) comply with all instructions and orders issued by the FDIC with respect to its loan practices.
FHA 100.110(b) COLOR	The Fair Housing Act (42 U.S.C. §§ 3601-3619), as implemented by the Department of Housing and Urban Development's Fair Housing regulations, 24 C.F.R. § 100.110(b), prohibits any person or entity engaged in residential real estate-related transactions from discriminating against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of color.
FHA 100.110(b) FAM-STATUS	The Fair Housing Act (42 U.S.C. §§ 3601-3619), as implemented by the Department of Housing and Urban Development's Fair Housing regulations, 24 C.F.R. § 100.110(b), prohibits any person or entity engaged in residential real estate-related transactions from discriminating against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of familial status.
FHA 100.110(b) HANDICAP	The Fair Housing Act (42 U.S.C. §§ 3601-3619), as implemented by the Department of Housing and Urban Development's Fair Housing regulations, 24 C.F.R. § 100.110(b), prohibits any person or entity engaged in residential real estate-related transactions from discriminating against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of handicap.
FHA 100.110(b) N-ORIG	The Fair Housing Act (42 U.S.C. §§ 3601-3619), as implemented by the Department of Housing and Urban Development's Fair Housing regulations, 24 C.F.R. § 100.110(b), prohibits any person or entity engaged in residential real estate-related transactions from discriminating against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of national origin.
FHA 100.110(b) RACE	The Fair Housing Act (42 U.S.C. §§ 3601-3619), as implemented by the Department of Housing and Urban Development's Fair Housing regulations, 24 C.F.R. § 100.110(b), prohibits any person or entity engaged in residential real estate-related transactions from discriminating against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race.
FHA 100.110(b) RELIGION	The Fair Housing Act (42 U.S.C. §§ 3601-3619), as implemented by the Department of Housing and Urban Development's Fair Housing regulations, 24 C.F.R. § 100.110(b), prohibits any person or entity engaged in

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residential real estate-related transactions from discriminating against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of religion.

FHA 100.110(b) SEX

The Fair Housing Act (42 U.S.C. §§ 3601-3619), as implemented by the Department of Housing and Urban Development's Fair Housing regulations, 24 C.F.R. § 100.110(b), prohibits any person or entity engaged in residential real estate-related transactions from discriminating against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of sex.

FHA 100.120(a) COLOR

The Fair Housing Act (42 U.S.C. §§ 3601-3619), as implemented by the Department of Housing and Urban Development's Fair Housing regulations, 24 C.F.R. § 100.120(a), prohibits any person or entity engaged in residential real estate-related transactions from discriminating against any person in making available loans or other financial assistance for a dwelling, because of color. Prohibited discrimination includes, but is not limited to, the practices described in § 100.120(b)(1) through (b)(4).

FHA 100.120(a) FAM-STATUS

The Fair Housing Act (42 U.S.C. §§ 3601-3619), as implemented by the Department of Housing and Urban Development's Fair Housing regulations, 24 C.F.R. § 100.120(a), prohibits any person or entity engaged in residential real estate-related transactions from discriminating against any person in making available loans or other financial assistance for a dwelling, because of familial status. Prohibited discrimination includes, but is not limited to, the practices described in § 100.120(b)(1) through (b)(4).

FHA 100.120(a) HANDICAP

The Fair Housing Act (42 U.S.C. §§ 3601-3619), as implemented by the Department of Housing and Urban Development's Fair Housing regulations, 24 C.F.R. § 100.120(a), prohibits any person or entity engaged in residential real estate-related transactions from discriminating against any person in making available loans or other financial assistance for a dwelling, because of handicap. Prohibited discrimination includes, but is not limited to, the practices described in § 100.120(b)(1) through (b)(4).

FHA 100.120(a) N-ORIG

The Fair Housing Act (42 U.S.C. §§ 3601-3619), as implemented by the Department of Housing and Urban Development's Fair Housing regulations, 24 C.F.R. § 100.120(a), prohibits any person or entity engaged in residential real estate-related transactions from discriminating against any person in making available loans or other financial assistance for a dwelling, because of national origin. Prohibited discrimination includes, but is not limited to, the practices described in § 100.120(b)(1) through (b)(4).

FHA 100.120(a) RACE

The Fair Housing Act (42 U.S.C. §§ 3601-3619), as implemented by the Department of Housing and Urban Development's Fair Housing regulations, 24 C.F.R. § 100.120(a), prohibits any person or entity engaged in residential real estate-related transactions from discriminating against any person in making available loans

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	or other financial assistance for a dwelling, because of race. Prohibited discrimination includes, but is not limited to, the practices described in § 100.120(b)(1) through (b)(4).
FHA 100.120(a) RELIGION	The Fair Housing Act (42 U.S.C. §§ 3601-3619), as implemented by the Department of Housing and Urban Development's Fair Housing regulations, 24 C.F.R. § 100.120(a), prohibits any person or entity engaged in residential real estate-related transactions from discriminating against any person in making available loans or other financial assistance for a dwelling, because of religion. Prohibited discrimination includes, but is not limited to, the practices described in § 100.120(b)(1) through (b)(4).
FHA 100.120(a) SEX	The Fair Housing Act (42 U.S.C. §§ 3601-3619), as implemented by the Department of Housing and Urban Development's Fair Housing regulations, 24 C.F.R. § 100.120(a), prohibits any person or entity engaged in residential real estate-related transactions from discriminating against any person in making available loans or other financial assistance for a dwelling, because of sex. Prohibited discrimination includes, but is not limited to, the practices described in § 100.120(b)(1) through (b)(4).
FHA 100.125(a) COLOR	The Fair Housing Act (42 U.S.C. §§ 3601-3619), as implemented by the Department of Housing and Urban Development's Fair Housing regulations, 24 C.F.R. § 100.125(a), prohibits any person or entity engaged in the purchasing of loans or other debts or securities which support the purchase, construction, improvement, repair or maintenance of a dwelling, or which are secured by residential real estate, from refusing to purchase such loans, debts, or securities, or imposing different terms or conditions for such purchases because of color. Unlawful conduct under this section includes, but is not limited to, conduct described in § 100.125(b)(1) through (b)(3).
FHA 100.125(a) FAM-STATUS	The Fair Housing Act (42 U.S.C. §§ 3601-3619), as implemented by the Department of Housing and Urban Development's Fair Housing regulations, 24 C.F.R. § 100.125(a), prohibits any person or entity engaged in the purchasing of loans or other debts or securities which support the purchase, construction, improvement, repair or maintenance of a dwelling, or which are secured by residential real estate, from refusing to purchase such loans, debts, or securities, or imposing different terms or conditions for such purchases because of familial status. Unlawful conduct under this section includes, but is not limited to, conduct described in § 100.125(b)(1) through (b)(3).
FHA 100.125(a) HANDICAP	The Fair Housing Act (42 U.S.C. §§ 3601-3619), as implemented by the Department of Housing and Urban Development's Fair Housing regulations, 24 C.F.R. § 100.125(a), prohibits any person or entity engaged in the purchasing of loans or other debts or securities which support the purchase, construction, improvement, repair or maintenance of a dwelling, or which are secured by residential real estate, from refusing to purchase such loans, debts, or securities, or imposing different terms or conditions for such purchases because of handicap. Unlawful conduct under this section includes, but is not limited to, conduct described in § 100.125(b)(1) through (b)(3).

Violation Code	Description

FHA 100.125(a) N-ORIG

The Fair Housing Act (42 U.S.C. §§ 3601-3619), as implemented by the Department of Housing and Urban Development's Fair Housing regulations, 24 C.F.R. § 100.125(a), prohibits any person or entity engaged in the purchasing of loans or other debts or securities which support the purchase, construction, improvement, repair or maintenance of a dwelling, or which are secured by residential real estate, from refusing to purchase such loans, debts, or securities, or imposing different terms or conditions for such purchases because of national origin. Unlawful conduct under this section includes, but is not limited to, conduct described in § 100.125(b)(1) through (b)(3).

FHA 100.125(a) RACE

The Fair Housing Act (42 U.S.C. §§ 3601-3619), as implemented by the Department of Housing and Urban Development's Fair Housing regulations, 24 C.F.R. § 100.125(a), prohibits any person or entity engaged in the purchasing of loans or other debts or securities which support the purchase, construction, improvement, repair or maintenance of a dwelling, or which are secured by residential real estate, from refusing to purchase such loans, debts, or securities, or imposing different terms or conditions for such purchases because of race. Unlawful conduct under this section includes, but is not limited to, conduct described in § 100.125(b)(1) through (b)(3).

FHA 100.125(a) RELIGION

The Fair Housing Act (42 U.S.C. §§ 3601-3619), as implemented by the Department of Housing and Urban Development's Fair Housing regulations, 24 C.F.R. § 100.125(a), prohibits any person or entity engaged in the purchasing of loans or other debts or securities which support the purchase, construction, improvement, repair or maintenance of a dwelling, or which are secured by residential real estate, from refusing to purchase such loans, debts, or securities, or imposing different terms or conditions for such purchases because of religion. Unlawful conduct under this section includes, but is not limited to, conduct described in § 100.125(b)(1) through (b)(3).

FHA 100.125(a) SEX

The Fair Housing Act (42 U.S.C. §§ 3601-3619), as implemented by the Department of Housing and Urban Development's Fair Housing regulations, 24 C.F.R. § 100.125(a), prohibits any person or entity engaged in the purchasing of loans or other debts or securities which support the purchase, construction, improvement, repair or maintenance of a dwelling, or which are secured by residential real estate, from refusing to purchase such loans, debts, or securities, or imposing different terms or conditions for such purchases because of sex. Unlawful conduct under this section includes, but is not limited to, conduct described in § 100.125(b)(1) through (b)(3).

FHA 100.130(a) COLOR

The Fair Housing Act (42 U.S.C. §§ 3601-3619), as implemented by the Department of Housing and Urban Development's Fair Housing regulations, 24 C.F.R. § 100.130(a), prohibits any person or entity engaged in the making of loans or in the provision of other financial assistance relating to loans covered by the Fair Housing Act from imposing different terms or conditions for the availability of such loans or other financial assistance because of color. Unlawful conduct under this section includes, but is not limited to, conduct described in § 100.130(b)(1) through (b)(5).

Violation Code	Description

FHA 100.130(a) FAM-STATUS

The Fair Housing Act (42 U.S.C. §§ 3601-3619), as implemented by the Department of Housing and Urban Development's Fair Housing regulations, 24 C.F.R. § 100.130(a), prohibits any person or entity engaged in the making of loans or in the provision of other financial assistance relating to loans covered by the Fair Housing Act from imposing different terms or conditions for the availability of such loans or other financial assistance because of familial status. Unlawful conduct under this section includes, but is not limited to, conduct described in § 100.130(b)(1) through (b)(5).

FHA 100.130(a) HANDICAP

The Fair Housing Act (42 U.S.C. §§ 3601-3619), as implemented by the Department of Housing and Urban Development's Fair Housing regulations, 24 C.F.R. § 100.130(a), prohibits any person or entity engaged in the making of loans or in the provision of other financial assistance relating to loans covered by the Fair Housing Act from imposing different terms or conditions for the availability of such loans or other financial assistance because of handicap. Unlawful conduct under this section includes, but is not limited to, conduct described in § 100.130(b)(1) through (b)(5).

FHA 100.130(a) N-ORIG

The Fair Housing Act (42 U.S.C. §§ 3601-3619), as implemented by the Department of Housing and Urban Development's Fair Housing regulations, 24 C.F.R. § 100.130(a), prohibits any person or entity engaged in the making of loans or in the provision of other financial assistance relating to loans covered by the Fair Housing Act from imposing different terms or conditions for the availability of such loans or other financial assistance because of national origin. Unlawful conduct under this section includes, but is not limited to, conduct described in § 100.130(b)(1) through (b)(5).

FHA 100.130(a) RACE

The Fair Housing Act (42 U.S.C. §§ 3601-3619), as implemented by the Department of Housing and Urban Development's Fair Housing regulations, 24 C.F.R. § 100.130(a), prohibits any person or entity engaged in the making of loans or in the provision of other financial assistance relating to loans covered by the Fair Housing Act from imposing different terms or conditions for the availability of such loans or other financial assistance because of race. Unlawful conduct under this section includes, but is not limited to, conduct described in § 100.130(b)(1) through (b)(5).

FHA 100.130(a) RELIGION

The Fair Housing Act (42 U.S.C. §§ 3601-3619), as implemented by the Department of Housing and Urban Development's Fair Housing regulations, 24 C.F.R. § 100.130(a), prohibits any person or entity engaged in the making of loans or in the provision of other financial assistance relating to loans covered by the Fair Housing Act from imposing different terms or conditions for the availability of such loans or other financial assistance because of religion. Unlawful conduct under this section includes, but is not limited to, conduct described in § 100.130(b)(1) through (b)(5).

Violation Code	Description

FHA 100.130(a) SEX

The Fair Housing Act (42 U.S.C. §§ 3601-3619), as implemented by the Department of Housing and Urban Development's Fair Housing regulations, 24 C.F.R. § 100.130(a), prohibits any person or entity engaged in the making of loans or in the provision of other financial assistance relating to loans covered by the Fair Housing Act from imposing different terms or conditions for the availability of such loans or other financial assistance because of sex. Unlawful conduct under this section includes, but is not limited to, conduct described in § 100.130(b)(1) through (b)(5).

Flood Insurance Act

FLOOD 339.3(a)

The Flood Disaster Protection Act of 1973 (42 U.S.C. §§ 4001-4129), as implemented by part 339 of the FDIC Rules and Regulations, 12 C.F.R. § 339.3(a), prohibits an FDIC-supervised institution from making, increasing, extending, or renewing a designated loan secured by a building, a mobile home, or personal property unless the underlying security is covered by flood insurance for the term of the loan. Further, the amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property securing the loan.

FLOOD 339.3(c)

The Flood Disaster Protection Act of 1973 (42 U.S.C. §§ 4001-4129), as implemented by part 339 of the FDIC Rules and Regulations, 12 C.F.R. § 339.3(c), requires that, effective July 1, 2019, an institution must accept private flood insurance, as defined in § 339.2, in satisfaction of the flood insurance purchase requirement in § 339.3(a) if the policy meets the coverage requirements in § 339.3(a). The institution may accept a policy that is not issued under the NFIP and that does not meet the definition of private flood insurance if the policy meets the requirements under § 339.3(c)(3)(i) through (c)(3)(iv). Additionally, the institution may accept a plan issued by a mutual aid society, as defined in § 339.2, if the plan meets the requirements under § 339.3(c)(4)(i) through (c)(4)((iv).

FLOOD 339.5(a)

The Flood Disaster Protection Act of 1973 (42 U.S.C. §§ 4001-4129), as implemented by part 339 of the FDIC Rules and Regulations, 12 C.F.R. § 339.5(a), requires an FDIC-supervised institution, or a servicer acting on its behalf, to require the escrow of all premiums and fees for any flood insurance required under § 339.3(a) for any designated loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016, except as provided by § 339.5(a)(2) or 339.5(c).

If, at any time during the term of a designated loan, it is determined that an exception under § 339.5(a)(2) does not apply, then the FDIC-supervised institution or its servicer must require the escrow of all premiums and fees for any flood insurance required under § 339.3(a) as soon as reasonably practicable. The flood insurance premiums and fees are required to be deposited in an escrow account on behalf of the borrower. This escrow account will be subject to escrow requirements adopted pursuant to § 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. § 2609). Following receipt of a notice from the Administrator of FEMA or other provider of flood insurance that premiums are due, the FDIC-supervised

Violation Code	Description
	institution, or servicer acting on its behalf, must pay the amount owed to the insurance provider from the escrow account by the premium due date.
FLOOD 339.5(b)	The Flood Disaster Protection Act of 1973 (42 U.S.C. §§ 4001-4129), as implemented by part 339 of the FDIC Rules and Regulations, 12 C.F.R. § 339.5(b), requires an FDIC-supervised institution, or servicer acting on its behalf, to mail or deliver a written notice that informs the borrower that the FDIC-supervised institution is required to escrow all premiums and fees for required flood insurance. The notice must be provided for all loans for which an FDIC-supervised institution is required to escrow under § 339.5(a), or 339.5(c)(2), or may be required to escrow under § 339.5(a)(3), and must be provided with the notice required under § 339.9, using language that is substantially similar to model clauses on the escrow requirement in Appendix A of part 339.
FLOOD 339.5(c)(2)	The Flood Disaster Protection Act of 1973 (42 U.S.C. §§ 4001-4129), as implemented by part 339 of the FDIC Rules and Regulations, 12 C.F.R. § 339.5(c)(2), requires an FDIC-supervised institution that previously qualified for the exception in § 339.5(c)(1), but no longer qualifies because it had assets of $1 billion or more for two consecutive calendar year ends, to escrow premiums and fees for flood insurance pursuant to § 339.5(a) for any designated loan made, increased, extended, or renewed on or after July 1 of the first calendar year of changed status.
FLOOD 339.5(d)	The Flood Disaster Protection Act of 1973 (42 U.S.C. §§ 4001-4129), as implemented by part 339 of the FDIC Rules and Regulations, 12 C.F.R. § 339.5(d), requires an FDIC-supervised institution, or a servicer acting on its behalf, to offer and make available to the borrower the option to escrow all premiums and fees for any flood insurance required under § 339.3 for any loan secured by residential improved real estate or a mobile home that is outstanding on January 1, 2016, or July 1 of the first calendar year in which the FDIC-supervised institution has had a change in status pursuant to § 339.5(c)(2), unless the loan or FDIC-supervised institution qualifies for an exception from the escrow requirement under § 339.5(d)(1). Further, an FDIC-supervised institution, or servicer acting on its behalf, is required to mail or deliver to the borrower no later than June 30, 2016, or September 30 of the first calendar year in which the institution has had a change in status pursuant to § 339.5(c)(2), a notice in writing, or electronically if agreed to by the borrower, informing the borrower of the option to escrow all premiums and fees for any required flood insurance and the methods by which the borrower may request the escrow. Such notice must be provided for any loan subject to § 339.5(d), using language similar to the model clause in Appendix B of part 339. An FDIC-supervised institution or servicer is required to begin escrowing premiums and fees for flood insurance as soon as reasonably practicable after receipt of the borrower's request to escrow.
FLOOD 339.6	The Flood Disaster Protection Act of 1973 (42 U.S.C. §§ 4001-4129), as implemented by part 339 of the FDIC Rules and Regulations, 12 C.F.R. § 339.6, requires an FDIC-supervised institution to use the standard flood hazard determination form developed by the Administrator of FEMA when determining whether the building or mobile home offered as collateral for a loan is or will be located in a special flood hazard area in which flood insurance is available. Further, the FDIC-supervised institution is required to

Violation Code	Description
	retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the institution owns the loan.
FLOOD 339.7(a) FP-NOTICE	The Flood Disaster Protection Act of 1973 (42 U.S.C. §§ 4001-4129), as implemented by part 339 of the FDIC Rules and Regulations, 12 C.F.R. § 339.7(a), requires an FDIC-supervised institution, or a servicer acting on its behalf, that determines at any time during the term of a designated loan that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required by § 339.3, to notify the borrower to obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under §339.3 for the remaining term of the loan.
FLOOD 339.7(a) FP-INSURANCE	The Flood Disaster Protection Act of 1973 (42 U.S.C. §§ 4001-4129), as implemented by part 339 of the FDIC Rules and Regulations, 12 C.F.R. § 339.7(a), requires an FDIC-supervised institution, or a servicer acting on its behalf, to purchase insurance on the borrower's behalf if the borrower fails to obtain flood insurance within 45 days after the FDIC-supervised institution or its servicer notifies the borrower of the need to obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under §339.3 for the remaining term of the loan. The FDIC-supervised institution or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance, including premiums or fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount.
FLOOD 339.7(b)(1)	The Flood Disaster Protection Act of 1973 (42 U.S.C. §§ 4001-4129), as implemented by part 339 of the FDIC Rules and Regulations, 12 C.F.R. § 339.7(b)(1), requires that within 30 days of receipt of a confirmation of a borrower’s existing flood insurance coverage, an FDIC-supervised institution or its servicer must: (i) notify the insurance provider to terminate any insurance purchased by the institution or its servicer under § 339.7(a); and (ii) refund to the borrower all premiums and any related fees paid by the borrower for any insurance purchased by the institution or its servicer under § 339.7(a) during any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the institution or its servicer were each in effect.
FLOOD 339.8	The Flood Disaster Protection Act of 1973 (42 U.S.C. §§ 4001-4129), as implemented by part 339 of the FDIC Rules and Regulations, 12 C.F.R. § 339.8, allows an FDIC-supervised institution or a servicer acting on its behalf, to charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area, if the determination meets one of the conditions under § 339.8(b)(1) through (b)(4).
FLOOD 339.9	The Flood Disaster Protection Act of 1973 (42 U.S.C. §§ 4001-4129), as implemented by part 339 of the FDIC Rules and Regulations, 12 C.F.R. § 339.9, requires an FDIC-supervised institution to furnish a

Violation Code	Description
	written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan, when making, increasing, extending, or renewing a loan secured by a building or mobile home located or to be located in a designated special flood hazard area. The written notice must include the information detailed in § 339.9(b)(1) through (b)(6); follow the timing of, record of receipt for, and the alternative methods of providing the notice as provided in 339.9(c) through (e). A financial institution will be considered in compliance with the requirement for notice to the borrower under this section by providing a written notice containing the language presented in Appendix A.
FLOOD 339.10	The Flood Disaster Protection Act of 1973 (42 U.S.C. §§ 4001-4129), as implemented by part 339 of the FDIC Rules and Regulations, 12 C.F.R. § 339.10, requires an FDIC-supervised institution to notify the Administrator of FEMA or designee in writing of the identity of the servicer of the loan, when the institution makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area. Further, the institution is required to notify the Administrator of FEMA or designee of any change in the servicer of a loan described in this section, within 60 days after the effective date of change.
Garnishment of Accounts Containing Federal Benefits	
GARNISHMNT 212.4	The Garnishment of Accounts Containing Federal Benefit Payments rule, 31 C.F.R. § 212.4, requires a financial institution, prior to taking any other action related to a garnishment order issued against a debtor, and no later than two business days following receipt of the order, to examine the order to determine if the United States or a State child support enforcement agency has attached or included a Notice of Right to Garnish Federal Benefits, as set forth in Appendix B to this part. If the Notice of Right to Garnish Federal Benefits is attached or included, then the financial institution must follow its otherwise customary procedures for handling the order, and if the Notice of Right to Garnish Federal Benefits is not attached or included, then the financial institution must follow the procedures in §§ 212.5 and 212.6.
GARNISHMNT 212.5	The Garnishment of Accounts Containing Federal Benefit Payments rule, 31 C.F.R. § 212.5, requires a financial institution to perform an account review when it is served a garnishment order issued against a debtor within the timeframes prescribed by § 212.5(a)(1) and (a)(2). The financial institution must then follow procedures in § 212.6 if the benefit payment was deposited during the lookback period as noted under § 212.5(c). If the benefit payment was not deposited during that period, the financial institution must follow its otherwise customary procedures. The financial institution must perform an account review according to the requirements of § 212.5(d) through (f) without consideration for any other attributes of the account or the garnishment order, including but not limited to § 212.5(d)(1) through (d)(6). The financial institution must perform the account review prior to taking any other actions related to the garnishment order that may affect funds in the account, and, perform the review separately for each account in the name of an account holder.

Violation Code	Description

GARNISHMNT 212.6

The Garnishment of Accounts Containing Federal Benefit Payments rule, 31 C.F.R. § 212.6, requires a financial institution to adhere to the rules and procedures prescribed in § 212.6(a) through (h) if an account review shows that a benefit agency deposited a benefit payment into an account during the lookback period.

GARNISHMNT 212.7

The Garnishment of Accounts Containing Federal Benefit Payments rule, 31 C.F.R. § 212.7, requires a financial institution to issue the notice to account holder, as required by § 212.6(e), in cases where a benefit agency deposited a benefit payment into an account during the lookback period, where the balance in the account on the date of account review was above zero dollars and the bank established a protected amount, and where there are funds in the account in excess of the protected amount. In addition, the financial institution must follow the content, delivery, and timing requirements under § 212.7(b), (e), and (f) when providing the notice to the account holder named in the garnishment order.

GARNISHMNT 212.11(b)

The Garnishment of Accounts Containing Federal Benefit Payments rule, 31 C.F.R. § 212.11(b), requires a financial institution to maintain records of account activity and actions taken in response to a garnishment order, sufficient to demonstrate compliance, for a period of not less than two years from the date on which the financial institution receives the garnishment order.

Home Mortgage Disclosure Act/Regulation C – Data Reported Beginning in 2018

HMDA 1003.4(a)

The Home Mortgage Disclosure Act (12 U.S.C. § 2801 et seq.), as implemented by Regulation C, 12 C.F.R. § 1003.4(a), requires a nonexempt financial institution to collect data regarding applications for covered loans received, originated, and purchased for each calendar year. An institution shall collect data regarding requests under a preapproval program, as defined in § 1003.2(b)(2), only if the preapproval request is denied, approved but not accepted, or results in the origination of a home purchase loan. The data collected must include all the information listed in § 1003.4(a)(1) through (a)(38).

HMDA 1003.4(b)

The Home Mortgage Disclosure Act (12 U.S.C. § 2801 et seq.), as implemented by Regulation C, 12 C.F.R. § 1003.4(b), requires financial institutions to collect data about the ethnicity, race, and sex of the applicant or borrower in the manner provided in Appendix B to Regulation C.

HMDA 1003.4(e)

The Home Mortgage Disclosure Act (12 U.S.C. § 2801 et seq.), as implemented by Regulation C, 12 C.F.R. § 1003.4(e), requires nonexempt banks and savings associations that are required to report data on small business, small farm, and community development lending under the Community Reinvestment Act to also collect the information required by § 1003.4(a)(9)(ii) for property located outside Metropolitan Statistical Areas and Metropolitan Divisions in which the institution has a home or branch office, or outside any Metropolitan Statistical Area.

Violation Code	Description

HMDA 1003.4(f)

The Home Mortgage Disclosure Act (12 U.S.C. § 2801 et seq.), as implemented by Regulation C, 12 C.F.R. § 1003.4(f), requires a financial institution to record the data collected pursuant to this section on a loan/application register within 30 calendar days after the end of the calendar quarter in which final action is taken.

HMDA 1003.5(a)

The Home Mortgage Disclosure Act (12 U.S.C. § 2801 et seq.), as implemented by Regulation C, 12 C.F.R. § 1003.5(a), requires a nonexempt financial institution to send its complete loan/application register in an electronic format to the appropriate Federal agency, as defined by § 1003.5(a)(4), by March 1 following the calendar year for which the loan data are compiled. A nonexempt subsidiary of a bank or savings association must complete a separate loan/application register, which it must submit, directly or through its parent, to the appropriate Federal agency for the subsidiary's parent by March 1 following the calendar year for which the loan data are compiled. This annual submission must include the information specified in § 1003.5(a)(3)(i) through (a)(3)(vii) and must be certified as accurate and complete by an authorized representative of the financial institution with knowledge of the data. The institution shall retain a copy of its loan/application register for at least three years. Procedures for the submission of data are available at www.consumerfinance.gov/hmda.

HMDA 1003.5(b)(2)-(d)

The Home Mortgage Disclosure Act (12 U.S.C. § 2801 et seq.), as implemented by Regulation C, 12 C.F.R. § 1003.5(b)(2) through (d), requires a financial institution to provide a written notice that clearly conveys that the institution's HMDA disclosure statement and modified loan/application register may be obtained on the CFPB's Web site at www.consumerfinance.gov/hmda. These notices must be made available to the public during normal business hours, upon request, at the institution's home office, and each branch office, physically located in each Metropolitan Statistical Area and each Metropolitan Division. The notice regarding the institution's HMDA disclosure statement must be made available no later than three business days after receiving notice from the FFIEC that the disclosure statement is available and must be available to the public for a period of five years. The notice related to the institution's modified loan/application register must be made available during the calendar year following the year for which the data was collected and must be made available to the public for a period of three years.

HMDA 1003.5(e)

The Home Mortgage Disclosure Act (12 U.S.C. § 2801 et seq.), as implemented by Regulation C, 12 C.F.R. § 1003.5(e), requires a financial institution to post a general notice about the availability of its HMDA data in the lobby of its home office and of each branch office physically located in each Metropolitan Statistical Area and each Metropolitan Division. This notice must clearly convey that the institution's HMDA data is available on the CFPB's Web site at www.consumerfinance.gov/hmda.

Home Mortgage Disclosure Act/Regulation C – Data Reported for 2017 and Prior Years

HMDA-2017 1003.4(a)

For the period prior to January, 1, 2018, the Home Mortgage Disclosure Act (12 U.S.C. § 2801 et seq.) as implemented by Regulation C, 12 C.F.R. § 1003.4(a), required a nonexempt financial institution to collect

Violation Code	Description
	data regarding applications for, and originations and purchases of, home purchase loans, home improvement loans, and refinancings for each calendar year. An institution was required to collect data regarding requests under a preapproval program, as defined in § 1003.2, only if the preapproval request was denied or resulted in the origination of a home purchase loan. All reportable transactions were to have been recorded within thirty calendar days after the end of the calendar quarter in which final action was taken. The data was required to be collected on a register in the format prescribed in Appendix A to Regulation C and was required to include the items listed in § 1003.4(a)(1) through (a)(14).
HMDA-2017 1003.4(b)	For the period prior to January 1, 2018, the Home Mortgage Disclosure Act (12 U.S.C. § 2801 et seq.), as implemented by Regulation C, 12 C.F.R. § 1003.4(b), required financial institutions to collect data about the ethnicity, race, and sex of the applicant or borrower in the manner provided in Appendix B to Regulation C.
HMDA-2017 1003.4(d)	For the period prior to January, 1, 2018, the Home Mortgage Disclosure Act (12 U.S.C. § 2801 et seq.) as implemented by Regulation C, 12 C.F.R. § 1003.4(d), required that a nonexempt financial institution was not to report: (1) Loans originated or purchased by the financial institution acting in a fiduciary capacity (such as trustee); (2) Loans on unimproved land; (3) Temporary financing (such as bridge or construction loans); (4) The purchase of an interest in a pool of loans (such as mortgage-participation certificates, mortgage-backed securities, or real estate mortgage investment conduits); (5) The purchase solely of the right to service loans; or (6) Loans acquired as part of a merger or acquisition, or as part of the acquisition of all of the assets and liabilities of a branch office as defined in § 1003.2.
HMDA-2017 1003.4(e)	The Home Mortgage Disclosure Act (12 U.S.C. § 2801 et seq.), as implemented by Regulation C, 12 C.F.R. § 1003.4(e), requires nonexempt banks and savings associations that are required to report data on small business, small farm, and community development lending under the Community Reinvestment Act to also collect the information required by § 1003.4(a)(9)(ii) for property located outside Metropolitan Statistical Areas and Metropolitan Divisions in which the institution has a home or branch office, or outside any Metropolitan Statistical Area.
HMDA-2017 1003.5(a)	For the period prior to January, 1, 2018, the Home Mortgage Disclosure Act (12 U.S.C. § 2801 et seq.) as implemented by Regulation C, 12 C.F.R. § 1003.5(a)(1), required a nonexempt financial institution to send its complete loan/application register to the agency office specified in Appendix A to Regulation C by March 1 following the calendar year for which the loan data was compiled. Additionally, for the period prior to January 1, 2018, a nonexempt subsidiary of a bank or savings association was required to complete a separate loan/application register, which it was to have submitted, directly or through its parent, to the same agency as the subsidiary's parent. Institutions and their nonexempt subsidiaries were to have retained a copy of these completed loan/application registers for at least three years.

Violation Code	Description

HMDA-2017 1003.5(b)(2)-(3)

For the period prior to January, 1, 2018, the Home Mortgage Disclosure Act (12 U.S.C. § 2801 et seq.) as implemented by Regulation C, 12 C.F.R. § 1003.5(b)(2) and (b)(3), required a nonexempt financial institution to make its disclosure statement (prepared by the FFIEC) available to the public at its home office no later than three business days after receiving it from the FFIEC. Additionally, during this period, a nonexempt financial institution was to either: (i) Make its disclosure statement available to the public, within ten business days of receiving it, in at least one branch office in each other Metropolitan Statistical Areas and Metropolitan Divisions where the institution had offices; or (ii) Post the address for sending written requests in the lobby of each branch office in other Metropolitan Statistical Areas and Metropolitan Divisions where the institution had offices; and mail or deliver a copy of the disclosure statement within fifteen calendar days of receiving a written request.

HMDA-2017 1003.5(c)

For the period prior to January, 1, 2018, the Home Mortgage Disclosure Act (12 U.S.C. § 2801 et seq.) as implemented by Regulation C, 12 C.F.R. § 1003.5(c), required a nonexempt financial institution to make its loan/application register available to the public after removing the following information regarding each entry: the application or loan number, the date that the application was received, and the date action was taken. An institution was required to make its modified register available following the calendar year for which the data was compiled, by March 31 for a request received on or before March 1, and within thirty calendar days for a request received after March 1.

HMDA-2017 1003.5(d)

For the period prior to January, 1, 2018, the Home Mortgage Disclosure Act (12 U.S.C. § 2801 et seq.) as implemented by Regulation C, 12 C.F.R. § 1003.5(d), required a nonexempt financial institution to make its modified register available to the public for a period of three years and its disclosure statement available for a period of five years. During this period, an institution was required to make the data available for inspection and copying during the hours the office was normally open to the public for business, and was prohibited from imposing an unreasonable fee for providing or reproducing the data.

HMDA-2017 1003.5(e)

For the period prior to January, 1, 2018, the Home Mortgage Disclosure Act (12 U.S.C. § 2801 et seq.) as implemented by Regulation C, 12 C.F.R. § 1003.5(e), required a nonexempt financial institution to post a general notice about the availability of its HMDA data in the lobby of its home office and of each branch office located in a Metropolitan Statistical Area or Metropolitan Division. During this period, institutions were required to promptly provide upon request the location of the institution's offices where the statement is available for inspection and copying, or it may include the location in the lobby notice.

Homeowners Protection Act

HPA 3(a)-(g)

Section 3 of the Homeowner’s Protection Act of 1998 (12 U.S.C. § 4902(a)-(g)), requires a mortgage servicer to cancel private mortgage insurance (PMI) when the borrower submits a request in writing to the servicer, has a good payment history, is current on payments, and meets certain previously established qualifications. Additionally, the servicer is required to terminate PMI on the earliest date that both: (1) the

Violation Code	Description
	mortgage principal is scheduled to reach 78% of the original value of the secured property; and (2) the borrower is current on mortgage payments. For high-risk non-conforming loans, the servicer is required to terminate borrower-paid PMI when the mortgage principal is scheduled to reach 77% of the original value of the secured property. This section also prohibits the servicer from requiring PMI beyond the first day of the month immediately following the date that is the midpoint of the loan's amortization period if the loan payments are current, and prohibits additional payments or premiums for PMI 30 days after the insurance is cancelled or terminated. The servicer must return all unearned PMI premiums to the borrower within 45 days after canceling or terminating PMI coverage. Further, if there is a modification of the terms or conditions of a loan, the cancellation date, termination date, or final termination date must be recalculated to reflect the modified terms and conditions.
HPA 4(a)(1)-(2)	Section 4(a)(1) and (2) of the Homeowner's Protection Act of 1998 (12 U.S.C. § 4903(a)(1)-(2)), requires initial disclosures in writing at the time of consummation for non-exempt residential mortgage transactions that will require private mortgage insurance. Specific information is required on the initial disclosures for fixed rate and adjustable rate residential mortgage transactions, as detailed in § 4903(a)(1)(A) and § 4903(a)(1)(B), respectively, detailing the borrower's rights to cancel this private mortgage insurance. Further, at the time the transaction is consummated, a written notice must be provided for high-risk residential mortgage transactions that states private mortgage insurance will not be required beyond the midpoint of the loan's amortization schedule, if the loan payments are current on that date.
HPA 4(a)(3)	Section 4(a)(3) of the Homeowner's Protection Act of 1998 (12 U.S.C. § 4903(a)(3)), requires annual written statements for residential mortgage transactions that require private mortgage insurance (PMI). The annual statement must set forth the borrower's rights to cancellation or termination of the PMI and must identify the servicer's mailing address and telephone number so the borrower may contact the server to determine if the borrower may cancel the PMI.
HPA 5(a)	Section 5(a) of the Homeowner's Protection Act of 1998 (12 U.S.C. § 4904(a)), requires the servicer to notify the borrower in writing not later than 30 days after the private mortgage insurance (PMI) is cancelled or terminated. The notice shall disclose that the PMI has terminated and the borrower no longer has PMI, and that no further premiums, payments, or other fees are due or payable by the borrower in connection with the PMI.
HPA 5(b)(1)-(2)	Section 5(b)(1) and (2) of the Homeowner's Protection Act of 1998 (12 U.S.C. § 4904(b)(1) and (2)), requires the servicer to provide a written notice to the borrower if a mortgage servicer determines that a mortgage will not qualify for cancellation or termination of private mortgage insurance. The notice shall disclose the grounds on which the determination was made. If an appraisal was used, the servicer must give the results of the appraisal to the borrower.

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	With respect to the denial of a requested cancellation, the notice required under this section must be provided not later than 30 days following the later of: (1) the date the borrower's request for cancellation is received; or (2) the date on which the borrower satisfies any evidence or certification requirements. If the requirements of an automatic termination are not met, the notice is due not later than 30 days after the scheduled termination date.
HPA 6(c)(1)	Section 6(c)(1) of the Homeowner's Protection Act of 1998 (12 U.S.C. § 4905(c)(1)), requires, in a residential mortgage transaction involving lender-paid mortgage insurance, that the written notice containing information specified under this section be provided not later than the date of the loan commitment. The written notice provided to the borrower must explain certain unique features of lender-paid mortgage insurance, including how this type of insurance differs from borrower-paid mortgage insurance, a generic analysis of the advantages and disadvantages of each type of mortgage insurance over a 10-year period assuming prevailing interest and property appreciation rates, and the potential Federal tax implications of lender-paid mortgage insurance.
HPA 6(c)(2)	Section 6(c)(2) of the Homeowner's Protection Act of 1998 (12 U.S.C. § 4905(c)(2)), requires, in a residential mortgage transaction involving lender-paid mortgage insurance, that a written notice be provided to the borrower not later than 30 days after the termination date that would apply in the case of borrower paid mortgage insurance. The notice must indicate that the borrower may wish to review financing options that could eliminate the requirement for private mortgage insurance.
HPA 7(No Subsection)	Section 7 of the Homeowner's Protection Act of 1998 (12 U.S.C. § 4906), prohibits the imposition of fees or other costs on any borrower with respect to any disclosure or notification requirements of this chapter.
Homeownership Counseling Act	
HCA 106(c)(5)	Section 106(c)(5) of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701x(c)(5)), requires a creditor of a loan to notify any eligible homeowner who fails to pay any amount by the due date of the availability of homeownership counseling. Such notification must be provided within 45 days of delinquency and in a manner approved by the Secretary of Housing and Urban Development. Additionally, prospective creditors must provide such a notice to any applicant for a mortgage described in section 106(c)(4) (12 U.S.C. § 1701x(c)(4)). These notices must comply with the requirements in § 106(c)(5)(A)(ii)(I) through (c)(5)(A)(ii)(V) (12 U.S.C. § 1701x(c)(5)(A)(ii)(I) through (V)). Such requirements include, but are not limited to: (a) notifying the homeowner or applicant of any homeownership counseling offered by the creditor or prospective creditor; (b) notifying the homeowner or prospective applicant of homeownership counseling offered by nonprofit organizations or provide a toll-free number where this information can be obtained; and (c) notifying the homeowner by a statement or notice, written in plain English by the Secretary of Housing and Urban Development, explaining the mortgage and foreclosure rights of servicemembers, and the

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	dependents of such servicemembers, under the Servicemembers Civil Relief Act (50 U.S.C. § 3901 et seq.), including the toll-free military one source number to call if servicemembers, or their dependents, require further assistance.
Military Lending Act	
MLA 232.4(a)	The Military Lending Act (10 U.S.C. § 987), as implemented by part 232 of the Department of Defense regulations, 32 C.F.R. § 232.4(a), prohibits a creditor from imposing a Military Annual Percentage Rate except as: 1) agreed to under the terms of the credit agreement or promissory note; 2) authorized by applicable State or Federal law; and 3) not specifically prohibited by this part.
MLA 232.4(b)	The Military Lending Act (10 U.S.C. § 987), as implemented by part 232 of the Department of Defense regulations, 32 C.F.R. § 232.4(b), prohibits a creditor from imposing a Military Annual Percentage Rate greater than 36 percent in connection with a covered extension of consumer credit that is closed-end credit or in any billing cycle for open-end credit.
MLA 232.4(c)	The Military Lending Act (10 U.S.C. § 987), as implemented by part 232 of the Department of Defense regulations, 32 C.F.R. § 232.4(c), requires a creditor to calculate the Military Annual Percentage Rate for covered closed-end and open-end credit transactions as specified under by § 232.4(c)(1) through (c)(2).
MLA 232.5(b)(2)(B)	The Military Lending Act (10 U.S.C. § 987), as implemented by part 232 of the Department of Defense regulations, 32 C.F.R. § 232.5(b)(2)(B), prohibits a creditor or an assignee from, directly or indirectly, obtaining any information from any database maintained by the Department of Defense, at any time after a consumer has entered into a transaction or established an account involving an extension of credit, to ascertain whether a consumer had been a covered borrower as of the date of that transaction or as of the date that account was established.
MLA 232.6	The Military Lending Act (10 U.S.C. § 987), as implemented by part 232 of the Department of Defense regulations, 32 C.F.R. § 232.6, requires a creditor to provide disclosures, as specified in § 232.6(a)(1) through (a)(3), to a covered borrower before or at the time the borrower becomes obligated on the extension of consumer credit, including any consumer credit originated or extended through the internet, or establishes an account for the consumer credit. The disclosures must be provided in writing in a form that the covered borrower can keep and must also be provided orally as specified in § 232.6(d)(2)(ii) and (d)(2)(iii).

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MLA 232.8

The Military Lending Act (10 U.S.C. § 987), as implemented by part 232 of the Department of Defense regulations, 32 C.F.R. § 232.8, prohibits a creditor from extending consumer credit to a covered borrower with certain terms or features or under the circumstances described in § 232.8(a) through (h). Among other requirements, this section prohibits creditors from:
(1) rolling over, renewing, refinancing, or consolidating any consumer credit extended to the covered borrower by the same creditor with the proceeds of other consumer credit;
(2) requiring a covered borrower to waive the covered borrower's right to legal recourse under any State or Federal law, including any provision of the Servicemembers Civil Relief Act;
(3) requiring a covered borrower to submit to arbitration;
(4) requiring as a condition for the extension of credit that the covered borrower establish an allotment to repay the obligation; or
(5) prohibiting a covered borrower from prepaying the consumer credit or charging a prepayment penalty for prepaying all or part of the obligation.

Non Deposit Products – Custodial Holdings of Government Securities by Depository Institutions

NDP-GOV-SC 450.4(a)

The Securities Exchange Act of 1934 (15 U.S.C. § 78o-5(b)(1)(A), (b)(4), (b)(5)(B)), as implemented by the Custodial Holdings of Government Securities by Depository Institutions rule, 17 C.F.R. § 450.4(a), requires a financial institution to observe the requirements outlined in § 450.4(a)(1) through (a)(6) with respect to its holdings of government securities for customer accounts.

NDP-GOV-SC 450.4(b)(1)

The Securities Exchange Act of 1934 (15 U.S.C. § 78o-5(b)(1)(A), (b)(4), (b)(5)(B)), as implemented by the Custodial Holdings of Government Securities by Depository Institutions rule, 17 C.F.R. § 450.4(b)(1), requires a financial institution to issue a confirmation or a safekeeping receipt containing specific information for each security held for a customer according to § 450.4(b)(1), except as provided by § 450.4(b)(2).

NDP-GOV-SC 450.4(c)

The Securities Exchange Act of 1934 (15 U.S.C. § 78o-5(b)(1)(A), (b)(4), (b)(5)(B)), as implemented by the Custodial Holdings of Government Securities by Depository Institutions rule, 17 C.F.R. § 450.4(c), requires a financial institution to maintain records of government securities held for customers, keep such records separate and distinct from other records, and meet requirements of § 450.4(c)(1) through (c)(5).

NDP-GOV-SC 450.4(d)

The Securities Exchange Act of 1934 (15 U.S.C. § 78o-5(b)(1)(A), (b)(4), (b)(5)(B)), as implemented by the Custodial Holdings of Government Securities by Depository Institutions rule, 17 C.F.R. § 450.4(d), requires a financial institution to conduct counts of government securities held for customers in both definitive and book-entry form at least annually and to reconcile such counts with customer account records, according to the requirements of § 450.4(d)(1) through (d)(3).

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NDP-GOV-SC 450.4(e)

The Securities Exchange Act of 1934 (15 U.S.C. § 78o-5(b)(1)(A), (b)(4), (b)(5)(B)), as implemented by the Custodial Holdings of Government Securities by Depository Institutions rule, 17 C.F.R. § 450.4(e), requires a financial institution to treat a government securities broker or dealer as a customer with respect to securities by such government securities broker or dealer in a Segregated Account as defined in § 403.4(f)(1) and separate from other securities held for the account of the government securities broker or dealer.

NDP-GOV-SC 450.4(f)

The Securities Exchange Act of 1934 (15 U.S.C. § 78o-5(b)(1)(A), (b)(4), (b)(5)(B)), as implemented by the Custodial Holdings of Government Securities by Depository Institutions rule, 17 C.F.R. § 450.4(f), requires a financial institution to preserve the records required by § 450.4(c) and (d)(3) for not less than six years with the first two years being in an easily accessible place.

Non-Deposit Products - Broker/Dealer Rules & Exemptions - Regulation R

NDP-REG-R 3(a)(4)

Section 3(a)(4) of the Securities and Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(i)-(xi)), prohibits a bank from conducting securities transactions without registering with the Securities and Exchange Commission unless such activities meet certain conditions described in the enumerated exceptions in § 3(a)(4)(B)(i) through (a)(4)(B)(xi).

NDP-REG-R 218.701(a)

The Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(F)), as implemented by Regulation R, 12 C.F.R. § 218.701(a), prohibits a financial institution from paying a referral fee to a financial institution employee for referring a high net worth customer or institutional customer to a broker or dealer with which the financial institution has a contractual or other written agreement pursuant to § 3(a)(4)(B)(i) of the Act, unless the financial institution is a registered broker/dealer or falls under one of the enumerated exceptions under 12 C.F.R. § 218.700, and meets the requirements of § 218.701(a)(1) through (a)(3).

NDP-REG-R 218.701(b)

The Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(F)), as implemented by Regulation R, 12 C.F.R. § 218.701(b), requires a financial institution that provides the disclosure pursuant to § 218.701(a)(2)(i) or (a)(3)(i) to disclose, clearly and conspicuously the name of the broker or dealer, and that the bank employee participates in an incentive compensation program under which the bank employee may receive a fee of more than a nominal amount for referring the customer to the broker or dealer and that payment of this fee may be contingent on whether the referral results in a transaction with the broker or dealer.

NDP-REG-R 218.741(a)

The Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(F)), as implemented by Regulation R, 12 C.F.R. § 218.741(a), prohibits a financial institution from engaging in transactions on behalf of a customer in

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	securities issued by money market funds unless the financial institution is a registered broker/dealer or meets the conditions under § 218.741(a)(1)-(2).
Non-Deposit Products - Consumer Protection in Sales of Insurance	
NDP-INS 343.30(a)-(c)	The Federal Deposit Insurance Act (12 U.S.C §§ 1819(a)(Seventh), 1819(a)(Tenth), and 1831x), as implemented by the Consumer Protection in Sales of Insurance rule, 12 C.F.R. § 343.30(a) through (c), prohibits the financial institution from: engaging in any practice that would lead a consumer to believe that an extension of credit is conditional upon the purchase of an insurance product or annuity from the institution or any of its affiliates, or an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity; engaging in any misleading practice or advertisement with respect to the sale of insurance products, as specified by the items enumerated in § 343.30(b)(1) through (b)(3); and discriminating in the sale of insurance products based on the applicant or insured being a victim of domestic violence, as prohibited by § 343.30(c).
NDP-INS 343.40(a)	The Federal Deposit Insurance Act (12 U.S.C §§ 1819(a)(Seventh), 1819(a)(Tenth), and 1831x), as implemented by the Consumer Protection in Sales of Insurance rule, 12 C.F.R. § 343.40(a), requires the financial institution, with the initial purchase of an insurance product or annuity by a consumer, to disclose to the consumer, except to the extent the disclosure would not be accurate, that the insurance product or annuity is not a deposit or other obligation of, or guaranteed by the institution or an affiliate of the institution; the insurance product or annuity is not insured by the FDIC or any other agency of the United States, the institution, or an affiliate of the institution; and in the case of an insurance product or annuity that involves an investment risk, that there is investment risk associated with the product, including the possible loss of value.
NDP-INS 343.40(b)	The Federal Deposit Insurance Act (12 U.S.C §§ 1819(a)(Seventh), 1819(a)(Tenth), and 1831x), as implemented by the Consumer Protection in Sales of Insurance rule, 12 C.F.R. § 343.40(b), requires the financial institution, in the case of an application for credit in connection with which an insurance product or annuity is solicited, offered, or sold, to disclose that the institution may not condition an extension of credit on either the consumer's purchase of an insurance product or annuity from the institution or any of its affiliates or the consumer's agreement not to obtain, or a prohibition on the consumer from obtaining an insurance product or annuity from an unaffiliated entity.
NDP-INS 343.40(c)	The Federal Deposit Insurance Act (12 U.S.C §§ 1819(a)(Seventh), 1819(a)(Tenth), and 1831x), as implemented by the Consumer Protection in Sales of Insurance rule, 12 C.F.R. § 343.40(c), requires the financial institution to provide the disclosures required by § 343.40(a) orally and in writing before the completion of the initial sale of an insurance product or annuity; and the disclosures required by § 343.40(b) be provided orally and in writing at the time the consumer applies for an extension of credit with which an insurance product or annuity is solicited, offered, or sold, except pursuant to § 343.40(c)(2) and (c)(3). The disclosures required by § 343.40(a) and (b) may also be provided electronically instead of on paper if the consumer affirmatively consents to receiving electronic disclosures and the disclosures are

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provided in a format that a consumer may retain or obtain later. If the disclosure is provided by electronic media, then oral disclosure is not required. In addition, the disclosures required by this section must be meaningful, conspicuous, simple, direct, readily understandable, designed to call attention to the nature and significance of the information provided, and meaningful as prescribed by § 343.40(c)(5) and (c)(6). The bank must also obtain consumer acknowledgment as outlined in § 343.40(c)(7).

NDP-INS 343.40(d)

The Federal Deposit Insurance Act (12 U.S.C §§ 1819(a)(Seventh), 1819(a)(Tenth), and 1831x), as implemented by the Consumer Protection in Sales of Insurance rule, 12 C.F.R. § 343.40(d), requires the disclosures described in § 343.40(a) be in advertisements and promotional materials for insurance products or annuities unless the advertisements and promotional materials are of a general nature describing or listing the services or products offered by the institution.

NDP-INS 343.50(a)-(b)

The Federal Deposit Insurance Act (12 U.S.C §§ 1819(a)(Seventh), 1819(a)(Tenth), and 1831x), as implemented by the Consumer Protection in Sales of Insurance rule, 12 C.F.R. § 343.50(a) and (b), requires: (1) a financial institution, to the extent practicable, keep the area where the institution conducts transactions involving insurance products or annuities physically segregated from areas where retail deposits are routinely accepted from the general public, identify the areas where insurance product or annuity sales activities occur, and clearly delineate and distinguish those areas where the institution's retail deposit-taking activities occur; and (2) that any person who accepts deposits from the public in an area where such transactions are routinely conducted in the institution, may refer a consumer who seeks to purchase an insurance product or annuity to a qualified person who sells that product only if the person making the referral receives no more than a one-time, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

NDP-INS 343.60

The Federal Deposit Insurance Act (12 U.S.C §§ 1819(a)(Seventh), 1819(a)(Tenth), and 1831x), as implemented by the Consumer Protection in Sales of Insurance rule, 12 C.F.R. § 343.60, prohibits a financial institution from permitting any person to sell or offer for sale any insurance product or annuity in any part of its office or on its behalf, unless the person is at all times appropriately qualified and licensed under applicable State insurance licensing standards with regard to the specific products being sold or recommended.

Non-Deposit Products – Protection of Customer Securities and Balances

NDP-SEC-BL 403.5(c)(1)-(2)

The Securities Exchange Act of 1934 (15 U.S.C § 78o-5(a)(5), (b)(1)(A), (b)(4)), as implemented by the Protection of Customer Securities and Balances rule, 17 C.F.R. § 403.5(c)(1) and (c)(2), requires a financial institution to:
(1) determine the quantity and issue of securities on each business day that are required to be, but are not, in the financial institution's possession or control and, as appropriate, bring such securities into possession or control, by: (i) promptly obtaining the release of any lien, charge, or other encumbrance against the securities; (ii) promptly obtaining the return of any securities loaned; (iii) promptly taking steps to obtain possession or control of securities failed to be received for more than 30 calendar days, or in the case of

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	mortgage-backed securities, for more than 60 calendar days; or (iv) promptly taking steps to buy securities as necessary to the extent of any shortage of securities in possession or control that cannot be resolved as required by the above procedures; and (2) prepare and maintain a current and detailed description of the procedures and internal controls that the financial institution utilizes to comply with the possession or control requirements of § 403.5(c), which must be made available upon request to the financial institution's appropriate regulatory agency.
NDP-SEC-BL 403.5(d)(1)	The Securities Exchange Act of 1934 (15 U.S.C § 78o-5(a)(5), (b)(1)(A), (b)(4)), as implemented by the Protection of Customer Securities and Balances rule, 17 C.F.R. § 403.5(d)(1), requires a financial institution that retains custody of securities that are the subject of a repurchase agreement between the financial institution and a counterparty to: (i) obtain the repurchase agreement in writing; (ii) confirm in writing the specific securities that are the subject of a repurchase transaction; (iii) advise the counterparty that the funds held by the financial institution pursuant to a repurchase transaction are not a deposit and not insured by the FDIC; (iv) if the counterparty agrees to grant the financial institution the right to substitute securities, include in the written repurchase agreement the provision by which the financial institution retains the right to substitute securities; (v) if the counterparty agrees to grant the financial institution the right to substitute securities, include the required disclosure statement, which must be prominently displayed in the written repurchase agreement immediately preceding the provision governing the right to substitution; and, (vi) maintain possession or control of securities that are the subject of the agreement in accordance with § 450.4(a), except when exercising its right of substitution in accordance with the provisions of the agreement and § 403.5(d)(1)(iv).
NDP-SEC-BL 403.5(d)(2)(i)	The Securities Exchange Act of 1934 (15 U.S.C § 78o-5(a)(5), (b)(1)(A), (b)(4)), as implemented by the Protection of Customer Securities and Balances rule, 17 C.F.R. § 403.5(d)(2)(i), requires a financial institution which retains custody of securities that are the subject of a repurchase agreement between the financial institution and a counterparty to include the required information in the confirmation, unless the institution is subject to the exceptions set forth in § 403.5(d)(3).
Non-Deposit Products – Recordkeeping and Confirmation Requirements for Securities Transactions	
NDP-RECORD 344.2(b)	The Federal Deposit Insurance Act (12 U.S.C. §§ 1817, 1818, and 1819(a)(Tenth)) and the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. § 5412), as implemented by the Recordkeeping and Confirmation Requirements for Securities Transactions rule, 12 C.F.R. § 344.2(b), requires FDIC-supervised institutions effecting securities transactions for customers to maintain, directly or indirectly, effective systems of records and controls regarding their customer securities transactions to ensure safe and sound operations. In addition, the records and systems maintained must reflect clearly and accurately the information required under Part 344 and provide an adequate basis for an audit.

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NDP-RECORD 344.4

The Federal Deposit Insurance Act (12 U.S.C. §§ 1817, 1818, and 1819(a)(Tenth)) and the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. § 5412), as implemented by the Recordkeeping and Confirmation Requirements for Securities Transactions rule, 12 C.F.R. § 344.4, requires FDIC-supervised institutions effecting securities transactions for customers to maintain the following records for at least three years: chronological records; account records; order tickets; records of broker/dealer; and notifications, as prescribed by § 344.(a)(1) through (a)(5).

NDP-RECORD 344.5

The Federal Deposit Insurance Act (12 U.S.C. §§ 1817, 1818, and 1819(a)(Tenth)) and the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. § 5412), as implemented by the Recordkeeping and Confirmation Requirements for Securities Transactions rule, 12 C.F.R. § 344.5, requires FDIC-supervised institutions effecting securities transactions for customers to give or send, by mail, facsimile, or other means of electronic transmission, to the customer at or before completion of the transaction either a broker/dealer's confirmation or a written notification, as prescribed by § 344.5(a) and (b).

NDP-RECORD 344.6

The Federal Deposit Insurance Act (12 U.S.C. §§ 1817, 1818, and 1819(a)(Tenth)) and the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. § 5412), as implemented by the Recordkeeping and Confirmation Requirements for Securities Transactions rule, 12 C.F.R. § 344.6, requires an FDIC-supervised institution to use the alternative notification procedures, as prescribed by § 344.6(a) through (f), if the transaction is effected for: notification by agreement; trust accounts; agency accounts; cash management sweep accounts; collective investment fund accounts; and periodic plan accounts.

NDP-RECORD 344.7(a)

The Federal Deposit Insurance Act (12 U.S.C. §§ 1817, 1818, and 1819(a)(Tenth)) and the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. § 5412), as implemented by the Recordkeeping and Confirmation Requirements for Securities Transactions rule, 12 C.F.R. § 344.7(a), requires all contracts, except for those in § 344.7(b) or (c), effected or entered into by an FDIC-supervised institution that provide for the purchase or sale of a security (other than an exempted security as defined in 15 U.S.C. § 78c(a)(12), government or municipal security, commercial paper, bankers' acceptances, or commercial bills), to provide for completion of the transaction within the number of business days in the standard settlement cycle followed by registered broker dealers in the United States, unless otherwise agreed to by the parties at the time of the transaction.

NDP-RECORD 344.8

The Federal Deposit Insurance Act (12 U.S.C. §§ 1817, 1818, and 1819(a)(Tenth)) and the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. § 5412), as implemented by the Recordkeeping and Confirmation Requirements for Securities Transactions rule, 12 C.F.R. § 344.8, requires an FDIC-supervised institution effecting securities transactions for customers to establish written policies and procedures, as prescribed by § 344.8(a)(1) through (a)(4).

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NDP-RECORD 344.9(a)

The Federal Deposit Insurance Act (12 U.S.C. §§ 1817, 1818, and 1819(a)(Tenth)) and the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. § 5412), as implemented by the Recordkeeping and Confirmation Requirements for Securities Transactions rule, 12 C.F.R § 344.9(a), requires FDIC-supervised institution officers and employees 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 recommend such action, report to the FDIC-supervised institution within 30 calendar 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. The report must identify the securities purchased or sold, the dates of the transactions, and whether the transactions were purchases or sales, except as provided by § 344.9(b).

OTHER-LAWS

OTHER-LAWS Uncoded-Uncoded

For use with uncoded violations. Insert relevant regulatory citation information.

Preservation of Consumers' Claims and Defenses

PCCD 433.2

The Preservation of Consumers' Claims and Defenses rule (Holder-in-Due-Course Rule), 16 C.F.R. § 433.2, prohibits a financial institution, in connection with any sale or lease of goods or services to consumers, from taking or receiving a consumer credit contract, or accepting, as full or partial payment for such sale or lease, the proceeds of any purchase money loans, unless the contract contains the required notice provisions in at least ten point, bold face, type. Such violations are considered unfair and deceptive acts or practices under section 5 of the Federal Trade Commission Act (15 U.S.C. § 45(a)).

Privacy of Consumer Financial Information/Regulation P

PRIVACY 1016.4

The Gramm-Leach-Bliley Act, Title V, Privacy (15 U.S.C. § 6801 et seq.), as implemented by Regulation P, 12 C.F.R. § 1016.4(a), requires a financial institution to provide a clear and conspicuous initial notice that accurately reflects the financial institution's privacy policies to customers and consumers. The financial institution must provide the notice to a customer not later than when it establishes a customer relationship, except as provided by § 1016.4(e), and to a consumer before the financial institution discloses any nonpublic personal information about the consumer to any nonaffiliated third party, if the financial institution makes such a disclosure other than as authorized by §§ 1016.14 and 1016.15. In addition, the financial institution must deliver the initial privacy notice in accordance with § 1016.9.

PRIVACY 1016.5

The Gramm-Leach-Bliley Act, Title V, Privacy (15 U.S.C. § 6801 et seq.), as implemented by Regulation P, 12 C.F.R. § 1016.5(a), requires a financial institution to provide a clear and conspicuous notice to customers, except as permitted by § 1016.9(e), that accurately reflects the financial institution's privacy

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	policies and practices not less than annually during the continuation of the customer relationship, and to deliver the notice in accordance with § 1016.9.
PRIVACY 1016.6	The Gramm-Leach-Bliley Act, Title V, Privacy (15 U.S.C. § 6801 et seq.), as implemented by Regulation P, 12 C.F.R. § 1016.6, requires a financial institution that provides the initial, annual, and revised privacy notices under §§ 1016.4, 1016.5, and 1016.8, to include the information outlined under § 1016.6(a)(1) through (a)(9). In addition, the institution must meet the requirements of § 1016.6(b) through (e) regarding nonaffiliated third parties, categories of nonpublic personal information, the short-form initial notice with opt-out notice for non-customers, and future disclosures.
PRIVACY 1016.7	The Gramm-Leach-Bliley Act, Title V, Privacy (15 U.S.C. § 6801 et seq.), as implemented by Regulation P, 12 C.F.R. § 1016.7, requires a financial institution that provides an opt out notice under § 1016.10(a) to provide a clear and conspicuous notice to each of the financial institution's consumers that accurately explains the right to opt out. The notice must state that the financial institution discloses or reserves the right to disclose nonpublic personal information about the consumer to a nonaffiliated third party; that the consumer has the right to opt out; and a reasonable means by which the consumer may exercise the opt out right. In addition, the financial institution must provide an initial notice if it provides the opt out notice later than required in accordance with § 1016.4; an opt out notice explaining how the financial institution will treat an opt out direction by a joint consumer, if it chooses to issue such notices; allow consumers to exercise the right to opt out at any time; and deliver the opt out notice in accordance with § 1016.7(c), (d), (h), and (j). This violation code presumes that the notice and opt-out exceptions set out at § 1016.14 and § 1016.15 do not apply.
PRIVACY 1016.8	The Gramm-Leach-Bliley Act, Title V, Privacy (15 U.S.C. § 6801 et seq.), as implemented by Regulation P, 12 C.F.R. § 1016.8, prohibits a financial institution from disclosing directly, or through an affiliate, any nonpublic personal information about a consumer to a nonaffiliated party other than as described in the initial notice that the financial institution provided to that consumer under § 1016.4, unless the following requirements are met: the financial institution provided a clear and conspicuous revised notice that accurately described its policies and practices; the financial institution provided to the consumer a new opt out notice; the financial institution has given the consumer a reasonable opportunity before information is disclosed to the nonaffiliated third party to opt out of the disclosure; and the consumer does not opt out. In addition, the institution must deliver a revised privacy notice in accordance with § 1016.9.
PRIVACY 1016.10(a)(1)	The Gramm-Leach-Bliley Act, Title V, Privacy, (15 U.S.C. § 6801 et seq.), as implemented by Regulation P, 12 C.F.R. § 1016.10(a)(1), prohibits a financial institution from disclosing directly, or through an affiliate, any nonpublic personal information about a consumer to a nonaffiliated third party unless the following requirements are met: the financial institution provides to the consumer an initial notice as required by § 1016.4 and an opt out notice as required by § 1016.7; the financial institution gives the consumer a reasonable opportunity before disclosing the information to the nonaffiliated third party to opt out of the disclosure; and the consumer does not opt out.

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PRIVACY 1016.11

The Gramm-Leach-Bliley Act, Title V, Privacy (15 U.S.C. § 6801 et seq.), as implemented by Regulation P, 12 C.F.R. § 1016.11, requires the financial institution that received nonpublic personal information from a nonaffiliated financial institution under an exception in §§ 1016.14 or 1016.15, to limit the disclosure and use of that information in accordance with § 1016.11(a)(1)(i) through (iii). The disclosure and use of nonpublic personal information received from a nonaffiliated financial institution outside an exception in §§ 1016.14 or 1016.15 must be in accordance with § 1016.11(b)(1)(i) through (iii). If the financial institution discloses nonpublic personal information to a nonaffiliated third party under or outside of an exception, the third party may disclose and use that information only as prescribed by § 1016.11(c) and (d), respectively.

PRIVACY 1016.12(a)

The Gramm-Leach-Bliley Act, Title V, Privacy (15 U.S.C. § 6801 et seq.), as implemented by Regulation P, 12 C.F.R. § 1016.12(a), prohibits a financial institution, except as permitted in § 1016.12(b), from disclosing directly, or through an affiliate, other than to a consumer reporting agency, an account number or similar form of access number or access code for a consumer's credit card account, deposit account, share account, or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

Prohibition Against Use of Interstate Branches Primarily for Deposit Production

IBBEA 369(No Subsection)

Section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (12 U.S.C. § 1835a), as implemented by part 369 of the FDIC Rules and Regulations, 12 C.F.R. part 369, prohibits a bank from using any authority to engage in interstate branching pursuant to the Interstate Act, or any amendment made by the Interstate Act to any other provision of law, primarily for the purpose of deposit production.

Protecting Tenants at Foreclosure Act

PTFA 702(a)(1)

Section 702(a)(1) of the Protecting Tenants at Foreclosure Act of 2009 (12 U.S.C. § 5520 note), requires a financial institution to send a notice to vacate to any bona fide tenant at least 90 days before the effective date of such notice in the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property. The Act originally expired at the end of 2014, but was restored effective June 23, 2018.

PTFA 702(a)(2)

Section 702(a)(2) of the Protecting Tenants at Foreclosure Act of 2009 (12 U.S.C. § 5520 note), requires a financial institution to honor the existing lease for renters until the end of the lease term in the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property under any bona fide lease. An institution may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90 day notice

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required under § 702(a)(1). The Act originally expired at the end of 2014, but was restored effective June 23, 2018.

Real Estate Settlement Procedures Act/Regulation X – Subpart B – Mortgage Settlement and Escrow Accounts

RESPA-B 1024.6

The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.6, requires the lender to provide a copy of the special information booklet for applicable loans to at least one of the applicants, as set forth in, and subject to the exceptions outlined under, § 1024.6(a)(1) through (a)(3). Unless specifically permitted in § 1024.6(b) through (d), no changes can be made to the special information booklet.

RESPA-B 1024.7(a)

The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.7(a), requires a lender to provide the applicant with a good faith estimate in accordance with the requirements of § 1024.7(a)(1) through (a)(5), except as otherwise provided in § 1024.7(a), (b), or (h).

A violation of § 1024.7(a) also constitutes a violation of § 5 of RESPA (12 U.S.C. § 2604).

RESPA-B 1024.7(c)

The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.7(c), requires the estimate of the charges and terms for all settlement services, unless specifically excepted under § 1024.7(c), to be available for at least 10 business days from when the good faith estimate is provided.

A violation of § 1024.7(c) also constitutes a violation of § 5 of RESPA (12 U.S.C. § 2604).

RESPA-B 1024.7(d)

The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.7(d), requires the loan originator to prepare the good faith estimate in accordance with the requirements of § 1024.7 and the instructions set forth in Appendix C.

A violation of § 1024.7(d) also constitutes a violation of § 5 of RESPA (12 U.S.C. § 2604).

RESPA-B 1024.7(e)

The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.7(e), requires that, except as provided in § 1024.7(f), the charges at settlement be in accordance with the tolerance limits outlined under § 1024.7(e)(1) through (e)(3).

A violation of § 1024.7(e) also constitutes a violation of § 5 of RESPA (12 U.S.C. § 2604). However, as specified in § 1024.7(i), any charges at settlement that exceed the charges listed on the good faith estimate by more than the permitted tolerances under § 1024.7(e) constitute a tolerance violation, which can be

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	cured by the loan originator by reimbursing to the borrower, at settlement or within 30 calendar days after settlement, the amount by which the tolerance was exceeded.
RESPA-B 1024.7(f)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.7(f), requires a loan originator to be bound to the settlement charges and terms listed on the good faith estimate, within the tolerances provided in § 1024.7(e), unless a revised good faith estimate is provided prior to settlement, or the good faith estimate becomes invalid pursuant to any of the circumstances set forth in § 1024.7(f)(1) through (f)(6). The loan originator must document and retain the reason for providing the revised good faith estimate for no less than 3 years after settlement.
RESPA-B 1024.8(a)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.8(a), requires the settlement agent to use the HUD-1 or HUD-1A, as appropriate, for every RESPA-covered transaction, unless its use is specifically exempted under § 1024.8(a). A violation of § 1024.8(a) also constitutes a violation of § 4 of RESPA (12 U.S.C. § 2603).
RESPA-B 1024.8(b)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.8(b), requires the settlement agent to complete the HUD-1 or HUD-1A, in accordance with the instructions set forth in Appendix A. The loan originator must transmit all information necessary to complete the HUD-1 or HUD-1A to the settlement agent. The settlement agent shall state the actual charges paid by the borrower and seller, as applicable, under § 1024.8(b)(1), or use the average charge for a settlement service under § 1024.8(b)(2). A violation of § 1024.8(b) also constitutes a violation of § 4 of RESPA (12 U.S.C. § 2603). However, as specified in § 1024.8(c), an inadvertent or technical error in completing the HUD-1 or HUD-1A would not be deemed a violation of § 4 of RESPA if a revised form, as appropriate, is provided in accordance with the requirements of § 1024.8 within 30 calendar days after settlement.
RESPA-B 1024.9	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.9, requires that if the HUD-1 or HUD-1A is reproduced, changes and insertions specified under § 1024.9(a) and (b) must be made in accordance with the requirements of those subsections. Section 1024.9(c) allows other deviations for the HUD-1 or HUD-1A if receipt of written approval is obtained from the Consumer Financial Protection Bureau.
RESPA-B 1024.10	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.10, requires the settlement agent to provide the HUD-1 or HUD-1A, in accordance with the requirements outlined in § 1024.10(a) through (c), unless the exemption under (d) applies. The lender must

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	retain the completed HUD-1 or HUD-1A and related documents in accordance with the recordkeeping requirements of § 1024.10(e).
RESPA-B 1024.12	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.12, prohibits the imposition of a fee for the preparation and distribution of the HUD-1 or HUD-1A settlement statement, escrow account statements required by § 10 of RESPA (12 U.S.C. § 2609), or statements required by the Truth in Lending Act (15 U.S.C. § 1601 et seq.).
RESPA-B 1024.14	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.14, prohibits the splitting of charges, and providing or accepting of any kickbacks, referral fees, or other things of value, as outlined in § 1024.14(b) through (d), unless allowed under § 1024.14(g). All documents provided pursuant to § 1024.14 must be retained for five years from the date of execution. A violation of § 1024.14 also constitutes a violation of § 8 of RESPA (12 U.S.C. § 2607).
RESPA-B 1024.15	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.15, requires an affiliated business arrangement to satisfy the conditions outlined in § 1024.15(b). All documents provided pursuant to § 1024.15 must be retained for five years after the date of execution. A violation of § 1024.15 also constitutes violations of § 8 of RESPA (12 U.S.C. § 2607) and of 12 C.F.R. § 1024.14.
RESPA-B 1024.17(c)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.17(c), requires that a servicer meet the requirements for escrow accounts, as applicable, in accordance with the requirements under § 1024.17(c)(1) through (c)(9).
RESPA-B 1024.17(e)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.17(e), requires a new servicer to provide the borrower with an initial escrow account statement within 60 days of the date of servicing transfer if either the monthly payment amount or the accounting method used is changed. The new servicer must comply with the requirements set forth in § 1024.17(e)(1) and (e)(2).
RESPA-B 1024.17(f)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.17(f), requires the servicer to conduct an escrow account analysis to determine whether a surplus, shortage, or deficiency exists as provided under § 1024.17(f)(1). Depending on the outcome, the servicer shall meet the timing and other requirements for surpluses, shortages, and deficiencies outlined in

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	§ 1024.17(f)(2) through (f)(4) and provide the required notice of shortage or deficiency as required under § 1024.17(f)(5).
RESPA-B 1024.17(g)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.17(g), requires the servicer to provide an initial escrow account statement to the borrower at settlement or within 45 calendar days of settlement. The initial escrow account statement must include the required information, as outlined in § 1024.17(g)(1), and if applicable, within the timeframe outlined in § 1024.17(g)(2).
RESPA-B 1024.17(h)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.17(h), requires, under (h)(1), that the format and completion of the initial escrow account statement be as set forth in Public Guidance Documents entitled “Initial Escrow Account Disclosure Statement – Format” and “Initial Escrow Account Disclosure Statement – Example” and, in accordance with the requirements of (h)(3), that the payees on initial escrow account statements be sufficiently identified.
RESPA-B 1024.17(i)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.17(i), requires the servicer to submit an annual escrow account statement to the borrower, in accordance with the form, timing, and content requirements of this section unless the exception in § 1024.17(i)(2) applies. A servicer is required to follow the short year statement requirements under § 1024.17(i)(4), as applicable.
RESPA-B 1024.17(k)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.17(k), requires the servicer to pay disbursements for property taxes and hazard insurance in a timely manner in accordance with the requirements of (k)(1) through (k)(5).
RESPA-B 1024.17(l)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.17(l), requires the servicer to follow the specified requirements for noting discretionary payments made as part of a monthly mortgage payment on initial and annual escrow account statements.
RESPA-B 1024.20	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.20, requires a lender, mortgage broker, or dealer that receives an application, or information sufficient to complete an application, to provide the loan applicant with a clear and conspicuous written list of homeownership counseling organizations that provide relevant counseling services in the loan applicant's location and to follow the timing and delivery requirements of § 1024.20(a), unless an exemption applies under § 1024.20(c). For a federally related mortgage loan that is a home equity line of

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credit subject to Regulation Z, 12 C.F.R. § 1026.40, a lender or mortgage broker may comply with the requirements in either § 1024.20(a) or 12 C.F.R. § 1026.40(b).

Real Estate Settlement Procedures Act/Regulation X – Subpart C – Mortgage Servicing

RESPA-C 1024.32(a)

The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.32(a), requires the mortgage servicing disclosures to be made clearly and conspicuously, in writing, and in a form that a recipient may keep. If the optional notice with acknowledgement form is provided to a successor in interest, the notice must be provided in accordance with the requirements of § 1024.32(c).

RESPA-C 1024.33(a)

The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.33(a), requires that for reverse mortgage transactions, a lender, mortgage broker, or dealer, as applicable, must provide a servicing disclosure statement that states whether the servicing of the mortgage loan may be assigned, sold, or transferred to another person at any time. The disclosure must be provided within three days, excluding legal public holidays, Saturdays, and Sundays.

RESPA-C 1024.33(b)

The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.33(b), requires each transferor servicer and transferee servicer to provide to the borrower a notice of transfer for any assignment, sale, or transfer of the servicing of the mortgage loan, unless specifically excluded in § 1024.33(b)(2). The notice must adhere to the timing requirements outlined in § 1024.33(b)(3) and the content requirements outlined in § 1024.33(b)(4).

RESPA-C 1024.33(c)

The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.33(c), requires that during the 60-day period beginning on the effective date of transfer, a payment may not be treated as late for any purpose if the former servicer, rather than the new servicer, receives payment on or before the applicable due date (including any grace period allowed under the mortgage loan instrument). If payment is received incorrectly by the former servicer, the former transferor servicer must promptly adhere to the requirements outlined in §1024.33(c)(2)(i) or (c)(2)(ii).

RESPA-C 1024.34(b)

The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.34(b), requires a servicer to return to the borrower any amounts within the servicer's control that remain in an escrow account within 20 days (excluding legal public holidays, Saturdays, and Sundays) of a borrower's payment of a mortgage loan in full. The servicer may credit funds to a new escrow account if the requirements outlined in § 1024.34(b)(2) are met.

RESPA-C 1024.35(a)-(d)

The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.35(a) through (d), requires a servicer to comply with the error resolution procedures in §

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	1024.35 when any written notice from the borrower is received that asserts an error, as outlined in § 1024.35(b), and that includes the name of the borrower, information that enables the servicer to identify the borrower's mortgage loan account, and the error the borrower believes has occurred. The servicer must provide contact information for borrowers to assert errors in accordance with the requirements under § 1024.35(c), and must provide to the borrower a written response acknowledging receipt of the notice of error, within five days (excluding legal public holidays, Saturdays, and Sundays), after receiving the error notice as required under § 1024.35(d).
RESPA-C 1024.35(e)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.35(e), requires a servicer to investigate and respond to a notice of error as outlined in § 1025.35(e), except as provided in § 1024.35(f) and (g).
RESPA-C 1024.35(g)(2)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.35(g)(2), requires a servicer to notify the borrower in writing within 5 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer reasonably determines that the notice of error is duplicative, overbroad, or untimely as provided in § 1024.35(g)(1). The notice must indicate the basis upon which the servicer has made such determination.
RESPA-C 1024.35(h)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.35(h), prohibits a servicer from charging a fee or requiring a borrower to make any payment that may be owed on a borrower's account, as a condition of responding to a notice of error.
RESPA-C 1024.35(i)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.35(i), prohibits a servicer from furnishing adverse information to any consumer reporting agency regarding any payment that is the subject of the notice of error for 60 days after receipt of a notice of error.
RESPA-C 1024.36(a)-(c)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.36(a) through (c), requires a servicer to comply with the request for information procedures in § 1024.36 when any written request for information from the borrower is received that includes the name of the borrower, information that enables the servicer to identify the borrower's mortgage loan account, and states the information the borrower is requesting. The servicer must adhere to the contact information requirements outlined in § 1024.36(b) for borrowers to use to request information and must provide to the borrower a written response acknowledging receipt of the request, within five days (excluding legal public holidays, Saturdays, and Sundays), after receiving the request for information as required under § 1024.36(c).

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RESPA-C 1024.36(d)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.36(d), requires a servicer to investigate and respond to an information request as outlined in § 1025.36(d)(1) through (d)(3), except as provided in § 1024.36(e) and (f).
RESPA-C 1024.36(f)(2)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.36(f)(2), requires a servicer to notify the borrower in writing within 5 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer reasonably determines that the request is duplicative, confidential, proprietary or privileged, irrelevant, overbroad, or untimely. The notice must indicate the basis under § 1026.36(f)(1) upon which the servicer has made such determination.
RESPA-C 1024.36(g)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.36(g), prohibits a servicer from charging a fee or requiring a borrower to make any payment that may be owed, as a condition of responding to an information request, unless permitted in § 1024.36(g)(2).
RESPA-C 1024.36(i)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.36(i), requires a servicer to treat the potential successors in interest as a borrower for the purposes of the requirements of § 1024.36(c) through (g) and to adhere to the written request requirements as outlined in § 1024.36(i).
RESPA-C 1024.37(b)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.37(b), prohibits a servicer from assessing a premium charge or fee related to force-placed insurance on a borrower, unless the servicer has a reasonable basis to believe that the borrower has failed to comply with the mortgage loan contract's requirement to maintain hazard insurance.
RESPA-C 1024.37(c)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.37(c), prohibits the servicer from assessing the borrower any premium charge or fee related to force-placed insurance until the delivery requirements outlined in § 1024.37(c)(1) have been met. The first written force-placed insurance notice required by § 1024.37(c)(1)(i) must contain the information outlined in § 1024.37(c)(2). The information in § 1024.37(c)(2)(iv), (vi), and (ix)(A) and (ix)(B) must be in bold text, except that the information about the physical address of the borrower's property may be set in regular text. The servicer is prohibited from including any information other than the information required by § 1024.37(c)(2) and the mortgage loan account number.

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RESPA-C 1024.37(d)

The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.37(d), requires a servicer to deliver or place in the mail a written reminder notice at least 15 days before a premium charge or fee related to force-placed insurance. A servicer may not deliver or place in the mail the reminder notice until at least 30 days after providing the first written notice required by § 1024.37(c)(1)(i). If certain information is not received by the servicer after delivering the written reminder notice required by § 1024.37(c)(1)(i), the servicer must provide a notice containing the information outlined in § 1024.37(d)(2)(i) or (d)(2)(ii), as applicable. The information in § 1024.37(d)(2)(i)(B) and (d)(2)(i)(D), must be in bold text and the information in § 1024.37(d)(2)(i)(C) must be as outlined in § 1024.37(c)(3). The servicer is prohibited from including any information other than the information required by § 1024.37(d)(2)(i) or (d)(2)(ii), and the mortgage loan account number.

RESPA-C 1024.37(e)

The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.37(e), prohibits the servicer from assessing the borrower any premium charge or fee related to renewing or replacing force-placed insurance, until the written notice requirements outlined in § 1024.37(e) have been met. The written renewal notice required by § 1024.37(e)(1)(i) must contain the information outlined in § 1024.37(e)(2). The information in § 1024.37(e)(2)(iv), (vi)(B), and (vii)(A) through (C) must be in bold text, except that the information about the physical address of the borrower's property may be set in regular text. The servicer is prohibited from including any information in the written notice, other than the information required by § 1024.37(e)(2) and the mortgage loan account number. The servicer must provide the written renewal notice before each anniversary of purchasing force-placed insurance on a borrower’s property.

RESPA-C 1024.37(f)

The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.37(f), requires a servicer to use a class of mail not less than first-class mail, if the notices required by § 1024.37(c)(1)(i), (c)(1)(ii), or (e)(1) are mailed.

RESPA-C 1024.37(g)

The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.37(g), requires a servicer to adhere to the cancellation requirements outlined in § 1024.37(g), within 15 days of receiving evidence that the borrower has had in place hazard insurance coverage that complies with the loan contract’s requirements to maintain hazard insurance.

RESPA-C 1024.37(h)

The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.37(h), requires that all charges related to force-placed insurance assessed to a borrower, by or through the servicer, must be bona fide and reasonable, except for charges subject to State regulation and charges authorized by the Flood Disaster Protection Act of 1973.

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RESPA-C 1024.38(a)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.38(a), requires a servicer to maintain policies and procedures that are reasonably designed to achieve the objectives set forth in § 1024.38(b).
RESPA-C 1024.38(c)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.38(c), requires a servicer to retain records that document actions taken with respect to a borrower's mortgage loan account until one year after the date a mortgage loan is discharged or servicing of a mortgage loan is transferred. For each mortgage loan serviced, the servicer must maintain the documents and data outlined in § 1024.38(c)(2)(i) through (c)(2)(v), in a manner that facilitates compiling such documents and data into a servicing file within five days.
RESPA-C 1024.39(a)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.39(a), requires a servicer to establish or make good faith efforts to establish live contact with a delinquent borrower no later than the 36th day of a borrower's delinquency and again no later than 36 days after each payment due date so long as the borrower remains delinquent, unless exempt by § 1024.39(c) or (d). Promptly after establishing live contact with a borrower, the servicer must inform the borrower about the availability of loss mitigation options, if appropriate.
RESPA-C 1024.39(b)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.39(b), requires the servicer to provide to a delinquent borrower written notices in accordance with the timing requirements of § 1024.29(b)(1) and the content requirements of § 1024.29(b)(2), unless exempt by § 1024.39(c) or (d).
RESPA-C 1024.39(c)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.39(c), requires the servicer to comply with modified early intervention written notice requirements when the conditions of § 1024.39(c)(1)(ii) are not met and any borrower on the mortgage loan is a debtor in bankruptcy. The modified early intervention written notice must comply with the content and timing requirements in § 1024.39(c)(1)(iii). A previously exempt servicer must resume compliance with § 1024.39(a) and (b) after the next payment due date that follows the earliest of the events outlined in § 1024.39(c)(2)(i), unless exempt by § 1024.39(c)(2)(ii).
RESPA-C 1024.39(d)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.39(d), requires a servicer to comply with the modified early intervention written notice requirements outlined in § 1024.39(d), if the servicer is a debt collector under the Fair Debt Collections Practices Act (FDCPA) and the borrower has invoked FDCPA cease communication protections.

Violation Code	Description
RESPA-C 1024.40	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.40, requires a servicer to maintain policies and procedures that facilitate continuity of contact between the borrower and servicer and are reasonably designed to achieve the objectives set forth in § 1024.40(a). The servicer must maintain policies and procedures reasonably designed to ensure that servicer personnel assigned to a delinquent borrower perform the functions outlined in § 1024.40(b).
RESPA-C 1024.41(b)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.41(b), requires a servicer to exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application and adhere to the review and determination of protection requirements outlined in § 1024.41(b)(2) and (b)(3).
RESPA-C 1024.41(c)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.41(c), requires a servicer to evaluate complete loss mitigation applications in accordance with the requirements of § 1024.41(c)(1), and to evaluate incomplete loss mitigation applications in accordance with the requirements of § 1024.41(c)(2). Within 5 days (excluding legal public holidays, Saturdays, and Sundays) of receiving a borrower's complete loss mitigation application, the servicer must provide written notice to the borrower containing the information outlined in § 1024.41(c)(3)(i), unless exempt by § 1024.41(c)(3)(ii). For information that is not in the borrower's control, the servicer must adhere to the requirements in § 1024.41(c)(4).
RESPA-C 1024.41(d)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.41(d), requires that if the servicer denies a complete loss mitigation application for any trial or permanent loan modification option, the notice provided to the borrower pursuant to § 1024.41(c)(1)(ii) must also state the servicer's specific reason(s) for denying each trial or permanent loan modification option, and, if applicable, that the borrower was not evaluated on other criteria.
RESPA-C 1024.41(e)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.41(e), requires a servicer offering a loss mitigation option to provide the borrower the prescribed time to accept or reject the option, as outlined in § 1024.41(e).
RESPA-C 1024.41(f)	The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.41(f), prohibits a servicer (including a small servicer) from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless the requirements of § 1024.41(f)(1) are met. If a borrower submits a complete loss mitigation application during the pre-foreclosure review period, the servicer must not make the first notice or filing required by applicable law, unless the servicer satisfies the requirements of § 1024.41(f)(2).

Violation Code	Description

RESPA-C 1024.41(g)

The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.41(g), prohibits a servicer from moving for foreclosure judgement or order of sale, or conducting a foreclosure sale, if a borrower submits a complete loss mitigation application within the prescribed timeframe, unless one of the actions in § 1024.41(g) has occurred.

RESPA-C 1024.41(h)

The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.41(h), requires that a servicer permit a borrower to appeal the denial of a loss mitigation application (trial or permanent), if the complete loss mitigation application was received during the prescribed timeframe. The servicer must abide by the required deadline in § 1024.41(h)(2), the independent evaluation requirements in § 1024.41(h)(3), and the appeal determination notification requirements outlined in § 1024.41(h)(4).

RESPA-C 1024.41(j)

The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.41(j), prohibits a small servicer from moving for foreclosure judgement or order of sale, or conducting a foreclosure sale under § 1024.41(f)(1), if a borrower is performing pursuant to the terms of an agreement on a loss mitigation option.

RESPA-C 1024.41(k)

The Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.), as implemented by Regulation X, 12 C.F.R. § 1024.41(k), requires that if the servicing of a mortgage loan is transferred when a loss mitigation application is pending, the transferee servicer must comply with the loss mitigation procedures under § 1024.41 based on the date the transferor servicer received the loss mitigation application, and must follow the timing requirements, notice requirements, and procedures outlined in § 1024.41(k).

Resolution and Receivership Rules – Sweep Account Disclosures

SWEEP-REPO 360.8(e)

The Federal Deposit Insurance Act (12 U.S.C. § 1821(d) and (e)), as implemented by the Resolutions and Receivership rules, 12 C.F.R. § 360.8(e), requires a financial institution to prominently disclose in writing to sweep account customers (at least annually) whether their swept funds are deposits within the meaning of 12 U.S.C. § 1813(l). If the funds are not deposits, the institution must further disclose the status such funds would have if the institution failed. The disclosure requirements imposed under this provision do not apply under certain listed exceptions.

Right To Financial Privacy Act

RTFPA 1103(a)-(b)

Section 1103(a) and (b) of the Right to Financial Privacy Act of 1978 (12 U.S.C. § 3401 et seq.), prohibits a financial institution from providing to any Government authority access to or copies of, or the information contained in, the financial records of any customer, except in accordance with the provisions of

Violation Code	Description
	the Act, and from releasing the financial records of a customer until the Government authority seeking such records certifies in writing to the financial institution that it has complied with the applicable provisions of the Act.
RTFPA 1104(No Subsection)	Section 1104 of the Right to Financial Privacy Act of 1978 (12 U.S.C. § 3401 et seq.), prohibits a financial institution from requiring a customer's authorization of disclosure of his or her financial records to the Government as a condition of doing business with the financial institution. In addition, the financial institution must keep a record of all instances in which a customer's financial records were disclosed to the Government authority, and upon a customer's request, the financial institution must give the customer a copy of the record kept for such instances, as prescribed by § 1104(c).
RTFPA 1111(No Subsection)	Section 1111 of the Right to Financial Privacy Act of 1978 (12 U.S.C. § 3401 et seq.), requires a financial institution, upon request by a Government authority, to assemble the records requested upon receipt of a request for financial records by a Government authority under §§ 1105 and 1107, and to prepare to deliver the records to the Government authority upon receipt of the certificate pursuant to § 1103(b).
RTFPA 1113(h)(6)	Section 1113(h)(6) of the Right to Financial Privacy Act of 1978 (12 U.S.C. § 3401 et seq.), requires a financial institution to keep a notation of each disclosure of a customer's financial records to a Government authority in connection with the Government authority's consideration or administration of assistance to the customer in the form of a Government loan, loan guaranty, or loan insurance program. In addition, the financial institution must permit the customer to inspect this information upon request.
Secure and Fair Enforcement for Mortgage Licensing Act	
SAFE-ACT 1007.103(a)	The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. § 5101 et seq.), as implemented by Regulation G, 12 C.F.R. § 1007.103(a), requires each bank employee who acts as a mortgage loan originator to register with the Nationwide Mortgage Licensing System and Registry (Registry), obtain a unique identifier, and maintain registration in accordance with the requirements of this part. A bank that employs one or more individuals who act as a residential mortgage originator is required to have each such employee comply with the registration requirements of this part. The bank must ensure an employee who is subject to the registration requirements does not act as a residential loan originator unless such employee is registered with the Registry. Further, a bank employee who previously registered, according to the requirements set forth in § 1007.103(a), before the employee becomes subject to this part at the current bank, is required to meet the conditions in § 1007.103(a)(4)(A) through (D) are met. The conditions outlined in § 1007.103(a)(4)(i)(A), (a)(i)(C), and (a)(i)(D) must be met when registered or licensed mortgage loan originators become bank employees as a result of an acquisition, consolidation, merger, or reorganization. These requirements must be met within 60 days from the effective date of the acquisition, merger, or reorganization.

Violation Code	Description

SAFE-ACT 1007.103(b)

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. § 5101 et seq.), as implemented by Regulation G, 12 C.F.R. § 1007.103(b), requires mortgage loan originators who are registered with the Nationwide Mortgage Licensing System and Registry to maintain their registration in accordance with the requirements of § 1007.103(b)(1) through (b)(3).

SAFE-ACT 1007.103(d)

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. § 5101 et seq.), as implemented by Regulation G, 12 C.F.R. § 1007.103(d), requires a bank to require each employee who is a mortgage loan originator to submit to the Nationwide Mortgage Licensing System and Registry the registration information under § 1007.103 (d)(1)(i) through (d)(1)(ix). Alternatively, the bank may delegate an employee to submit the information on the covered employee's behalf provided this individual does not act as a mortgage loan originator. Further, this section requires a bank employee registering, renewing, or updating his or her registration as a mortgage loan originator to provide the appropriate authorizations and attestation of the registration.

SAFE-ACT 1007.103(e)

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. § 5101 et seq.), as implemented by Regulation G, 12 C.F.R. § 1007.103(e), requires a bank to submit to the Nationwide Mortgage Licensing System and Registry, the information concerning the covered financial institution's record as specified in § 1007.103(e)(1)(i) through (e)(1)(iv); and the employee information under § 1007.103(e)(2).

SAFE-ACT 1007.104

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. § 5101 et seq.), as implemented by Regulation G, 12 C.F.R. § 1007.104, requires a bank that employs one or more mortgage loan originators to adopt and follow written procedures designed to assure compliance with § 1007.104. These policies and procedures must be appropriate to the nature, size, complexity, and scope of the mortgage lending activities of the bank, and apply only to those employees acting within the scope of their employment. At a minimum, these policies and procedures must include the information specified in § 1007.104(a) through (i) of this section.

SAFE-ACT 1007.105

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. § 5101 et seq.), as implemented by Regulation G, 12 C.F.R. § 1007.105, requires a bank to make the unique identifier(s) of its registered mortgage loan originator(s) available to consumers in a manner and method practicable to the institution. Further, a registered mortgage loan originator must provide his or her unique identifier to a consumer: (1) upon request; (2) before acting as a mortgage loan originator; and (3) through the originator's initial written communication with a consumer, whether on paper or electronically.

Violation Code	Description

Servicemember's Civil Relief Act

SCRA 108(No Subsection)

Section 108 of the Servicemembers Civil Relief Act of 2003 (50 U.S.C. § 3919), prohibits a creditor from taking certain adverse actions against a servicemember due to the servicemember exercising his/her rights under the Servicemembers Civil Relief Act. Such adverse actions include, but are not limited to denying or revoking credit, changing the terms of an existing credit arrangement, or refusing to grant credit to the servicemember in substantially the amount or on substantially the terms requested.

SCRA 207(a)-(b)

Section 207(a) and (b) of the Servicemembers Civil Relief Act of 2003 (50 U.S.C. § 3937(a)-(b)), requires a creditor to reduce the interest rate on a servicemember's obligations, or of a servicemember and spouse jointly, incurred prior to entry into military service, to no more than 6 percent for the duration of the servicemember's military service, upon receipt of written notice and a copy of the servicemember's military orders or another appropriate indicator of military service. A creditor that reduces the interest rate on a servicemember's obligations, or a servicemember and spouse jointly, is required to forgive interest in excess of 6 percent, and to reduce any periodic payment due from a servicemember by the amount of interest forgiven. The interest rate reduction must be applied retroactively to the date on which the servicemember is called to military service. Note that for mortgage loans, trust deeds, or other security in the nature of a mortgage, § 2203(b) of the Housing and Economic Recovery Act of 2008, extends the 6 percent interest rate cap to one year after the end of the period of military service.

SCRA 302(a)

Section 302(a) of the Servicemembers Civil Relief Act of 2003 (50 U.S.C. § 3952(a)), prohibits a creditor from rescinding or terminating contracts by a servicemember, after that servicemember enters active-duty military service, for the purchase, lease, or bailment of real or personal property (including a motor vehicle) for a breach of terms occurring before or during military service, without a court order, if the servicemember has paid a deposit or installment prior to entry into military service. A creditor is also prohibited from repossessing the property of a servicemember after the servicemember enters active-duty military service due to a breach of terms occurring before or during military service without a court order, if the servicemember has paid a deposit or installment prior to entry into military service.

SCRA 303(a)-(c)

Section 303(a) through (c) of the Servicemembers Civil Relief Act of 2003 (50 U.S.C. § 3953(a)-(c)), prohibits the sale, foreclosure, or seizure of real or personal property due to a breach of an obligation by a servicemember during the period of military service or within one year thereafter, except if: (1) a court order has been granted, or (2) the sale, foreclosure or seizure of property is made pursuant to an agreement as provided in § 107 of the Servicemembers Civil Relief Act (50 U.S.C. § 3918). The prohibition only applies to obligations that originated prior to the servicemember's entry into military service for which the servicemember is still obligated, and is secured by a mortgage, trust deed, or other security instrument.

SCRA 305(d);(f)

Section 305(d) and (f) of the Servicemembers Civil Relief Act of 2003 (50 U.S.C. § 3955(d) and (f)), requires that:

Violation Code	Description
	(1) in the case of a lease, as described in § 305(b)(1) of the Servicemembers Civil Relief Act (50 U.S.C. § 3955(b)(1)), termination of the lease under § 305(a) (50 U.S.C. 3955(a)) is effective 30 days after the next due date for rent following the day that the written notice described in § 305(c) of the Servicemembers Civil Relief Act (50 U.S.C. § 3955(c)), is delivered; and (2) the creditor refund rent or lease amounts paid in advance for a period after the effective date of the lease termination. Such refund must be made within 30 days of the effective date of the termination of the lease.
SCRA 306(a)	Section 306(a) of the Servicemembers Civil Relief Act of 2003 (50 U.S.C. § 3957(a), prohibits a creditor from exercising any right or option obtained under an assignment of the servicemember's life insurance policy during the period of military service or within one year thereafter, without a court order. The prohibition pertains to assignments which occurred prior to the servicemembers entry into military service and is subject to the exceptions specified in § 306(b) of the Servicemembers Civil Relief Act (50 U.S.C. § 3957(b)).
Telephone Consumer Protection Act/ Miscellaneous Rules Relating to Common Carriers	
TCPA-MRCC 227(b)(1)	Section 227(b)(1) of the Communications Act of 1934 (47 U.S.C. § 227), prohibits any person within the United States, or outside the United States if the recipient is within the United States, from: making any call (other than for emergency purposes or with the prior express consent of the called party) using an automatic telephone dialing system or artificial or pre-recorded voice to any telephone line outlined under § 227(b)(1)(A)(i) through (b)(1)(A)(iii); initiating any telephone call to any residential telephone line using an artificial or pre-recorded voice to deliver a message without the prior express consent of the called party, except as permitted under § 227(b)(1)(B); using any telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine, except as permitted under § 227(b)(1)(C)(i) through (b)(1)(C)(iii); or using an automatic telephone dialing system so that two or more telephone lines of a multi-line business is engaged simultaneously.
TCPA-MRCC 227(d)(1)	Section 227(d)(1) of the Communications Act of 1934 (47 U.S.C. § 227), prohibits any person within the United States from initiating any communication using a telephone facsimile machine or making any telephone calls using any automatic telephone dialing system that does not comply with the technical and procedural standards prescribed under § 227(d); or, using a computer or other electronic device to send any message via a telephone facsimile machine unless such person clearly marks, in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission, the date and time it is sent and an identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of such business, other entity, or individual.
TCPA-MRCC 227(e)	Section 227(e) of the Communications Act of 1934 (47 U.S.C. § 227), prohibits any person within the United States, in connection with any telecommunications service or IP-enabled voice service, to cause any caller identification service to knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value, unless such transmission is exempted by Federal Communications Commission regulations as set out in § 227(e)(3)(B).

Violation Code	Description

TCPA-MRCC 64.1200(a)

The Miscellaneous Rules Relating to Common Carriers (47 C.F.R. § 64.1200(a)), prohibit any person or entity from: initiating any telephone call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or pre-recorded voice to any emergency telephone line, telephone line of any guest room or patient room, or to any telephone number assigned to a paging service, except as provided by § 64.1200(a)(2); initiating any telephone call to any residential line using an artificial or pre-recorded voice to deliver a message without the prior express written consent of the called party unless the call meets the conditions prescribed in § 64.1200(a)(3)(i)-(v); using a telephone facsimile machine, computer, other device to send an unsolicited advertisement to a telephone facsimile machine unless the call meets the conditions prescribed in § 64.1200(a)(4)(i)-(vi); using an automatic telephone dialing system in such a way that two or more telephone lines of a multi-line business are engaged simultaneously; disconnecting an unanswered telemarketing call prior to at least 15 seconds or four (4) rings; abandoning more than three percent of all telemarketing calls that are answered live by a person and not following the abandonment-related requirements of § 64.1200(a)(7)(i)-(iv); and using any technology to dial any telephone number for the purpose of determining whether the line is a facsimile or voice line.

TCPA-MRCC 64.1200(b)

The Miscellaneous Rules Relating to Common Carriers (47 C.F.R. § 64.1200(b)), require that all artificial or pre-recorded voice telephone messages state clearly at the beginning of the message the identify of the business, individual, or other entity responsible for initiating the call; state clearly during or after the message the telephone number (other than that of the auto dialer or pre-recorded message player that placed the call) of the business, other entity, or individual subject to the conditions in § 64.1200(b)(2); and provide an automated, interactive voice- and/or key press-activated opt-out mechanism for the called person to make a do-not-call request subject to the conditions of § 64.1200(b)(3).

TCPA-MRCC 64.1200(c)

The Miscellaneous Rules Relating to Common Carriers (47 C.F.R. § 64.1200(c)), prohibit any person or entity from initiating any telephone solicitation to: any residential telephone subscriber before 8 a.m. or after 9 p.m. (local time of the called party's location); or a residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the Federal Government, unless the person or entity meets requirements under § 64.1200(c)(2)(i)-(iii).

TCPA-MRCC 64.1200(d)

The Miscellaneous Rules Relating to Common Carriers (47 C.F.R. § 64.1200(d)), prohibit a person or entity from initiating any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity. The procedures must meet the following minimum standards: written policy; training of personnel engaged in telemarketing; recording and disclosing do-not-call requests; identification of sellers and telemarketers; affiliated persons or entities, and the maintenance of do-not-call lists.

Violation Code	Description

Truth in Lending Act/Regulation Z – Subpart B – Open-End Credit

TILA-B 1026.5(a)

The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.5(a), requires the creditor to make the disclosures required for open-end credit clearly and conspicuously in writing, and in a form the consumer may keep, except as provided in § 1026.5(a)(ii)(A)-(B).

TILA-B 1026.5(b)

The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.5(b), requires the creditor to provide the disclosures required for open-end credit within the timelines set forth in § 1026.5(b)(1) through (b)(4).

TILA-B 1026.5(c)

The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.5(c), requires that the open-end credit disclosures provided by the creditor reflect the terms of the legal obligation between the parties. If any information necessary for accurate disclosure is unknown to the creditor, it shall make the disclosure based on the best information reasonably available and shall state clearly that the disclosure is an estimate.

TILA-B 1026.6(a)

The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.6(a), requires the creditor to provide the consumer account opening disclosures for home equity plans secured by a dwelling under § 1026.40, that disclose the items listed under § 1026.6(a), to the extent applicable.

TILA-B 1026.6(b)

The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.6(b), requires the creditor to provide the account opening disclosures in § 1026.6(b) for open-end plans other than home equity plans secured by a dwelling under § 1026.40.

TILA-B 1026.7(a)

The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.7(a), requires the creditor to provide the consumer a periodic statement for home equity plans secured by a dwelling under § 1026.40, that discloses the information outlined under § 1026.7(a), as applicable.

TILA-B 1026.7(a); 108(e)

The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.7(a), requires the creditor to provide the consumer a periodic statement for home equity plans secured by a dwelling under § 1026.40, that discloses the information outlined under § 1026.7(a), as applicable.

Violation Code	Description
	Section 108(e)(1) and (e)(2) of the Truth in Lending Act (12 U.S.C. § 1607(e)), requires the FDIC to notify creditors in cases where an annual percentage rate or finance charge was inaccurately disclosed and to make monetary adjustments to the accounts of consumers in cases where the annual percentage rate or finance charge has been understated by more than the allowed tolerances as a result of a clear and consistent pattern or practice of violations, gross negligence, or a willful violation which was intended to mislead the person to whom the credit was extended, unless an exception under this section applies.
TILA-B 1026.7(b)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.7(b), requires the creditor to provide the consumer with a periodic statement for open-end plans other than home equity plans secured by a dwelling under § 1026.40, that discloses the information outlined in § 1026.7(b), as applicable.
TILA-B 1026.8	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.8, requires the creditor to identify credit transactions on or with the first periodic statement that reflects the transaction, by furnishing the information in § 1026.8(a) or (b), as applicable.
TILA-B 1026.9(a)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.9(a), requires the creditor to comply with the subsequent disclosure requirements for furnishing the statement of billing rights as outlined under § 1026.9(a)(1) pertaining to the annual statement.
TILA-B 1026.9(b)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.9(b), requires the creditor to comply with the disclosure requirements for supplemental credit access devices and additional features as provided in § 1026.9(b)(1) through (b)(3).
TILA-B 1026.9(c)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.9(c), requires the creditor to follow the change in terms requirements provided in § 1026.9(c)(1) and (c)(2), as applicable.
TILA-B 1026.9(d)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.9(d), requires any person, other than the card issuer, who imposes a finance charge at the time of honoring a consumer's credit card, to disclose the amount of that finance charge prior to its imposition.
TILA-B 1026.9(e)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.9(e), requires the card issuer, upon renewal of a credit or charge card, to follow the disclosure requirements provided in § 1026.9(e)(1) and (e)(2).

Violation Code	Description
TILA-B 1026.9(f)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.9(f), requires the card issuer to comply with the disclosure requirements for changes in the credit card account insurance provider as provided in § 1026.9(f)(1) through (f)(3).
TILA-B 1026.9(g)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.9(g), requires the creditor to comply with the requirements for increases in rates due to delinquency or default, or as a penalty as provided in § 1026.9(g)(1) through (g)(3) for home equity plans not subject to the requirements of § 1026.40.
TILA-B 1026.9(h)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.9(h), requires the creditor to comply with the requirements pertaining to the consumer's rejection of certain significant changes in terms as provided in § 1026.9(h)(1) and (h)(2).
TILA-B 1026.10	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.10, requires the creditor to follow the payment crediting requirements for open-end credit as provided in § 1026.10(a) through (f).
TILA-B 1026.11	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.11, requires the creditor to follow the requirements for treatment of open-end credit balances and for account termination as provided in § 1026.11(a) through (c).
TILA-B 1026.13	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.13, requires the creditor to follow the billing error resolution requirements for open-end credit as provided in § 1026.13(c) through (g).
TILA-B 1026.12	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.12, requires the creditor to follow the special credit card provisions as provided in § 1026.12(a) through (f).
TILA-B 1026.15(b)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.15(b), requires that in any transaction or occurrence subject to rescission, a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy to each if the

Violation Code	Description
	notice is delivered in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act). The notice shall identify the transaction or occurrence, and clearly and conspicuously disclose the information as provided in § 1026.15(b)(1) through (b)(5).
TILA-B 1026.15(c)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.15(c), prohibits a creditor from disbursing any money other than in escrow, performing any services, or delivering any materials until after the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded, unless a consumer waives the right to rescind under § 1026.15(e).
TILA-B 1026.15(d)(2)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.15(d)(2), requires that within 20 calendar days after receipt of a notice of rescission from a consumer, the creditor shall return any money or property that has been given to anyone in connection with the transaction and shall take any action necessary to reflect the termination of the security interest.
TILA-B 1026.16(a)-(c)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.16(a) through (c), requires that if an advertisement for open-end credit states specific credit terms, it shall state only those that actually are or will be arranged or offered by the creditor, and if certain terms are advertised as described in § 1026.16(b), additional disclosures must be made as provided in § 1026.16(b)(1) and (b)(2). Catalogs or other multiple-page advertisements and electronic advertisements shall comply with § 1026.16(c)(2), as applicable.
TILA-B 1026.16(d)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.16(d), requires home-equity plan advertisements to adhere to additional requirements as provided in § 1026.16(d)(1) through (d)(6).
TILA-B 1026.16(f)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.16(f), prohibits an advertisement for open-end credit from referring to an annual percentage rate as “fixed,” or using a similar term, unless the advertisement also specifies a time period that the rate will be fixed and will not increase during that period, or if no such time period is provided, that the rate will not increase while the plan is open.
TILA-B 1026.16(g)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.16(g), requires additional disclosures for promotional rates and fees advertised for open-end (not home-secured) credit plans, as provided in § 1026.16(g)(3) and (4).

Violation Code	Description

TILA-B 1026.16(h)(3)-(4)

The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.16(h)(3) and (4), requires additional disclosures for advertisements of deferred interest open-end credit plans not subject to § 1026.40.

Truth in Lending Act/Regulation Z – Subpart C – Closed-End Credit

TILA-C 1026.17(a)

The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.17(a), requires the creditor to make the disclosures for closed-end credit required by Subpart C, except as required by § 1026.19(e), (f), and (g), clearly, conspicuously, grouped together or segregated as required, in writing and in a form the consumer may keep. The terms "finance charge" and "annual percentage rate," when required to be disclosed under § 1026.18(d) and (e), together with a corresponding amount or percentage rate, must be more conspicuous than other disclosures, except the creditor's identity under § 1026.18(a). For private education loan disclosures, the term "annual percentage rate" and the corresponding percentage rate must be less conspicuous than the term "finance charge" and corresponding amount under § 1026.18(d), the interest rate under § 1026.47(b)(1)(i) and (c)(1), and the notice of the right to cancel under § 1026.47(c)(4).

TILA-C 1026.17(b)

The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.17(b), requires the creditor to make disclosures for closed-end credit, before consummation of the transaction, except for the disclosures required by § 1026.19(e), (f), and (g) and § 1026.20(e). The timing of disclosures under § 1026.17(b) may be delayed for transactions covered under § 1026.17(g) and (h), and other special timing requirements apply for certain other transactions as specified under § 1026.17(b).

TILA-C 1026.17(c)

The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.17(c), requires the creditor to provide disclosures that reflect the terms of the legal obligation between the parties, and to adhere to the basis of disclosures and the use of estimates as required by § 1026.17(c)(2) through (c)(5).

TILA-C 1026.17(f)

The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.17(f), requires that when disclosures are given before consummation and a subsequent event makes them inaccurate, the creditor must re-disclose any changed term unless the term was based on an estimate and labeled as such, or all changed terms if the disclosed annual percentage rate varies by more than the tolerance allowed by § 1026.22(a). This re-disclosure requirement does not apply to private education loan disclosures made in compliance with § 1026.47.

TILA-C 1026.18(a)-(c)

The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.18(a) through (c), requires a creditor to disclose the information related to the creditor's identity,

Violation Code	Description
	amount financed, and the itemization of amount financed, as applicable, for each closed-end transaction other than mortgage transactions subject to § 1026.19(e) and (f).
TILA-C 1026.18(d)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.18(d), requires the creditor to accurately disclose the "finance charge," using that term, for each closed-end credit transaction other than mortgage transactions subject to § 1026.19(e) and (f). The disclosure must include a brief description such as "the dollar amount the credit will cost you" and shall be treated as accurate if the amount disclosed as the finance charge satisfies § 1026.18(d)(1)(i) or (d)(1)(ii) for mortgage loans and § 1026.18(d)(2) for other credit transactions.
TILA-C 1026.18(d); 108(e)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.18(d), requires the creditor to accurately disclose the "finance charge," using that term, for each closed-end credit transaction other than mortgage transactions subject to § 1026.19(e) and (f). The disclosure must include a brief description such as "the dollar amount the credit will cost you" and shall be treated as accurate if the amount disclosed as the finance charge for mortgage loans satisfies § 1026.18(d)(1)(i) or (d)(1)(ii) and for other credit transactions, if it satisfies § 1026.18(d)(2). Section 108(e)(1) and (e)(2) of the Truth in Lending Act (12 U.S.C. § 1607(e)), requires the FDIC to notify creditors in cases where the finance charge was inaccurately disclosed and to make monetary adjustments to the accounts of consumers in cases where the finance charge has been understated by more than the allowed tolerances as a result of a clear and consistent pattern or practice of violations, gross negligence, or a willful violation which was intended to mislead the person to whom the credit was extended, unless an exception under this section applies.
TILA-C 1026.18(e)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.18(e), requires the creditor to disclose the "annual percentage rate," using that term, for each applicable closed-end credit transaction other than mortgage transactions subject to § 1026.19(e) and (f). The disclosure must include a brief description such as "the cost of your credit as a yearly rate."
TILA-C 1026.18(e)-108(e)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.18(e), requires the creditor to disclose the "annual percentage rate," using that term, for each applicable closed-end credit transaction other than mortgage transactions subject to § 1026.19(e) and (f). The disclosure must include a brief description such as "the cost of your credit as a yearly rate." Section 108(e)(1) and (e)(2) of the Truth in Lending Act (12 U.S.C. § 1607(e)), requires the FDIC to notify creditors in cases where the annual percentage rate was inaccurately disclosed and to make monetary adjustments to the accounts of consumers in cases where the annual percentage rate has been understated by more than the allowed tolerances as a result of a clear and consistent pattern or practice of violations, gross negligence, or a willful violation which was intended to mislead the person to whom the credit was extended, unless an exception under this section applies.

Violation Code	Description

TILA-C 1026.18(f)

The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.18(f), requires a creditor to disclose the information outlined in § 1026.18(f)(1) for applicable variable rate transactions, other than for mortgage transactions subject to § 1026.19(e) and (f), or as provided in § 1026.18(f)(3). The creditor must disclose the information outlined in § 1026.18(f)(2) if the annual percentage rate may increase after consummation for transactions secured by the consumer's principal dwelling that have terms greater than one year.

TILA-C 1026.18(g)-(j)

The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.18(g) through (j), requires a creditor to disclose the information related to the payment schedule, total of payments, any demand feature, and total sales price, as applicable, for each closed-end transaction other than mortgage transactions subject to § 1026.19(e) and (f).

TILA-C 1026.18(k)-(m)

The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.18(k) through (m), requires a creditor to disclose the information related to any prepayment penalty, late payment charge, and security interest, as applicable, for each closed-end transaction other than mortgage transactions subject to § 1026.19(e) and (f).

TILA-C 1026.18(n)-(o)

The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.18(n) and (o), requires a creditor to disclose information related to insurance, debt cancellation, and certain security interest charges, as applicable, for each closed-end transaction other than mortgage transactions subject to § 1026.19(e) and (f). Under § 1026.18(n), creditors must disclose the items required by § 1026.4(d) in order to exclude certain insurance premiums and debt cancellation fees from the finance charge. Under § 1026.18(o), creditors must make disclosures required by § 1026.4(e) in order to exclude from the finance charge certain fees prescribed by law or certain premiums for insurance in lieu of perfecting a security interest.

TILA-C 1026.18(p)-(r)

The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.18(p) through (r), requires a creditor to disclose the information related to the contract document, assumption policy, and required deposit, as applicable, for each closed-end transaction other than mortgage transactions subject to § 1026.19(e) and (f).

TILA-C 1026.18(s)

The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.18(s), requires that for closed-end transactions secured by real property or a dwelling, the creditor must disclose specific information about the interest rate and payments, other than for transactions that are subject to § 1026.19(e) and (f). The disclosures must be in accordance with the form requirements of § 1026.18(s)(1), the interest rate requirements of § 1026.18(s)(2), the payment requirements of § 1026.18(s)(3) through (s)(5), and the special disclosure requirements of § 1026.18(s)(6).

Violation Code	Description

TILA-C 1026.18(t)

The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.18(t), requires that for a closed-end transaction secured by real property or a dwelling, the creditor must disclose a "No-guarantee-to-refinance" statement, other than for transactions that are subject to § 1026.19(e) and (f). The statement must be in a form substantially similar to Model Clause H-4(k) in Appendix H of Content of Disclosures.

TILA-C 1026.19(a)

The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.19(a), requires that for reverse mortgage transactions subject to both § 1026.33 and the Real Estate Settlement Procedures Act (12 U.S.C. § 2601) secured by the consumer's dwelling, the creditor must provide the consumer with good faith estimates of the disclosures required by § 1026.18. The creditor must deliver or place the disclosures in the mail no later than the third business day after the creditor receives the consumer's written application. The creditor must adhere to the imposition of fee requirements of § 1026.19(a)(ii) and (a)(iii), the waiting period requirements of § 1026.19(a)(2), the waiver of waiting period requirements of § 1026.19(a)(3), and the notice requirements of § 1026.19(a)(4).

TILA-C 1026.19(b);(d)

The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.19(b) and (d), requires that for variable-rate transactions secured by the consumer's principal dwelling with a term greater than a year, in which the annual percentage rate may increase after consummation, the creditor must provide the disclosures outlined in § 1026.19(b) at the time an application form is provided or before the consumer pays a non-refundable fee, whichever is earlier, except as provided under § 1026.19(d).

TILA-C 1026.19(e)

The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.19(e), requires the creditor to provide a consumer in a closed-end consumer credit transaction secured by real property or a cooperative unit, a loan estimate disclosing the information required under § 1026.37. The disclosures must adhere to the requirements of § 1026.19(e)(1), the pre-disclosure activity requirements of § 1026.19(e)(2), the good faith determination for estimates of closing cost requirements of § 1026.19(e)(3), and the provision and receipt of revised disclosure requirements of § 1026.19(e)(4).

TILA-C 1026.19(f)

The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.19(f), requires the creditor to provide a consumer in a closed-end consumer credit transaction secured by real property or a cooperative unit, a closing disclosure with the information required under § 1026.38. The disclosures must adhere to the provision of disclosure requirements of § 1026.19(f)(1), the subsequent change requirements of § 1026.19(f)(2), the charges disclosed requirements of § 1026.19(f)(3), the transactions involving a seller requirements of § 1026.19(f)(4), and the fee restriction requirements of § 1026.19(f)(5).

TILA-C 1026.19(g)

Violation Code	Description
	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.19(g), requires the creditor to provide a consumer in a closed-end consumer credit transaction secured by real property or a cooperative unit, a copy of the special information booklet within the time specified, except as provided in § 1026.19(g)(1)(ii) and (g)(1)(iii). A creditor is prohibited from making changes to, deletions from, or additions to the special information booklet other than the changes specified in § 1026.19(g)(2)(i) through (g)(2)(iv).
TILA-C 1026.20(a)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.20(a), requires a creditor to treat a refinancing as a new transaction and provide new disclosures to the consumer. The new finance charge must include any unearned portion of the old finance charge that is not credited to the existing obligation.
TILA-C 1026.20(b)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.20(b), requires that for assumptions of an existing residential mortgage loan, a creditor must make new disclosures to the subsequent consumer, based on the remaining obligation, before the assumption occurs.
TILA-C 1026.20(c)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.20(c), requires the creditor, assignee, or servicer of a covered adjustable rate mortgage that incurred a payment change because of the adjustment of the interest rate, to provide certain disclosures, in accordance with the timing and content requirements of §1026.20(c)(2) and the formatting requirements described in § 1026.20(c)(3).
TILA-C 1026.20(d)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.20(d), requires that, in connection with the initial interest rate adjustment of a covered adjustable rate mortgage, the creditor, assignee, or servicer provide certain disclosures within the prescribed timeframes and in a separate document, in accordance with the content requirements of § 1026.20(d)(2) and the formatting requirements described in § 1026.20(d)(3).
TILA-C 1026.20(e)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.20(e), requires the creditor or servicer to disclose information in accordance with the content requirements of § 1026.20(e)(2), the formatting requirements described in § 1026.20(e)(4), and the timing requirements of § 1026.20(e)(5), for a covered closed-end consumer credit transaction secured by a first lien on real property or a dwelling, other than a reverse mortgage under § 1026.33, for which an escrow account was established and will be cancelled.

Violation Code	Description
TILA-C 1026.21	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.21, requires a creditor to take the actions outlined in § 1026.21(a), (b), and (c), when a credit balance in excess of $1 is created in connection with a transaction.
TILA-C 1026.23(b)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.23(b), requires the creditor to deliver two copies of the notice of the right to rescind a credit transaction in which a security interest is or will be retained or acquired in a consumer's principal dwelling to each consumer whose ownership interest is or will be subject to the security interest, except for transactions described in § 1026.23(f). The notice must follow the content and format requirements of § 1026.23(b).
TILA-C 1026.23(c)-(e)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.23(c) through (e), requires that a creditor: delay performance of the credit transaction in accordance with the requirements of § 1026.23(c); adhere to the effects of rescission under § 1026.23(d); and permit a consumer's waiver of the right to rescind in the format outlined under § 1026.23(e).
TILA-C 1026.24(a)-(b)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.24(a) and (b), requires that if an advertisement states specific credit terms, it shall clearly and conspicuously state only those terms that actually are or will be arranged or offered by the creditor.
TILA-C 1026.24(c)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.24(c), requires that if an advertisement states a rate of finance charge, the rate must be stated as an "annual percentage rate" using that term, and if the rate will increase after consummation, the advertisement must state that fact. The advertisement cannot state any other rate together with the annual percentage rate (or APR), except as permitted by § 1026.24(c).
TILA-C 1026.24(d)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.24(d), requires that when the "triggering terms" listed in § 1026.24(d)(1) appear in an advertisement, the disclosures under § 1026.24(d)(2) must also appear, as applicable. If a catalog or other multiple-page advertisement, or an electronic advertisement (such as an advertisement appearing on an Internet Web site), gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by § 1026.24(d)(2), it shall be considered a single advertisement if it meets the requirements of § 1026.24(e)(1). If a catalog or other multiple-page advertisement or an electronic advertisement (such as an advertisement appearing on an Internet Web site) does not meet the requirements of § 1026.24(e)(2), the advertisement does not comply with § 1026.24(d)(2).

Violation Code	Description

TILA-C 1026.24(f)

The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.24(f), requires that advertisements (other than television or radio advertisements) for credit secured by a dwelling that state a simple annual rate of interest and more than one simple annual rate of interest will apply over the term of the advertised loan, or that state the amount of any payment, must include the disclosures required under § 1026.24 (f)(2) and (f)(3), and must be made clearly and conspicuously, except that certain envelopes, banners, and pop-up advertisements are excluded as provided under § 1026.24(f)(4).

TILA-C 1026.24(g)

The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.24(g), requires that an advertisement made through television or radio stating any of the "triggering terms" that require additional disclosures under § 1026.24(d)(2), must comply with the disclosure requirements of § 1026.24(d)(2) by stating in the advertisement, clearly and conspicuously:
(1) each of the additional disclosures required under § 1026.24(d)(2); or
(2) the information required under § 1026.24(d)(2)(iii) and a toll-free telephone number or a reverse charge telephone number referencing that such number may be used by consumers to obtain additional loan cost information.

TILA-C 1026.24(h)

The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.24(h), requires that when an advertisement for credit secured by the consumer's principal dwelling and distributed in paper form or through the Internet states that the extension of credit may exceed the fair market value of the dwelling, the advertisement shall clearly and conspicuously disclose that, (1) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and (2) that the consumer should consult a tax adviser regarding the deductibility of interest and charges.

TILA-C 1026.24(i)

The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.24(i), prohibits, certain acts or practices in advertisements for credit secured by a dwelling, as further outlined under § 1026.24(i)(1) through (i)(7).

Truth in Lending Act/Regulation Z – Subpart D – Miscellaneous

TILA-D 1026.25

The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.25, requires, generally, that a creditor retain evidence of compliance with the disclosures in part 1026 for two years after the date they are required to be made or action is required to be taken. These retention requirements do not apply to the advertising rules under §§ 1026.16 and 1026.24, and longer retention requirements apply to certain sections in part 1026, as provided below.

A creditor is required to retain, and provide copies (as applicable) of, records in the manner specified under § 1026.25(c) that evidence compliance with the requirements of: (1) the early disclosures under §

Violation Code	Description
	1026.19(e), and the closing disclosures under § 1026.19(f) for three years after the later of the date of consummation, the date disclosures are required to be made, or the date action is required to be taken, except that the disclosures under § 1026.19(f)(1)(i) or § 1026.19(f)(4)(i) must be retained for five years after consummation; (2) the loan originator compensation under § 1026.36, for three years after the date of payment; and (3) the ability-to-repay provisions under § 1026.43, for three years after the date of consummation of a covered transaction. The administrative agencies responsible for enforcing the regulation must be permitted by the creditor to inspect the relevant records to ensure compliance with part 1026. In addition, such agencies may require creditors under their jurisdictions to retain records for a longer period, if necessary, to carry out their enforcement responsibilities under section 108 of the Act.
TILA-D 1026.26	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.26, requires that, when responding orally to a consumer's inquiry about the cost of credit, the creditor state only rates in terms of the annual percentage rate, except that, for open-end credit a periodic rate or rates may also be stated, and for closed-end credit a simple annual rate or periodic rate may also be stated if applied to an unpaid balance. Special conditions exist for open-end and closed-end transactions in which the applicable annual percentage rate cannot be determined in advance by the creditor, as provided under § 1026.26.
TILA-D 1026.27	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.27, requires the disclosures required by part 1026, with the exception of advertisements subject to §§ 1026.16 and 1026.24, also be made available in English upon the consumer's request when those disclosures are initially made in a language other than English.
TILA-D 1026.28(a)(2)(i)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.28(a)(2)(i), requires that if a creditor gives written notice of a consumer's rights under a state law that provides for a longer period of time for reporting billing errors than that allowed under Federal law with respect to the consumer’s open-end credit account, the notice must include a statement that reliance on the longer time period available for certain actions under state law may result in the loss of important rights that could be preserved by acting more promptly under Federal law. The notice must also explain when the state law provisions apply; and if applicable, where the state disclosures should appear in relation to the required Federal disclosures, as further provided under § 1026.28(a)(2)(i).
TILA-D 1026.30	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.30, requires the creditor to disclose in any consumer credit contract secured by a dwelling and subject to the Act and part 1026, the maximum interest rate that may be imposed during the term of an obligation when: (a) in the case of closed-end credit, the annual percentage rate may increase after consummation, or (b) in the case of open-end credit, the annual percentage rate may increase during the plan.

Violation Code	Description

Truth in Lending Act/Regulation Z – Subpart E – Special Rules for Certain Home Mortgage Transactions

TILA-E 1026.31(b)

The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.31(b), requires the creditor to make disclosures for certain home mortgage transactions, as outlined in §§ 1026.31 through 1026.45, clearly and conspicuously in writing, and in a form that the consumer can keep.

TILA-E 1026.31(c)(1)

The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.31(c)(1), requires the creditor to provide the high-cost mortgage disclosures required by § 1026.32, at least three business days prior to consummation or account opening. Any new disclosures provided must be in accordance to the change in terms requirements of § 1026.31(c)(1)(i), and the telephone disclosure requirements of § 1026.31(c)(1)(ii), as applicable. The consumer may waive the three business day waiting period but must satisfy the requirements outlined in § 1026.31(c)(1)(iii).

TILA-E 1026.31(c)(2)

The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.31(c)(2), requires the creditor to provide the reverse mortgage disclosures required by § 1026.33, at least three business days prior to consummation of a closed-end credit transaction, or the first transaction under an open-end credit plan.

TILA-E 1026.31(d)

The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.31(d), requires that disclosures for certain home mortgage transactions reflect the terms of the legal obligation between the parties. If any information for an accurate disclosure is unknown at the time the disclosure is provided, including per-diem interest, the creditor is required to provide the best information reasonably available and clearly state that the disclosure is an estimate.

TILA-E 1026.32(a)(3)

The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.32(a)(3), requires a creditor to determine the annual percentage rate for a closed- or open-end credit high-cost mortgage transaction in accordance with the requirements outlined in § 1026.32(a)(3)(i) through (a)(3)(iii).

TILA-E 1026.32(c)

The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.32(c), requires a creditor to provide the high-cost mortgage disclosures in addition to any other disclosures required by Regulation Z, in a conspicuous type size, as outlined in § 1026.32(c)(1) through (c)(5), as applicable.

Violation Code	Description
TILA-E 1026.32(d)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.32(d), prohibits a creditor from using the terms outlined in § 1026.32(d)(1) through (d)(8), for any high-cost mortgage transactions, unless specifically allowed under § 1026.32(d)(1)(ii) and (d)(1)(iii), or (d)(8)(i) through (d)(8)(iii).
TILA-E 1026.33(b)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.33(b), requires a creditor to provide certain disclosures for reverse mortgage transactions in a form substantially similar to the model form found in paragraph (d) of Appendix K. The disclosure must contain the information outlined in § 1026.33(b)(1) through (b)(4).
TILA-E 1026.33(c)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.33(c), requires a creditor to provide certain disclosures for reverse mortgages related to the projected total cost of credit, in accordance with the information outlined in § 1026.33(c)(1) through (c)(6), as applicable.
TILA-E 1026.34(a)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z 12 C.F.R. § 1026.34(a), prohibits certain acts or practices for high-cost mortgage loans, as outlined in § 1026.34(a)(1) through (a)(10).
TILA-E 1026.34(b)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.34(b), prohibits a creditor from structuring a high-cost mortgage in a form, for the purpose, and with the intent to evade the requirements of Subpart E - Special Rules for Certain Home Mortgage Transactions.
TILA-E 1026.35(b)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.35(b), requires a creditor to establish an escrow account, before consummation, when extending a first-lien higher-priced mortgage loan secured by a consumer's principal dwelling, unless an exemption in § 1026.35(b)(2) applies. The creditor may not cancel the escrow account, unless the conditions set forth in § 1026.35(b)(3)(i) and (b)(3)(ii) are satisfied.
TILA-E 1026.35(c)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.35(c), requires a creditor to obtain appraisals for a higher-priced mortgage loan prior to consummation, unless specifically exempt under § 1026.35(c)(2), following the requirements in § 1026.35(c)(3) through (c)(7).

Violation Code	Description
TILA-E 1026.35(d)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.35(d), prohibits a creditor from structuring credit secured by a consumer's principal dwelling that does not meet the definition of open-end credit in § 1026.2(a)(20) as an open-end plan to evade the requirements of this section.
TILA-E 1026.36(c)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.36(c), requires a creditor to adhere to certain servicing practices for closed-end consumer credit transactions secured by a consumer's principal dwelling. The servicer must adhere to the payment processing requirements as outlined in § 1026.36(c)(i) through (c)(iii), not allow for the pyramiding of late fees or delinquency charges as outlined in § 1026.36(c)(2), and provide a payoff statement as outlined under § 1026.36(c)(3).
TILA-E 1026.36(d)(1)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.36(d)(1), prohibits a loan originator from receiving compensation, in connection with a consumer credit transaction secured by a dwelling, in an amount that is based on the terms of a transaction(s), as outlined in § 1026.36(d)(1)(i) through (d)(1)(iv).
TILA-E 1026.36(d)(2)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.36(d)(2), requires, except as provided in § 1026.36(d)(2)(i)(C), that if any loan originator receives compensation directly from a consumer in a consumer credit transaction secured by a dwelling: 1) the loan originator cannot receive compensation, directly or indirectly, from any person other than the consumer in connection with the transaction; and 2) any person who knows or has reason to know of the consumer-paid compensation to the loan originator (other than the consumer) cannot pay any compensation to a loan originator, directly or indirectly, in connection with the transaction.
TILA-E 1026.36(e)(1)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.36(e)(1), prohibits a loan originator from directing or "steering" a consumer to consummate a consumer credit transaction secured by a dwelling based on the fact that the originator will receive greater compensation from the creditor in that transaction than in other transactions the originator could have offered to the consumer, unless the consummated transaction is in the consumer's interest.
TILA-E 1026.36(f)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.36(f), requires a loan originator for a consumer credit transaction secured by a dwelling, that is not a government agency or State housing finance agency, to comply with the qualification requirements as outlined in § 1026.36(f)(1) through (f)(3), as applicable.

Violation Code	Description
TILA-E 1026.36(g)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.36(g), requires a loan originator organization to include the information in § 1026.36(g)(1)(i) and (g)(1)(ii), on all documents described in § 1026.36(g)(2). The loan originator must do so whenever each loan document is provided to a consumer or presented to a consumer for signature, as applicable.
TILA-E 1026.36(h)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.36(h), prohibits mandatory arbitration clauses and waivers of certain consumer rights on a contract or other agreement relating to a consumer credit transaction secured by a dwelling, as outlined in § 1026.36(h)(1) and (h)(2).
TILA-E 1026.36(i)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.36(i), prohibits a creditor from financing, directly or indirectly, any premiums or fees for credit insurance in connection with a consumer credit transaction secured by a dwelling. This prohibition does not apply to credit insurance for which premiums or fees are calculated and paid in full on a monthly basis.
TILA-E 1026.36(j)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.36(j), requires a depository institution to establish and maintain appropriate written policies and procedures reasonably designed to ensure and monitor compliance with the requirements of § 1026.36(d) through (g).
TILA-E 1026.36(k)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.36(k), prohibits a creditor from extending credit to a first-time borrower in connection with a closed-end transaction secured by a dwelling, other than a reverse mortgage transaction subject to § 1026.33 or a transaction secured by a timeshare plan described in 11 U.S.C. § 101(53D) that may result in negative amortization, unless the creditor receives documentation that the consumer has received homeownership counseling as provided under § 1026.36(k)(1). Furthermore, § 1026.36(k)(3) prohibits a creditor from steering or directing a consumer to choose a particular counselor or counseling organization.
TILA-E 1026.37(a)-(e)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.37(a) through (e), requires the creditor to disclose on the Loan Estimate specified information under the headings "General Information," "Loan Terms," "Projected Payments," and "Costs at Closing" for each transaction subject to § 1026.19(e). The information required under § 1026.37(b) through (d) shall be disclosed under the specified headings and separate tables, and the creditor must include a statement that the consumer may obtain general information and tools at the Web site of the Consumer Financial Protection Bureau, and the link or uniform resource locator address to the Web site: www.consumerfinance.gov/mortgage-estimate, as required under § 1026.37(e).

Violation Code	Description
TILA-E 1026.37(f)-(j)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.37(f) through (j), requires the creditor to disclose on the Loan Estimate under the master heading "Closing Cost Details," a table with the heading of "Loan Costs," disclosing the items and amounts described in § 1026.37(f)(1) through (f)(4), in accordance with the requirements of § 1026.37(f)(5) and (f)(6); a table with the heading of "Other Costs," disclosing the items and amounts described in § 1026.37(g)(1) through (g)(6), in accordance with the requirements of § 1026.37(g)(7) and (g)(8); a table with the heading of "Calculating Cash to Close," itemizing amounts as required by § 1026.37(h)(1) or (h)(2), as appropriate; and if applicable, an "Adjustable Payment (AP) Table" that meets the requirements of § 1026.37(i) and an "Adjustable Interest Rate (AIR) Table" that meets the requirements of § 1026.37(j).
TILA-E 1026.37(k)-(n)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.37(k) through (n), requires the creditor to disclose on the Loan Estimate under the master heading "Additional Information About This Loan," specific information under the headings "Contact Information," "Comparisons," and "Other Considerations." At the creditor's option, a signature table to "Confirm Receipt" of the Loan Estimate following the requirements of § 1026.37(n). These disclosures must contain the information, and be made, as set forth in § 1026.37(k) through (n), as applicable.
TILA-E 1026.37(o)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.37(o), requires the creditor to format the Loan Estimate as outlined under § 1026.37(o)(1) through (o)(4) pertaining to (1) General requirements, (2) Headings and labels, (3) Form, and (4) Rounding, subject only to the exceptions outlined in § 1026.37(o)(5).
TILA-E 1026.38(a)-(d)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.38(a) through (d), requires the creditor to disclose on the Closing Disclosure specific information under the headings "General Information," "Loan Terms," "Projected Payments," and "Costs at Closing" for each transaction subject to § 1026.19(f). These disclosures must contain the information, and be made, as set forth under § 1026.38(b) through (d).
TILA-E 1026.38(e)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.38(e), requires creditors who provided the optional alternative table pursuant to § 1026.37(h)(2) to disclose the information outlined in § 1026.38(e)(1) through (e)(6) in a separate table on the Closing Disclosure for transactions that do not involve a seller or for simultaneous subordinate financing. The creditor must label the table under the heading "Calculating Cash to Close" and state, "Use this table to see what has changed from your Loan Estimate."
TILA-E 1026.38(f)-(k)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.38(f) through (k), requires the creditor to disclose on the Closing Disclosure, "Loan Costs," "Other

Violation Code	Description
	Costs," Closing Cost Totals," "Calculating Cash to Close," and "Summaries of Transactions," as applicable, under a heading for "Closing Cost Details." These disclosures must contain the information, and be made, as set forth under § 1026.38(f) through (k) using the specified headings and tables.
TILA-E 1026.38(l)-(n)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.38(l) through (n), requires the creditor to disclose on the Closing Disclosure under the master heading "Additional Information About This Loan," and under the heading "Loan Disclosures," "Assumption," "Demand Feature," "Late Payment," "Negative Amortization," "Partial Payment" Policy," "Security Interest," and "Escrow Account" information. These disclosures must contain the information, and be made, as set forth under § 1026.38(l)(1) through (l)(7). Additionally, if applicable, the table required by § 1026.37(i) under the heading "Adjustable Payment (AP) Table" and the table required by § 1026.37(j) under the heading "Adjustable Interest Rate (AIR) Table" shall also be disclosed.
TILA-E 1026.38(o)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.38(o), requires the creditor to disclose on the Closing Disclosure under the heading "Loan Calculations," the "Total of Payments," the "Finance Charge," the "Amount Financed," the "Annual Percentage Rate," using that term and the abbreviation "APR" and expressed as a percentage, and the "Total Interest Percentage," using that term and the abbreviation "TIP" and expressed as a percentage. These disclosures must contain the information, including the statements after each disclosure, as set forth under § 1026.38(o).
TILA-E 1026.38(o); 108(e)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.38(o), requires the creditor to disclose on the Closing Disclosure under the heading "Loan Calculations," the "Total of Payments," the "Finance Charge," the "Amount Financed," the "Annual Percentage Rate," using that term and the abbreviation "APR" and expressed as a percentage, and the "Total Interest Percentage," using that term and the abbreviation "TIP" and expressed as a percentage. These disclosures must contain the information, including the statements after each disclosure, as set forth under § 1026.38(o). Section 108(e)(1) and (e)(2) of the Truth in Lending Act (12 U.S.C. § 1607(e)), requires the FDIC to notify creditors in cases where the finance charge was inaccurately disclosed and to make monetary adjustments to the accounts of consumers in cases where the finance charge has been understated by more than the allowed tolerances as a result of a clear and consistent pattern or practice of violations, gross negligence, or a willful violation which was intended to mislead the person to whom the credit was extended, unless an exception under this section applies.
TILA-E 1026.38(p)-(s)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.38(p) through (s), requires the creditor to disclose on the Closing Disclosure specific information under the headings "Other Disclosures," "Questions?" and "Contact Information." At the creditor's option, the Closing Disclosure may include a signature table to "Confirm Receipt" by the applicant(s), which shall

Violation Code	Description
	follow the requirements of § 1026.38(s). These disclosures must contain the information, and be made, as set forth in § 1026.38(p) through (s), as applicable.
TILA-E 1026.38(t)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.38(t), requires the creditor to format the Closing Disclosure as outlined under § 1026.38(t)(1) through (t)(4) pertaining to (1) General requirements, (2) Headings and labels, (3) Form, and (4) Rounding, subject only to the exceptions outlined in § 1026.38(t)(5).
TILA-E 1026.39	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.39, requires a covered person, as defined in § 1026.39(a), to provide certain disclosures to the consumer on or before the 30th calendar day following the date of a mortgage purchase, assignment, or transfer as outlined in § 1026.39(b)(1) through (b)(5). These disclosures are not required with respect to a particular mortgage loan if one of the exceptions under § 1026.39(c) apply. The disclosure must comply with the content requirements outlined in § 1026.39(d)(1) through (d)(5).
TILA-E 1026.40(a)-(b)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.40(a) and (b), requires that the home equity credit plan disclosures under § 1026.40(d) follow the form of disclosure requirements as outlined under § 1026.40(a)(1) through (a)(3) and the timing requirements outlined under § 1026.40(b). The brochure required under § 1026.40(e), must also follow the timing requirements under § 1026.40(b).
TILA-E 1026.40(d)-(e)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.40(d) and (e), requires the creditor to provide home equity credit plan disclosures related to the following, as applicable: (1) Retention of information, (2) Conditions for disclosed terms, (3) Security interest and risk to home, (4) Possible actions by creditor, (5) Payment terms, (6) Annual percentage rate, (7) Fees imposed by creditor, (8) Fees imposed by third parties to open a plan, (9) Negative amortization, (10) Transaction requirements, (11) Tax implications, and (12) Disclosures for variable-rate plans. In addition, the home-equity brochure entitled "What You Should Know About Home Equity Lines of Credit" or a suitable substitute shall be provided as required by § 1026.40(e).
TILA-E 1026.40(f)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.40(f), requires creditors to adhere to limitations on home equity credit plans pertaining to (1) Changing the annual percentage rate, (2) Terminating a plan, (3) Changing terms, and (4) Terminating reverse mortgages subject to § 1026.33.
TILA-E 1026.40(g)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.40(g), requires the creditor to refund all fees paid by the consumer to anyone in connection with a

Violation Code	Description
	home equity credit plan application if any term required to be disclosed under § 1026.40(d) changes (other than a change due to fluctuations in the index in a variable-rate plan) before the plan is opened and, as a result, the consumer elects not to open the plan.
TILA-E 1026.40(h)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.40(h), prohibits a creditor from imposing a nonrefundable fee in connection with an application until three business days after the consumer receives the home equity credit plan disclosures and brochure required under this section.
TILA-E 1026.41(a)-(d)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.41(a) through (d), requires a servicer of closed-end consumer credit transactions secured by a dwelling to comply with the periodic statement requirements pertaining to (a) General requirements, (b) Timing, (c) Form, and (d) Content and layout.
TILA-E 1026.42(c)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.42(c), requires that a covered person, in connection with a covered transaction, as these terms are defined in this section, not base the valuation of a consumer's principal dwelling on any of the prohibited practices outlined in § 1026.42(c)(1) and (c)(2) pertaining to (1) Coercion and (2) Mischaracterization of value.
TILA-E 1026.42(d)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.42(d), prohibits conflicts of interest in the preparation of a valuation or performance of valuation management functions, in connection with covered transactions as defined in this section. Subsections 1026.42(d)(2) through (d)(4) provide standards for compliance for employees and affiliates of creditors, based on asset size from the past two calendar years, and for providers of multiple settlement services.
TILA-E 1026.42(e)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.42(e), prohibits creditors, in connection with a covered transaction as defined in this section, from extending credit based on a valuation which the creditor knew, at or before consummation, violated § 1026.42(c) or (d), unless the creditor documents that it has acted with reasonable diligence to determine that the valuation does not materially misstate or misrepresent the value of the consumer's principal dwelling.
TILA-E 1026.42(f)(1)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.42(f)(1), requires that the creditor and its agents compensate a fee appraiser for performing appraisal services in covered transactions, as defined by this section, at a rate that is customary and reasonable for comparable appraisal services performed in the geographic market of the property being appraised.

Violation Code	Description

TILA-E 1026.42(g)

The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.42(g), requires any covered person, as defined in this section, to report within a reasonable time to the appropriate state agency an appraiser that has materially failed to comply with the Uniform Standards of Professional Appraisal Practice or ethical or professional requirements for appraisers under applicable state or federal law or regulations. A material failure to comply exists if it is likely to significantly affect the value assigned to the consumer's principal dwelling.

TILA-E 1026.43(c)

The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.43(c), requires a creditor, in connection with a covered transaction as defined in this section, to make a reasonable and good faith determination, at or before consummation, that a consumer will have a reasonable ability to repay the loan, unless an exception applies under § 1026.43(d) through (f). A creditor must consider the factors set forth in § 1026.43(c)(2) through (c)(7) to make an ability to repay determination.

TILA-E 1026.43(g)

The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.43(g), requires a creditor to comply with the prepayment penalty requirements outlined under § 1026.43(g)(1) through (g)(5), for covered transactions defined in this section.

TILA-E 1026.43(h)

The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.43(h), prohibits a creditor from structuring credit secured by a consumer's dwelling that does not meet the definition of open-end credit in § 1026.2(a)(20) as an open-end plan to evade the requirements of this section.

Truth in Lending Act/Regulation Z – Subpart F – Special Rules for Private Education Loans

TILA-F 1026.46(c)

The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.46(c), requires creditors to make private education loan disclosures covered by Subpart F to be made clearly and conspicuously, and in accordance with the disclosure requirements of § 1026.46(c)(2), and as applicable, with the electronic disclosure requirements of § 1026.46(c)(3).

TILA-F 1026.46(d)

The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.46(d), requires a creditor to disclose private education loan information for applications or solicitations under § 1026.47(a), approvals under § 1026.47(b), and acceptance under § 1026.47(c), based on the timing requirements and contingencies specified under § 1026.46(d).

Violation Code	Description
TILA-F 1026.46(e)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.46(e), requires private education loan disclosures to reflect the terms of the legal obligation between the parties. If any information necessary for an accurate disclosure is unknown to the creditor, the creditor must make the disclosure based on the best information reasonably available at the time the disclosure is provided, and must clearly state that the disclosure is an estimate.
TILA-F 1026.46(f)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.46(f), requires that if a transaction involves more than one creditor, only one set of private education loan disclosures will be given. The creditors must agree among themselves which creditor will comply with the requirements that this part imposes on any or all of them.
TILA-F 1026.47(a)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.47(a), requires a creditor to provide certain disclosures on or with a solicitation or an application for a private education loan, except as provided for under § 1026.46(d)(1)(iii) for loans with multiple purposes. As applicable, the disclosures must contain the information outlined under § 1026.47(a)(1) through (a)(8).
TILA-F 1026.47(b)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.47(b), requires a creditor to provide certain disclosures for private education loans on or with any notice of approval provided to the consumer. The disclosure must contain information required under § 1026.18 and the information outlined under § 1026.47(b)(1) through (b)(5).
TILA-F 1026.47(c)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.47(c), requires a creditor to provide certain disclosures for private education loans after the consumer has accepted the loan in accordance with the requirements of § 1026.48(c)(1). The loan acceptance disclosures must contain the information required under § 1026.18 and the information outlined under § 1026.47(c)(1) through (c)(4).
TILA-F 1026.48(a)	The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z 12 C.F.R. §1026.48(a), prohibits a creditor, other than the educational institution itself, from marketing educational loans using an educational institution's identifying characteristics, including name, logo, mascot, and symbols in a way that implies that the covered educational institution endorses the creditor's loans, unless, as permitted by § 1026.48(b), the creditor and the educational institution have entered into an arrangement where the educational institution agrees to endorse the creditor's private education loans, such an arrangement is not prohibited by other applicable law or regulation, and the marketing includes a disclosure in the manner required under § 1026.48(b) that the creditor, not the educational institution, is making the loan.

Violation Code	Description

TILA-F 1026.48(c)

The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.48(c), requires the creditor to honor a consumer's right to accept the terms of a private education loan at any time within 30 calendar days following the date on which the consumer receives the disclosures required under § 1026.47(b). Unless specifically permitted in § 1026.48(c)(3) or (c)(4), the creditor is prohibited from changing the rate and terms of the private education loan that are required to be disclosed under § 1026.47(b) and (c) prior to the earlier of the timeframes outlined in § 1026.48(c)(2)(i) and (c)(2)(ii).

TILA-F 1026.48(d)

The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.48(d), requires the creditor to honor a consumer's right to cancel a private education loan, without penalty, until midnight of the third business day following the date on which the consumer receives the disclosures required by § 1026.47(c). The creditor is prohibited from disbursing the funds of a private education loan until the three-business day period has expired.

TILA-F 1026.48(e)

The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.48(e), requires that prior to consummating a private education loan, a creditor obtain from the consumer or the institution of higher education the private education loan self-certification form developed by the Secretary of Education, signed by the consumer, in written or electronic form.

TILA-F 1026.48(f)

The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.48(f), requires that a creditor with a preferred lender arrangement provide to the covered educational institution the information required under § 1026.47(a)(1) through (a)(5), for each type of private education loan the lender plans to offer to consumers for students attending the covered educational institution for the period beginning July 1 of the current year and ending June 30 of the following year. The creditor must provide the information annually, within the timeframes outlined in this section.

Truth in Lending Act/Regulation Z – Subpart G – Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students

TILA-G 1026.51(a)

The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.51(a), prohibits a card issuer from opening a credit card account for a consumer under an open-end (not home-secured) consumer credit plan, or increasing any credit limit applicable to such account, unless the card issuer considers the consumer's ability to repay to make the required minimum payment under the terms of the account and establishes and maintains reasonable policies and procedures to consider the consumer's ability to repay as outlined under § 1026.51(a)(1)(i) through (a)(1)(ii). A creditor must use a reasonable method for estimating the minimum periodic payments the consumer would be required to pay under the terms of the account as outlined in § 1026.51(a)(2).

Violation Code	Description
TILA-G 1026.51(b)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.51(b), prohibits a creditor from opening a credit card account under an open-end (not home-secured) consumer credit plan for a consumer less than 21 years old, unless the consumer has submitted a written application and the card issuer has complied with § 1026.51(b)(1)(i) or (b)(1)(ii), as applicable. A creditor cannot increase the credit limit on a credit card account opened pursuant to § 1026.51(b)(1) before the consumer is 21years old unless it follows the requirements of § 1026.51(b)(2)(i) or (b)(2)(ii), as applicable.
TILA-G 1026.52(a)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.52(a), requires that the total amount of fees a consumer pays on a credit card account under an open-end (not home-secured) consumer credit plan during the first year after account opening must not exceed 25 percent of the credit limit in effect when the account is opened, except that this limitation does not apply to fees listed under § 1026.52(a)(2).
TILA-G 1026.52(b)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.52(b), prohibits a card issuer from imposing a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan unless the dollar amount of the fee is consistent with § 1026.52(b)(1) through (b)(2).
TILA-G 1026.53	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.53, requires that when a consumer makes a payment in excess of the required minimum payment for a credit card account under an open-end (not home-secured) consumer credit plan, the creditor must allocate the excess payment as specified by § 1026.53(a), except as provided under § 1026.53(b).
TILA-G 1026.54	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.54, prohibits the card issuer from imposing finance charges as a result of the loss of a grace period on a credit card account under an open-end (not home-secured) consumer credit plan if those finance charges are based on: (i) balances for days in billing cycles that precede the most recent billing cycle; or (ii) any portion of a balance subject to a grace period that was repaid prior to the expiration of the grace period, except as provided for under § 1026.54(b).
TILA-G 1026.55(a)-(b)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.55(a) and (b), prohibits a card issuer from increasing an annual percentage rate or a fee, or a charge required to be disclosed under § 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) on a credit card account under an open-end (not home-secured) consumer credit plan, except as provided in § 1026.55(b).

Violation Code	Description
TILA-G 1026.55(c)(2)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.55(c)(2), prohibits a card issuer from requiring repayment of the protected balance using a method that is less beneficial to the consumer than one of the methods outlined in § 1026.55(c)(2)(i) through (c)(2)(iii).
TILA-G 1026.56(b)(1)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.56(b)(1), prohibits a card issuer from assessing a fee or charge on a consumer's credit card account under an open-end (not home-secured) consumer credit plan for an over-the-limit transaction unless the card issuer complies with §1026.56(b)(1)(i) through (b)(1)(v).
TILA-G 1026.56(c)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.56(c), requires a card issuer who permits a consumer to consent to the card issuer's payment of any over-the-limit transaction in writing, orally, or electronically, to also permit the consumer to revoke his or her consent using the same methods available to the consumer for providing consent.
TILA-G 1026.56(d)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.56(d), requires the card issuer to follow the timing and placement requirements of notices as outlined in § 1026.56(d)(1) through (d)(3) regarding the (1) Initial notice, (2) Confirmation of opt-in, and (3) Notice of right of revocation.
TILA-G 1026.56(e)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.56(e), requires the card issuer to comply with the content requirements for the initial notice and subsequent notice as outlined in § 1026.56(e)(1) through (e)(2).
TILA-G 1026.56(f)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.56(f), requires that if two or more consumers are jointly liable on a credit card account under an open-end (not home-secured) consumer credit plan, the card issuer shall treat the affirmative consent of any of the joint consumers as affirmative consent for that account. Similarly, the card issuer shall treat a revocation of consent by any of the joint consumers as revocation of consent for that account.
TILA-G 1026.56(i)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.56(i), requires a card issuer to comply with a consumer's revocation request as soon as reasonably practicable after the card issuer receives it.

Violation Code	Description
TILA-G 1026.56(j)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.56(j), prohibits a card issuer, notwithstanding a consumer's affirmative consent to a card issuer's payment of over-the-limit transactions, from imposing over-the-limit fees or charges in excess of one per cycle (unless the exception of § 1026.56(j)(1)(ii) applies) or solely because of the creditor's failure to promptly replenish the credit limit. A creditor is also prohibited from conditioning a credit limit on whether a consumer provided affirmative consent, and charging over-the-limit fees attributed to fees or interest charged by the cardholder.
TILA-G 1026.57(b)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.57(b), requires an institution of higher education to publicly disclose any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card to college students.
TILA-G 1026.57(c)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.57(c), prohibits a card issuer from offering a college student any tangible item to induce such student to apply for or open an open-end consumer credit plan offered by such card issuer or creditor, if such offer is made: (1) on a campus of the institution of higher education; (2) near the campus of an institution of higher education; or (3) at an event sponsored by, or related to, an institution of higher education.
TILA-G 1026.57(d)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.57(d), requires a card issuer that was party to one or more college credit card agreements in effect at any time during a calendar year to submit to the Consumer Financial Protection Bureau (CFPB) an annual report regarding those agreements in the form and manner prescribed by the CFPB. The card issuer must include in the annual report the required contents described in § 1026.57(d)(2) and must adhere to the timing requirements prescribed in § 1026.57(d)(3).
TILA-G 1026.58(c)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.58(c), requires an issuer of credit cards under an open-end (not home-secured) consumer credit plan to comply with the submission of credit card agreements to the Consumer Financial Protection Bureau as outlined in § 1026.58(c)(1) through (c)(8), unless an exception applies.
TILA-G 1026.58(d)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.58(d), requires an issuer of credit cards under an open-end (not home-secured) consumer credit plan to post its credit card agreements on its publicly available Web site as outlined in § 1026.58(d)(1) through (d)(4).

Violation Code	Description
TILA-G 1026.58(e)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.58(e), requires an issuer of credit cards under an open-end (not home-secured) consumer credit plan to comply with the agreement requirements for all open accounts as outlined in § 1026.58(e)(1) through (e)(3).
TILA-G 1026.59	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.59, requires an issuer of credit cards under an open-end (not home-secured) consumer credit plan to comply with the requirements of § 1026.59(a)(1) for the evaluation of increased rates and § 1026.59(a)(2) for rate reductions. In addition, card issuers must comply with the requirements for the evaluation of rate increases as specified in § 1026.59(b) through (h), including, written policies and procedures, timing, review of factors considered in determining the applicable annual percentage rate, rate increases due to delinquency, and the rules for acquired credit card accounts.
TILA-G 1026.60(a)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.60(a), requires the card issuer to provide the disclosures required under this section on or with a solicitation or an application to open a credit or charge card account. These disclosures shall follow the format specified under § 1026.60(a)(2) and follow the requirements of § 1026.60(a)(4) for fees that can vary by state.
TILA-G 1026.60(b)-(f)	The Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.60(b) through (f), requires the card issuer to disclose the items in these subsections, unless an exception applies, on or with an application or a solicitation to open a credit or charge card account.
TILA-G 1026.61(b)	The Truth in Lending Act (15 U.S.C. § 1601 et. seq.), as implemented by Regulation Z, § 1026.61(b), prohibits a hybrid prepaid-credit card issuer from structuring the credit feature as a negative balance on the asset feature of a prepaid account. Instead, the credit feature must be structured as a separate credit feature, as described in this subsection.
TILA-G 1026.61(c)	The Truth in Lending Act (15 U.S.C. § 1601 et. seq.), as implemented by Regulation Z, § 1026.61(c), prohibits a card issuer from engaging in the activities in § 1026.61(c)(1)(i) through (c)(1)(iii), with respect to a covered separate feature that could be accessible at any point by a hybrid prepaid-credit card, until 30 days after the prepaid account has been registered.

Violation Code	Description

Truth in Savings Act/Regulation DD

TISA 1030.3

The Truth in Savings Act (12 U.S.C. § 4301 et seq.), as implemented by Regulation DD, 12 C.F.R. § 1030.3, requires a financial institution to make disclosures required by §§ 1030.4 through 1030.6 of this part, as applicable, clearly and conspicuously, in writing, and in a form the consumer may keep. The disclosures should also meet the requirements of § 1030.3(b) through (f) regarding the terms of the legal obligation; responding to oral inquiries; and the rounding and accuracy rules for rates and yields. Disclosures required by, and provided in accordance with, the Electronic Funds Transfer Act and its implementing Regulation E, that are also required by this part may be substituted for the disclosures required by this part.

TISA 1030.4(a)-(b)

The Truth in Savings Act (12 U.S.C. § 4301 et seq.), as implemented by Regulation DD, 12 C.F.R. § 1030.4(a) and (b), requires a financial institution to provide account disclosures to a consumer before an account is opened or a service provided, whichever is earlier, and to provide account disclosures to a consumer upon request. The account disclosures must contain the information required by § 1030.4(b).

TISA 1030.5(a)

The Truth in Savings Act (12 U.S.C. § 4301 et seq.), as implemented by Regulation DD, 12 C.F.R. § 1030.5(a), requires a financial institution to provide advance notice to affected consumers of any change in terms required to be disclosed under § 1030.4(b), if the change reduces the annual percentage yield or adversely affects the consumer, except as permitted under § 1030.5(a)(2). The notice must include the effective date of the change, and be mailed or delivered at least 30 calendar days before the effective date of the change.

TISA 1030.5(b)-(c)

The Truth in Savings Act (12 U.S.C. § 4301 et seq.), as implemented by Regulation DD, 12 C.F.R. § 1030.5(b) and (c), requires a financial institution to provide disclosures before maturity, by disclosing specific information for time accounts longer than one month that renew automatically; and time accounts longer than one year that do not renew automatically. These disclosures must be provided in accordance with the content and timing requirements of subsections (b) and (c).

TISA 1030.6

The Truth in Savings Act (12 U.S.C. § 4301 et seq.), as implemented by Regulation DD, 12 C.F.R. § 1030.6, requires a financial institution to provide certain periodic statement disclosures. Section 1030.6(a) requires a financial institution that mails or delivers a periodic statement to include disclosures of the annual percentage yield earned; amount of interest; fees imposed; length of the statement period; and total overdraft and returned item fees as required by § 1030.11(a). The institution must also meet the requirements of § 1030.6(b) when the financial institution uses the average daily balance method and calculates interest for a period other than the statement period.

Violation Code	Description
TISA 1030.7	The Truth in Savings Act (12 U.S.C. § 4301 et seq.), as implemented by Regulation DD, 12 C.F.R. § 1030.7, requires a financial institution to calculate interest on the full amount of principal in an account each day using permissible methods, and to use the same method in determining any minimum balance to earn interest. This section also requires that interest begin to accrue not later than the business day specified for interest-bearing accounts as set out in the Expedited Funds Availability Act (12 U.S.C. § 4005) and its implementing Regulation CC (12 C.F.R. part 229).
TISA 1030.8(a)	The Truth in Savings Act (12 U.S.C. § 4301 et seq.), as implemented by Regulation DD, 12 C.F.R. § 1030.8(a), prohibits a financial institution from advertising in a way that is misleading or inaccurate, or that misrepresents an institution's deposit contract. An institution's advertisements cannot refer to, or describe, an account as "free" or "no cost" (or contain a similar term), if any maintenance activity fee may be imposed on the account, or use the word "profit" in referring to interest paid on an account.
TISA 1030.8(b)-(c)	The Truth in Savings Act (12 U.S.C. § 4301 et seq.), as implemented by Regulation DD, 12 C.F.R. § 1030.8(b) and (c), requires that, if a financial institution advertises a rate of return, the advertisement state the rate as an "annual percentage yield" using that term (the abbreviation APY may be used as long as "annual percentage yield" is used at least once in the advertisement). The only other rate that may be stated is "interest rate" if not more conspicuous than the annual percentage yield to which it is related. In addition, except as provided by § 1030.8(e), if the financial institution advertises the annual percentage yield, the advertisement must clearly and conspicuously state information, as applicable, regarding variable rates; the time the annual percentage yield is offered; any minimum balance and minimum opening deposit requirements; the effect of any fees; and the features of time accounts.
TISA 1030.8(d)	The Truth in Savings Act (12 U.S.C. § 4301 et seq.), as implemented by Regulation DD, 12 C.F.R. § 1030.8(d), requires that, except as provided by § 1030.8(e), if a financial institution advertises a bonus, the advertisement must clearly and conspicuously state the "annual percentage yield," using that term; the time requirement to obtain the bonus; the minimum balance required to obtain the bonus; the minimum balance required to open the account; and when the bonus will be provided.
TISA 1030.9(c)	The Truth in Savings Act (12 U.S.C. § 4301 et seq.), as implemented by Regulation DD, 12 C.F.R. § 1030.9(c), requires a financial institution to retain evidence of compliance with the requirements of part 1030 for a minimum of two years after the date disclosures are required to be made or action is required to be taken.
TISA 1030.11(a)	The Truth in Savings Act (12 U.S.C. § 4301 et seq.), as implemented by Regulation DD, 12 C.F.R. § 1030.11(a), requires a financial institution to separately disclose on each periodic statement, as applicable, the total dollar amount for all fees or charges imposed on the account for paying checks or other items

Violation Code	Description
	when there are insufficient or unavailable funds and the account becomes overdrawn, using the term "Total Overdraft Fees;" and the total dollar amount for all fees or charges imposed on the account for returning items unpaid. These fee disclosures must be provided for the statement period and for the calendar year-to-date, using the format requirements of § 1030.11(a)(3).
TISA 1030.11(b)	
	The Truth in Savings Act (12 U.S.C. § 4301 et seq.), as implemented by Regulation DD, 12 C.F.R. § 1030.11(b), requires a financial institution to disclose in a clear and conspicuous manner in any advertisement promoting the payment of overdrafts, except as provided in § 1030.11(b)(2) through (b)(4), the fee(s) for payment of each overdraft; the categories of transactions for which a fee for paying an overdraft may be imposed; the time period by which the consumer must repay or cover any overdraft; and the circumstances under which the institution will not pay an overdraft.
TISA 1030.11(c)	
	The Truth in Savings Act (12 U.S.C. § 4301 et seq.), as implemented by Regulation DD, 12 C.F.R. § 1030.11(c), prohibits a financial institution from disclosing balance information to a consumer through an automated system that includes "additional amounts" that the institution may provide to cover an item when there are insufficient or unavailable funds in the consumer's account, whether under a discretionary service, a service subject to Regulation Z (12 C.F.R. part 1026), or a service to transfer funds from another account of the consumer. A financial institution may, at its option, disclose additional balances that include such additional amounts if the institution prominently states that balances include the additional amounts and, if applicable, that the amounts are not available for all transactions.
Unfair & Deceptive Acts or Practices (Section 5 of FTC Act)	
UDAP Section 5(No Subsection–Unfair)	
	Section 5 of the Federal Trade Commission Act of 1914 (15 U.S.C. § 45) prohibits unfair acts or practices. 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.
UDAP Section 5(No Subsection–Deceptive)	
	Section 5 of the Federal Trade Commission Act of 1914 (15 U.S.C. § 45) prohibits deceptive acts or practices. To determine whether a representation, omission, or practice is "deceptive," a three-part test is used. 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.

III. Examination Templates

Federal Deposit Insurance Corporation
Division of Depositor and Consumer Protection
[XXX] Field Office
[Mailing Address]
[City, State Zip]

[Month Day, Year]

[Name]
[Title]
[Bank Name]
[Mailing Address]
[City, ST Zip]

Dear [Name]:

We are planning to conduct a [CHOOSE ONE: Consumer Compliance OR Consumer Compliance and Community Reinvestment Act (CRA)] examination of your institution in the upcoming quarter. The purpose of this letter is to provide you with information about the examination process and a list of available resources.

EXAMINATION PROCESS

Our upcoming examination will assess how your institution complies with various consumer protection laws and regulations. Examiners will evaluate your institution's compliance management system (CMS) using a risk-based approach that involves: developing a compliance risk profile of your institution's products, services, markets, organizational structure, operations, and past supervisory performance; identifying inherent risks associated with the level and complexity of your business operations; and testing selected transactions when an area has a high risk of consumer harm and CMS efforts appear weak.

Examiners will evaluate your institution using the Uniform Interagency Consumer Compliance Rating System, which is organized under three broad categories: board and management oversight, compliance program, and violations of law and consumer harm. The first two categories, board and management oversight and compliance program, are used to assess your institution's CMS. The third category, violations of law and consumer harm, includes assessment factors that evaluate the dimensions of any identified violation or consumer harm.

- Board and management oversight is assessed based on the level of oversight and commitment to your institution's CMS; effectiveness of your institution's change management processes; comprehension, identification, and management of risks arising from your institution's products, services, or activities; and self-identification of consumer compliance issues and corrective action undertaken as such issues are identified.
- The compliance program is assessed based on whether your institution's policies and procedures are appropriate to the risk in the products, services, and activities of your

institution; the degree to which compliance training is current and tailored to risk and staff responsibilities; the sufficiency of the monitoring and audit, if applicable, to encompass compliance risks throughout your institution; and the responsiveness and effectiveness of the consumer complaint resolution process.

- The violations of law and consumer harm are assessed by analyzing the root cause(s) of any violations of law identified during the examination; the severity of any consumer harm resulting from violations; the duration of time over which the violations occurred; and the pervasiveness of the violations.

Examiners will also review your institution's ability to appropriately assess, measure, monitor, and control the risks associated with significant third-party relationships. Additionally, examiners will review and follow-up on violations, recommendations, and Matters Requiring Board Attention, as applicable, identified at your previous Consumer Compliance examination. Information related to the examination process, including examination procedures and definitions of consumer harm, can be found in the FDIC Compliance Examination Manual, which is available at www.fdic.gov/regulations/compliance/manual.

[ONLY INCLUDED WHEN CRA EXAMINATION SCHEDULED: The 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. The FDIC has adopted 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. More information about the CRA examination procedures and the asset size thresholds can be found at www.ffiec.gov/cra.]

Pre-Examination Interview

The Examiner-in-Charge (EIC) will conduct a pre-examination interview prior to the on-site portion of your examination. The purpose of the interview is to ensure that we understand your institution's operations, as well as the products and services offered. It further allows us to tailor any information and document requests appropriately and plan for the examination efficiently.

Enclosed is a list of the questions the EIC will use to conduct the interview. We encourage you to review these questions in advance and invite appropriate institution personnel to participate in the interview. We are not requesting that you prepare written responses to these questions. After this interview, you will receive a Compliance Information and Document Request (CIDR) to complete and return to the FDIC. The EIC will use your responses to the CIDR to determine the scope of our on-site review. Once the EIC has determined the products and services to be reviewed on-site, a subsequent request for specific transactional level information may be provided.

FDIC*connect*

During the pre-examination interview, the EIC will discuss the method(s) available for exchanging examination information and will determine your willingness to provide electronic information via FDIC*connect*. FDIC*connect* is an encrypted system designed to specifically accommodate the interchange of sensitive information between the FDIC and the financial institutions we supervise. The FDIC strives to maintain high security standards associated with obtaining and holding

confidential bank documents. To achieve our goals of efficiency and security, we prefer that you submit documents associated with the examination through FDIC*connect* Enterprise File Exchange (EFX). You can upload documents to this site as separate files, or you can utilize any computer application that electronically groups or "zips" multiple files together and upload the zipped file in one step.

Representatives of your institution should already have access privileges for FDIC*connect*. Users may access the system and the instructions at www.fdicconnect.gov. If you need assistance accessing or using FDIC*connect*, please e-mail FDICConnect@fdic.gov or call 877-275-3342 and select option 4.

REFERENCE RESOURCES

Listed below are some of the resources available to assist bank management in understanding and managing the examination process.

FDIC Website
The FDIC's website has several resources that you may find useful. In particular, www.fdic.gov/regulations contains the following links:

- *Bank Examinations* – includes information about Consumer Compliance, CRA, and fair lending examination processes and supervisory guidance.
- *Resources for Bank Officers & Directors* – includes the Community Banking Initiative and the Directors' Resource Center, which focuses on guidance and other information that address current issues faced by the banking industry. Links to the Technical Assistance Video Program are also available.

Technical Assistance
FDIC examiners can provide you with certain types of technical assistance related to consumer compliance. Information about the technical assistance offered by the FDIC is available at www.fdic.gov/regulations/resources/director/Technical.pdf.

COMMUNICATION WITH FDIC

We strive to maintain open communication throughout the examination process. Ongoing communication between the examination staff and bank management is a critical element of effective bank supervision. All Board members are also encouraged to participate with bank management in the examination process, which can provide an opportunity to discuss compliance-related banking matters.

Your institution is supervised by the [XXX] Field Office, which is part of the FDIC's [XXX] Region. The EIC is your primary point of contact; however, if you wish to provide feedback or have concerns during the examination, we encourage you to contact the Field Supervisor, Supervisory Examiner, or Regional Office. In the event these efforts are not successful, you may contact the Division Director at DirectorDCP@fdic.gov. The FDIC provided this communication

channel to FDIC-supervised institutions in FIL-51-2016, which is available at www.fdic.gov/news/news/financial/2016/fil16051.html.

FDIC Office of the Ombudsman

The FDIC Office of the Ombudsman is a confidential, neutral, and independent source of information and assistance to anyone affected by the FDIC in its regulatory, resolution, receivership, or asset disposition activities. If you have concerns about your interactions with the FDIC, you may contact them with questions. Information about the Office of the Ombudsman is available at www.fdic.gov/regulations/resources/ombudsman/.

At the end of the examination, you will receive a Post-Examination Survey from the Office of the Ombudsman. We encourage financial institutions to provide feedback on the examination process, Report of Examination, and other supervisory processes by completing this survey. Your feedback is confidential and responses are not attributable to your institution unless you specifically request follow-up from FDIC senior leadership. Honest and candid feedback helps ensure that the FDIC's supervisory programs are fair, balanced, and objective.

FDIC Appeals Process

If disagreements or other concerns arise, we encourage bank management to communicate their concerns with the EIC, field office management, or the appropriate regional office staff. Division-level informal reviews are also available. If informal efforts to resolve disagreements are not successful, you may pursue a formal request as explained in the Supervision Appeals Review Committee (SARC) Guidelines available at www.fdic.gov/regulations/laws/sarc/sarcguidelines.html.

If you have questions regarding the information in this letter, please contact me at [phone number].

Sincerely,

[Name]
[Title]

Enclosure: Pre-Examination Interview Questions

Bank of Anytown

Anytown **Any County** **Any State**

Region: Regional Office Name Certificate Number: 12345

Examiner in Charge: Robin J. Cummings

Examination Date: Month XX, 20XX

Examiner's Comments and Conclusions	12345

The Bank of Anytown Examination Template provides guidance on the format and content of the Report of Examination (ROE). Examiners use their professional judgment and discretion when writing the ROE. The ROE informs the Board of Directors about the examination findings. Additionally, the tone matches the Compliance Management System element descriptors (strong, adequate, and weak). Examination staff prepare the ROE according to the Plain Writing Act, which requires federal agencies to use clear government communication that the public can understand and use. Finally, all formal recommendations that require follow-up by the bank are limited to the "Matters Requiring Board Attention" section of the ROE.

SCOPE OF EXAMINATION

This section must include, at a minimum, the following information.

- *Date of examination and name of the Examiner-in-Charge.*
- *Review period (discuss CRA evaluation period, if applicable).*
- *Type (Compliance, CRA, both, or Visitation) and purpose of the examination.*
- *Description of the role or impact, if any, of other examination findings, ratings, or pre-examination materials on establishing the scope.*
- *Description of the process or procedures used to review the CMS, fair lending, and CRA.*

Example:

Examiner-in-Charge Robin J. Cummings conducted a compliance examination and a Community Reinvestment Act (CRA) evaluation of Bank of Anytown as of [month, day, year].

The examination included a risk-focused review of the bank's compliance management system (CMS), with an emphasis on areas exhibiting potential risk of consumer harm, since the [month, day, year] FDIC compliance examination. FDIC data, bank documentation, and publicly available information influenced the examination scope. Based on the compliance risk profile of the institution, examiners focused transaction testing in areas such as residential lending activities and third-party relationships. In addition, examiners conducted a fair lending review using the Federal Financial Institutions Examination Council's Fair Lending Examination Procedures focusing on consumer loan pricing. Examiners evaluated the bank's CRA performance using Intermediate Small Institution Examination Procedures, focusing on activities since the previous evaluation dated [month, day, year].

CONSUMER COMPLIANCE RATING

This section must include, at a minimum, the following information.

- *Disclosure of, and support for, the Consumer Compliance Rating.*
- *Discussion of the primary factors contributing to the rating.*
- *Trend of the institution's compliance posture since the prior examination.*
- *Reference to the Matters Requiring Board Attention page, if appropriate.*

Example:

A Consumer Compliance Rating of "2" is assigned. An institution in this category represents a financial institution that maintains a CMS that is satisfactory at managing consumer compliance risk in the institution's products and services and at substantially limiting violations of law and consumer harm. The rating is supported

Examiner's Comments and Conclusions (Continued)	12345

by adequate Board of Directors (Board) and management oversight and an adequate compliance program. Although a Level 3/High Severity violation is cited, the violation was self-identified and management implemented corrective action during the examination. As a result, the duration of consumer harm was limited. The compliance posture remains unchanged since the prior examination. The Matters Requiring Board Attention, which follow the Examiner's Comments and Conclusions, detail matters that require follow-up by the Board and additional supervisory oversight.

COMPLIANCE MANAGEMENT SYSTEM

Board and Management Oversight

This section must include, at a minimum, the following information:

- *Summary statement about the quality of Board and Management Oversight based upon the institution's size, complexity, and risk profile. Use one of the following descriptors: strong, adequate, or weak.*
- *Comments addressing each of the following components of Board and Management Oversight, as outlined below under the optional sub-headings:*
  - *Oversight and Commitment –*
    - *Commitment to and oversight of the institution's CMS.*
    - *Level of resources dedicated toward compliance functions.*
    - *Due diligence and oversight of third parties to ensure compliance with consumer protection laws and regulations, and appropriate oversight of third parties' compliance responsibilities.*
  - *Change Management –*
    - *Anticipation and responsiveness to changes in applicable laws and regulations, market conditions, and products and services offered.*
    - *Due diligence reviews performed in advance of product changes, considering the entire lifecyle of the product or service, and after implementation of changes.*
  - *Comprehension, Identification, and Management of Risk –*
    - *Comprehension and identification of compliance risks, including emerging risks, in the institution's financial products, services, and other activities.*
    - *Management of identified risk, including self-assessments.*
  - *Corrective Action and Self-Identification –*
    - *Comment(s) addressing whether Matters Requiring Board Attention and recommendations from the previous examination, if any, have been satisfactorily addressed. Comments regarding any outstanding issues should be made under the applicable CMS elements.*
    - *Identification of and responsiveness to compliance risk management deficiencies and violations of law or regulations, including remediation.*
- *Separate summary statement for any recommendation(s) after the discussion of strengths and weaknesses of the Board and Management Oversight components, as applicable.*

Example:

Board and management oversight is adequate. Examiners considered oversight and commitment; change management; comprehension, identification, and management of risk; and corrective action and self-identification.

Examiner's Comments and Conclusions (Continued)	12345

Oversight and Commitment
Board and management provide adequate oversight to the compliance function. The Board demonstrates its commitment to maintaining an effective CMS in several key ways. First, the Board allocates sufficient resources to compliance functions. Vice President and Compliance Officer (CO) Taylor Cook has the independence and authority needed to effect corrective actions and is knowledgeable of consumer protection laws and regulations. Second, minutes from the Board, Compliance, and Audit Committees revealed regular discussion and ample knowledge of compliance matters. Finally, the Board reviews and approves compliance policies annually, or more frequently as necessitated by changes in consumer protection regulations.

Management has generally conducted effective and ongoing due diligence and oversight of third parties. However, one weakness was identified related to a new relationship with third-party service provider, Error Resolution Services, Inc. (ERS). The bank contracted with ERS at year-end [year], but did not adequately review the contract or understand processes related to handling error resolutions, resulting in a Level 2/Medium Severity Violation of the Electronic Funds Transfer Act (EFTA).

Strengthening due diligence and contract review processes prior to entering contracts with third parties will help mitigate the risk of consumer harm and prevent future violations. See Matters Requiring Board Attention and Level 2/Medium Severity Violations Pages for additional details.

Change Management
Management has demonstrated the ability to respond timely and adequately to regulatory changes. Management proactively developed procedures and provided training in anticipation of the Truth in Lending Act (TILA)-Real Estate Settlement Procedures Act (RESPA) Integrated Disclosure Rule (TRID). Management was also aware of changes to flood insurance regulations in response to the Biggert-Waters Act and updated policies and procedures accordingly. However, changes were not fully communicated to personnel, which contributed to a Level 2/Medium Severity Violation of Flood Insurance. See Level 2/Medium Severity Violations Pages for recommendations.

Comprehension, Identification, and Management of Risk
Management comprehends and identifies compliance risks throughout the institution, including risks involved with new products and services. For example, management identified the new overdraft program as a high-risk area. As a result, CO Cook implemented a comprehensive oversight program to ensure compliance with applicable regulations and internal policies on an ongoing basis.

In addition to discussions held at periodic Compliance Committee meetings, CO Cook presents emerging issues to the Audit Committee, as well as the results of monitoring efforts and compliance audits. The Board is sufficiently informed through reviews of Compliance and Audit Committee minutes. This structure enhances Board and management's ability to identify, prevent, and correct deficiencies.

Corrective Action and Self-Identification
Management appropriately identifies deficiencies through ongoing monitoring and auditing programs. In addition, all Matters Requiring Board Attention, violations, and recommendations from the prior examination were fully addressed and in a timely manner. However, in one case management failed to implement corrective action for a self-identified issue. Specifically, a Level 3/High Severity Violation was cited involving an exception

Examiner's Comments and Conclusions (Continued)	12345

in the audit report in which management failed to provide corrective action. Eight consumers were harmed but were not provided remediation.

Examiners recommend that management ensure full corrective action is completed, including any applicable remediation, in response to all compliance-related findings. See Level 3/High Severity Violation Pages for additional details.

Compliance Program

This section must include, at a minimum, the following information.

- *Summary statement about the quality of the overall Compliance Program using one of the following descriptors: strong, adequate, or weak.*
- *Subsequent information, as applicable, under the designated sub-headings: Policies and Procedures, Training, Monitoring and/or Audit, and Consumer Complaint Response.*
- *Separate summary statement about policies and procedures, training, monitoring and/or audit, and consumer complaint response using one of the following descriptors: strong, adequate, or weak.*
- *Scope and adequacy of policies and procedures, training, monitoring and/or audit, and consumer complaint response. Focus on strengths and weaknesses, particularly in identifying, addressing, and preventing consumer harm.*
- *Deficiencies in policies and procedures, training, and monitoring and/or audit; and violations that resulted, or could pose a risk of consumer harm.*
- *Volume of consumer complaints received by the bank, or complaints pertaining to the bank, received by third-party service provider(s) since the prior compliance examination. State number and impact, if known. State whether the institution responded timely and effectively.*
- *Separate summary statement for any recommendation(s) after the discussion of strengths and weaknesses of the Compliance Program components, as applicable*

Example:

The Compliance Program is adequate. Examiners considered strengths and weaknesses in policies and procedures, training, monitoring and audit, and consumer complaint response.

Policies and Procedures

Policies and procedures and third-party relationship management programs are adequate. The bank has written policies for all applicable consumer protection regulations and formal procedures for most compliance-related regulations. Fair lending procedures document underwriting criteria, exceptions to policy, and loan processing centralization. However, there is no guidance on pricing consumer loans. Instead, individual loan officers have pricing discretion. The lack of formalized guidance combined with a lack of internal controls over pricing increases fair lending risks. In addition, a weakness in procedures regarding the calculation of annual percentage rates contributed to the Level 3/High Severity Violation of TILA, resulting in customer restitution totaling $18,000. Finally, the lack of formalized due diligence procedures to ensure that Board and management are aware of compliance and other risks prior to entering into contracts with third parties contributed to Level 2/Medium Severity violations of the EFTA.

Examiner's Comments and Conclusions (Continued)	12345

Examiners recommend that management develop formal guidance on pricing consumer loans and include monitoring and/or auditing of areas where discretion is allowed. The development and implementation of third-party oversight procedures will help ensure appropriate due diligence and contract structuring, and revisions to the Loan Processing Policy and related procedures will provide for accurate annual percentage rate calculations. See Matters Requiring Board Attention, Level 3/High Severity Violations, and Level 2/Medium Severity Violations Pages for additional details.

Training

Compliance training is adequate and provided timely to appropriate staff. CO Cook is responsible for compliance training and establishes an annual training schedule for Directors, management, and staff. Compliance training is multifaceted, employing in-person meetings, online programs, and external workshops and seminars. Training appropriately focuses on new and revised consumer protection regulations and areas exhibiting greater risk of consumer harm. CO Cook periodically assesses employees' knowledge and updates training with current information. Despite these efforts, a lack of training on new Flood Insurance requirements contributed to the Level 2/Medium Severity Violation resulting in customer restitution totaling $326.

Examiners recommend training loan personnel on recent Flood Insurance requirements. See Level 2/Medium Severity Violation Pages for additional details.

Monitoring and/or Audit

Monitoring practices and the audit program are adequate. The institution employs various methods of monitoring for compliance with consumer protection regulations in the loan administration, deposit operations, and other areas. In addition to regularly scheduled reviews, monitoring is used to follow-up on audit and examination findings, regulation changes, and new product or service implementation. Since the last examination, management implemented an effective pre-closing review of all residential real estate loan transactions.

Monitoring practices are supplemented by a formalized, external audit program. External audit firm Anytown Risk Advisors conducts periodic risk-based compliance audits, including deposit and loan compliance audits semi-annually and fair lending audits annually. Written audit reports are comprehensive, addressing the scope, sample size, identified deficiencies, corrective action recommendations, management's responses, and timeframes for correction. Responses to audit findings are prompt. The Audit Committee develops an annual compliance risk assessment, which considers exceptions noted in monitoring and assists in prioritizing the audit schedule and scope based on risk. While audit is generally effective, the scope of the [year] lending audit did not review compliance with force-placed flood insurance requirements. Examiners identified a Level 2/Medium Severity Violation of Flood Insurance, specifically relating to force-placed policies.

Examiners recommend expanding the scope of the Flood Insurance audit to include compliance with force-placed Flood Insurance requirements. See Level 2/Medium Severity Violations Pages for additional details.

Consumer Complaint Response

Consumer complaint response procedures are adequate and address complaints received by the bank and third-party service providers. These complaints include feedback received from consumers, whether it is verbal, written, or electronic. Under the Board-approved complaint policy, CO Cook is charged with investigating and responding to consumer complaints. In addition, CO Cook effectively monitors complaints to identify any issues that may have a widespread impact on consumers or business practices and takes action when warranted. Since

Examiner's Comments and Conclusions (Continued)	12345

the last examination, the bank received one written complaint, which management responded to in a timely and appropriate manner.

VIOLATIONS OF LAW AND CONSUMER HARM

This section should briefly summarize the following information, as applicable:

- *Impact of the violation(s) identified on the evaluation of the institution's CMS and resulting consumer compliance rating.*
- *Summary statement of the primary weaknesses or deficiencies that contributed to the violations.*
- *Assessment of severity and duration of consumer harm.*
- *Pervasiveness or number of consumers impacted.*

Example:

The violations identified during this examination did not evidence a deficient CMS or warrant an adverse consumer compliance rating. The violations were the result of minor weaknesses in policies, procedures, training, and third party oversight. One violation resulted in $18,000 of restitution to eight customers. Because the violation was self-identified and partially corrected prior to the examination, the duration of consumer harm was limited. Bank management has committed to full corrective action.

COMMUNITY REINVESTMENT ACT

This section must include, at a minimum, the following information.

- *The CRA rating, including the interagency definition of the rating*
- *A brief statement explaining the basis for the rating*
- *A statement referring the reader to the CRA Performance Evaluation*

Example:

A CRA Rating of Satisfactory is assigned. The bank has a satisfactory record of helping to meet the credit needs of its assessment areas, including low- and moderate-income neighborhoods. Satisfactory ratings under the Lending Test and Community Development Test support the overall rating. Please refer to the Performance Evaluation for further details.

MEETING WITH MANAGEMENT

This section must include, at a minimum, the following information.

- *The date of the meeting.*
- *The names and titles of the attendees representing the FDIC, state regulators, and the bank.*
- *Brief comment on items discussed at the meeting, including but not limited to the compliance examination findings and proposed rating, fair lending review, and the CRA performance evaluation findings and proposed rating. Include a statement that ratings are subject to additional review.*
- *Management's response to the findings, proposed ratings, and recommendations; CRA performance evaluation and proposed ratings; and any proposed enforcement action(s), if applicable.*
- *Management's willingness to make restitution, if applicable.*

Examiner's Comments and Conclusions (Continued)	12345

Example:

On [month, day, year], Examiner-in-Charge Cummings, Supervisory Examiner Kenneth Randall, and Financial Institution Specialist Joseph Barr met with management to discuss the results of the examination and the CRA evaluation. President James Crowley, Senior Vice President Stephen Gidney, Vice President Matthew Wolcott, Vice President Edward Harl, and CO Cook represented the bank.

Examiner-in-Charge Cummings discussed the scope of the examination, and the strengths and weaknesses of the CMS. She also discussed the importance of maintaining a CMS that prioritizes areas where harm to consumers may occur, particularly in third-party oversight. Finally, Examiner-in-Charge Cummings addressed the fair lending portion of the examination, the violations cited, and the bank's CRA performance.

Examiners discussed all recommendations and Matters Requiring Board Attention in the Report and disclosed the proposed compliance and CRA ratings. Examiner-in-Charge Cummings informed management that the ratings are subject to additional review. Management was receptive to the findings of the compliance examination and CRA evaluation. They concurred with the proposed ratings, agreed to address all Matters Requiring Board Attention and recommendations, and confirmed that voluntary restitution was provided to customers impacted by the TILA and Flood Insurance violations on [month, day, year].

Examiner-in-Charge Robin J. Cummings (Signature)	Reviewer Sheila K. Barnett (Signature)

Matters Requiring Board Attention	12345

*This section is **only** included in the ROE for significant matters that require action by the Board and additional supervisory oversight. Matters Requiring Board Attention should be presented on a separate page, and must include, at a minimum, the following information.*

- *An introductory statement explaining the significance of the matters.*
- *Specific matters (CMS deficiencies or violations) that require action by the Board and follow-up by the regulators. Each Matter Requiring Board Attention must include the following components:*
  - *Specific issue warranting attention*
  - *Measurable action to be taken*
  - *Benefit of prompt corrective action or potential consequence of inaction*
- *Board or management's response to the Matters Requiring Board Attention, and the timeframe(s) for implementation. Examiners may use their judgment in determining whether one response to the Matters Requiring Board Attention is sufficient, or if an individual response to each item is necessary. Include the name(s) of the individual(s) who committed to the corrective action(s) whether there is one response to all matters or individual responses to each. Also include a conclusion reminding the Board of their responsibility to respond.*

Example:

The following matters identified during the compliance examination represent areas where Board action is necessary to ensure the CMS continues to provide a framework to successfully manage its compliance responsibilities and risks. These matters will receive supervisory follow-up prior to the next examination.

- Third Party Oversight - The Board and management did not conduct sufficient due diligence when entering into a third-party contract. This resulted in a violation of the EFTA and potential harm to customers. The development and implementation of procedures governing third-party providers will help provide for effective due diligence prior to entering into contracts with third parties. Furthermore, these procedures will ensure that the Board and management are aware of compliance and other risks prior to entering into third-party contracts. Financial Institution Letter 44-2008, *Guidance for Managing Third-Party Risk* (June 6, 2008), provides additional information regarding third-party risk management principles and practices that assist management in developing a third party oversight program that meets the needs of the bank.

- Truth in Lending - Current bank procedures do not include all fees required in the annual percentage rate calculation causing a systemic violation that resulted in a severe level of harm to the bank's customers. The development and implementation of procedures will assist applicable personnel in including all required fees into the prepaid finance charge and ensure the accurate calculation of annual percentage rates and prevent the recurrence of TILA violations.

President Crowley agreed to implement corrective action in each of the above areas within 30 days after receiving the Report. It is the Board's responsibility to ensure that these matters are addressed and provide responses, as requested.

Level 3/High Severity Violations	12345

Level 3 violations are those violations that have resulted in significant harm to consumers or members of a community and/or may pose legal or reputational risks, or financial harm to the bank.

Level 3/High Severity and Level 2/Medium Severity Violations, listed in order of severity, must include the following elements, as applicable.

- *Summary of regulatory section and violation code*
- *Description of how the institution's practices differed from regulatory requirements*
- *Sample size reviewed, and universe of applicable transactions*
- *Number of violations identified and 2-3 examples. (Examples are not required if the violation is systemic.)*
- *Description of the root cause(s) of the violation*
- *Description of any corrective action taken by the institution before or during the examination*
- *Information about whether the violation was previously identified but remained unchanged since the previous examination*
- *Corrective action(s) recommended*
- *Management's response to the violation and recommendations (noting the individual responding)*

Example:

TRUTH IN LENDING VIOLATIONS SUBJECT TO RESTITUTION

The Truth in Lending Act (15 U.S.C. § 1601 et seq.), as implemented by Regulation Z, 12 C.F.R. § 1026.18(e), requires the creditor to disclose the "annual percentage rate," using that term, for each applicable closed-end credit transaction other than mortgage transactions subject to § 1026.19(e) and (f). The disclosure must include a brief description such as "the cost of your credit as a yearly rate." [TILA-C 1026.18(e); 108(e)]

Section 108(e)(1) and (e)(2) of the Truth in Lending Act (12 U.S.C. § 1607(e)), requires the FDIC to notify creditors in cases where the annual percentage rate was inaccurately disclosed and to make monetary adjustments to the accounts of consumers in cases where the annual percentage rate has been understated by more than the allowed tolerances as a result of a clear and consistent pattern or practice of violations, gross negligence, or a willful violation which was intended to mislead the person to whom the credit was extended, unless an exception under this section applies.

Loan processors failed to include the loan guarantee fee as a prepaid finance charge when calculating the "amount financed" on Anytown Housing Finance Agency (AHFA) loans. Consequently, the Truth in Lending (TIL) disclosures understated the annual percentage rate for each loan. In the second and third quarter [year] quality control reports, Anytown Risk Advisors identified this error in all eight AHFA loans the bank originated. At that time, management did not perform a file review or determine if restitution was applicable. Although CO Cook provided TIL training in [month, year], she did not update the bank's written procedures to reflect how employees should consider the loan guarantee fee in the "amount financed" calculation. This omission is the root cause of the violation. While on-site, CO Cook and examiners confirmed that the eight loans identified by Anytown Risk Advisors represented the total universe of loans originated since the last examination.

Level 3/High Severity Violations (Continued)	57125

Revisions to the Loan Processing Policy and Procedures Manual to specify how different loan fees should be treated in the "amount financed" calculation will help ensure this violation does not recur. In addition, examiners recommend that management implement practices to provide for full corrective action, including any applicable remediation, is made in response to findings.

Management's Response: *Management provided restitution totaling $18,000 on [month, day, year]. CO Cook also committed to updating the Loan Processing Policy and related procedures and committed to ensuring full corrective action in response to findings.*

Level 2/Medium Severity Violations	12345

Level 2 violations include systemic, recurring or repetitive errors that represent a failure of the bank to meet a key purpose of the underlying regulation or statute but do not rise to a Level 3 violation.

Refer to the Level 3/High Severity Violations page for required elements.

Example:

FLOOD INSURANCE

The Flood Disaster Protection Act of 1973 (42 U.S.C. §§ 4001-4129), as implemented by part 339 of the FDIC Rules and Regulations, 12 C.F.R. § 339.7(b)(1), requires that within 30 days of receipt of a confirmation of a borrower's existing flood insurance coverage, an FDIC-supervised institution or its servicer must: (i) notify the insurance provider to terminate any insurance purchased by the institution or its servicer under § 339.7(a); and (ii) refund to the borrower all premiums and any related fees paid by the borrower for any insurance purchased by the institution or its servicer under § 339.7(a) during any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the institution or its servicer were each in effect.
[FLOOD 339.7(b)(1)]

Examiners reviewed all five flood insurance policies that management force-placed since the last examination. In two instances, borrowers confirmed that they had purchased private flood insurance policies. Loan personnel terminated the force-placed policies. However, the bank did not refund the premium for the force-placed policy for the timeframe the borrower's policy was also in effect, which is required by the Biggert-Waters Act amendments to flood insurance requirements. CO Cook is aware of the Biggert-Waters Act requirements and updated the bank's Flood Insurance Policy and procedures. The root cause of this violation is that CO Cook did not train loan personnel on the Biggert-Waters requirements involving force-placed insurance. Further, compliance with force-placed flood insurance requirements was not included in the scope of the Flood Insurance audit, which contributed to the violation continuing undetected.
Examiners recommended training for loan personnel on flood insurance and expanding the scope of the Flood Insurance audit to include compliance with force-placed flood insurance requirements. They also reminded management that the regulatory agencies are mandated to assess civil money penalties for pattern or practice flood insurance violations.

Affected borrowers are evidenced in the following table:

Borrower	Loan Number	Loan Date	Premium Due Customer
Last Name	XXXXX	MM/DD/YYYY	$150
Last Name	XXXXX	MM/DD/YYYY	$176

Management's Response: CO Cook reviewed the force-placed flood insurance requirements of the Biggert-Waters Act with loan personnel during the examination and committed to expanding the scope of the bank's flood audit. She also scheduled formal flood insurance training for the third quarter of [year]. President Crowley notified the affected customers and voluntarily provided $326 in restitution for the premium amounts on [month, day, year].

Level 2/Medium Severity Violations (Continued)	12345

ELECTRONIC FUND TRANSFERS

The Electronic Fund Transfers Act (15 U.S.C. § 1693 et seq.), as implemented by Regulation E, 12 C.F.R. § 1005.11(c), requires a financial institution to investigate, determine whether an error occurred, report the results to the consumer, and correct the error within the timeframes provided under this subsection (c). [EFTA-A 1005.11(c)]

Bank personnel did not process all Electronic Fund Transfer (EFT) error disputes according to Section 1005.11(c) of Regulation E. CO Cook explained that management relies solely on ERS to manage the EFT dispute process. ERS is a new third-party service provider contracted since the last examination. Examiners reviewed the log showing all 20 disputes that ERS received relating to the Bank of Anytown. The log notes the timeframes for processing each dispute. There were three disputes under $20 that ERS did not process. During the examination, deposit personnel reviewed the three disputes and determined that no EFT errors occurred that required adjustments to customer accounts. The root cause of this violation is that CO Cook was unaware that the ERS contract stated that claims under $20 would not be processed.
Thorough review of the bank's third-party oversight procedures and the ERS contract will help ensure that all EFT disputes are processed according to regulatory requirements.

Affected customers are evidenced in the following table:

Name	Account Number	Dispute Date	Dispute Amount
Last Name	XXXXX	MM/DD/YYYY	$5
Last Name	XXXXX	MM/DD/YYYY	$10
Last Name	XXXXX	MM/DD/YYYY	$15

Management's Response: President Crowley agreed that it is management's responsibility to ensure that third-party contracts and procedures comply with regulations. He stated that the bank will properly investigate all claims going forward.

Level 1/Low Severity Violations	12345

Level 1 violations are isolated or sporadic in nature or systemic violations that are unlikely to impact consumers or the underlying purposes of the regulation or statute.

Level 1/Low Severity Violations must include, at a minimum, the following information.

- *Regulatory section and violation code*
- *Description of how the institution's practices differed from regulatory requirements*
- *Blanket statement indicating management's (specific name) actions or intentions to address the noted violation(s)*
- *The Level 1/Low Severity Violations should be provided to management and a copy retained in the examination workpapers. They should not be included in the ROE.*

Example:

Identification of Regulation	Description of Provision Violated
REAL ESTATE SETTLEMENT PROCEDURES	
§ 1024.7(f) **[RESPA-B 1024.7(f)]**	In one instance, loan processing personnel did not deliver a revised good faith estimate form within the required time period.
TRUTH IN LENDING	
§ 1026.23(b) **[TILA-C 1026.23(b)]**	A loan officer did not provide the right of rescission notice to one customer.
EQUAL CREDIT OPPORTUNITY	
§ 1002.13(a)-(c) **[ECOA 1002.13(a)-(c)]**	A loan officer did not collect government monitoring information on two home refinance applications.

Management's Response: CO Cook stated that she will meet individually with applicable personnel to review the violations cited above.

IV. Fair Lending Laws and Regulations

Fair Lending Laws and Regulations

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 Consumer Financial Protection Bureau's Regulation B, found at 12 CFR part 1002, 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 1002.

The Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010 further amended the ECOA and covers:

- Data collection for loans to minority-owned and women-owned businesses (awaiting final regulation);
- Legal action statute of limitations for ECOA violations is extended to five years (effective July 21, 2010); and
- A disclosure of the consumer's ability to receive a copy of any appraisal(s) and valuation(s) prepared in connection with first-lien loans secured by a dwelling is to be provided to applicants within 3 business days of receiving the application (effective January 18, 2014).

NOTE: Further information regarding the technical requirements of fair lending are incorporated into the sections ECOA V 7.1 and FCRA VIII 6.1 of this manual.

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 violation may still exist even if a lender treated applicants equally.

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 characteristics of 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 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; and
- 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 1002.4(b) 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.

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 non-minority 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 because the judgment had been vacated. The non-minority 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 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 $60,000.00. 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.

The 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 Introduction is intended to help examiners recognize fair lending issues that may have a potential disparate impact. Guidance in the **Appendix** to the Interagency Fair Lending Examination Procedures provides details on how to obtain relevant information regarding such situations along with methods of evaluation, 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 as necessary to ensure their effective implementation.While these procedures apply to many examinations, agencies routinely use statistical analyses or other specialized techniques in fair lending examinations to assist in evaluating whether a prohibited basis was a factor in an institution's credit decisions. Examiners should follow the procedures provided by their respective agencies in these cases.

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 latitude.

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 the examiner greater latitude than his, or her, own agency would. For example, if an agency's policy is to review compliance management systems in all of its institutions, 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 are applicable to other prohibited bases and to nonresidential transactions.

Finally, these procedures focus on analyzing institution compliance with the broad, nondiscrimination 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 1002.7 and 1002.9, respectively, of Regulation B.

Part I — Examination Scope Guidelines Background

The FDIC has developed the Fair Lending Scope and Conclusions Memorandum (FLSC) to implement a standard nationwide format for documenting the scope and conclusions of fair lending reviews. FLSC has been adopted as a means of focusing the examiner's attention to the areas that pose the greatest unmanaged fair lending risk to the institution. It incorporates the Interagency Fair Lending Examination Procedures[1] and assists in documenting the types of fair lending risks that are present; the controls that

[1] The interagency examination procedures are presented in their entirety in Part III of this section of the manual.

management has put in place to manage the risk; the effectiveness of these controls; why the particular focal point(s) are chosen; the level of review conducted; and the results of any additional analysis that was conducted. The FLSC is included in section IV-3.1 of this manual.

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 *Using Self-Tests and Self-Evaluations to Streamline 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 *Using Self-Tests and Self-Evaluations to Streamline the Examination* in the **Appendix** for additional details.

Scoping may disclose the existence of circumstances — such as the use of credit scoring or a large volume 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 to arrive at a well-reasoned and practical conclusion about how to conduct a particular institution's examination of fair lending performance.

In certain cases where an agency already possesses information which 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. However, examiners should validate that the institution's operational structure, product offerings, policies, and risks have not changed since the prior examination before condensing the scoping process.

The scoping process can be performed either off-site, onsite, or both, depending on whatever is determined appropriate and feasible. In the interest of minimizing burdens on both the examination team and the institution, 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* "**Potential Scoping Information**" in the **Appendix** 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 broad categories of credit such as residential, consumer, or commercial, as well as product variations within such categories (fixed vs. variable, etc.).
- Whether the institution has a special purpose credit program, or other program that is specifically designed to assist certain underserved populations.
- 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 institution's loan officer or broker compensation program.
- 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 Community Reinvestment Act (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 without prior consultation with agency staff.
- 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 their processes and internal controls to determine whether or not expanding the scope and/or length of the examination is justified.
- 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.

- Applicants can be steered from the financial institution to the subsidiary or other lending channel and vice versa, and what policies and procedures exist to monitor this practice.
- 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 an institution may be in violation if it participates in transactions in which it knew or reasonably ought to have known other parties were discriminating.

As part of understanding the financial institution's own lending operations, it is also important to understand any dealings the financial institution has with affiliated and non-affiliated mortgage loan brokers and other third party lenders.

These brokers may generate mortgage applications and originations solely for a specific financial institution or may broadly gather loan applications for a variety of local, regional, or national lenders. As a result, it is important to recognize what impact these mortgage brokers and other third party lender actions and application processing operations have on the lending operations of a financial institution. Because brokers can be located anywhere in or out of the financial institution's primary lending or CRA assessment areas, it is important to evaluate broker activity and fair lending compliance related to underwriting, terms, and conditions, redlining, and steering, each of which is covered in more depth in sections of these procedures. Examiners should consult with their respective agencies for specific guidance regarding broker activity.

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 Metropolitan Statistical Area (MSA) or underwriting center(s) that are determined to present the highest discrimination risk. Examiners should use Loan Application Register (LAR) data organized by underwriting center, if available. After calculating denial rates between the control and prohibited basis groups for the underwriting centers, examiners should select the centers with the highest fair lending risk. This approach would also be used when reviewing pricing or other terms and conditions of approved applicants from the prohibited basis and control groups. If underwriting centers have fewer than five racial or national origin denials, examiners should not examine for racial discrimination in underwriting. Instead, they should shift the focus to other loan products or prohibited bases, or examination types such as a pricing examination.

However, if examiners learn of other indications of risks that favor analyzing a prohibited basis with fewer transactions than the minimum in the sample size tables, they should consult with their supervisory office on possible alternative methods of analysis. For example, there is strong reason to examine a pattern in which almost all of 19 male borrowers received low rates but almost all of four female borrowers received high rates, even though the number of each group is fewer than the stated minimum. Similarly, there would be strong reason to examine a pattern in which almost all of 100 control group applicants were approved but all four prohibited basis group applicants were not, even though the number of prohibited basis denials was fewer than five.

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 institution's key underwriting personnel and those involved with establishing the institution's pricing policies and practices. 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 "Considering Automated Underwriting and Credit Scoring" section of the **Appendix** for

guidance.)

- Applicable pricing policies, risk-based pricing models, and guidance for exercising discretion over loan terms and conditions.
- Descriptions of any compensation system, including whether compensation is related to, loan production or pricing.
- The institution's formal and informal relationships with any finance companies, subprime mortgage or consumer lending entities, or similar institutions.
- Loan application forms.
- Home Mortgage Disclosure Act – Loan Application Register (HMDA-LAR) or loan registers and lists of declined applications.
- Description(s) of databases maintained for loan product(s) to be reviewed.
- Records detailing policy exceptions or overrides, exception reporting and monitoring processes.
- Copies of any consumer complaints alleging discrimination and related loan files.
- Compliance program materials (particularly fair lending policies), training manuals, organization charts, as well as record keeping, monitoring protocols, and internal controls.
- Copies of any available marketing materials or descriptions of current or previous marketing plans or programs or pre-screened solicitations.

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, policies and procedures 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 required by applicable laws and regulations is nonexistent or incomplete.

C3. Data and/or recordkeeping problems compromised reliability of previous examination reviews.

C4. Fair lending problems were previously found in one or more institution products or in institution subsidiaries.

C5. The size, scope, and quality of the compliance management program, including management's involvement, designation of a compliance officer, and staffing is materially inferior to programs customarily found in institutions of similar size, market demographics, and credit complexity.

C6. The institution has not updated compliance policies and procedures to reflect changes in law or in agency guidance.

C7. Fair lending training is nonexistent or weak.

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 improvement, 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 manufactured housing loans
- Wholesale, indirect, and brokered loans
- Portfolio lending (including portfolios of Fannie Mae/Freddie Mac rejections)

In addition, determine whether the institution offers any conventional "affordable" housing loan programs special purpose credit programs or other programs that are specifically designed to assist certain borrowers, such as underserved populations 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 or pricing policies at those centers or in those residential products.
- No unresolved fair lending complaints, administrative proceedings, litigation, or similar factors.
- No discretion to set price or credit terms and conditions in particular decision centers or for particular residential products.

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.).

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 is 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.*

Overt *indicators of discrimination such as:*

O1. Including explicit prohibited basis identifiers in the institution's written or oral policies and procedures (underwriting criteria, pricing standards, etc.).

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 *Part E* of the *Considering Automated Underwriting and Credit Scoring* 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.

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 standard underwriting criteria, 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. Financial incentives for loan officers or brokers to charge higher prices (including interest rate, fees and points). Special attention should be given to situations where financial incentives are accompanied by broad pricing discretion (as in P2), such as through the use of overages or yield spread premiums.

P2. Presence of broad discretion in loan pricing (including interest rate, fees and points), such as through overages, underages or yield spread premiums. Such discretion may be present even when institutions provide rate sheets

and fees schedules, if loan officers or brokers are permitted to deviate from those rates and fees without clear and objective criteria.

P3. Use of risk-based pricing that is not based on objective criteria or applied consistently.

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.

P6. *In mortgage pricing, disparities in the incidence or rate spreads[2] of higher-priced lending by prohibited basis characteristics as reported in the HMDA data.

P7. *A loan program that contains only borrowers from a prohibited basis group, or has significant differences in the percentages of prohibited basis groups, especially in the absence of a Special Purpose Credit Program under ECOA.

Indicators of potential ***disparate treatment by Steering*** *such as:*

S1. Lack of clear, objective and consistently implemented standards for (i) referring applicants to subsidiaries, affiliates, or lending channels within the institution (ii) classifying applicants as "prime" or "sub-prime" borrowers, or (iii) deciding what kinds of alternative loan products should be offered or recommended to applicants (product placement).

S2. Financial incentives for loan officers or brokers to place applicants in nontraditional products (i.e., negative amortization, "interest only", "payment option" adjustable rate mortgages) or higher cost products.

S3. For an institution that offers different products based on credit risk levels, any significant differences in percentages of prohibited basis groups in each of the alternative loan product categories.

S4. *Significant differences in the percentage of prohibited basis applicants in loan products or products with specific features relative to control group applicants. Special attention should be given to products and features that have potentially negative consequences for applicants (i.e., non-traditional mortgages, prepayment penalties, lack of escrow requirements, or credit life insurance).

S5. *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 to the percentage of prohibited basis applicants of the subsidiary(ies) or affiliate(s).

S6. *For an institution that has one or more lending channels that originate the same loan product, any significant differences in the percentage of prohibited basis applicants in one of the lending channels compared to the percentage of prohibited basis applicants of the other lending channel.

S7. Consumer complaints alleging discrimination in residential loan pricing or product placement.

S8. *For an institution with sub-prime mortgage subsidiaries, a concentration of those subsidiaries' branches in minority areas relative to its other branches.

Indicators of potential ***discriminatory Redlining*** *such as:*

R1. *Significant differences, as revealed in HMDA data, in the number of applications received, withdrawn, approved not accepted, and closed for incompleteness or loans originated in those areas in the institution'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 non-minority) 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. *Significant differences in the number of originations of higher-priced loans or loans with potentially negative consequences for borrowers, (i.e., non-traditional mortgages, prepayment penalties, lack of escrow requirements) in areas with relatively high concentrations of minority residents compared with areas with relatively low concentrations of minority residents.

R5. Other patterns of lending identified during the most recent CRA examination that differ by the concentration of minority residents.

R6. Explicit demarcation of credit product markets that excludes MSAs, political subdivisions, census tracts, or other geographic areas within the institution's lending market or CRA assessment areas and having relatively high concentrations of minority residents.

R7. Difference in services available or hours of operation at

[2] Regulation C, Section 203.4(a)(12)

branch offices located in areas with concentrations of minority residents when compared to branch offices located in areas with concentrations of non-minority residents.

R8. 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.

R9. The institution's CRA assessment area appears to have been drawn to exclude areas with relatively high concentrations of minority residents.

R10. Employee statements that reflect an aversion to doing business in areas with relatively high concentrations of minority residents.

R11. Complaints or other allegations by consumers or community representatives that the institution excludes or restricts access to credit for areas with relatively high concentrations of minority residents. Examiners should review complaints against the institution filed either with their agency or the institution; 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 institutions during prior CRA examinations.

R12. An institution that has most of its branches in predominantly non-minority neighborhoods at the same time that the institution's sub-prime 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 non-minority areas of the market.

M3. Marketing through brokers or other agents that the institution 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 institutions 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.

M6. *Proportion of 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. For complex issues regarding these factors, consult with agency supervisory staff.

- 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, B, 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, C.
- Where any of the risk factors P1-P7 are present, consider conducting a pricing comparative file analysis as described in Part III, D.
- Where any of the risk factors S1-S8 are present, consider conducting a steering analysis as described in Part III, E.
- Where any of the risk factors R1-R12 are present, consider conducting an analysis for redlining as described in Part III, G.
- Where any of the risk factors M1-M7 are present, consider conducting a marketing analysis as described in Part III, H.
- 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, I.

Step Six: Identify Consumer Lending Discrimination Risk

Factors

For any consumer loan products selected in Step One for risk analysis, examiners should conduct a risk factor review similar to that conducted for residential lending products in Steps Three through Five, above. Examiners should consult with agency supervisory staff 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, a Hispanic or Asian surname could constitute a surrogate for an applicant's race or national origin because the examiner can assume that the institution (which can rebut the presumption) perceived the person to be Hispanic or Asian. Similarly, an applicant's given name could serve as a surrogate for his or her gender. A surrogate for a prohibited basis group characteristic may be used to set up a comparative analysis with control group applicants or borrowers.*

Examiners should then follow the rules in Steps Three through Five, above and identify the possible discriminatory patterns encountered and consider examining those products determined to have sufficient risk of discriminatory conduct.

Step Seven: Identify Commercial Lending Discrimination Risk Factors

Where an institution does a substantial amount of lending in the commercial lending market, most notably small business lending 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; R5-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 high concentrations of minority residents compared to areas with concentrations of non-minority residents.

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 *Fair Lending Sample Size Tables* 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 guidance, provided the self-test or self-evaluation meets the requirements set forth in *Using Self-Tests and Self-Evaluations to Streamline the Examination* located in the **Appendix**.

Part III — Examination Procedures[3]

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. Verify Accuracy of Data

Prior to any analysis and preferably before the scoping process, examiners should assess the accuracy of the data being reviewed. Data verifications should follow specific protocols (sampling, size, etc.) intended to ensure the validity of the review. For example, where an institution's LAR data is relied upon, examiners should generally validate the accuracy of the institution's submitted data by selecting a sample of LAR entries and verifying that the information noted on the LAR was reported according to instructions by comparing information contained in the loan file for each sampled loan. If the LAR data are inconsistent with the information contained in the loan files, depending on the nature of the errors, examiners may not be able to proceed with a fair lending analysis until the LAR data have been corrected by the institution. In cases where inaccuracies impede the examination, examiners should direct the institution to take action to ensure data integrity (data scrubbing, monitoring, training, etc.).

***NOTE**: While the procedures refer to the use of HMDA data, other data sources should be considered, especially in the case of non-HMDA reporters or institutions that originate loans but are not required to report them on a LAR.*

B. 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 institution'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

[3] This reflects the interagency examination procedures in their entirety.

presentation to management in connection with Part IV of these procedures.

C. 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 *Fair Lending Sample Size Tables*, 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 institution 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 institution'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 supervisory staff 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, a mathematical formula, or an automated tool) 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 institution 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. <u>Create Applicant Profile Spreadsheet</u>

   Based upon the institution'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 institution 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 institution'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 *Identifying 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 institution 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 institution 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 *Considering Automated Underwriting and Credit Scoring*, Part C in 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 management and document both the findings and all conversations on an appropriate worksheet.

D. Analyzing Potential Disparities in Pricing and Other Terms and Conditions.

Depending on the intensity of the examination and the size of the borrower population to be reviewed, the analysis of decisions on pricing and other terms and conditions may involve a comparative file review, statistical analysis, a combination of the two, or other specialized technique used by an agency. Each examination process assesses an institution's credit-decision standards and whether decisions on pricing and other terms and conditions are applied to borrowers without regard to a prohibited basis.

The procedures below encompass the examination steps for a comparative file review. Examiners should consult their own agency's procedures for detailed guidance where appropriate. For example, when file reviews are undertaken in conjunction with statistical analysis, the guidance on specific sample sizes referenced below may not apply.

Step 1. Determine Sample Selection

Examiners may review data in its entirety or restrict their analysis to a sample depending on the examination approach used and the quality of the institution's compliance management system. The Fair Lending Sample Size Tables in the ***Appendix*** provide general guidance about appropriate sample sizes. Generally, the sample size should be based on the number of prohibited basis group and control group originations for each focal point selected during the 12 months preceding the examination and the outcome of the compliance management system analysis conducted in Part II. When possible, examiners should request specific loan files in advance and request that the institution have them available for review at the start of the examination.

Step 2. Determine Sample Composition and Create Applicant Profiles

Examiners should tailor their sample and subsequent analysis to the specific factors that the institution considers when determining its pricing, terms, and conditions. For example, while decisions on pricing, and other terms and conditions are part of an institution's underwriting process, general underwriting criteria should not be used in the analysis if they are not relevant to the term or condition to be reviewed. Additionally, consideration should be limited to factors which examiners determine to be legitimate.

While the period for review should be 12-months, prohibited basis group and control group borrowers should be grouped and reviewed around a range of dates during which the institution's practices for the term or condition being reviewed were the same. Generally, examiners should use the loan origination date or the loan application date.

Identify data to be analyzed for each focal point to be reviewed and record this information for each borrower on a spreadsheet to ensure a valid comparison regarding terms and conditions. For example, in certain cases, an institution may offer slightly differentiated products with significant pricing implications to borrowers. In these cases, it may be appropriate to group these procedures together for the purposes of evaluation.

Step 3. Review Terms and Conditions; Compare with Borrower Outcomes

a. Review all loan terms and conditions (rates, points, fees, maturity variations, LTVs, collateral requirements, etc.) with special attention to those which are left, in whole or in part, to the discretion of loan officers or underwriters. For each such term or condition, identify (a) any prohibited basis group borrowers in the sample who appear to have been treated unfavorably with respect to that term or condition and (b) any control group borrowers 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 universe any control group borrowers who appear to have been treated more favorably than one or more of the above-identified prohibited basis group borrowers and who have pricing or creditworthiness factors (under the institution's standards) that are equal to or less favorable than the prohibited basis group borrowers.

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 Part A, 1 – 5, *Evaluating Responses to Evidence of Disparate Treatment* in the **Appendix**.

E. Steering Analysis

An institution that offers a variety of lending products or product features, either through one channel or through multiple channels, may benefit consumers by offering greater choices and meeting the diverse needs of applicants. Greater product offerings and multiple channels, however, may also create a fair lending risk that applicants will be illegally steered to certain choices based on prohibited characteristics.

Several examples illustrate potential fair lending risk:

- An institution that offers different lending products based on credit risk levels may present opportunities for loan officers or brokers to illegally steer applicants to the higher-risk products.
- An institution that offers nontraditional loan products or loan products with potentially onerous terms (such as prepayment penalties) may present opportunities for loan officers or brokers to illegally steer applicants to certain products or features.
- An institution that offers prime or sub-prime products through different channels may present opportunities for applicants to be illegally steered to the sub-prime channel.

The distinction between guiding consumers toward a specific product or feature and illegal steering centers on whether the institution did so on a prohibited basis, rather than based on an applicant's needs or other legitimate factors. It is not necessary to demonstrate financial harm to a group that has been "steered." It is enough to demonstrate that action was taken on a prohibited basis regardless of the ultimate financial outcome. If the scoping analysis reveals the presence of one or more risk factors S1 through S8 for any selected focal point, consult with agency supervisory staff about conducting a steering analysis as described below.

Step 1. Clarify what options are available to applicants

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 or feature and their alternatives that are offered by the institution or by a subsidiary or affiliate. Examples of products may include stated income, negative amortization, and options ARMs. Examples of terms and features include prepayment penalties and escrow requirements. The distinction between a product, term, and feature may vary institution to institution. For example, some institutions may consider "stated income" a feature, whiles others may consider that a distinct product.

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 institution for determining how referrals are to be made and choices presented to applicants.

a. Obtain not only information regarding the product or feature offered by the institution and alternatives offered by subsidiaries/affiliates, but also information on alternatives offered solely by the institution itself.

b. Obtain any information regarding a subsidiary of the institution directly from that entity, but seek information regarding an affiliate or holding company subsidiary only from the institution itself.

c. Obtain all appropriate documentation and provide a written summary of 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 institution's documents and information obtained in discussions with loan personnel and managers 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 another internal lending channel, subsidiary or affiliate; (ii) offering one or more alternatives to a person who applies to the institution for a specific product or feature, but does not meet its criteria; or (iii) referring a person who applies to a subsidiary or affiliate for its product, but who appears qualified for a loan from the institution, to the institution; or referring a person who applies through one internal lending channel for a product, but who appears to be qualified for a loan through another lending channel to that particular lending channel.

g. Determine whether loan personnel are encouraged, through financial incentives or otherwise, to make referrals, either from the institution to a subsidiary/affiliate or vice versa. Similarly, determine whether the institution provides financial incentives related to products and features.

Step 3. Determine how referral decisions are made and documented within the institution.

Determine how a referral is made to another internal lending

channel, subsidiary, or affiliate. Determine the reason for referral and how it is documented.

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 institution's stated policies, conditions, or criteria in fact are adhered to by individual decision makers. If not, 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 institution 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 institution'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 products and features to offer applicants, conduct a comparative analysis to determine whether that discretion has been exercised in a nondiscriminatory manner.

Compare the institution'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, Section C 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 Fair Lending Sample Size Tables, Table B in the* ***Appendix*** *and select "marginal applicants" as instructed in Part III, Section C, above.*

b. Prepare a spread sheet for the sample which contains data entry categories for those underwriting and/or referral criteria that the institution 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 and/or referral criteria) with management, documenting all such conversations.

Step 7. Examiners should consult with their agency's supervisory staff if they see a need to contact control group or prohibited basis group applicants to substantiate the steering analysis.

F. 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 in all commercial credit activities of a covered institution, the agencies recognize that small businesses (sole proprietorships, partnerships, and small, closely-held corporations) may have less experience in borrowing. Small businesses may have fewer borrowing options, which may make them more vulnerable to discrimination. 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 institution in evaluating commercial loan applications.

NOTE*: Examiners should consult their own agencies for guidance on when a comparative analysis or statistical analysis is appropriate, and follow their agencies procedures for conducting such a review/analysis.*

Step 2. Conduct Comparative File Review

a. Select all (or 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 institutions 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 institution to evaluate the credit request. Maintenance or use of data that identifies prohibited basis characteristics of those involved with the business (either in approved or denied loan applications) should be evaluated as a potential violation of Regulation B.

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.

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 in order to determine whether there is a pattern or practice of discrimination. 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 judgment. 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.

G. Analysis of Potential Discriminatory "Redlining"

Overview: For purposes of this analysis, traditional "redlining" is a form of illegal disparate treatment in which an institution 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 also include "reverse redlining," the practice of targeting certain borrowers or areas with less advantageous products or services based on prohibited characteristics.

The redlining analysis may be applied to determine whether, on a prohibited basis:

- an institution fails or refuses to extend credit in certain areas;
- an institution targets certain borrowers or certain areas with less advantageous products:
- an institution makes loans in such an area but at a restricted level or upon less-favorable terms or conditions as compared to contrasting areas; or
- an institution omits or excludes such an area from efforts to market residential loans or solicit customers for residential credit.

This guidance focuses on possible discrimination based on race or national origin. 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 institutions 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 institution (see risk factors R6-10 in Part I, above) suggests that the institution 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 B 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 institution 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 institution'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 institution's CRA assessment area and reasonably expected market area for residential products that have a racial or national origin 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 institution;
3. Identify and delineate any areas within the institution's CRA assessment area and reasonably expected market area for residential products that are non-minority in character and that the institution appears to treat more favorably;
4. Identify the location of any minority areas located just outside the institution's CRA assessment area and market area for residential products, such that the institution may be purposely avoiding such areas;
5. Obtain the institution's explanation for the apparent difference in treatment between the areas and evaluate whether it is credible and reasonable; and
6. 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 six 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 institution's explanation (Step 5) for one of the policies or patterns in question may already be documented in the CRA materials reviewed (Step 1) 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 institution'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 5 (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 on complaints or allegations against the institution, Steps 1-4 must be addressed.

Comparative analysis for redlining

Step 1. Identify and delineate any areas within the institution's CRA assessment area and reasonably expected 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 institution'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 institution 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 institution's CRA assessment area or reasonably expected 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 institution 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. Analyzing racial and national origin concentrations in quartiles (such as 0 to <=25%, >25% to < = 50%, >50% to <= 75%, and >75%) or based on majority concentration (0 to <=50%, and >50%) may be helpful. However, examiners should bear in mind that it is illegal for the institution to consider a prohibited factor in any way. For example, an area or neighborhood may only have a minority population of 20%, but if the area's concentration appears related to lending practices, it would be appropriate to use that area's level of concentration in the analysis. Contacts with community groups can be helpful to learn whether there are such subtle features of racial or ethnic character within a particular neighborhood.

   - 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.

b. Describe how the racial or national origin character changes across the suspected redlining area's various boundaries.

c. Document or estimate the demand for credit, within the minority area. This may include the applicable demographics of the area, including the percentage of homeowners, the median house value, median family income, or the number of small businesses, etc. Review the institution's non-originated loan applications from the suspected redlined areas. If available, review aggregate institution data for loans originated and applications received from the suspected redlined areas.

Community contacts may also be helpful in determining the demand for such credit. If the minority area does not have a significant amount of demand for such credit, 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 institution.

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 institution'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 institution 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-R9. The differences in treatment can be in marketing, products offered, branch operations (including the services provided and the hours of operation), 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 institution: (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 institution has indicated.

Step 3. Identify and delineate any areas within the institution's CRA assessment area and reasonably expected market area for residential products that are non-minority in character and that the institution appears to treat more favorably.

To the extent not already completed during scoping:

a. Document the percentages of control group 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 institution'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 institution 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. Identify the location of any minority areas located just outside the institution's CRA assessment area and market area for residential products, such that the institution may be purposely avoiding such areas.

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 institution excluded from the assessment area improperly, consider whether they ought to be included in the redlining analysis. Analyze the institution's reasonably expected market area in the same manner.

Step 5. Obtain the institution'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 institution 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 institution full information about what differences appear to exist in how it treats minority and non-minority areas, and how the examiners reached their preliminary conclusions at this stage of the analysis.

a. Evaluate whether the conditions identified by the institution 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 institution to explain why the areas were treated differently despite the similar conditions.

b. Evaluate whether the conditions identified by the institution 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 institution to explain why those areas were treated differently, despite the similar conditions.

c. Obtain explanations from the institution for any apparent differences in treatment observed by the examiners but not called for by the institution's policies:

- If the institution's explanation cites any specific conditions in the non-minority 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 institution to explain why the areas were treated differently despite the similar conditions.
- If the institution's explanation cites any specific conditions in the minority area(s) to justify less favorable treatment, determine whether the non-minority area(s) had those conditions. If there are non-minority areas for which those conditions existed, ask the institution to explain why those areas were treated differently, despite the similar conditions.

d. Evaluate the institution's responses by applying appropriate principles selected from the **Appendix** on Evaluating Responses to Evidence of Disparate Treatment.

Step 6. Obtain and evaluate specific types of other information that may support or contradict a finding of redlining.

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. Nevertheless, if the institution'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 constituted redlining.

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 may support the view that the institution was avoiding 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 may support the view that the institution was avoiding 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 may 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 institution discouraged those applicants from applying. If so, that may support the view that the institution was avoiding conducting business in the area and may constitute evidence of a violation of Section 1002.4(b) of Regulation B. Conversely, if the comparisons of individual transactions show that the institution treated minority and non-minority applicants within and outside the suspected redlining area similarly, that tends to contradict the conclusion that the institution 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 determine whether the institution's apparent differences in treatment of minority and non-minority areas constitute redlining.

- 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 an institution's representatives that loan applications from a suspected redlined area were discouraged;
  - whether the institution 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 non-minority areas (as the examiners are familiar with those transactions);
  - any unusual delays or irregularities in loan processing for transactions in the suspected redlining area; and
  - differences in the institution'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 institution that indicates the institution 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 institution intended to discriminate.

c. *Marketing*. A clear exclusion of the suspected redlining area from the institution's marketing of residential loan products supports the view that the institution 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 institution 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 institution has marketed in the suspected redlined area and in non-minority 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 institution'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.

e. *Peer performance*. Market share analysis and other comparisons to competitors are insufficient by themselves to prove that an institution engaged in illegal redlining. By the same token, an institution cannot justify its own failure to market or lend in an area by citing other institutions' failures to lend or market there.

However, an institution'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 institutions 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.

f. Institution's record. Request from the institution 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 intent to serve that group that tends to contradict the view that the institution intends to discriminate against the group.

NOTE*: 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. If the institution's explanation is that the disparate results are the consequence of a specific, neutral policy or practice that the institution applies broadly, such as not making loans on homes below a certain value, review the guidance in the Special Analyses section of the* ***Appendix*** *under Disproportionate Adverse Impact Violations and consult agency managers.*

H. Analysis of Potential Discriminatory Marketing Practices.

When scoping identifies significant risk factors (M1-M7) related to marketing, examiners should consult their agency's supervisory staff and experts about a possible marketing discrimination analysis. If the supervisory staff agrees to proceed, the examiners should collect information as follows:

Step 1. Identify the institution's marketing initiatives.

a. *Pre-approved solicitations*

- Determine whether the institution sends out pre-approved solicitations:
  - For home purchase loans,
  - For home improvement loans, or
  - For refinance loans.
- Determine how the institution selects recipients for such solicitations
  - Learn from the institution its criteria for such selections.
  - Review any guidance or other information the institution provided credit reporting companies or other companies that supply such lists.

b. *Media Usage*

- Determine in which newspapers and broadcast media the institution 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 institution's strategies for geographic and demographic distribution of advertisements.
- Obtain and review copies of the institution's printed advertising and promotional materials.
- Determine what criteria the institution 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 non-minority areas.

c. *Self-produced promotional materials*

- Learn how the institution distributes its own promotional materials, both methods and geographical distribution.
- Learn what the institution regards as the target audience(s) for those materials.

d. *Realtors, brokers, contractors, and other intermediaries*

- Determine whether the institution solicits business from specific realtors, brokers, home improvement contractors, and other conduits.
  - Learn how the institution decides which intermediaries it will solicit.
  - Identify the parties contacted and determine the distribution between minority and non-minority areas.
  - Obtain and review the types of information the institution distributes to intermediaries.
  - Determine how often the institution contacts intermediaries.
  - Determine what criteria the institution communicates to intermediaries about the type of customers it seeks or the nature of the geographic areas in which it wishes to do business.

e. *Telemarketers or predictive dialer programs*

- Learn how the institution identifies which consumers to contact, and whether the institution sets any parameters on how the list of consumers is compiled.

Step 2. Determine whether the institution'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 institution's explanation for it.

For additional guidance, refer to Part C of the *Special Analyses* section in the **Appendix**.

I. 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 the *Considering Automated Underwriting and Credit Scoring* 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 E of the *Considering Automated Underwriting and Credit Scoring* section of the **Appendix**.

J. 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 an institution 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 supervisory

staff for further guidance.

Part IV — Obtaining and Evaluating Responses From the Institution 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 institution than was customary from the institution or was required by the institution'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 institution 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 institution'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 institution 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 institution'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 Violations 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 1–3 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 supervisory staff 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

Introduction

This Appendix offers a full range of 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.

Compliance Management Analysis Checklist

This checklist is for use in conjunction with Part II of these procedures as a device for examiners to evaluate the strength of an institution's compliance program in terms of its capacity to prevent, and to identify and self-correct fair lending violations in connection with the products or issues selected for analysis. The checklist is not intended to be an absolute test of an institution's compliance management program. Programs containing all or most of the features described in the list may nonetheless be flawed for other reasons; conversely, a compliance program that 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 an institution's efforts to ensure fair lending compliance.

If the transactions within the proposed scope are covered by a listed preventive measure, and the answer is "Yes", check the box in the first column. You may then reduce the intensity (mainly the sample size) of the planned comparative file review to the degree that the preventive 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 preventive measures apply to specific products outside the proposed scope. However, if the information you have obtained shows that the measure is a general practice of the institution, and thus applies to all loan products, check the box in the second column in order to assist future examination planning.

Preventive Measures

Determine whether policies and procedures exist 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
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?		
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 institutions, more costly loan products, or potentially onerous features?		

	Within the proposed scope	Lender-wide
6. Refer credit seekers to nontraditional products (i.e., negative amortization, "interest only," "payment option," "adjustable rate mortgages") when they could have qualified for traditional mortgages?		
7. Waive or grant exceptions to application procedures or credit standards?		
8. State a willingness to negotiate?		
9. Use different procedures or standards to evaluate applications?		
10. Use different procedures to obtain and evaluate appraisals?		
11. Provide certain applicants opportunities to correct or explain adverse or inadequate information, or to provide additional information?		
12. Accept alternative proofs of creditworthiness?		
13. Require cosigners?		
14. Offer or authorize loan modifications?		
15. Suggest or permit loan assumptions?		
16. Impose late charges, reinstatement fees, etc.?		
17. Initiate collection or foreclosure?		

	Within the proposed scope	Lender-wide
d. Has the institution taken specific initiatives to prevent the following practices:		
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. Limiting the exchange of credit-related information for the institution's efforts to qualify an applicant from a prohibited basis group.		
4. Drawing the institution's CRA assessment area by unreasonably excluding minority areas?		
5. Targeting certain borrowers or areas with less advantageous products?		
e. Does the institution have procedures to ensure that it does not:		
1. State racial or ethnic limitations in advertisements?		
2. Employ code words or use photos in advertisements that convey racial or ethnic limitations or preferences?		
3. Place advertisements that a reasonable person would regard as indicating minority consumers are less desirable?		
4. Advertise only in media serving predominantly minority or non-minority areas of the market?		
5. Conduct other forms of marketing differentially in minority or 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?		
8. Provide financial incentives for loan officers to place applicants in nontraditional products or higher-risk products?		

2. Compliance Audit Function: Does the Institution 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. It 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 1002.15(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 1002.15(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 Using Self-Tests and Self-Evaluations to Streamline the Examination in this* ***Appendix*** *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 1002.15(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 institution'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 Using Self-Tests and Self-Evaluations to Streamline 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 institution'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?		

	Within the proposed scope	Lender-wide
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?		
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 institution'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. Will the data to be obtained reflect the data on which decisions were based?		
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 institution 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?		

	Within the proposed scope	Lender-wide
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?		
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 surname if not provided by the applicant?		

3. Corrective Measures

	Within the proposed scope	Lender-wide
a. Determine whether the institution 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 institution'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?		

Considering Automated Underwriting and Credit Scoring

These procedures are designed to help an examiner draw and support fair lending conclusions in situations involving automated underwriting or credit scoring.

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 and obtain:
   a. The number and inter-relationship of each model or scorecard applied to a particular product;
   b. The purposes for which each scorecard is employed (e.g., approval decision, set credit limits, set pricing, determine processing requirements, etc.);
   c. The developer of each scorecard 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 the cutoffs and 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 the cutoffs and 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; and
   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. Disparate Impact and Credit Scoring Algorithms

Consult with agency supervisory staff to assess potential disparate treatment issues relating to the credit scoring algorithm.

E. Credit Scoring Systems that Include Age

Regulation B expressly requires the initial validation and periodic revalidation of a credit scoring system that 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 at 12 CFR 1002.2(p) and 1002.6(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 1002.2(v)).

F. Examination for Empirical Derivation and Statistical Soundness

Regulation B requires credit scoring systems that use age to be empirically derived, and demonstrably and statistically sound. This means that they must fulfill the requirements of 12 CFR 1002.2(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

A. Responses to Comparative Evidence of Disparate Treatment

The following are responses that an institution 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, may rebut the appearance of disparate treatment. The examiners must evaluate the validity and credibility of the responses.

1. **The institution's personnel were unaware of the prohibited basis identity of the applicant(s)**

   If the institution 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 consumer.

   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 institution 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 institution, or some non-prohibited factor related to the processing of their applications. The difference identified by the institution 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 institution to justify favorable treatment for a control group applicant also exists for an otherwise similar prohibited basis applicant who was treated unfavorably. Similarly, the appearance of disparate treatment remains if a factor cited by the institution to justify unfavorable treatment for a prohibited basis applicant also exists for a control group applicant that got favorable treatment. If this is not so, ask the institution 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 institution 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 institution 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 institution 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 institution 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 institution 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 institution 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 institution would consider and is consistent with the institution's policies and procedures;
  - File review found no evidence that the factor is applied selectively on a prohibited basis (in other words, the institution's explanation is "not inconsistent with available information"); and
  - The institution'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 institution 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 institution 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 institution 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 an institution apart from the familiar qualifications demanded by the secondary market and insurers. For example, a consumer 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 institution cites reasons for "accommodations" that an ordinary prudent institution would not value.
- **"Gut feeling."** Be skeptical when institutions justify an approval or denial by a general perception or reaction to the consumer. 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 institution can cite something specific that made him or her confident or uncomfortable about the consumer. There is no discrimination if it is credible that the institution indeed considered such a factor and did not apply it selectively on a prohibited basis.

c. Follow up customer contacts

- If the institution's explanation of the handling of a particular transaction is based on consumer traits, actions, or desires not evident from the file, consider obtaining agency authorization to contact the consumer to verify the institution'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 institution 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 institution claims an unidentified error caused the favorable or unfavorable result in question, expect the institution 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 an institution's unsupported claim that otherwise inexplicable differences in treatment are distributed randomly.

If the institution can document that similarly situated prohibited basis group 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 institution to "cost factors" is insufficient to explain pricing differences.

If the institution claims that specific borrowers received different terms or conditions because of cost or risk considerations, ask the institution to be able to identify specific risk or cost differences between them.

If the institution 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 consumers to learn whether the institution in fact behaved comparably toward prohibited basis and control group consumers. The contacts would be to learn such information as the institution's opening quote of terms to the consumer 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 rates 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 agency supervisory staff about further analysis. Findings or violations based on disparate treatment or disparate impact regarding cost or risk factors should be discussed with agency supervisory staff.

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 institution's decisions and/or consumer behavior, treat the situation as an apparent violation to which the institution 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 institution 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 — 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 institution 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, an institution'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 institution'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 an institution claims that its use of a prohibited factor is lawful because it is operating an SPCP, ask the institution 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 institution 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 institution 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 group 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 institution 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.

Identifying Marginal Transactions

These procedures are intended to assist an examiner in identifying denied and approved applications that were not either clearly qualified or unqualified, i.e., marginal transactions.

A. Marginal Denials

Denied applications with any or all the following characteristics are "marginal." Such denials are compared to marginal approved applications. Marginal denied 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 institution'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 institution'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 institution'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, but 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 institution'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 institution's more rigid standards;
- Had a strength that a prudent institution 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 institutions guideline of 36 percent, but this may in fact be easily corrected if the application lists assets to pay off sufficient non-housing debts to reduce the ratio to the guideline, or if the institution were to count excluded part-time earnings described in the application.

B. Marginal Approvals

Approved applications with any or all of the following characteristics are "marginal." Such approvals are compared to marginal denied applications. Marginal approvals include those:

- Whose qualifications satisfied the institution'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 institution's own standards are not clear, fell short of common secondary market or industry lending standards;
- That a prudent conservative institution 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.

Potential Scoping Information

As part of the scoping process described in Part I of the procedures, examiners will need to gather documents and information to sufficiently identify their focal points for review. Below is a list of suggested information that examiners may wish to gather internally, as well as from the institution itself.

A. 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. Complaint information.
3. 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.*

B. 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. The examiner should generally request only those items that correspond to the time period(s) being examined.*

Fair Lending Sample Size Tables

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

	Sample 1 Prohibited Basis Denials			**Sample 2 Control Group Approvals**		
Number of Approvals	5–25	26–100	>150	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)

Explanatory Notes to Sample Size Tables

1. Examiners should not follow Table B when conducting a pricing review that involves a regression analysis. Consult with agency supervisory staff for specific protocol in these cases.
2. When performing both underwriting and terms and conditions comparisons, use the same control group approval sample for both tasks.
3. If there are fewer than 5 prohibited basis denials or 20 control group approvals, refer to “Sample Size” instructions in the procedures.
4. “Minimum” and “maximum” sample sizes: select a sample size between the minimum and maximum numbers identified above. Examiners should base the size of their review on the level of risk identified during the preplanning and scoping procedures. Once the sample size has been determined, select individual transactions judgmentally. Refer to procedures.
5. 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.
6. 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 institution 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.

1. Institution's Compliance Program (For examinations that will include analysis of the institution'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 self-test 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.

      NOTE: *The request should advise the institution 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 institution's fair lending policies and/or procedures.
   f. Training materials related to fair lending issues including records of attendance.
   g. Records detailing policy exceptions or overrides, exception reporting and monitoring processes.
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 institution should be specifically asked whether its pricing policies for any loan products include the use of "overages". The request should also ask whether the institution offers any "sub-prime" loan products 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 institution should provide pricing policy and practice details for each affected product, including the institution's criteria for differentiating between each risk or cost level and any policies regarding overages. Regarding indirect lending, the institution should be asked to provide any forms of agreement (including compensation) with brokers/dealers, together with a description of the roles that both the institution 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.

      Comment: *The integrity of the institution's HMDA-LAR data should be verified prior to the pre-examination analysis.*
   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 application or loan-level data bases maintained, including a *description* of all data fields within the database or that can be linked at the loan-level.
   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: brokers, realtors, real estate developers, appraisers, underwriters, 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 institution's service providers.*
   k. Addresses of any Internet Site(s)

      Comment: *Internet "Home Pages" or similar sites that an institution may have on the Internet may provide* information *concerning the availability of credit, or means for obtaining it. All such information must comply with the nondiscrimination requirements of the fair lending laws. In view of the increasing capability to conduct transactions on the Internet, it is extremely important for examiners to review an institution'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 institution responses thereto.

Special Analyses

These procedures are intended to assist examiners who encounter disproportionate adverse impact violations, discriminatory pre-application screening and possible discriminatory marketing.

A. Disproportionate Adverse Impact Violations

When all five conditions below exist, consult within your agency to determine whether to present the situation to the institution and solicit the institution's response. Note that condition 5 can be satisfied by either of two alternatives.

The contacts between examiners and institutions 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), consult agency supervisory staff if the policy or criterion is obviously related to predicting creditworthiness and is used in a way that is commensurate with its relationship to creditworthiness, or is obviously related 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 in a way that appears consistent with industry standards and with a prudent evaluation of credit risk.*

Conditions

1. A specific policy or criterion is involved.

   The policy or criterion suspected of producing a disproportionate adverse impact on a prohibited basis should 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.*

2. The policy or criterion on its stated terms is neutral for prohibited bases.
3. The policy or criterion falls disproportionately on applicants or borrowers in a prohibited basis group.

   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 with agency supervisory staff 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 provides that the policy or criterion that causes the impact must be justified by "business necessity" if the institution 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 generally 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 prohibited basis group applicants were denied loans more frequently than control group applicants because they failed an institution'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 institution'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 an institution to abandon a policy or criterion that is clearly the most effective method of accomplishing a legitimate business objective. However, if an alternative that is approximately equally effective is available that would cause a less severe adverse impact, the policy or criterion in question may constitute 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 institution, as described in the next section below.

Obtaining the institution's response

If the first four conditions plus either 5a or 5b appear to exist, consult with agency supervisory staff about whether and how to inform the institution of the situation and solicit the institution's response. The communication with the institution may include the following:

- 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 request that the institution provide any information supporting the business justification for the policy and request that the institution 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 institution's response persuasively contradicts the existence of the significant disparity or establishes a business justification. Consult with agency supervisory staff, as appropriate.

Discriminatory Pre-Application Screening

Obtain an explanation for any:

Withdrawals by applicants in prohibited basis groups without documentation of consumer intent to withdraw;

Denials of applicants in prohibited basis groups without any documentation of applicant qualifications; or

On a prohibited basis, selectively quoting unfavorable terms (for example, high fees or down payment requirements) to prospective applicants, or quoting 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.)

Obtain explanations for any delays between application and action dates on a prohibited basis

If the institution cannot explain the situations, examiners should consider obtaining authorization from their agency to contact the consumers to verify the institution's description of the transactions. Information from the consumer may help determine whether a violation occurred.

In some instances, such as possible "prescreening" of applicants by institution personnel, the results of the procedures discussed so far, including interviews with consumers, may be inconclusive in determining whether a violation has occurred. In those cases, examiners should, if authorized by their agency, consult with agency supervisory staff 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 institution treats them in the application process.

C. 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 consumers are less desirable or are only eligible for certain products.
2. Obtain full documentation as to the nature and extent, together with management's explanation, for any situation in which the institution, despite the availability of other options in the market:
   - Advertises only in media serving either minority or non-minority areas of the market;
   - Markets through brokers or other agents that the institution 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; or
- Offer different products to such geographies, especially if sub-prime products are primarily marketed to racial or ethnic minorities.

  ***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.*

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 this **Appendix** for guidance.

Using Self-Tests and Self-Evaluations to Streamline 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 a 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 1002.15(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 may constitute a self-test. The information set forth in 12 CFR 1002.15(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 1002.15(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 self-evaluations (or even parts of them), they need not repeat those tasks.

***NOTE:** When the term self-evaluation is used below, it is meant to 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*.

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 consider the self-evaluation to the degree possible in light of the remaining questions and communicate the findings to the institution 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 an institution 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 analyzed (whether abstracted from files or obtained from electronic databases) 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 control group and 75 prohibited basis group transactions, plan to verify the data for 25 control group and seven prohibited basis group transactions.

G. Did the 10% sample reviewed for Question F also show that customer assistance and institution 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 institution'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 institution.

If not all of the questions in the section above are answered "Yes", resume the examination procedures at the point where the institution'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.

FAIR LENDING SCOPE AND CONCLUSIONS MEMORANDUM

General Instructions

Examiners conduct fair lending reviews in accordance with the Federal Financial Institutions Examination Council Fair Lending Examination Procedures and document the review using the Fair Lending Scope and Conclusions memorandum (FLSC). The FLSC is divided into five sections and begins with a series of questions and *Examiner Summary* sections to develop an institution overview and document the assessment of inherent fair lending risks. If more than minimal inherent risk exists, examiners identify specific product(s) to assess applicable discrimination risk factors and whether any factors help mitigate those risks. If residual risk exists and additional analysis is warranted, examiners identify potential focal point(s) and conduct an in-depth analysis. If an in-depth analysis is conducted, examiners document the steps taken to perform the review. Examiners also document the overall conclusions of the fair lending review, including any findings or recommendations, and considerations for the next examination.

SECTION 1: DEVELOP AN INSTITUTION OVERVIEW

BANK AND EXAMINATION INFORMATION	
Bank Name:	
City/State:	
Region/Territory/FO:	
FO Performing Exam:	
Cert Number:	
Exam Number:	
EIC:	
Fair Lending Examiner:	
HMDA Reporter:	
Total Assets as of Current Call Report:	
Start Date of Examination:	
Date of Previous Compliance Examination (Rating):	
Date of Previous CRA Examination and Type (Rating):	
Date of Previous Risk Examination (CAMELS):	
STRUCTURE AND MANAGEMENT	**Response**
1. Have there been any changes in the following areas since the previous examination:	
a) Control of the bank?	
b) Management or key personnel (policy makers)?	
c) Personnel primarily responsible for compliance?	
d) Business strategy, markets, or delivery channels?	
e) Main office; branch office(s); deposit-taking remote service facilities, including ATMs; loan production office(s); or deposit production office(s)?	
2. Does the bank have any subsidiaries or affiliates that offer credit products or services?	

3. Has the bank been involved with any merger or acquisition activity since the previous examination or is any such activity planned?	
4. ***Examiner Summary:*** • Summarize pertinent details about the bank's structure, management, organizational hierarchy, business strategy, and markets, and highlight any changes since the previous examination. • Name any subsidiaries or affiliates that offer credit products or services, and describe those offerings. • Describe any recent or planned merger or acquisition activity. • Describe any inherent fair lending risks relating to the bank's structure or management.	
SUPERVISORY HISTORY	**Response**
5. Has the bank been involved in any investigations by other agencies (e.g., DOJ, HUD, EEOC, or state or local authorities) since the previous examination?	
6. Has the bank received any fair lending-related complaints since the previous examination?	
7. Were any fair lending violations identified at (or since) the previous examination?	
8. Were any fair lending recommendations made at (or since) the previous examination?	
9. ***Examiner Summary:*** • Summarize the bank's recent supervisory history, including details about any investigations or litigation related to discrimination, and any fair lending-related complaints. • Describe the scope of the previous fair lending review, including any findings or recommendations. • Describe what the bank has done to address any findings or recommendations. • Describe any inherent fair lending risks relating to the bank's supervisory history.	
COMPLIANCE MANAGEMENT SYSTEM	**Response**
10. Does the bank maintain fair lending-related policies and procedures?	
11. Do the Board, management, and employees receive fair lending training?	
12. Does the bank conduct fair lending-related monitoring?	
13. Have there been any internal or external fair lending audits conducted since the previous examination?	
14. Have there been any fair lending risk assessments completed since the previous examination?	
15. ***Examiner Summary:*** • Describe the bank's compliance management system (CMS) as it relates to fair lending (e.g., Board and management oversight, policies and procedures, training, monitoring or audits, and consumer complaint response) and highlight any changes since the previous examination. • **Note: Examiners document in Section 1 a description of the bank's CMS as it relates to fair lending. A description of the effectiveness of the bank's CMS in mitigating fair lending risk is documented in Section 2, as applicable.**	

LOAN PORTFOLIO	Response
16. Has the bank introduced any new loan products, programs, services, or features (e.g., escrow, private mortgage insurance, add-ons, skip-a-payment), including any offered through a third party, since the previous examination?	
17. Has the bank experienced significant growth in any particular loan product type?	
18. Excluding loan participations, has the bank purchased any loans or loan portfolios since the previous examination?	
19. Are any of the bank's loan products or programs offered, originated, or serviced through, or jointly with, a third party?	
20. Has the bank offered any loss mitigation options to mortgage borrowers (e.g., loan modifications, payment forbearance plans, short sales, or deeds-in-lieu of foreclosure) since the previous examination?	
21. Does the bank operate a Special Purpose Credit Program (as defined by Regulation B)?	
21. Does the bank operate a Special Purpose Credit Program (as defined by Regulation B)?	
22. Does the bank offer any of the following products:	
a) Non-traditional loans (e.g., interest-only, negative amortization, payment option)	
b) Reverse mortgages	
c) Subprime loan programs	
d) Mortgages with prepayment penalties	
23. ***Examiner Summary:*** • Describe the bank's loan product offerings and summarize pertinent details regarding loan portfolio composition or loan growth since the previous examination. • Describe any third-party lending relationships (e.g., indirect lending, broker arrangements, secondary market loans) and explain the role of the third party in the lending process. • Describe any inherent fair lending risks as it relates to the bank's loan servicing or loss mitigation efforts. • Describe any inherent fair lending risks relating to the bank's loan portfolio.	

CHANGE IN LOAN COMPOSITION SINCE THE PREVIOUS EXAMINATION

Loan Type	$ of Loans 06/30/20XX	% of Total Loans	$ of Loans 12/31/20XX	% of Total Loans	Difference ($ of Loans)	% Difference
Construction						
Consumer						
Commercial						
Farm						
Multi-Family Residential						
1-4 Family Residential						
Other						
Total						

LOAN ACTIVITY FROM TO

Loan Type	Loan Count (#)	% of Total Count	Loan Amount ($)	% of Total Amount
Const and Land Dev		%		%
Secured by Farmland		%		%
1-4 Family Residential		%		%
Multi-Family Residential		%		%
Commercial Real Estate		%		%
Total Real Estate Loans		%		%
Commercial and Industrial		%		%
Agricultural		%		%
Consumer		%		%
Other Loans		%		%
Gross Loans		%		%

POPULATION DEMOGRAPHICS
24. ***Examiner Summary:*** • Describe the demographic composition of the population residing within the bank's CRA assessment area and market area (e.g., racial and ethnic composition of the population, or other demographic characteristics).

CREDIT AND MARKET OPERATIONS - UNDERWRITING	Response
25. Do underwriting systems or processes vary by product, lending channel, or subsidiary/affiliate?	
26. Is loan decision-making centralized?	
27. Does the bank use an automated system for credit underwriting?	
If the bank uses an automated underwriting system, are overrides of the system allowed?	
28. Are any third parties directly involved in the bank's underwriting process?	
29. Does the bank use artificial intelligence/machine learning technologies (including that which is provided through a third-party) to make credit underwriting decisions?	
30. Has the underwriting process for any product changed since the previous examination?	
31. Have the underwriting criteria for any product changed since the previous examination?	
32. Is any guidance regarding underwriting criteria absent, vague, or subjective?	
33. Does the bank allow discretion in residential real estate loan underwriting (including secondary market activity)?	
34. Does the bank allow discretion in consumer loan underwriting?	

35.	If the bank allows discretion, does it track exceptions to underwriting criteria?
36.	Does the bank conduct secondary reviews of loan denials (i.e., someone conducts a second review of a loan application before it is officially denied)?
37.	Does a review of the bank's policies and processes raise any overt concerns with respect to underwriting?
38.	***Examiner Summary:*** • Describe the bank's method of underwriting for each product type offered (e.g., residential real estate, consumer, commercial). • Describe any differences in underwriting by lending channel and the role of any third party. • Describe whether discretion or exceptions are permitted, how any underwriting guidance (including that which relates to allowing exceptions) is provided to lending staff, and how discretion or exceptions are documented and tracked. • Describe any inherent fair lending risks relating to the bank's underwriting practices.

	CREDIT AND MARKET OPERATIONS - PRICING	**Response**
39.	Do credit pricing systems or processes vary by product, lending channel, subsidiary/affiliate, or market?	
40.	Does the bank's pricing (e.g., rates and fees) vary by region, office, or branch?	
41.	Are any third parties directly involved in the bank's pricing process?	
42.	Does the bank use artificial intelligence/machine learning technologies (including that which is provided through a third-party) to make pricing decisions?	
43.	Has the pricing process for any loan product changed since the previous examination?	
44.	Has the bank made any changes to the terms or fees on any loan products or services since the previous examination?	
45.	Does the bank provide loan officers with a rate sheet, matrix, or written guidance for pricing loans?	
46.	Is any guidance regarding pricing criteria absent, vague, or subjective?	
47.	Does the bank allow discretion in the setting of loan terms and conditions (including interest rates or fees) for residential real estate lending (including secondary market activity)?	
48.	Does the bank allow discretion in the setting of loan terms and conditions (including interest rates or fees) for consumer lending?	
49.	If the bank allows discretion, does it track exceptions to pricing criteria?	
50.	Does the bank or any person (e.g., consumer, third party) pay mortgage loan originators, directly or indirectly, any compensation beyond salaries?	
51.	If the bank originates loans through indirect lending relationships, are dealers allowed to add a mark-up to the bank's buy rate?	
	If the indirect lender/dealer is allowed mark-ups, does the bank retain a share?	
52.	Does a review of the bank's policies and processes raise any overt concerns with respect to pricing?	

53.	***Examiner Summary:*** • Describe the bank's method of pricing for each product type offered (e.g., residential real estate, consumer, commercial). Include details regarding how interest rates and fees are established. • Describe any differences in pricing by lending channel and the role of any third party. • Describe whether discretion or exceptions are permitted, how any pricing guidance (including that which relates to allowing exceptions) is provided to lending staff, and how discretion or exceptions are documented and tracked. • Describe any inherent fair lending risks as it relates to loan officer or broker compensation. • Describe any inherent fair lending risks relating to the bank's pricing practices.	
CREDIT AND MARKET OPERATIONS - STEERING		**Response**
54.	Can loan officers exercise discretion in referring consumers to alternative loan products offered within the same area of the bank or through multiple channels (e.g., a consumer seeking to apply for a particular loan is referred by the loan officer to apply for another type of loan offered in the same area of the bank or through a different lending channel such as a mortgage division, subsidiary, or affiliate).	
55.	Can an application that is denied for a specific product then be referred and underwritten for a different product?	
56.	Does the bank document an applicant's choice of loan product/lending channel?	
57.	Does a review of the bank's policies and processes raise any overt concerns with respect to steering?	
58.	***Examiner Summary:*** • Describe the application process and whether loan officers are permitted discretion in referring consumers to alternative products offered within the same area of the bank or through a different lending channel such as a mortgage division, subsidiary, or affiliate. • Describe the process by which denied loan applications may be referred to another product. • Describe any inherent fair lending risks relating to the potential for steering.	
CREDIT AND MARKET OPERATIONS - MARKETING		**Response**
59.	Does the bank, either directly or through a third party, actively market/advertise through any medium?	
60.	Does the bank use social media to market any products or services?	
61.	Does the bank have any marketing service arrangements or other agreements with real estate agents?	
62.	Do any of the bank's marketing or outreach efforts focus on a specific product, geographic area, or demographic group?	
63.	Does the bank review marketing plans and advertisements for fair lending compliance?	
64.	Does the bank provide guidance to employees conducting marketing and outreach to ensure that outreach efforts reach all areas of the bank's market area?	

65. ***Examiner Summary:*** • Describe the bank's credit marketing efforts and methods used to promote the bank's products and services (e.g., print advertisements, radio, online marketing, marketing service arrangements, and outreach activities). • Describe any targeted efforts, including prescreened marketing, that focus on particular loan products or segments of the bank's market. Indicate whether any targeting categories or filters are used for advertisements on social media. • Describe any inherent risks based on the bank's population demographics. • Describe any inherent fair lending risks relating to the bank's marketing efforts.	
CREDIT AND MARKET OPERATIONS - REDLINING	**Response**
66. Does the bank's CRA assessment area or market area contain areas with relatively high concentrations of minority group residents or majority-minority census tracts?	
67. Does the area immediately surrounding the bank's CRA assessment area or market area include areas with relatively high concentrations of minority group residents or majority-minority census tracts?	
68. Have there been any changes in the bank's assessment area since the previous CRA evaluation?	
69. Does the bank's CRA assessment area reflect any irregularities or have conspicuous gaps (e.g., is it smaller than a whole political subdivision by excluding portions of a town, county, or city)?	
70. Is the bank's market area different than the CRA assessment area?	
71. Do services, loan products, or hours of operation vary by branch or office location?	
72. Does the bank have branches or offices in or near areas with relatively high concentrations of minority group residents or majority-minority census tracts?	
73. After mapping the bank's loan dispersion, are there any conspicuous gaps in lending?	
74. Does a review of the bank's policies and processes raise any overt concerns with respect to redlining?	
75. ***Examiner Summary:*** • Describe the demographic composition of the bank's CRA assessment area and market area. • Describe any changes to the bank's CRA assessment area or market area since the previous examination. • Explain any differences in the bank's CRA assessment area and market area. Include details about any irregularities or conspicuous gaps in either area. • Describe any inherent risks that relate to changes in the bank's business or branching strategy. • Describe any differences in hours, products, or services by branch or office location. • After mapping the bank's loan dispersion, describe any conspicuous gaps in lending. • Describe any inherent fair lending risks relating to the bank's CRA assessment area and market area.	
SECTION 1 CHECKPOINT	**Response**
76. Based on the information in the institution overview, does the bank exhibit more than minimal inherent fair lending risk?	

If yes, proceed to Section 2 "Identification of Discrimination Risk Factors" to document the product(s) that warrant further analysis.
If no, proceed to Section 5 "Fair Lending Conclusions and Recommendations" to document the conclusions of the fair lending review and any findings or recommendations.

SECTION 2: IDENTIFICATION OF DISCRIMINATION RISK FACTORS

PRODUCTS	
77.	Products
	☑ Residential Real Estate
	☑ Consumer Secured
	☑ Consumer Unsecured
	☑ Automobile Secured
	☑ Credit Card
	☑ Commercial Credit
	☑ Agriculture/Farm Credit
	☑ Other
POTENTIAL DISCRIMINATION RISK FACTORS: RESIDENTIAL REAL ESTATE	
78.	Compliance Program Discrimination Risk Factors (C1-C7)
	☑ C1: Overall institution compliance record is weak.
	☑ C2: Prohibited basis monitoring information required by applicable laws and regulations is nonexistent or incomplete.
	☑ C3: Data and/or recordkeeping problems compromised reliability of previous examination reviews.
	☑ C4: Fair lending problems were previously found in one or more institution products or in institution subsidiaries.
	☑ C5: The size, scope, and quality of the compliance management program, including senior management's involvement, designation of a compliance officer, and staffing is materially inferior to programs customarily found in institutions of similar size, market demographics and credit complexity.
	☑ C6: The institution has not updated compliance policies and procedures to reflect changes in law or in agency guidance.
	☑ C7: Fair lending training is nonexistent or weak.
	Support for Risk Factors:
	Mitigating Factors:
79.	Overt Discrimination Risk Factors (O1-O5)
	☑ O1: Including explicit prohibited basis identifiers in the institution's written or oral policies and procedures (underwriting criteria, pricing standards, etc.).

	☑ 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 Part E of the Considering Automated Underwriting and Credit Scoring 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.
	Support for Risk Factors:
	Mitigating Factors:
80.	Underwriting Discrimination Risk Factors (U1-U9)
	☑ 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 standard underwriting criteria, 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.
	Support for Risk Factors:
	Mitigating Factors:
81.	Pricing Discrimination Risk Factors (P1-P7)
	☑ P1: Financial incentives for loan officers or brokers to charge higher prices (including interest rate, fees and points). Special attention should be given to situations where financial incentives are accompanied by broad pricing discretion (as in P2), such as through the use of overages or yield spread premiums.

	☑ P2: Presence of broad discretion in loan pricing (including interest rate, fees and points), such as through overages, underages or yield spread premiums. Such discretion may be present even when institutions provide rate sheets and fees schedules, if loan officers or brokers are permitted to deviate from those rates and fees without clear and objective criteria.
	☑ P3: Use of risk-based pricing that is not based on objective criteria or applied consistently.
	☑ 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.
	☑ P6: In mortgage pricing, disparities in the incidence or rate spreads of higher-priced lending by prohibited basis characteristics as reported in the HMDA data.
	☑ P7: A loan program that contains only borrowers from a prohibited basis group, or has significant differences in the percentages of prohibited basis groups, especially in the absence of a Special Purpose Credit Program under ECOA.
	Support for Risk Factors:
	Mitigating Factors:
82.	Steering Discrimination Risk Factors (S1-S8)
	☑ S1: Lack of clear, objective and consistently implemented standards for (i) referring applicants to subsidiaries, affiliates, or lending channels within the institution (ii) classifying applicants as "prime" or "sub-prime" borrowers, or (iii) deciding what kinds of alternative loan products should be offered or recommended to applicants (product placement).
	☑ S2: Financial incentives for loan officers or brokers to place applicants in nontraditional products (i.e., negative amortization, "interest only", "payment option" adjustable rate mortgages) or higher cost products.
	☑ S3: For an institution that offers different products based on credit risk levels, any significant differences in percentages of prohibited basis groups in each of the alternative loan product categories.
	☑ S4: Significant differences in the percentage of prohibited basis applicants in loan products or products with specific features relative to control group applicants. Special attention should be given to products and features that have potentially negative consequences for applicants (i.e., non-traditional mortgages, prepayment penalties, lack of escrow requirements, or credit life insurance).
	☑ S5: 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 to the percentage of prohibited basis applicants of the subsidiary(ies) or affiliate(s).
	☑ S6: For an institution that has one or more lending channels that originate the same loan product, any significant differences in the percentage of prohibited basis applicants in one of the lending channels compared to the percentage of prohibited basis applicants of the other lending channel.
	☑ S7: Consumer complaints alleging discrimination in residential loan pricing or product placement.
	☑ S8: For an institution with sub-prime mortgage subsidiaries, a concentration of those subsidiaries' branches in minority areas relative to its other branches.

	Support for Risk Factors:
	Mitigating Factors:
83.	Redlining Discrimination Risk Factors (R1-R12)
	☑ R1: Significant differences, as revealed in HMDA data, in the number of applications received, withdrawn, approved not accepted, and closed for incompleteness or loans originated in those areas in the institution'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 non-minority) 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: Significant differences in the number of originations of higher-priced loans or loans with potentially negative consequences for borrowers, (i.e., non-traditional mortgages, prepayment penalties, lack of escrow requirements) in areas with relatively high concentrations of minority residents compared with areas with relatively low concentrations of minority residents.
	☑ R5: Other patterns of lending identified during the most recent CRA examination that differ by the concentration of minority residents.
	☑ R6: Explicit demarcation of credit product markets that excludes MSAs, political subdivisions, census tracts, or other geographic areas within the institution's lending market or CRA assessment areas and having relatively high concentrations of minority residents.
	☑ R7: Difference in services available or hours of operation at branch offices located in areas with concentrations of minority residents when compared to branch offices located in areas with concentrations of non-minority residents.
	☑ R8: 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.
	☑ R9: The institution's CRA assessment area appears to have been drawn to exclude areas with relatively high concentrations of minority residents.
	☑ R10: Employee statements that reflect an aversion to doing business in areas with relatively high concentrations of minority residents.
	☑ R11: Complaints or other allegations by consumers or community representatives that the institution excludes or restricts access to credit for areas with relatively high concentrations of minority residents. Examiners should review complaints against the institution filed either with their agency or the institution; 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 institutions during prior CRA examinations.
	☑ R12: An institution that has most of its branches in predominantly non-minority neighborhoods at the same time that the institution's sub-prime mortgage subsidiary has branches which are located primarily in predominantly minority neighborhoods.

	Support for Risk Factors:
	Mitigating Factors:
84.	Marketing Discrimination Risk Factors (M1-M7)
	☑ M1: Advertising patterns or practices that a reasonable person would believe indicate prohibited basis customers are less desirable.
	☑ M2: Advertising only in media serving non-minority areas of the market.
	☑ M3: Marketing through brokers or other agents that the institution 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 institutions 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.
	☑ M6: Proportion of 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.
	Support for Risk Factors:
	Mitigating Factors:
POTENTIAL DISCRIMINATION RISK FACTORS: CONSUMER SECURED	
POTENTIAL DISCRIMINATION RISK FACTORS: CONSUMER UNSECURED	
POTENTIAL DISCRIMINATION RISK FACTORS: AUTOMOBILE SECURED	
POTENTIAL DISCRIMINATION RISK FACTORS: CREDIT CARD	
POTENTIAL DISCRIMINATION RISK FACTORS: COMMERCIAL CREDIT	
POTENTIAL DISCRIMINATION RISK FACTORS: AGRICULTURE/FARM CREDIT	
POTENTIAL DISCRIMINATION RISK FACTORS: OTHER	
SECTION 2 CHECKPOINT	**Response**
85.	Based on the applicable discrimination risks for each product evaluated, does residual risk warrant the selection of one or more potential focal points to consider for an in-depth analysis?
	If yes, proceed to Section 3 "Description of Potential Focal Points" and obtain Field Supervisor or designee approval to proceed with analysis of selected focal point(s).
	If no, proceed to Section 5 "Fair Lending Conclusions and Recommendations" to document the conclusions of the fair lending review and any findings or recommendations.

SECTION 3: DESCRIPTION OF POTENTIAL FOCAL POINTS

POTENTIAL FOCAL POINTS		
86. Potential Focal Points		
Fair Lending Analysis:		
Loan Product	**Market**	**Decision Center**
Prohibited Basis	**Control Group**	**Target Group**
Selected As Focal Point?	**Control Group Sample Size**	**Target Group Sample Size**
EXAMINER SUMMARY OF FOCAL POINT SELECTION		
87. ***Examiner Summary:*** • Describe the rationale for considering the potential focal point(s). • Identify the focal point(s) ultimately selected for an in-depth analysis and provide support for the selection.		
FIELD SUPERVISOR/DESIGNEE APPROVAL		
88. Field Supervisor/Designee Approval for Selected Focal Point(s):		
Field Supervisor/Designee Name:		
Date of Approval:		

SECTION 4: DESCRIPTION OF FOCAL POINT ANALYSIS

DESCRIPTION OF FOCAL POINT ANALYSIS	Response
89. Did examiners conduct a criteria interview with the bank?	
90. Did the focal point analysis include a comparative file review?	
91. Did the focal point analysis include a statistical analysis?	
92. ***Examiner Summary:*** • Describe the specific steps taken to analyze the approved focal point(s). • Provide details regarding target group and control group selections, criteria interview, comparative file review, statistical analysis, and any other relevant information.	

SECTION 5: FAIR LENDING CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS AND RECOMMENDATIONS	Response
93. Was an isolated violation of discrimination cited in the report of examination?	
94. Was a practice or pattern of discrimination violation cited in the report of examination?	
95. Did the examiner provide recommendations to bank management to correct any fair lending violation(s) or to enhance the bank's compliance management system as it relates to fair lending?	
96. ***Examiner Summary:*** • Summarize the overall conclusions of the fair lending review and describe any findings. • If applicable, provide support for ending the scoping process after evaluating inherent risk or for not selecting a focal point after evaluating applicable discrimination risk factors. • Include any considerations for the next examination.	
97. ***Recommendations Provided to the Bank:*** • Provide specific language for any recommendations to be considered for the report of examination. • If any recommendations are not going to be included in the report of examination, but were provided to the bank, describe those recommendations and indicate how they were communicated to the bank.	
FIELD SUPERVISOR/DESIGNEE APPROVAL:	
98. Field Supervisor/Designee Approval: • NOTE: The final, e-signed FLSC Word document is required to be retained in SOURCE with the examination documents.	
Field Supervisor/Designee Name:	
Date of Approval:	

References

- *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*
- *Interagency Fair Lending Examination Procedures*
- *Appendix to Interagency Fair Lending Examination Procedures*
- *Enforcement Policy Statement*
- *Policy Statement on Discrimination in Lending*

V. Consumer Compliance Lending Issues

Truth in Lending Act[1]

Introduction

The Truth in Lending Act (TILA), 15 U.S.C. 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 1026), 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, and the Home Equity Loan Consumer Protection Act of 1988.

Regulation Z also was amended to implement section 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 1013).

The Home Ownership and Equity Protection Act of 1994 (HOEPA) amended the 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.

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 the TILA. The amendments were made to simplify and improve disclosures related to credit transactions.

The Electronic Signatures in Global and National Commerce Act (the E-Sign Act), 15 U.S.C. 7001 *et seq*., was enacted in 2000 and did not require implementing regulations. On November 9, 2007, amendments to Regulation Z and the official commentary were issued to simplify the regulation and provide guidance on the electronic delivery of disclosures consistent with the E-Sign Act.

In July 2008, Regulation Z was amended to protect consumers in the mortgage market from unfair, abusive, or deceptive lending and servicing practices. Specifically, the change applied protections to a newly defined category of "higher-priced mortgage loans" (HPML) that includes virtually all closed-end subprime loans secured by a consumer's principal dwelling. The revisions also applied new protections to mortgage loans secured by a dwelling, regardless of loan price, and required the delivery of early disclosures for more types of transactions. The revisions also banned several advertising practices deemed deceptive or misleading. The Mortgage Disclosure Improvement Act of 2008 (MDIA) broadened and added to the requirements of the Board's July 2008 final rule by requiring early Truth in Lending disclosures for more types of transactions and by adding a waiting period between the time when disclosures are given and consummation of the transaction. In 2009, Regulation Z was amended to address those provisions. The MDIA also requires disclosure of payment examples if the loan's interest rate or payments can change, as well as disclosure of a statement that there is no guarantee the consumer will be able to refinance in the future. In 2010, Regulation Z was amended to address these provisions, which became effective on January 30, 2011.

In December 2008, the Board adopted two final rules pertaining to open-end (not home-secured) credit. The first rule involved Regulation Z revisions and made comprehensive changes applicable to several disclosures required for: applications and solicitations, new accounts, periodic statements, change in terms notifications, and advertisements. The second was a rule published under the Federal Trade Commission (FTC) Act and was issued jointly with the Office of Thrift Supervision and the National Credit Union Administration. It sought to protect consumers from unfair acts or practices with respect to consumer credit card accounts. Before these rules became effective, however, the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act) amended the TILA and established a number of new requirements for open-end consumer credit plans. Several provisions of the Credit CARD Act are similar to provisions in the Board's December 2008 TILA revisions and the joint FTC Act rule, but other portions of the Credit CARD Act address practices or mandate disclosures that were not addressed in these rules. In light

[1] These procedures include amendments to TILA and Regulation Z through April 2016, the mortgage servicing amendments effective in October 2017, and the amendments to Regulation Z regarding prepaid accounts, unless otherwise indicated. These procedures do not include the 2017 TILA-RESPA Integrated Disclosure Rule amendments.

of the Credit CARD Act, the Board, NCUA, and OTS withdrew the substantive requirements of the joint FTC Act rule. On July 1, 2010, compliance with the provisions of the Board's rule that were not impacted by the Credit CARD Act became effective.

The Credit CARD Act provisions became effective in three stages. The provisions effective first (August 20, 2009) required creditors to increase the amount of notice consumers receive before the rate on a credit card account is increased or a significant change is made to the account's terms. These amendments also allowed consumers to reject such increases and changes by informing the creditor before the increase or change goes into effect. The provisions effective next (February 22, 2010) involved rules regarding interest rate increases, over-the-limit transactions, and student cards. Finally, the provisions effective last (August 22, 2010) addressed the reasonableness and proportionality of penalty fees and charges and re-evaluation of rate increases.

In 2009, Regulation Z was amended following the passage of the Higher Education Opportunity Act (HEOA) by adding disclosure and timing requirements that apply to lenders making private education loans.

In 2009, the Helping Families Save Their Homes Act amended the TILA to establish a new requirement for notifying consumers of the sale or transfer of their mortgage loans. The purchaser or assignee that acquires the loan must provide the required disclosures no later than 30 days after the date on which it acquired the loan.

In 2010, the Board further amended Regulation Z to prohibit payment to a loan originator that is based on the terms or conditions of the loan, other than the amount of credit extended. The amendment applies to mortgage brokers and the companies that employ them, as well as to mortgage loan officers employed by depository institutions and other lenders. In addition, the amendment prohibits a loan originator from directing or "steering" a consumer to a loan that is not in the consumer's interest to increase the loan originator's compensation.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) amended the TILA to include several provisions that protect the integrity of the appraisal process when a consumer's home is securing the loan. The rule also requires that appraisers receive customary and reasonable payments for their services. The appraiser and loan originator compensation requirements had a mandatory compliance date of April 6, 2011.

The Dodd-Frank Act generally granted rulemaking authority under the TILA to the Consumer Financial Protection Bureau (CFPB). Title XIV of the Dodd-Frank Act included a number of amendments to the TILA, and in 2013, the CFPB issued rules to implement them. Prohibitions on mandatory arbitration and waivers of consumer rights, as well as requirements that lengthen the time creditors must maintain an escrow account for higher-priced mortgage loans, were generally effective June 1, 2013. Most of the remaining amendments to Regulation Z were effective in January 2014.[2] These amendments include ability-to-repay requirements for mortgage loans, appraisal requirements for higher-priced mortgage loans, a revised and expanded test for high-cost mortgages, as well as additional restrictions on those loans, expanded requirements for servicers of mortgage loans, refined loan originator compensation rules and loan origination qualification standards, and a prohibition on financing credit insurance for mortgage loans. The amendments also established new record retention requirements for certain provisions of the TILA. On October 22, 2014, the CFPB issued a final rule providing an alternative small servicer definition for nonprofit entities and amended the ability-to-repay exemption for nonprofit entities. The final rule also provided a cure mechanism for the points and fees limit that applies to qualified mortgages. The final rule was effective on November 3, 2014, except for one provision that is effective on October 3, 2015. On October 2, 2015, the CFPB revised the definitions of small creditor and rural and underserved areas, which affect the availability of some special provisions and exemptions to Regulation Z's Ability-to-Repay, high-cost mortgage, and HPML escrow requirements. The final rule was effective January 1, 2016.[3] In March 2016, the CFPB issued an interim final rule exercising the expanded authority granted to the CFPB by the Helping Expand Lending Practices in Rural Communities Act to exempt small creditors that operate in rural or underserved areas.[4] The interim final rule was effective March 31, 2016.

In 2013, the CFPB also revised several open-end credit provisions in Regulation Z. The CFPB revised the general limitation on the total amount of account fees that a credit card issuer may require a consumer to pay. Effective March 28, 2013, the limit is 25 percent of the credit limit in effect when the account is opened and applies only during the first year after account opening. The CFPB also amended Regulation Z to remove the requirement that card issuers consider the consumer's independent ability to pay for applicants who are 21 or older and to

[2] The amendment to 12 CFR 1026.35(e) was effective July 24, 2013; the amendments to 12 CFR 1026.35(b)(2)(iii), 1026.36(a), (b), and (j), and commentary to 12 CFR 1026.25(c)(2), 1026.35, and 1026.36(a), (b), (d), and (f) in Supp. I to Part 1026, were effective January 1, 2014.

[3] 80 FR 59944 (October 2, 2015).

[4] 81 FR 16074 (Mar. 25, 2016).

permit issuers to consider income and assets to which such consumers have a reasonable expectation of access. This change was effective May 3, 2013, with a mandatory compliance date of November 4, 2013.

In 2013, the CFPB further amended Regulation Z as well as Regulation X, the regulation implementing the Real Estate Settlement Procedures Act (RESPA), to fulfill the mandate in the Dodd-Frank Act to integrate the mortgage disclosures under TILA and RESPA sections 4 and 5. Regulation Z now contains two new forms required for most closed-end consumer mortgage loans. The Loan Estimate is provided within three business days from application, and the Closing Disclosure is provided to consumers three business days before loan consummation. These disclosures must be used for mortgage loans for which the creditor or mortgage broker receives an application on or after October 3, 2015.[5]

In 2016, the CFPB amended Regulation Z as well as Regulation E, the regulation implementing the Electronic Fund Transfer Act (EFTA), to extend protections to prepaid accounts. In Regulation E, tailored provisions governing disclosures, limited liability and error resolution, and periodic statements were adopted for prepaid accounts, along with new requirements regarding the posting and submission of prepaid account agreements. In Regulation Z, coverage of the term "credit card" was expanded to include "hybrid prepaid-credit card" as defined in 12 CFR 1026.61. The amendments to Regulation Z further regulate credit features that may be offered in conjunction with prepaid accounts. Together these amendments are known as the "Prepaid Rule." The Bureau further amended the Prepaid Rule in January 2018 to modify the definition of "business partner," in addition to making other changes, and extend the effective date of the Prepaid Rule, as amended, to April 1, 2019.

NOTE: These procedures have not been updated to reflect the Know Before You Owe (KBYO) final rule issued on July 7, 2017. The 2017 TILA-RESPA rule includes an optional compliance period, which began on October 10, 2017 and is for transactions for which a creditor or mortgage broker receives an application prior to October 1, 2018. During this period, early compliance with the 2017 rule is allowed, but not required.

On August 4, 2016, the CFPB issued a final rule to further clarify, revise, and amend provisions of Regulation Z and Regulation X (81 Fed. Reg. 72160) (October 19, 2016). The amendments in the final rule are referenced in this document as the "2016 Servicing Rule." The 2016 Servicing Rule establishes definitions of successor in interest and confirmed successor in interest, and provides that a confirmed successor in interest is a "consumer" for purposes of the mortgage servicing provisions in Regulation Z.[6] The 2016 Servicing Rule also adopts a general definition of delinquency that applies to all of the servicing provisions in Regulation X and the provisions regarding periodic statements for mortgage loans in Regulation Z. Furthermore, the 2016 Servicing Rule clarifies, revises, or amends provisions of Regulation Z relating to:

- Interest rate adjustment notices for adjustable-rate mortgages (ARMs) (12 CFR 1026.20);
- Prompt crediting of mortgage payments and responses to requests for payoff amounts (12 CFR 1026.36(c));
- Periodic statements for mortgage loans (12 CFR 1026.41), including requiring servicers to provide certain consumers in bankruptcy a modified periodic statement or coupon book; and
- Small servicers (12 CFR 1026.41(e)(4)).

The 2016 Servicing Rule was effective on October 19, 2017, except the provisions related to successors in interest and periodic statements for consumers in bankruptcy, which take effect on April 19, 2018.

The CFPB concurrently issued an interpretive rule under the Fair Debt Collection Practices Act (FDCPA) to clarify the interaction of the FDCPA and specified mortgage servicing rules in Regulations X and Z. (81 Fed. Reg. 71977) (October 19, 2016).[7] This interpretive rule constitutes an advisory opinion for purposes of the

[5] The effective date for the TILA-RESPA Integrated Disclosure Rule was extended to October 3, 2015 by a final rule published in the Federal Register on July 24, 2015. (80 Fed.Reg. 43911). Other provisions of the rule were effective on October 3, 2015, regardless of whether an application was received on that date. Specifically, these provisions restrict the imposition of fees on a consumer before the consumer has received the Loan Estimate and indicated an intent to proceed, and restrict creditors from providing a consumer with a written estimate of terms or costs (prior to providing the Loan Estimate) unless they also provided a written statement informing the consumer that the terms or costs may change. The rule also restricts a creditor from requiring the submission of documents verifying information related to the consumer's application before providing the Loan Estimate.

[6] The 2016 Servicing Rule includes the following changes to Regulation Z for successors in interest: 12 CFR 1026.2(a)(11) and (27), 1026.20(f), 1026.39(f), and 1026.41(g). The 2016 Servicing Rule also changes several sections of the Official Interpretations of Regulation X, published in commentary.

[7] *See* Safe Harbors from Liability under the Fair Debt Collection Practices Act for Certain Actions Taken in Compliance with Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) (81 Fed. Reg. 71977) (October 19, 2016) (hereinafter 2016 FDCPA Interpretive Rule). The interpretations contained in this interpretive rule are included in Regulation X comments 30(d)-1 and 39(d)-2; Regulation Z comment 2(a)(11)-4.ii.

FDCPA and provides safe harbors from liability for servicers acting in compliance with it.

Format of Regulation Z

The 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 (12 CFR 1026.1 through 1026.4) of the regulation provides general information that applies to open-end and closed-end credit transactions. It sets forth definitions (12 CFR 1026.2) and stipulates which transactions are covered and which are exempt from the regulation (12 CFR 1026.3). It also contains the rules for determining which fees are finance charges (12 CFR 1026.4).

Subpart B (12 CFR 1026.5 through 1026.16) relates to open-end credit. It contains rules on account-opening disclosures (12 CFR 1026.6) and periodic statements (12 CFR 1026.7-8). It also describes special rules that apply to credit card transactions, treatment of payments (12 CFR 1026.10).and credit balances (12 CFR 1026.11), procedures for resolving credit billing errors (12 CFR 1026.13), annual percentage rate (APR) calculations (12 CFR 1026.14), rescission rights (12 CFR 1026.15), and advertising (12 CFR 1026.16).

Subpart C (12 CFR 1026.17 through 1026.24) relates to closed-end credit. It contains rules on disclosures (12 CFR 1026.17 - 20), treatment of credit balances (12 CFR 1026.21), annual percentage rate calculations (12 CFR 1026.22), rescission right (12 CFR 1026.23), and advertising (12 CFR12 CFR 1026.24).

Subpart D (12 CFR 1026.25 through 1026.30) contain rules on record retention (12 CFR 1026.25), oral disclosures (12 CFR 1026.26), disclosures in languages other than English (12 CFR 1026.27), effect on state laws (12 CFR 1026.28), state exemptions (12 CFR 1026.29), and rate limitations (12 CFR 1026.30).

Subpart E (12 CFR 1026.31 through 1026.45) Subpart E contains special rules for mortgage transactions. The rules require certain disclosures and provide limitations for closed-end credit transactions and open-end credit plans that have rates or fees above specified amounts or certain prepayment penalties (12 CFR 1026.32). Special disclosures are also required, including the total annual loan cost rate, for reverse mortgage transactions (12 CFR 1026.33). The rules also prohibit specific acts and practices in connection with high-cost mortgages, as defined in 12 CFR 1026.32(a), (12 CFR 1026.34); in connection with closed-end higher-priced mortgage loans, as defined in 12 CFR 1026.35(a), (12 CFR 1026.35); and in connection with an extension of credit secured by a dwelling (12 CFR 1026.36). This subpart also sets forth disclosure requirements, effective October 3, 2015, for most closed-end transactions secured by real property, as required by 12 CFR 1026.37□38, disclosures for mortgage transfers (12 CFR 1026.39), and disclosure requirements for periodic statements for residential mortgage loans are also provided (12 CFR 1026.41). In addition, it contains minimum standards for transactions secured by a dwelling, which contains provisions relating to ability to repay and qualified mortgages (12 CFR 1026.43).This subpart includes the small servicer exemption found in 12 CFR 1026.41(e)(4)

Subpart F (12 CFR 1026.46 through 1026.48) relates to private education loans. It contains rules on disclosures (12 CFR 1026.46), limitations on changes in terms after approval (12 CFR 1026.48), the right to cancel the loan (12 CFR 1026.47), and limitations on co-branding in the marketing of private education loans (12 CFR 1026.48).

Subpart G (12 CFR 1026.51 through 1026.61) relates to credit card accounts, including covered separate credit features accessible by hybrid prepaid-credit cards, under an open-end (not home-secured) consumer credit plan (except for 12 CFR 1026.57(c), which applies to all open-end credit plans). This subpart contains rules regarding disclosures provided on or with credit and charge card applications and solicitations (12 CFR 1026.60). It also contains rules regarding hybrid prepaid-credit cards (12 CFR 1026.61). Subpart G contains rules on evaluation of a consumer's ability to make the required payments under the terms of an account (12 CFR 1026.51), limits the fees that a consumer can be required to pay (12 CFR 1026.52), and contains rules on allocation of payments in excess of the minimum payment (12 CFR 1026.53). It also sets forth certain limitations on the imposition of finance charges as the result of a loss of a grace period (12 CFR 1026.54), and on increases in annual percentage rates, fees, and charges for credit card accounts (12 CFR 1026.55), including the reevaluation of rate increases (12 CFR 1026.59). This subpart prohibits the assessment of fees or charges for over-the-limit transactions unless the consumer affirmatively consents to the creditor's payment of over-the-limit transactions (12 CFR 1026.56). This subpart also sets forth rules for reporting and marketing of college student open-end credit (12 CFR 1026.57). Finally, it sets forth requirements for the Internet posting of credit card accounts under an open-end (not home-secured) consumer credit plan (12 CFR 1026.58).

Several appendices contain information such as the procedures for determinations about state laws, state exemptions and issuance of official interpretations, special rules for certain kinds of credit plans, model disclosure forms, standards for determining ability to pay, and the rules for computing annual percentage rates in closed-end credit transactions and total-annual-loan-cost rates for reverse mortgage transactions.

Official interpretations of the regulation are published in a commentary. Good faith compliance with the commentary protects creditors from civil liability under the TILA. In addition, the commentary includes more detailed information 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 discuss all the sections of Regulation Z, but rather highlights only certain sections of the regulation and the TILA.

Subpart A – General

This subpart contains general information regarding both open-end and closed-end credit transactions. It sets forth definitions (12 CFR 1026.2) and sets out which transactions are covered and which are exempt from the regulation (12 CFR 1026.3). It also contains the rules for determining which fees are finance charges (12 CFR 1026.4).

Purpose of the TILA and Regulation Z

The TILA 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:

- Protects consumers against inaccurate and unfair credit billing and credit card practices;
- Provides ability to repay requirements and other limitations applicable to credit cards;
- Provides consumers with rescission rights;
- Provides for rate caps on certain dwelling-secured loans;
- Imposes limitations on home equity lines of credit (HELOCs) and certain closed-end home mortgages;
- Provides minimum standards for most dwelling-secured loans; and
- Delineates and prohibits unfair or deceptive mortgage lending practices.

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 – 12 CFR 1026.1 and 1026.2

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 12 CFR 1026.1(c) of the regulation and relevant definitions appear in 12 CFR 1026.2.

The 2016 Servicing Rule adds a definition of successor in interest. Successor in interest means a person to whom an ownership interest in a dwelling securing a closed-end consumer credit transaction is transferred from a consumer, provided that the transfer is:

- A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;
- A transfer to a relative resulting from the death of the consumer;
- A transfer where the spouse or children of the consumer become an owner of the property;
- A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the consumer becomes an owner of the property; or
- A transfer into an inter vivos trust in which the consumer is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.

12 CFR 1026.2(a)(27)(i) (*Effective April 19, 2018*).

Confirmed successor in interest means a successor in interest once a servicer has confirmed the successor in interest's identity and ownership interest in the dwelling. 12 CFR 1026.2(a)(27)(ii). (*Effective April 19, 2018*).

Under 12 CFR 1026.2(a)(11), a confirmed successor in interest is a consumer for purposes of 12 CFR 1026.20(c) through (e), 1026.36(c), 1026.39, and 1026.41. (*Effective April 19, 2018*).

Further, a servicer that is debt collector under the FDCPA with respect to a mortgage loan does not violate the prohibition in FDCPA section 805(b)'s on communicating with third parties by communicating with a confirmed successor in interest in compliance with the mortgage servicing rules because "consumer" for purposes of FDCPA section 805 includes any person

who meets the definition in this part of confirmed successor in interest. (Comment 2(a)(11)-4.ii).[8]

Exempt Transactions – 12 CFR 1026.3

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 an annually adjusted threshold not secured by real property or by personal property used or expected to be used as the principal dwelling of the consumer;[9]
- 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 not subject to a finance charge; and
- Certain student loan programs.

However, when a credit card is involved, generally exempt credit (e.g., business purpose credit) is subject to the requirements that govern the 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 cardholder must not be held liable for more than $50 for the unauthorized use of the card. (Comment 3-1)

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.

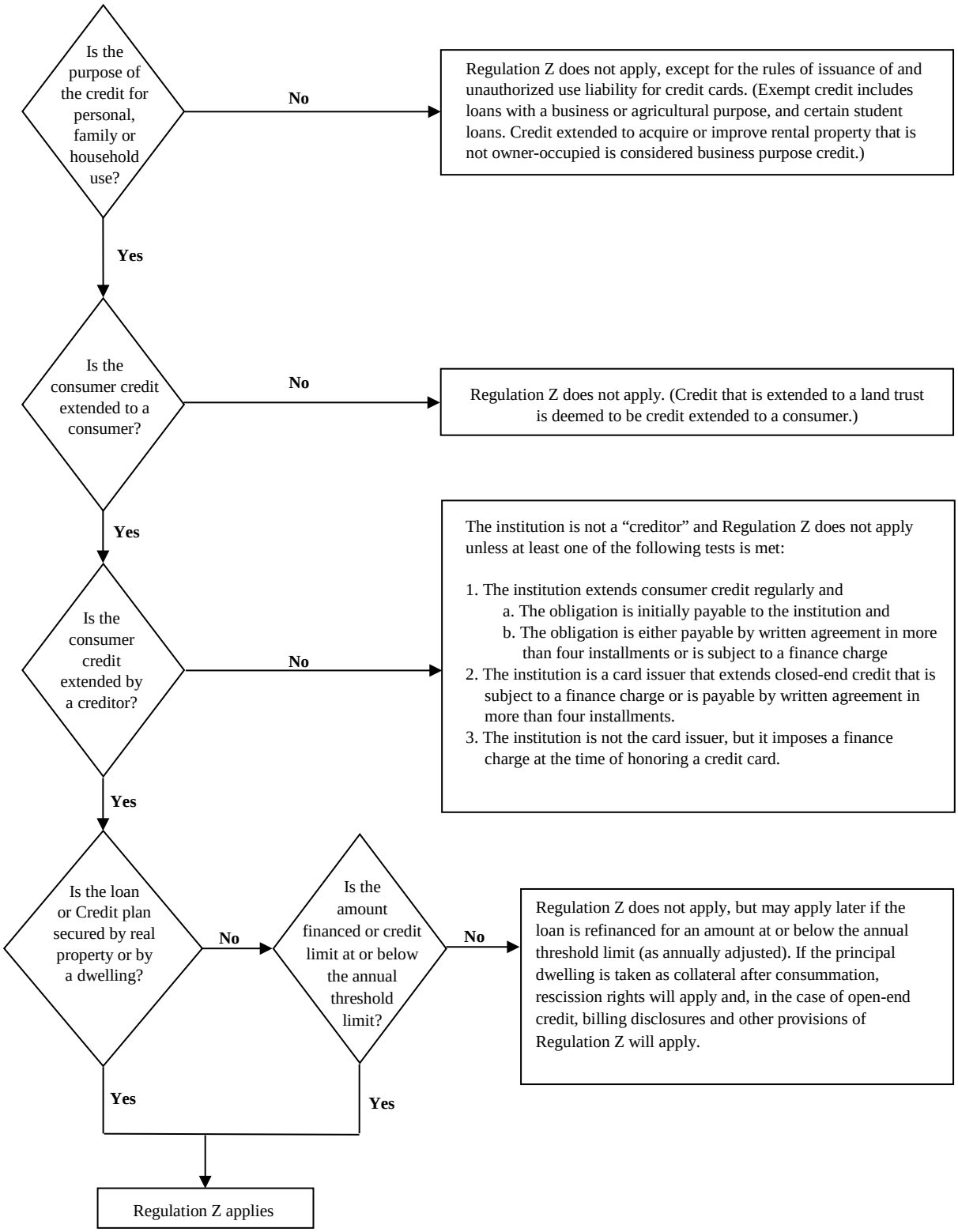
All five factors must be evaluated before the lender can conclude that disclosures are not necessary. Normally, no one factor, by itself, is sufficient reason to determine the applicability of Regulation Z. In any event, the financial institution may routinely furnish disclosures to the consumer. Disclosure under such circumstances does not control whether the transaction is covered, but

[8] *See also* the 2016 FDCPA Interpretive Rule (81 Fed. Reg. 71977, 71979).

[9] The Dodd-Frank Act requires that this threshold be adjusted annually by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). For the current threshold, *see* 12 CFR 1026.3(b)(ii).

can assure protection to the financial institution and compliance with the law.

Coverage Considerations under Regulation Z



Determination of Finance Charge and Annual Percentage Rate ("APR")

Finance Charge (Open-End and Closed-End Credit) – 12 CFR 1026.4

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. In addition, with respect to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card, the finance charge does not include a charge imposed on the asset feature of the prepaid account to the extent the amount of the charge does not exceed comparable charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card.

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 (12 CFR 1026.4(b)).

Accuracy Tolerances (Closed-End Credit) – 12 CFR 1026.18(d) and 1026.23(g)

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 the 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 the TILA and Regulation Z permit various finance charge accuracy tolerances for closed-end credit.

Tolerances for the finance charge in a closed-end transaction, other than a mortgage loan, 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 is not understated 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 or $100, whichever is greater.
  - 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 12 CFR 1026.32, 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 that should have been included in the finance charge was not included.

  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.

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 within this document briefly summarize the rules that must be considered.

Prepaid Finance Charges – 12 CFR 1026.18(b)(3)

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 (FHA), private mortgage insurance (PMI) paid to such companies as the Mortgage Guaranty Insurance Corporation (MGIC), and, in non-real-estate transactions, 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

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).

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

- Interest
- Transaction fees
- Loan origination fees consumer points
- Credit guarantee insurance premiums
- Charges imposed on the creditor for purchasing the loan, which are passed on to the consumer
- Discounts for inducing payment by means other than credit
- Mortgage broker fees
- 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

Charges included unless conditions are met → **Conditions** (Any loan)

- Premiums for credit life, A&H, or loss of income insurance → Insurance not required, disclosures are made, and consumer authorizes
- Debt cancellation fees → Coverage not required, disclosures are made, and consumer authorizes
- Premiums for property or liability insurance → Consumer selects insurance company and disclosures are made
- Premiums for vendor's single interest (VSI) insurance → Insurer waives right of subrogation, consumer selects insurance company, and disclosures are made
- 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
- Charges imposed by third parties → Use of the third party is not required to obtain loan and creditor does not retain the charge
- Charges imposed by third party closing agents → Creditor does not require and does not retain the fee for the particular service
- 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 not included if bona fide and reasonable amount (Residential Mortgage transactions and loans secured by real estate)

- Fees for title insurance, title examination, property survey, etc.
- Fees for preparing loan documents, mortgages, and other settlement documents
- Amounts required to be paid into escrow, if not otherwise included in the finance charge
- Notary fees
- Pre-consummation flood and pest inspection fees
- Appraisal and credit report fees

Charges never included

- Charges payable in a comparable cash transaction.
- Fees for unanticipated late payments
- Overdraft fees not agreed to in writing
- Seller's points
- Participation or membership fees
- Discount offered by the seller to induce payment by cash or other means not involving the use of a credit card
- Interest forfeited as a result of interest reduction required by law
- Charges absorbed by the creditor as a cost of doing business

Annual Percentage Rate Definition – 12 CFR 1026.22 (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.

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 12 CFR 1026.18.

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. For example, 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 (interest is not defined by Regulation Z, but rather is defined by state or other federal law). For example:
    - 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 must be excluded from the finance charge. The finance charge in that case would be only the interest on the loan.
- The payment schedule, which does not necessarily include only principal and interest (P + I) payments. For example:
    - 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 12 CFR 1026.17(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 78s (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 need 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, subject to limited exceptions. 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.

If an APR 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 CFPB 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

Subpart B relates to open-end credit. It contains rules on account-opening disclosures (12 CFR 1026.6) and periodic statements (12 CFR 1026.7-.8). It also describes special rules that apply to credit card transactions, treatment of payments (12 CFR 1026.10) and credit balances (12 CFR 1026.11), procedures for resolving credit billing errors (12 CFR 1026.13), annual percentage rate calculations (12 CFR 1026.14), rescission requirements (12 CFR 1026.15) and advertising (12 CFR 1026.16).

Time of Disclosures (Periodic Statements) – 12 CFR 1026.5(b)

For credit card accounts under an open-end (not home-secured) consumer credit plan, creditors must adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement and that payments are not treated as late for any purpose if they are received within 21 days after mailing or delivery of the statement. In addition, for all open-end consumer credit accounts with grace periods, creditors must adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the date on which a grace period (if any) expires and that finance charges are not imposed as a result of the loss of a grace period if a payment is received within 21 days after mailing or delivery of a statement. For purposes of this requirement, a "grace period" is defined as a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate. For non-credit card open-end consumer plans without a grace period, creditors must adopt reasonable policies and procedures designed to ensure that periodic statements are mailed or delivered at least 14 days prior to the date on which the required minimum periodic payment is due. Moreover, the creditor must adopt reasonable policies and procedures to ensure that it does not treat as late a required minimum periodic payment received by the creditor within 14 days after it has mailed or delivered the periodic statement.

Subsequent Disclosures (Open-End Credit) – 12 CFR 1026.9

For open-end, not home-secured credit, the following applies:

Creditors are required to provide consumers with 45 days' advance written notice of rate increases and other significant changes to the terms of their credit card account agreements. The list of "significant changes" includes most fees and other terms that a consumer should be aware of before use of the account. Examples of such fees and terms include:

- Penalty fees;
- Transaction fees;
- Fees imposed for the issuance or availability of the open-end plan;
- Grace period; and

- Balance computation method.

Changes that do not require advance notice include:

- Reductions of finance charges;
- Termination of account privileges resulting from an agreement involving a court proceeding;
- Increase in an APR upon expiration of a specified period of time previously disclosed in writing;
- Increases in variable APRs that change according to an index not under the card issuer's control; and
- Rate increases due to the completion of, or failure of a consumer to comply with, the terms of a workout or temporary hardship arrangement, if those terms are disclosed prior to commencement of the arrangement.

A creditor may suspend account privileges, terminate an account, or lower the credit limit without notice. However, a creditor that lowers the credit limit may not impose an over limit fee or penalty rate as a result of exceeding the new credit limit without a 45-day advance notice that the credit limit has been reduced.

For significant changes in terms (with the exception of rate changes, increases in the minimum payment, certain changes in the balance computation method, and when the change results from the consumer's failure to make a required minimum periodic payment within 60 days after the due date), a creditor must also provide consumers the right to reject the change. If the consumer does reject the change prior to the effective date, the creditor may not apply the change to the account (12 CFR 1026.9(h)(2)(i)).

In addition, when a consumer rejects a change or increase, the creditor must not:

- Impose a fee or charge or treat the account as in default solely as a result of the rejection; or
- Require repayment of the balance on the account using a method that is less beneficial to the consumer than one of the following methods: (1) the method of repayment prior to the rejection; (2) an amortization period of not less than five years from the date of rejection; or (3) a minimum periodic payment that includes a percentage of the balance that is not more than twice the percentage included prior to the date of rejection.

Finance Charge (Open-End Credit) – 12 CFR 1026.6(a)(1) and 1026.6(b)(3)

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. There are three common methods used, namely, 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. If the examiner is unable to understand the disclosed explanation, he or she should discuss the explanation with management and should remind management 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, the financial institution may, at its option, explain that the average daily balance is or can be multiplied by the number of days in the billing cycle and the periodic rate applied to the product to determine the amount of interest.

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 may, at its option, explain that interest is or may be determined by 1) multiplying each of the average daily balances by the number of days in the billing cycle (or if the daily rate varied during the cycle, by multiplying the number of days that the applicable rate was in effect), 2) by multiplying each of the results by the applicable daily periodic rate, and 3) adding these 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.

NOTE: 12 CFR 1026.54 prohibits a credit card issuer from calculating finance charges based on balances for days in previous billing cycles as a result of the loss of a grace period (a practice sometimes referred to as "double-cycle billing").

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)

The disclosed APR on an open-end credit account is accurate if it is within one-eighth of one percentage point of the APR calculated under Regulation Z.

Determination of APR – 12 CFR 1026.14

The basic method for determining the APR in open-end credit transactions involves multiplying each periodic rate by the number of periods in a year. This method is used in all types of open-end disclosures, including:

- 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 and it does not involve any particular finance charge or periodic balance.

A second method of calculating the APR is the quotient method. At a creditor's option, the quotient method may be disclosed on periodic statements for home-equity plans subject to 12 CFR 1026.40 (home-equity lines of credit or "HELOCs").[10] The quotient method reflects the annualized equivalent of the rate that was actually applied during a cycle. This rate, also known as the effective APR, will differ from the corresponding APR if the creditor applies minimum, fixed, or transaction charges to the account during the cycle. (12 CFR 1026.14(c))

Brief Outline for Open-End Credit APR Calculations on Periodic Statements

NOTE: Assume monthly billing cycles for each of the calculations below.

I. Basic method for determining the APR in an open-end credit transaction. This is the corresponding APR. (12 CFR 1026.14(b))

   A. Monthly rate x 12 = APR

[10] If a creditor does not disclose the effective (or quotient method) APR on a HELOC periodic statement, it must instead disclose the charges (fees and interest) imposed as provided in 12 CFR 1026.7(a).

II. Optional effective APR that may be disclosed on HELOC periodic statements

A. APR when only periodic rates are imposed (12 CFR 1026.14(c)(1))

1. Monthly rate x 12 = APR

Or

2. (Total finance charge / sum of the balances) x 12 = APR

B. APR when minimum or fixed charge, but not transaction charge imposed. (12 CFR 1026.14(c)(2))

1. (Total finance charge / amount of applicable balance[11]) x 12 = APR[12]

C. APR when the finance charge includes a charge related to a specific transaction (such as a cash advance fee), even if the total finance charge also includes any other minimum, fixed, or other charge not calculated using a periodic rate. (12 CFR 1026.14(c)(3))

1. (Total finance charge / (all balances + other amounts on which a finance charge was imposed during the billing cycle without duplication[13]) x 12 = APR[14]

D. APR when the finance charge imposed during the billing cycle includes a minimum or fixed charge that does not exceed $.50 for a monthly or longer billing cycle (or pro rata part of $.50 for a billing cycle shorter than monthly). (12 CFR 1026.14(c)(4))

1. Monthly rate x 12 = APR

E. APR calculation when daily periodic rates are applicable if only the periodic rate is imposed or when a minimum or fixed charge (but not a transactional charge is imposed. (12 CFR 1026.14(d))

1. (Total finance charge / average daily balance) x 12 = APR

Or

2. (Total finance charge / sum of daily balances) x 365 = APR

Change in Terms Notices for Home Equity Plans Subject to 12 CFR 1026.40 – 12 CFR 1026.9(c)

Servicers are required to provide consumers with 15 days' advance written notice of a change to any term required to be disclosed under 12 CFR 1026.6(a) or where the required minimum periodic payment is increased. Notice is not required when the change involves a reduction of any component of a finance charge or other charge or when the change results from an agreement involving a court proceeding. If the creditor prohibits additional extensions of credit or reduces the credit limit in certain circumstances (if permitted by contract), a written notice must be provided no later than three business days after the action is taken and must include the specific reasons for the action. If the creditor requires the consumer to request reinstatement of credit privileges, the notice also must state that fact.

Payments – 12 CFR 1026.10 (Open-End Credit)

Creditors are required to credit a payment to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge. If a creditor fails to credit a payment, as required by 12 CFR 1026.10(a) or (b), in time to avoid the imposition of finance or other charges, the creditor shall adjust the consumer's account so that the charges imposed are credited to the consumer's account during the next billing cycle.

If a card issuer makes a material change in the address for receiving payments or procedures for handling payments, and such change causes a material delay in the crediting of a payment to the consumer's account during the 60–day period following the date on which such change took effect, the card issuer may not impose any late fee or finance charge for a late payment on the credit card account during the 60–day period following the date on which the change took effect.

Timely Settlement of Estates – 12 CFR 1026.11(c)

Issuers are required to establish procedures to ensure that any administrator of an estate can resolve the outstanding credit card balance of a deceased account holder in a timely manner. If an administrator requests the amount of the balance:

- The issuer is prohibited from imposing additional fees on the account;
- The issuer is required to disclose the amount of the balance to the administrator in a timely manner (safe harbor of 30 days); and

[11] For the following formulas, the APR cannot be determined if the applicable balance is zero. (12 CFR 1026.14(c)(2))

[12] Loan fees, points, or similar finance charges that relate to the opening of the account must not be included in the calculation of the APR.

[13] The sum of the balances may include the average daily balance, adjusted balance, or previous balance method. When a portion of the finance charge is determined by application of one or more daily periodic rates, the sum of the balances also means the average of daily balances. See Appendix F to Regulation Z.

[14] Cannot be less than the highest periodic rate applied, expressed as an APR. Loan fees, points, or similar finance charges that relate to the opening of the account must not be included in the calculation of the APR.

- If the balance is paid in full within 30 days after disclosure of the balance, the issuer must waive or rebate any trailing or residual interest charges that accrued on the balance following the disclosure.

Billing Error Resolution – 12 CFR 1026.13 (Open-End Credit)

A billing error notice is a written notice from a consumer that:

- Is received by a creditor at the address disclosed under 12 CFR 1026.7(a)(9) or (b)(9), as applicable, no later than 60 days after the creditor transmitted the first periodic statement that reflects the alleged billing error;
- Enables the creditor to identify the consumer's name and account number; and
- To the extent possible, indicates the consumer's belief and the reasons for the belief that a billing error exists, and the type, date, and amount of the error.

The creditor shall mail or deliver written acknowledgment to the consumer within 30 days of receiving a billing error notice, unless the creditor has complied with the appropriate resolution procedures of 12 CFR 1026.13(e) and (f), as applicable, within the 30–day period. Furthermore, the creditor credit must comply with the appropriate resolution procedures provided by 12 CFR 1026.13(e) and (f), as applicable, within two complete billing cycles (but in no event later than 90 days) after receiving a billing error notice.

Until a billing error is resolved, the following rules apply:

- The consumer need not pay (and the creditor may not try to collect) any portion of any required payment that the consumer believes is related to the disputed amount (including related finance or other charges).
- The creditor or its agent is also prohibited from making or threatening to make an adverse report to any person about the consumer's credit standing, or report that an amount or account is delinquent, because the consumer failed to pay the disputed amount or related finance or other charges.
- A creditor shall not accelerate any part of the consumer's indebtedness or restrict or close a consumer's account solely because the consumer has exercised in good faith rights provided by this section.

A creditor is not prohibited, however, from taking action to collect any undisputed portion of the item or bill; from deducting any disputed amount and related finance or other charges from the consumer's credit limit on the account; or from reflecting a disputed amount and related finance or other charges on a periodic statement, provided that the creditor indicates on or with the periodic statement that payment of any disputed amount and related finance or other charges is not required pending the creditor's compliance with this section.

If a creditor determines that a billing error occurred as asserted, it must within the applicable time limits:

- Correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable; and
- Mail or deliver notification of the correction to the consumer.

If, after conducting a reasonable investigation, a creditor determines that no billing error occurred or that a different billing error occurred from that asserted, the creditor must within the applicable time limits:

- Mail or deliver to the consumer an explanation that sets forth the reasons for the creditor's belief that the billing error alleged by the consumer is incorrect in whole or in part;
- Furnish copies of documentary evidence of the consumer's indebtedness, if the consumer so requests; and
- If a different billing error occurred, correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable.

If a creditor determines that a consumer owes all or part of the disputed amount and related finance or other charges, determine whether the credit complied with the requirements provided in 12 CFR 1026.13(g).

A creditor that has fully complied with the requirements of 12 CFR 1026.13 has no further responsibilities under this section (other than as provided in 12 CFR 1026.13(g)(4)) if a consumer reasserts substantially the same billing error.

NOTE: Special credit card provisions provide additional protections for consumers, including provisions relating to unauthorized use. (12 CFR 1026.12)

Minimum Payments – 12 CFR 1026.7(b)(12)

For credit card accounts under an open-end credit plan, card issuers generally must disclose on periodic statements an estimate of the amount of time and the total cost (principal and interest) involved in paying the balance in full by making only the minimum payments, an estimate of the monthly payment amount required to pay off the balance in 36 months and the total cost (principal and interest) of repaying the balance in 36 months. Card issuers also must disclose a minimum payment warning and an estimate of the total interest that a consumer would save if that consumer repaid the balance in 36 months, instead of making minimum payments.

Advertising for Open-End Plans– 12 CFR 1026.16

The regulation requires that loan product advertisements provide accurate and balanced information, in a clear and conspicuous manner, about rates, monthly payments, and other loan features. The advertising rules ban several deceptive or misleading advertising practices, including representations that a rate or payment is "fixed" when in fact it can change.

If an advertisement for credit states specific credit terms, it must state only those terms that actually are or will be arranged or offered by the creditor. If any finance charges or other charges are set forth in an advertisement, the advertisement must also clearly and conspicuously state the following:

- Any minimum, fixed, transaction, activity or similar charge that is a finance charge under 12 CFR 1026.4 that could be imposed; Any periodic rate that may be applied expressed as an APR as determined under 12 CFR 1026.14(b). If the plan provides for a variable periodic rate, that fact must be disclosed; and

- Any membership or participation fee that could be imposed.

If any finance charges or other charge or payment terms are set forth, affirmatively or negatively, in an advertisement for a home-equity plan subject to the requirements of 12 CFR 1026.40, the advertisement also must clearly and conspicuously set forth the following:

- Any loan fee that is a percentage of the credit limit under the plan and an estimate of any other fees imposed for opening the plan, stated as a single dollar amount or a reasonable range;

- Any periodic rate used to compute the finance charge, expressed as an APR as determined under 12 CFR 1026.14(b); and

- The maximum APR that may be imposed in a variable-rate plan.

Regulation Z's open-end home-equity plan advertising rules include a clear and conspicuous standard for home-equity plan advertisements, consistent with the approach taken in the advertising rules for consumer leases under Regulation M. Commentary provisions clarify how the clear and conspicuous standard applies to advertisements of home-equity plans with promotional rates or payments, and to Internet, television, and oral advertisements of home-equity plans. The regulation allows alternative disclosures for television and radio advertisements for home-equity plans. The regulation also requires that advertisements adequately disclose not only promotional plan terms, but also the rates or payments that will apply over the term of the plan.

Regulation Z also contains provisions implementing the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, which requires disclosure of the tax implications of certain home-equity plans.

Subpart C – Closed-End Credit

Subpart C relates to closed-end credit. It contains rules on disclosures (12 CFR 1026.17-.20), treatment of credit balances (12 CFR 1026.21), annual percentage rate calculations (12 CFR 1026.22), rescission rights (12 CFR 1026.23), and advertising (12 CFR 1026.24).

The TILA-RESPA Integrated Disclosures must be given for most closed-end transactions secured by real property for which the creditor receives an application on or after October 3, 2015. The TILA-RESPA Integrated Disclosures do not apply to HELOCs, reverse mortgages, or mortgages secured by a mobile home or by a dwelling that is not attached to real property. Truth in Lending disclosures (TIL disclosures) and the Consumer Handbook on Adjustable Rate Mortgages (CHARM) booklet must still be provided for certain closed-end loan transactions.

Disclosures, Generally

Timing

Generally, all disclosures provided to consumers must be made clearly and conspicuously in writing, in a form that the consumer may keep ((12 CFR 1026.17(a), 1026.37(o), 1026.38(t)). However, the timing of the disclosures may change depending on the transaction (12 CFR 1026.19(a), 1026.19(e)(1)(iii), 1026.19(f)(1)(ii), 1026.19(g)).

Disclosures in connection with non-mortgage closed-end loans and specified housing assistance loan programs for low- and moderate-income consumers must be provided before consummation of the transaction (12 CFR 1026.3)

For most closed-end transactions secured by real property for which the creditor receives an application on or after October 3, 2015 (including construction-only loans, loans secured by vacant land or by 25 or more acres, and credit extended to certain trusts for tax or estate planning purposes), disclosures must be provided in accordance with the timing requirements outlined in 12 CFR 1026.19(e), (f) and (g). Generally, a creditor is required to mail or deliver the Loan Estimate within three business days of receipt of the consumer's loan application and to ensure that the consumer receives the Closing Disclosure no later than three business days before loan consummation (12 CFR 1026.19(e)(iii), 1026.19(f)(1)(ii)). If the loan is a purchase transaction, the special information booklet must also be provided within three business days of receipt of the consumer's application (12 CFR 1026.19(g)). The specifics of these disclosure timing requirements are further discussed below, including a discussion about revised disclosures.

Mortgage loans not subject to 12 CFR 1026.19(e) and (f) (e.g., reverse mortgages, and chattel-dwelling loans) have different disclosure requirements. For reverse mortgages, disclosures

must be delivered or mailed to the consumer no later than the third business day after a creditor receives the consumer's written application (12 CFR 1026.19(a)). For chattel-dwelling mortgage loans, disclosures must be provided to the consumer prior to consummation of the loan (12 CFR 1026.17(b)). Revised disclosures are also required within three business days of consummation if certain mortgage loan terms change (12 CFR 1026.19(a)(2)). For loans like reverse mortgages, the consumer will receive the Good Faith Estimate (GFE), HUD-1 Settlement Statement (HUD-1), and Truth in Lending disclosures as required under the applicable sections of both TILA and RESPA. Consumers receive TIL disclosures for chattel-dwelling loans that are not secured by land, but the GFE and the HUD-1 are not required. Finally, certain variable rate transactions secured by a dwelling have additional disclosure obligations with specific timing requirements both prior to and after consummation (see 12 CFR 1026.20(c) and (d) below).

Basis for Disclosures

Generally

Disclosures provided for closed-end transactions must reflect the credit terms to which the parties will be legally bound as of the outset of the credit transaction. If information required for the disclosures is unknown, the creditor may provide the consumer with an estimate, using the best information reasonably available. The disclosure must be clearly marked as an estimate.

Variable and Adjustable Rate

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. 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 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 buy-down that is reflected in a contract or a consumer buy-down, the disclosed APR should be a composite rate based on the lower rate for the buy-down 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, such as 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.

Finance Charge, Amount Financed and APRs

Finance Charge – 12 CFR 1026.18(c)

The aggregate total amount of the finance charge must be disclosed for all loans. An itemization of the amount financed is required (except as provided in 12 CFR 1026.18(c)(2) or (c)(3)), unless the loan is subject to 12 CFR 1026.19(e) and (f) (i.e., most closed-end mortgage loans).

Amount Financed – 12 CFR 1026.18(b), 1026.38(o)

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.

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 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 that 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.

Conversely, 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 that 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.

Payment Schedule – 12 CFR 1026.18(g)

For transactions that are not subject to 12 CFR 1026.19(e) and (f), 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.

Annual Percentage Rate (Closed-End Credit) – 12 CFR 1026.22

Calculating the Annual Percentage Rate – 12 CFR 1026.22

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 (1839).

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.

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 the disclosed APR is within one-eighth of 1 percentage point of the APR calculated under Regulation Z (12 CFR 1026.22(a)(2)).

- Irregular transactions (which include multiple advance transactions and other transactions not considered regular), if the disclosed APR is within one-quarter of 1 percentage point of the APR calculated under Regulation Z (12 CFR 1026.22(a)(3)).

- Mortgage transactions, if the disclosed APR is within one-eighth of 1 percentage point for regular transactions or one-quarter of 1 percentage point for irregular transactions **or if**:

1) The rate results from the disclosed finance charge, and:

   a) The disclosed finance charge is considered accurate under 12 CFR 1026.18(d)(1) or 1026.38(o)(2), as applicable; or

   b) The disclosed finance charge is calculated incorrectly but is considered accurate for purposes of rescission, under 12 CFR 1026.23(g) or (h), whichever applies. (12 CFR 1026.22(a)(4))

2) The disclosed finance charge is calculated incorrectly but is considered accurate under 12 CFR 1026.18(d)(1) or 1026.38(o)(2), as applicable, or 12 CFR 1026.23 (g) or (h), and either:

   a) The finance charge is understated and the disclosed APR is also understated but is closer to the actual APR than the APR that would be considered accurate under 12 CFR 1026.22(a)(4); or

   b) The disclosed finance charge is overstated and the disclosed APR is also overstated but is closer to the actual APR than the APR that would be considered accurate under 12 CFR 1026.22(a)(4).

   For example, in an irregular transaction subject to a tolerance of ¼th of 1 percentage point, if the actual APR is 9.00 percent and a $75 omission from the finance charge corresponds to a rate of 8.50 percent that is considered accurate under 12 CFR 1026.22(a)(4), a disclosed APR of 8.65 percent is considered accurate under 12 CFR 1026.22(a)(5). However, a disclosed APR below 8.50 percent or above 9.25 percent would not be considered accurate.

Construction Loans – 12 CFR 1026.17(c)(6) & 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 CFPB'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 12 CFR 1026.17(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.

360-Day and 365-Day Years – 12 CFR 1026.17(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 percent x 365 = 12.17 percent), 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 percent 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.

NOTE: Notwithstanding the APR tolerance, a creditor's disclosures must reflect the terms of the legal obligation between the parties (12 CFR 1026.17(c)(1)), and the APR must be determined in accordance with either the actuarial method or the U.S. Rule method (12 CFR 1026.22(a)(1)). A creditor may not ignore, for disclosure purposes, the effects of applying a 360-day year daily rate over 365 days. (Comment 12 CFR 1026.17(c)(3)-1.ii)

Required Deposit – 12 CFR 1026.18(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.

Transactions with TILA-RESPA Integrated Disclosures – Generally

NOTE: These procedures have not been updated to reflect the Know Before You Owe (KBYO) final rule issued on July 7, 2017. The 2017 TILA-RESPA rule includes an optional compliance period, which began on October 10, 2017 and is for transactions for which a creditor or mortgage broker receives an application prior to October 1, 2018. During this period, early compliance with the 2017 rule is allowed, but not required.

On December 31, 2013, the CFPB published a final rule implementing Sections 1098(2) and 1100A(5) of the Dodd-Frank Act, which directed the CFPB to publish a single, integrated disclosure for mortgage loan transactions, which includes mortgage loan disclosure requirements under TILA and sections 4 and 5 of RESPA. The amendments in the final rule, referred to as the "TILA-RESPA Integrated Disclosure Rule" or

"TRID," are applicable to covered closed-end mortgage loans for which a creditor or mortgage broker receives an application on or after October 3, 2015. As a result, Regulation Z now houses the integrated forms, timing, and related disclosure requirements for most closed-end consumer mortgage loans.

The new integrated disclosures are not used to disclose information about reverse mortgages, HELOCs, chattel-dwelling loans such as loans secured by a mobile home or by a dwelling that is not attached to real property (i.e., land), or other transactions not covered by the TILA-RESPA Integrated Disclosure Rule. The final rule also does not apply to loans made by a creditor who makes five or fewer mortgages in a year. Creditors originating these types of mortgages must continue to use, as applicable, the GFE, HUD-1, and TIL disclosures.

Most closed-end mortgage loans are exempt from the requirement to provide the GFE, HUD-1, and servicing disclosure requirements of 12 CFR 1024.6, 1024.7, 1024.8, 1024.10, and 1024.33(a). Instead, these loans are subject to disclosure, timing, and other requirements under TILA and Regulation Z. Specifically, the aforementioned provisions do not apply to the following federally related mortgage loans:

- Loans subject to the special disclosure (TILA-RESPA Integrated Disclosure) requirements for certain closed-end consumer credit transactions secured by real property set forth in 12 CFR 1026.19(e), (f), and (g); or
- Certain no-interest loans secured by subordinate liens made for the purpose of down payment or similar home buyer assistance, property rehabilitation assistance, energy efficiency assistance, or foreclosure avoidance or prevention. (12 CFR 1026.3(h))

NOTE: A creditor may not use the TILA-RESPA Integrated Disclosure forms instead of the GFE, HUD-1, and TIL forms for transactions that continue to be covered by TILA or RESPA that require those disclosures (e.g., reverse mortgages)

Summary of Applicable Disclosure Requirements:

Use TILA-RESPA Integrated Disclosures (See Regulation Z):	Continue to use existing TIL and RESPA disclosures (as applicable):
• Most closed-end mortgage loans, including: o Construction-only loans o Loans secured by vacant land or by 25 or more acres	• HELOCs (subject to disclosure requirements under 12 CFR 1026.40) • Reverse mortgages[15] (subject to existing TIL and GFE disclosures) • Chattel-secured mortgages (i.e., mortgages secured by a mobile home or by a dwelling that is not attached to real property, such as land) (subject to existing TIL disclosures, and not RESPA)
NOTE: In both cases, there is a partial exemption from these disclosures under 12 CFR 1026.3(h) for loans secured by subordinate liens and associated with certain housing assistance loan programs for low- and moderate-income persons.	

Creditors making closed-end consumer credit transactions secured by real property, and subject to the provisions of 12 CFR 1026.19(e) and (f), must provide consumers with a Loan Estimate under 12 CFR 1026.37, Closing Disclosure under 12 CFR 1026.38, the special information booklet as required by RESPA, under 12 CFR 1026.19(g), and, as applicable for ARM transactions, the CHARM booklet. The special information

[15] An open-end reverse mortgage receives open-end disclosures, not a GFE or HUD-1.

booklet is described in further detail below.

Early disclosures (Loan Estimate) – 12 CFR 1026.19(e)

12 CFR 1026.19(e) requires the creditor to provide good faith estimates of the Loan Estimate disclosures required by 12 CFR 1026.37 (see subpart E for information on the content, form, and format of the disclosure). The creditor generally must deliver or place in the mail the Loan Estimate no later than three business days after receiving the consumer's application, and no later than seven business days before consummation. (12 CFR 1026.19(e)(1)(i) and (iii))

Generally, the creditor is responsible for ensuring that the Loan Estimate and its delivery meet the rule's content, delivery, and timing requirements. (See 12 CFR 1026.19(e) and 1026.37.) If a mortgage broker receives a consumer's application, the mortgage broker may provide the Loan Estimate to the consumer on the creditor's behalf. If it does so, the mortgage broker must comply with all requirements of 12 CFR 1026.19(e), as well as the three-year record retention requirements in 12 CFR 1026.25(c). (12 CFR 1026.19(e)(1)(ii)) The creditor is expected to maintain communication with mortgage brokers to ensure that the Loan Estimate and its delivery satisfy the rule's requirements, and the creditor is legally responsible for any errors or defects. (12 CFR 1026.19(e)(1)(ii); Comment 19(e)(1)(ii) -1 and -2)

Timing – Loan Estimate – early disclosures

The Loan Estimate must be delivered or placed in the mail to the consumer no later than the third business day after the creditor or mortgage broker receives the consumer's application for a mortgage loan. (12 CFR 1026.19(e)(1)(iii)(A)) If the Loan Estimate is not provided to the consumer in person, the consumer is considered to have received the Loan Estimate three business days after it is delivered or placed in the mail (this applies to electronic delivery as well). (12 CFR 1026.19(e)(1)(iv); Comment 19(e)(1)(iv)-2). Other than for transactions secured by a consumer's interest in a timeshare plan, the Loan Estimate must be delivered or placed in the mail no later than the seventh business day before consummation (12 CFR 1026.19(e)(1)(iii)(B) and (C)).

For purposes of the TILA-RESPA Integrated Disclosures rule, an "application" is defined in 12 CFR 1026.2(a)(3)(ii). For transactions subject to 12 CFR 1026.19(e), (f), or (g), an application consists of the submission of the following six pieces of information:

- The consumer's name;
- The consumer's income;
- The consumer's social security number to obtain a credit report;
- The property address;
- An estimate of the value of the property; and
- The mortgage loan amount sought.

This definition of application is similar to the definition under Regulation X (12 CFR 1024.2(b)), except that it does not include the seventh "catch-all" element of that definition, that is, "any other information deemed necessary by the loan originator."

An application may be submitted in written or electronic format, and includes a written record of an oral application. (Comment 2(a)(3)-1)

This definition of application does not prevent a creditor from collecting whatever additional information it deems necessary in connection with the request for the extension of credit. However, once a consumer has submitted[16] the six pieces of information discussed above to the creditor for purposes of obtaining an extension of credit, the creditor has an application for purposes of the requirement for delivery of the Loan Estimate to the consumer and must abide by the three business day timing requirement. (Comment 2(a)(3)-1)

If the creditor determines, within the three business day period, that the consumer's application will not or cannot be approved on the terms requested by the consumer, or if the consumer withdraws the application within that period, the creditor does not have to provide the Loan Estimate. However, if the creditor does not provide the Loan Estimate, it will not have complied with the Loan Estimate requirements if it later consummates the transaction on the terms originally applied for by the consumer. If a consumer amends an application and a creditor determines the amended application may proceed, then the creditor is required to comply with the Loan Estimate requirements, including delivering or mailing a Loan Estimate within three business days of receiving the amended or resubmitted application. (Comment 19(e)(1)(iii)-3)

A "business day" for purposes of providing the Loan Estimate is a day on which the creditor's offices are open to the public for carrying out substantially all of its business functions. (Comment 19(e)(1)(iii)-1, 12 CFR 1026.2(a)(6))

NOTE: The term "business day" is defined differently for other purposes, including counting days to ensure the consumer receives the Closing Disclosure on time. (12 CFR 1026.2(a)(6), 1026.19(e)(1)(iii)(B) and (e)(1)(iv), and 1026.19(f)(1)(ii)(A) and (f)(1)(iii)) For these other purposes, business day means all

[16] When a consumer uses an online application system that allows the information to be saved, the application must be submitted before the Loan Estimate timing requirements are triggered.

calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a). (12 CFR 1026.2(a)(6); Comment 2(a)(6)-2; Comments 19(e)(1)(iii)-1 and 19(f)(1)(ii)-1)

Creditors are required to act in good faith and exercise due diligence in obtaining information necessary to complete the Loan Estimate. (Comment 17(c)(2)(i)-1) Normally, creditors may rely on the representations of other parties in obtaining information. (12 CFR 1026.17(c)(2)(i))

NOTE: There may be some information that is not reasonably available to the creditor at the time the Loan Estimate is made. In these instances, except as otherwise provided in 12 CFR 1026.19, 1026.37, and 1026.38, the creditor may use estimates even though it knows that more precise information will be available by the point of consummation. However, new disclosures may be required under 12 CFR 1026.17(f) or 1026.19. (Comment 17(c)(2)(i)-1) When estimated figures are used, they must be designated as such on the Loan Estimate. (Comment 17(c)(2)(i)-2)

The consumer may modify or waive the seven business day waiting period after receiving the Loan Estimate if the consumer determines that the mortgage loan is needed to meet a bona fide personal financial emergency that necessitates consummating the credit transaction before the end of the waiting period. (12 CFR 1026.19(e)(1)(v)) Whether a consumer has a bona fide personal financial emergency is determined by the facts surrounding the consumer's individual situation. One example is the imminent sale of the consumer's home at foreclosure, where the foreclosure sale will proceed unless loan proceeds are made available to the consumer during the waiting period. (12 CFR 1026.19(e)(1)(v); Comment 19(e)(1)(v)-1). To modify or waive the waiting period, the consumer must give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and is signed by all consumers primarily liable on the legal obligation. (12 CFR 1026.19(e)(1)(v)) The creditor may not provide the consumer with a pre-printed waiver form. (12 CFR 1026.19(e)(1)(v))

Good faith requirement and tolerances

Creditors are responsible for ensuring that the figures stated in the Loan Estimate are made in good faith and consistent with the best information reasonably available to the creditor at the time they are disclosed. (12 CFR 1026.19(e)(3); Comment 19(e)(3)(iii)-1 through -3) Whether or not a Loan Estimate was made in good faith is determined by calculating the difference between the estimated charges originally provided in the Loan Estimate and the actual charges paid by or imposed on the consumer in the Closing Disclosure. (12 CFR 1026.19(e)(3)(i) and (ii)). Generally, if the charge paid by or imposed on the consumer exceeds the amount originally disclosed on the Loan Estimate, it is not in good faith. (12 CFR 1026.19(e)(3)(i)) As long as the creditor's estimate is consistent with the best information reasonably available, and the creditor charges the consumer <u>less</u> than the amount disclosed on the Loan Estimate, the Loan Estimate is considered to be in good faith. (12 CFR 1026.19(e)(3)(i))

The general rule is that the estimated closing cost is in good faith if the charge does not exceed the amount disclosed in the Loan Estimate. Unless there is an exception, depending on the specific circumstances, the creditor may not charge more than the amounts disclosed on the Loan Estimate. (12 CFR 1026.19(e)(3)(i)). For certain charges, there are different tolerances when charges exceed the amounts disclosed.

Zero tolerance. For charges other than those that are specifically excepted, as noted below, creditors may not charge consumers more than the amount disclosed on the Loan Estimate, other than for changed circumstances that permit a revised Loan Estimate. (12 CFR 1026.19(e)(3)(i) and (iv) The zero tolerance charges include but are not limited to the following:

- Fees for required services paid to the creditor, mortgage broker, or an affiliate of either (12 CFR 1026.19(e)(3)(i), Comment 19(e)(3)(i)-1(i)-(iii));
- Fees paid to an unaffiliated third party if the creditor did not permit the consumer to shop for a third-party service provider for a settlement service or transfer taxes. (12 CFR 1026.19(e)(3)(i)), Comment 19(e)(3)(i)-1(iv)-(v))

10 percent cumulative tolerance. Charges for third-party services and recording fees paid by or imposed on the consumer are grouped together and are subject to a 10 percent cumulative tolerance. This means the creditor may charge the consumer more than the amount disclosed on the Loan Estimate for any of these charges so long as the total sum of the charges added together does not exceed the sum of all such charges disclosed on the Loan Estimate by more than 10 percent. (12 CFR 1026.19(e)(3)(ii)(A)). These charges are:

- Recording fees (Comment 19(e)(3)(ii)-4);
- Charges for required third-party services where:
    - The charge is not paid to the creditor or the creditor's affiliate (12 CFR 1026.19(e)(3)(ii)(B)); and
    - The consumer is permitted by the creditor to shop for the third-party service, and the consumer selects a third-party service provider on the creditor's written list of service providers. (12 CFR 1026.19(e)(3)(ii)(C); 12 CFR 1026.19(e)(1)(vi); Comment 19(e)(1)(vi)-1 through 7))

Variances permitted without tolerance limits. Creditors may charge consumers more than the amount disclosed on the Loan Estimate without any tolerance limitation for certain costs or terms, but only if the original estimated charge, or lack of an estimated charge for a particular service, was based on the best information reasonably available to the creditor at the time the disclosure was provided. (12 CFR 1026.19(e)(3)(iii)) These charges are:

- Prepaid interest; property insurance premiums; amounts placed into an escrow, impound, reserve or similar account and may be paid to the creditor or its affiliates. (12 CFR 1026.19(e)(3)(iii)(A)-(C))

- Charges paid to unaffiliated third-party service providers for services required by the creditor if the creditor permits the consumer to shop and the consumer selects a third-party service provider not on the creditor's written list of service providers. (12 CFR 1026.19(e)(3)(iii)(D))

- Charges paid to third-party service providers for services not required by the creditor (may be paid to affiliates of the creditor). (12 CFR 1026.19(e)(3)(iii)(E))

List of services for which a consumer may shop. In addition to the Loan Estimate, if the consumer is permitted to shop for a settlement service, the creditor, no later than three business days after receiving the application, must provide the consumer with a written list of services for which the consumer can shop. This list must:

- Identify at least one available settlement service provider for each service, and

- State that the consumer may choose a different provider of that service. (12 CFR 1026.19(e)(3)(ii)(C) and (e)(1)(vi)(C))

  NOTE: When a creditor allows a consumer to shop for a third-party service and the consumer chooses a service provider not identified on the creditor's list, the charge is not subject to a tolerance limitation.

Refunds within 60 days of consummation. If the amounts paid by the consumer at closing exceed the amounts disclosed on the Loan Estimate beyond the applicable tolerance threshold, the creditor must refund the excess to the consumer no later than 60 calendar days after consummation. (12 CFR 1026.19(f)(2)(v))

- For charges subject to zero tolerance, any amount charged beyond the amount disclosed on the Loan Estimate must be refunded to the consumer. (12 CFR 1026.19(e)(3)(i))

- For charges subject to a 10 percent cumulative tolerance, to the extent the total sum of the charges added together exceeds the sum of all such charges disclosed on the Loan Estimate by more than 10 percent, the difference must be refunded to the consumer. (12 CFR 1026.19(e)(3)(ii))

Loan Estimate - Revisions and Corrections

Creditors generally are bound by the original Loan Estimate and must determine the estimate's good faith by calculating the difference between the estimated charges originally provided and the actual charges paid by the consumer. For purposes of determining whether the estimates are in good faith, the creditor may use a revised estimate of a charge instead of the amount originally disclosed if the revision is due to one of the reasons set out in specific circumstances in 12 CFR 1026.19(e)(3)(iv)(A) through (F). Specific circumstances include:

Changed circumstances – increased settlement charges. Changed circumstances that occur after the Loan Estimate is provided to the consumer that cause estimated settlement charges to increase more than is permitted under the TILA-RESPA Integrated Disclosure rule (12 CFR 1026.19(e)(3)(iv)(A)).

- A creditor may provide and use a revised Loan Estimate redisclosing a settlement charge and compare that revised estimate to the amount imposed on the consumer for purposes of determining good faith if changed circumstances cause the estimated charge to increase or, in the case of charges subject to the 10 percent cumulative tolerance under 12 CFR 1026.19(e)(3)(ii), cause the sum of those charges to increase by more than the 10 percent tolerance. (12 CFR 1026.19(e)(3)(iv)(A); Comment 19(e)(3)(iv)(A)-1) Examples of changed circumstances affecting settlement costs include (Comment 19(e)(3)(iv)(A)-2):

  - A natural disaster that damages the property or otherwise results in additional closing costs;

  - A creditor's estimate of title insurance is no longer valid because the title insurer goes out of business; or

  - New information not relied on when the Loan Estimate was provided is discovered, such as a neighbor of the seller filing a claim contesting the property boundary.

Changed circumstances – consumer eligibility. Changed circumstances that occur after the Loan Estimate is provided to the consumer that affect the consumer's eligibility for the terms for which the consumer applied or the value of the security for the loan (12 CFR 1026.19(e)(3)(iv)(B)).

NOTE: A changed circumstance permitting a revised Loan Estimate under 12 CFR 1026.19(e)(3)(iv)(A) and (B) is:

- An extraordinary event beyond the control of any interested party or other unexpected event specific to the consumer or transaction (12 CFR 1026.19(e)(3)(iv)(A)(*1*));

- Information specific to the consumer or transaction that the creditor relied upon when providing the original Loan Estimate and that was inaccurate or changed after the disclosures were provided (12 CFR 1026.19(e)(3)(iv)(A)(*2*)); or

- New information specific to the consumer or transaction that the creditor did not rely on when providing the original Loan Estimate. (12 CFR 1026.19(e)(3)(iv)(A)(*3*))

Change in eligibility. A creditor also may provide and use a revised Loan Estimate if a changed circumstance affected the consumer's creditworthiness or the value of the security for the loan and resulted in the consumer being ineligible for an estimated loan term previously disclosed. (12 CFR 1026.19(e)(3)(iv)(B); Comment 19(e)(3)(iv)(B)-1) This may occur when a changed circumstance causes a change in the consumer's eligibility for specific loan terms disclosed on the Loan Estimate, which in turn results in increased cost for a settlement service beyond the applicable tolerance threshold. (Comment 19(e)(3)(iv)(A)-2) For example:

- The creditor relied on the consumer's representation to the creditor of a $90,000 annual income, but underwriting determines that the consumer's annual income is only $80,000.
- There are two co-applicants applying for a mortgage loan and the creditor relied on a combined income when providing the Loan Estimate, but one applicant subsequently becomes unemployed.

Revisions requested by the consumer. The consumer requests revisions to the credit terms or the settlement that cause the estimated charge to increase. For example, a consumer grants a power of attorney authorizing a family member to consummate the transaction on the consumer's behalf, and the creditor provides revised disclosures reflecting the fee to record the power of attorney. (Comment 19(e)(3)(iv)(C)-1)

Rate locks after initial Loan Estimate. If the interest rate for the loan was not locked when the Loan Estimate was provided and, upon being locked at some later time, points or lender credits for the mortgage loan change, the creditor is required to provide a revised Loan Estimate no later than three business days after the interest rate is locked and may use the revised Loan Estimate to compare to points and lender credits charged. The revised Loan Estimate must reflect the revised interest rate as well as any revisions to the points disclosed on the Loan Estimate pursuant to 12 CFR 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms that have changed due to the new interest rate. (12 CFR 1026.19(e)(3)(iv)(D); Comment 19(e)(3)(iv)(D)-1)

Expiration of Loan Estimate. If the consumer indicates an intent to proceed with the transaction more than 10 business days after the Loan Estimate was delivered or placed in the mail to the consumer, a creditor may use a revised Loan Estimate. (12 CFR 1026.19(e)(3)(iv)(E); Comment 19(e)(3)(iv)(E)-1) No justification is required for the change to the original estimate of a charge other than the lapse of 10 business days.

Construction loans. In addition to the circumstances described above, creditors also may use a revised Loan Estimate where the transaction involves financing of new construction and the creditor reasonably expects that settlement will occur more than 60 calendar days after the original Loan Estimate has been provided. (12 CFR 1026.19(e)(3)(iv)(F)) Creditors may use revised Loan Estimates in this circumstance only when the original Loan Estimate clearly and conspicuously stated that at any time prior to 60 days before consummation, the creditor may issue revised disclosures. (Comment 19(e)(3)(iv)(F)-1)

> *NOTE: 12 CFR 1026.19(e)(3) does not include technical errors, miscalculations, or underestimations of charges as reasons for which creditors are permitted to provide revised Loan Estimates.*

Timing – Loan Estimate – revised disclosures

The general rule is that the creditor must deliver or place in the mail the revised Loan Estimate to the consumer no later than three business days after receiving the information sufficient to establish that one of the reasons for the revision has occurred. (12 CFR 1026.19(e)(4)(i); Comment 19(e)(4)(i)-1)

The creditor may not provide a revised Loan Estimate on or after the date the creditor provides the consumer with the Closing Disclosure. (12 CFR 1026.19(e)(4)(ii); Comment 19(e)(4)(ii)-1.ii) Because the Closing Disclosure must be received by the consumer no later than three business days before consummation, this means the consumer must receive a revised Loan Estimate no later than four business days prior to consummation. (12 CFR 1026.19(e)(4)(ii); Comment 19(e)(4)(ii)-1.ii)

NOTE: Generally a creditor is required to provide a revised Loan Estimate within three business days of receiving information sufficient to establish the changed circumstance or other triggering event (or in the case of a rate lock, the next business day). In some circumstances, the creditor may already have provided a Closing Disclosure and thus be unable to provide a revised Loan Estimate. However, if there are less than four business days between the date the creditor would be required to provide a revised disclosure and consummation, creditors may provide consumers with a Closing Disclosure reflecting any revised charges resulting from the changed circumstance and rely on those figures (rather than the amounts disclosed on the Loan Estimate) for purposes of determining good faith and the applicable tolerance. Comment 19(e)(4)(ii)-1 provides illustrative examples.

Predisclosure activity (12 CFR 1026.19(e)(2)(i)(A))

A creditor or other person generally may not impose any fee on a consumer in connection with the consumer's application for a mortgage transaction until the consumer has received the Loan Estimate and has indicated intent to proceed with the transaction. (12 CFR 1026.19(e)(2)(i)(A)) This restriction includes limits on imposing:

- Application fees;
- Appraisal fees;
- Underwriting fees; and

- Other fees imposed on the consumer.

The only exception to this exclusion is for a bona fide and reasonable fee for obtaining a consumer's credit report. (12 CFR 1026.19(e)(2)(i)(B); Comment 19(e)(2)(i)(A)-1 through -5 and Comment 19(e)(2)(i)(B)-1)

Documentation of intent to proceed. To satisfy the record retention requirements of 12 CFR 1026.25, the creditor must document the consumer's communication of the intent to proceed. (12 CFR 1026.19(e)(2)(i)(A)) A consumer indicates intent to proceed with the transaction when the consumer communicates, in any manner, that the consumer chooses to proceed after the Loan Estimate has been delivered, unless a particular manner of communication is required by the creditor. (12 CFR 1026.19(e)(2)(i)(A)) This may include:

- Oral communication in person immediately upon delivery of the Loan Estimate; or

- Oral communication over the phone, written communication via email, or signing a pre-printed form after receipt of the Loan Estimate.

A consumer's silence is not indicative of intent to proceed. (Comment 19(e)(2)(i)(A)-2)

Written information for consumers before the Loan Estimate is provided. (12 CFR 1026.19(e)(2)(ii)) A creditor or other person may provide a consumer with estimated terms or costs prior to the consumer receiving the Loan Estimate, if the person clearly and conspicuously states at the top of the front of the first page of the written estimate and in font size no smaller than 12-point font "Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing the loan." (12 CFR 1026.19(e)(2)(ii); Comment 19(e)(2)(ii)-1) In addition, the written estimate may not have headings, content, and format substantially similar to the Loan Estimate or the Closing Disclosure. (12 CFR 1026.19(e)(2)(ii); Comment 19(e)(2)(ii)-1)

The CFPB has provided a model of the required statement in form H-26 of Appendix H to Regulation Z.

Verification of information before the Loan Estimate is provided. A creditor or other person may not condition providing the Loan Estimate on a consumer submitting documents verifying information related to the consumer's mortgage loan application before providing the Loan Estimate. (12 CFR 1026.19(e)(2)(iii); Comment 19(e)(2)(iii)-1)

Final Disclosures (Closing Disclosure) – 12 CFR 1026.19(f)

For loans that require a Loan Estimate (i.e., most closed-end mortgage loans secured by real property) and that proceed to closing, creditors must provide a new final disclosure reflecting the actual terms of the transaction; it is called the Closing Disclosure. The form integrates and replaces the HUD-1 and the final TIL disclosure for these transactions. The creditor is generally required to ensure that the consumer receives the Closing Disclosure no later than three business days before consummation of the loan. (12 CFR 1026.19(f)(1)(ii))

NOTE: If the creditor mails the disclosure six business days prior to consummation, it can assume that it was received three business days after sending. (12 CFR 1026.19(f)(1)(iii); Comment 19(f)(1)(iii))

- The Closing Disclosure generally must contain the actual terms and costs of the transaction. (12 CFR 1026.19(f)(1)(i)) Creditors may estimate disclosures using the best information reasonably available when the actual term or cost is not reasonably available to the creditor at the time the disclosure is made. However, creditors must act in good faith and use due diligence in obtaining the information. The creditor normally may rely on the representations of other parties in obtaining the information, including, for example, the settlement agent. The creditor is required to provide corrected disclosures containing the actual terms of the transaction at or before consummation. (Comments 19(f)(1)(i)-2, -2.i, and -2.ii)

- The Closing Disclosure must be in writing and contain the information prescribed in 12 CFR 1026.38. The creditor must disclose only the specific information set forth in 12 CFR 1026.38(a) through (s), as shown in the CFPB's form in Appendix H-25. (12 CFR 1026.38(t))

- If the actual terms or costs of the transaction change prior to consummation, the creditor must provide a corrected disclosure that contains the actual terms of the transaction and complies with the other requirements of 12 CFR 1026.19(f), including the timing requirements, and requirements for providing corrected disclosures due to subsequent changes. (Comment 19(f)(1)(i)-1)

- New three-day waiting period. If the creditor provides a corrected disclosure, it must provide the consumer with an additional three-business-day waiting period prior to consummation if the annual percentage rate becomes inaccurate, the loan product changes, or a prepayment penalty is added to the transaction. (12 CFR 1026.19(f)(2)(ii)

"Consummation" occurs when the consumer becomes contractually obligated to the creditor on the loan, not, for example, when the consumer becomes contractually obligated to a seller on a real estate transaction. The time when a consumer becomes contractually obligated to the creditor on the loan depends on applicable state law. (12 CFR 1026.2(a)(13); Comment 2(a)(13)-1)

Timing and Delivery - Closing Disclosure.

Generally, the creditor is responsible for ensuring that the consumer receives the Closing Disclosure form no later than

three business days before consummation. (12 CFR 1026.19(f)(1)(ii)(A); Comment 19(f)(1)(v)-3) The creditor also is responsible for ensuring that the Closing Disclosure meets the content, delivery, and timing requirements. (12 CFR 1026.19(f) and 1026.38) For timeshare transactions, the creditor must ensure that the consumer receives the Closing Disclosure no later than consummation. (12 CFR 1026.19(f)(1)(ii)(B))

If the Closing Disclosure is provided in person, it is considered received by the consumer on the day it is provided. If it is mailed or delivered electronically, the consumer is considered to have received the Closing Disclosure three business days after it is delivered or placed in the mail. (12 CFR 1026.19(f)(1)(iii); Comment 19(f)(1)(ii)-2)

However, if the creditor has evidence that the consumer received the Closing Disclosure earlier than three business days after it is mailed or delivered, it may rely on that evidence and consider it to be received on that date. (Comments 19(f)(1)(iii)-1 and -2)

Multiple consumers. In transactions that are not rescindable, the Closing Disclosure may be provided to any consumer with primary liability on the obligation. (12 CFR 1026.17(d)) In rescindable transactions, the creditor must provide the Closing Disclosure separately and meet the timing requirements for each consumer who has the right to rescind under TILA (see 12 CFR 1026.23).

Settlement agents. Creditors may contract with settlement agents to have the settlement agent provide the Closing Disclosure to consumers on the creditor's behalf, provided that the settlement agent complies with all relevant requirements of 12 CFR 1026.19(f). (12 CFR 1026.19(f)(1)(v)) Creditors and settlement agents also may agree to divide responsibility with regard to completing the Closing Disclosure, with the settlement agent assuming responsibility to complete some or all the Closing Disclosure. (Comment 19(f)(1)(v)-4) Any such creditor must maintain communication with the settlement agent to ensure that the Closing Disclosure and its delivery satisfy the requirements described above, and the creditor is legally responsible for any errors or defects. (12 CFR 1026.19(f)(1)(v); Comment 19(f)(1)(v)-3) In transactions involving a seller, the settlement agent is required to provide the seller with the Closing Disclosure reflecting the actual terms of the seller's transaction no later than the day of consummation. (12 CFR 1026.19(f)(4)(i) and (ii))

NOTE: "Business day" has a different meaning for purposes of providing the Closing Disclosure than it is for purposes of providing the Loan Estimate after receiving a consumer's application. For purposes of providing the Closing Disclosure, the term business day means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a). (See 12 CFR 1026.2(a)(6), 1026.19(f)(1)(ii)(A) and (f)(1)(iii))

Three-business-day waiting period. The loan may not be consummated less than three business days after the Closing Disclosure is received by the consumer. If a settlement is scheduled during the waiting period, the creditor generally must postpone settlement, unless the consumer determines that the extension of credit is necessary to meet a bona fide personal financial emergency and waives the waiting period. The written waiver describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all consumers who are primarily liable on the legal obligation. Pre-printed forms for this purpose are prohibited. (12 CFR 1026.19(f)(1)(iv))

Average charges. In general, the amount imposed on the consumer for any settlement service must not exceed the amount the settlement service provider actually received for that service. However, an average charge may be imposed instead of the actual amount received for a particular service, as long as the average charge satisfies the following conditions (12 CFR 1026.19(f)(3)(i)-(ii); Comment 19(f)(3)(i)-1):

- The average charge is no more than the average amount paid for that service by or on behalf of all consumers and sellers for a class of transactions;
- The creditor or settlement service provider defines the class of transactions based on an appropriate period of time, geographic area, and type of loan;
- The creditor or settlement service provider uses the same average charge for every transaction within the defined class; and
- The creditor or settlement service provider does not use an average charge:
  - For any type of insurance;
  - For any charge based on the loan amount or property value; or
  - If doing so is otherwise prohibited by law.

Closing Disclosures - Revisions and Corrections (12 CFR 1026.19(f)(2)).

Creditors must re-disclose terms or costs on the Closing Disclosure if certain changes occur to the transaction after the Closing Disclosure was first provided that cause the disclosures to become inaccurate. There are three categories of changes that require a corrected Closing Disclosure containing all changed terms. (12 CFR 1026.19(f)(2))

- Changes that occur before consummation that require a new three-business-day waiting period; (12 CFR 1026.19(f)(2)(ii))
- Changes that occur before consummation and do not require a new three-business-day waiting period; and (12 CFR 1026.19(f)(2)(i))

- Changes that occur after consummation. (12 CFR 1026.19(f)(2)(iii))

Changes before consummation requiring new waiting period. If one of the following occurs after delivery of the Closing Disclosure and before consummation, the creditor must provide a corrected Closing Disclosure containing all changed terms and ensure that the consumer receives it no later than three business days before consummation. (12 CFR 1026.19(f)(2)(ii); Comment 19(f)(2)(ii)-1)

- The disclosed APR becomes inaccurate. If the APR previously disclosed becomes inaccurate, the creditor must provide a corrected Closing Disclosure with the corrected APR disclosure and all other terms that have changed. The APR's accuracy is determined according to 12 CFR 1026.22. (12 CFR 1026.19(f)(2)(ii)(A))

- The loan product changes. If the loan product is changed, causing the product description disclosed to become inaccurate, the creditor must provide a corrected Closing Disclosure with the corrected loan product and all other terms that have changed. (12 CFR 1026.19(f)(2)(ii)(B))

- A prepayment penalty is added. If a prepayment penalty is added to the transaction, the creditor must provide a corrected Closing Disclosure with the prepayment penalty provision disclosed and all other terms that have changed. (12 CFR 1026.19(f)(2)(ii)(C))

The consumer may waive this period if the consumer is facing a bona fide personal financial emergency. (12 CFR 1026.19(f)(1)(iv))

Changes before consummation not requiring new waiting period; consumer's right to inspect. For any other changes before consummation that do not fall under the three categories above (i.e., related to the APR, loan product, or the addition of a prepayment penalty), the creditor still must provide a corrected Closing Disclosure with any terms or costs that have changed and ensure that the consumer receives it. For these changes, there is no additional three-business-day waiting period required. The creditor must ensure only that the consumer receives the revised Closing Disclosure at or before consummation. (12 CFR 1026.19(f)(2)(i); Comment 19(f)(2)(i)-1 through -2)

However, a consumer has the right to inspect the Closing Disclosure during the business day before consummation. (12 CFR 1026.19(f)(2)(i)) If a consumer asks to inspect the Closing Disclosure the business day before consummation, the Closing Disclosure presented to the consumer must reflect any adjustments to the costs or terms that are known to the creditor at the time the consumer inspects it. (12 CFR 1026.19(f)(2)(i))

A creditor may satisfy the obligation to provide the Closing Disclosure by ensuring that a settlement agent that provides a consumer with the disclosures complies with the requirements of 12 CFR 1026.19(f). (12 CFR 1026.19(f)(1)(v); Comment 19(f)(2)(i)-2)

Changes due to events occurring after consummation. Creditors must provide a corrected Closing Disclosure if an event in connection with the settlement occurs during the 30-calendar-day period after consummation that causes the Closing Disclosure to become inaccurate and results in a change to an amount paid by the consumer from what was previously disclosed. (12 CFR 1026.19(f)(2)(iii); Comment 19(f)(2)(iii)-1)

When a post-consummation event requires a corrected Closing Disclosure, the creditor must deliver or place in the mail a corrected Closing Disclosure not later than 30 calendar days after receiving information sufficient to establish that such an event has occurred. (12 CFR 1026.19(f)(2)(iii); Comment 19(f)(2)(iii)-1) In transactions involving a seller, the settlement agent must provide the seller with a revised Closing Disclosure if an event occurs within 30 days of consummation that makes the disclosures inaccurate as they relate to the amount actually paid by the seller. The settlement agent must deliver or mail a corrected closing disclosure no later than 30 days from receiving information that establishes the Closing Disclosure is inaccurate and results in a change to an amount actually paid by the seller from what was previously disclosed. (12 CFR 1026.19(f)(4)(ii))

Changes due to clerical errors. The creditor must provide a revised Closing Disclosure to correct non-numerical clerical errors no later than 60 calendar days after consummation. (12 CFR 1026.19(f)(2)(iv)) An error is clerical if it does not affect a numerical disclosure and does not affect the timing, delivery, or other requirements imposed by 12 CFR 1026.19(e) or (f). (Comment 19(f)(2)(iv)-1)

Refunds related to the good faith analysis. The creditor can cure a tolerance violation of 12 CFR 1026.19(e)(3)(i) or (ii) by providing a refund to the consumer and delivering or placing in the mail a corrected Closing Disclosure that reflects the refund no later than 60 calendar days after consummation. (12 CFR 1026.19(f)(2)(v))

Special Information Booklet - 12 CFR 1026.19(g)

Creditors generally must provide a copy of the special information booklet, otherwise known as the home buying information booklet, to consumers who apply for a consumer credit transaction secured by real property. For loans using the Loan Estimate and Closing Disclosure forms, creditors provide the "*Your Home Loan Toolkit: A Step-by-Step Guide,*" designed by the CFPB to replace the "Shopping for Your Home Loan: Settlement Cost Booklet" as the special information booklet. This requirement is not limited to closed-end transactions and applies to most consumer credit transactions secured by real property, except in a few circumstances (see below). The special information booklet is required pursuant to Regulation Z (12 CFR 1026.19(g)(1)) as well as Section 5 of RESPA (12 U.S.C. 2604) and 12 CFR 1024.6 of Regulation X. It is published by the CFPB to help consumers applying for federally related

mortgage loans understand the nature and cost of real estate settlement services.

- If the consumer is applying for a HELOC subject to 12 CFR 1026.40, the creditor (or mortgage broker) can provide a copy of the brochure entitled "What You Should Know About Home Equity Lines of Credit" instead of the special information booklet. (12 CFR 1026.19(g)(1)(ii))

- The creditor need not provide the special information booklet if the consumer is applying for a real property-secured consumer credit transaction that does not have the purpose of purchasing a one-to-four family residential property, such as a refinancing, a closed-end loan secured by a subordinate lien, or a reverse mortgage. (12 CFR 1026.19(g)(1)(iii))

Creditors must deliver or place in the mail the special information booklet not later than three business days after receiving the consumer's loan application. (12 CFR 1026.19(g)(1)(i))

If the creditor denies the consumer's application or if the consumer withdraws the application before the end of the three-business-day period, the creditor need not provide the special information booklet. (12 CFR 1026.19(g)(1)(i); Comment 19(g)(1)(i)-3)

When two or more persons apply together for a loan, the creditor may provide a copy of the special information booklet to just one of them. (Comment 19(g)(1)-2)

If the consumer uses a mortgage broker, the mortgage broker must provide the special information booklet and the creditor need not do so. (12 CFR 1026.19(g)(1)(i))

Creditors generally are required to use the booklets designed by the CFPB and may make only limited changes to the special information booklet. (12 CFR 1026.19(g)(2)) The CFPB may issue revised or alternative versions of the special information booklet from time to time in the future. Creditors should monitor the Federal Register for notice of revisions. (Comment 19(g)(1)-1)

Loans Receiving Non-TILA-RESPA Integrated Disclosures, Generally

Creditors making closed-end loans to consumers not subject to the TILA-RESPA Integrated Disclosures Rule (i.e., other than loans where 12 CFR 1026.19(e) and (f) require the Loan Estimate and the Closing Disclosure) must provide the consumer with the Truth in Lending (TIL) disclosure, as outlined in 12 CFR 1026.17 and 1026.18. Creditors engaged in specified housing assistance programs for low- and moderate-income consumers would also provide their consumers with the TIL Disclosure. (12 CFR 1026.3(h))

TIL Disclosure.

The TIL disclosure provided for these loans includes a payment schedule. (12 CFR 1026.18(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.

Variable and Adjustable Rate Transactions; 12 CFR 1026.18(f), 1026.20(c) and (d)

Closed-end transactions generally

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. 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 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 buy-down that is reflected in a contract or a consumer buy-down, the disclosed APR should be a composite rate based on the lower rate for the buy-down 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, such as 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.

Adjustable Rate Mortgage Disclosures

Disclosure of Post-Consummation Events - Initial Rate Change for Adjustable Rate Mortgages – 12 CFR 1026.20(d)

Creditors, assignees, or servicers[17] (referred to collectively as creditors) of adjustable rate mortgages, or ARMs, secured by the consumer's principal dwelling and with terms of more than one year are generally required to provide consumers with certain information pertaining to the ARM's initial rate change.[18] This information must be provided in a disclosure that is separate from all other documents, and the disclosure must be provided between 210 and 240 days before the first payment at the adjusted rate is due. If the first payment at a new rate is due within the first 210 days after consummation, the creditor must provide the rate change disclosure at consummation.

Disclosures required under this section must provide consumers with information related to the timing and nature of the rate change. If the new rate pursuant to the change disclosed is not known and the creditor provides an estimate, the rate must be identified as an estimate. If the creditor is using an estimate, it must be based on the index within 15 business days prior to the date of the disclosure. The calculation is made using the index reported in the source of information that the creditor uses in the explanation of how the interest rate is determined.

Disclosures required under 12 CFR 1026.20(d) must also include, among others:

- The date of the disclosure.
- A statement explaining that the time period that the current rate has been in effect is ending, that the current rate is expiring, and that a change in the rate may result in a change in the required payment; providing the effective date of the change and a schedule of any future changes; and describing any other changes to the loan terms, features, or options taking effect on the same date (including expiration of interest-only or payment-option features).
- A table containing the current and new interest rates, the current and new payments, including the date the new payment is due, and for interest-only or negative amortization loans, the amount of the current and new payment allocated to principal, interest, and escrow (if applicable).

NOTE: The new payment allocation disclosed is the expected payment allocation for the first payment for which the new interest rate will apply.

- An explanation of how the interest rate is determined, including (among other things) an explanation of the index or formula used to determine the new rate and the margin.
- Any limitations on the interest rate or payment increase for each scheduled increase and over the life of the loan. Creditors must also include a statement regarding the extent to which such limitations result in foregone interest rate increases and the earliest date such foregone interest rate increases may apply to future interest rate adjustments.
- An explanation of how the new payment is determined, including an explanation of the index or formula used to determine the new rate, including the margin, the expected loan balance on the date of the rate adjustment, and the remaining loan term or any changes to the term caused by the rate change.

[17] Creditors, assignees, and servicers are all subject to the requirements of this 12 CFR 1026.20(d). Creditors, assignees, and servicers may decide among themselves which of them will provide the required disclosures. However, establishing a business relationship where one party agrees to provide disclosures on behalf of the other parties does not absolve all other parties from their legal obligations.

[18] Exemptions to disclosure requirements are covered in the section titled, "Exemptions to the Adjustable Rate Mortgage Disclosure Requirements – 12 CFR 1026.20(c)(1)(ii) and (d)(1)(ii)" below.

- If the creditor is using an estimated rate or payment, a statement that the actual new interest rate and new payment will be provided to the consumer between two and four months prior to the first payment at the new rate.

- For negative amortization loans, creditors must provide a statement indicating that the new payment will not be allocated to pay loan principal and will not reduce the balance of the loan; instead, the payment will only apply to part of the interest, thereby increasing the amount of principal.

- A statement indicating the circumstances under which any prepayment penalty may be imposed, the time period during which it may be imposed, and a statement that the consumer may contact the servicer for additional information, including the maximum amount of the penalty that may be charged to the consumer.

- The telephone number of the creditor, assignee, or servicer for use if the consumer anticipates that he or she may not be able to make the new payments.

- A statement providing specified alternatives (which include refinancing, selling the property, loan modification, and forbearance) available if the consumer anticipates not being able to make the new payment.

- A website address for either the CFPB's or the Department of Housing and Urban Development's (HUD) list of homeownership counselors and counseling organizations, the HUD toll-free telephone number to access the HUD list of homeownership counselors and counseling organizations, and the CFPB's website address for state housing finance authorities contact information.

- For more information pertaining to the required format of the disclosures required under 12 CFR 1026.20(d), please see 12 CFR 1026.20(d)(3) and the model and sample forms H-4(D)(3) and (4) in Appendix H.

Disclosure of Post-Consummation Events - Rate Adjustments Resulting in Payment Changes – 12 CFR 1026.20(c)

Creditors, assignees, or servicers[19] (referred to collectively as creditors) of ARMs secured by a consumer's principal dwelling with a term greater than one year are generally required to provide consumers with disclosures prior to the adjustment of the interest rate on the mortgage,[20] if the interest rate change will result in a payment change as follows:

- For ARMs where the payment changes along with a rate change, disclosures must be provided to consumers between 60 and 120 days before the first payment at the new amount is due.

- For ARMs where the payment changes in connection with a uniformly scheduled interest rate adjustment occurring every 60 days (or more frequently), the disclosures must be provided between 25 and 120 days before the first payment at the new amount is due.

- For ARMs originated prior to January 10, 2015, in which the contract requires the adjusted interest and payment to be calculated based on an index that is available on a date less than 45 days prior to the adjustment date, disclosures must be provided between 25 and 120 days before the first payment at the new amount is required.

- For ARMs where the first adjustment occurs within 60 days of consummation and the new interest rate disclosed at the time was an estimate, the disclosures must be provided as soon as practicable, but no less than 25 days before the first payment at the new amount is due.

Disclosures required under 12 CFR 1026.20(c) must contain specific information, which includes, among others:

- A statement explaining that the time period during which the consumer's current rate has been in effect is ending and that the rate and payment will change; when the interest rate will change; dates when additional interest rate adjustments are scheduled to occur; and any other change in loan terms or features that take effect on the same date that the interest rate and payment change, such as an expiration of interest-only treatment or payment-option feature.

- A table explaining the current and new interest rates, the current and new payments, including the date the new payment is due, and for interest-only or negative amortizing loans, the amount of the current and new payment allocated to principal, interest, and amounts for escrow (if applicable).

- An explanation of how the new interest rate is determined, including (among other things) the index or formula used to determine the new rate and the margin, and any application of previously foregone interest rate increases from past adjustments;

[19] Creditors, assignees, and servicers are all subject to the requirements of 12 CFR 1026.20(c). Creditors, assignees, and servicers may decide among themselves which of them will provide the required disclosures. However, establishing a business relationship where one party agrees to provide disclosures on behalf of the other parties does not absolve all other parties from their legal obligations.

[20] Exemptions to disclosure requirements are covered in the section titled, "Exemptions to the Adjustable Rate Mortgage Disclosure Requirements – 12 CFR 1026.20(c)(1)(ii) and (d)(1)(ii)" below.

- Any limitations on the interest rate and payment increase for each scheduled increase for the duration of the loan. Creditors must also include a statement regarding the extent to which such limitations result in foregone interest rate increases and the earliest date such foregone interest rate increases may apply to future interest rate adjustments.

- An explanation of how the new payment is determined, including an explanation of the index or formula used to determine the new rate, including the margin, the expected loan balance on the date of the rate adjustment, and the remaining loan term or any changes to the term caused by the rate change;

- For negative amortization loans, creditors must provide a statement indicating that the new payment will not reduce the balance of the loan, rather, the payment will only apply to part of the interest, thereby increasing the amount of principal; and

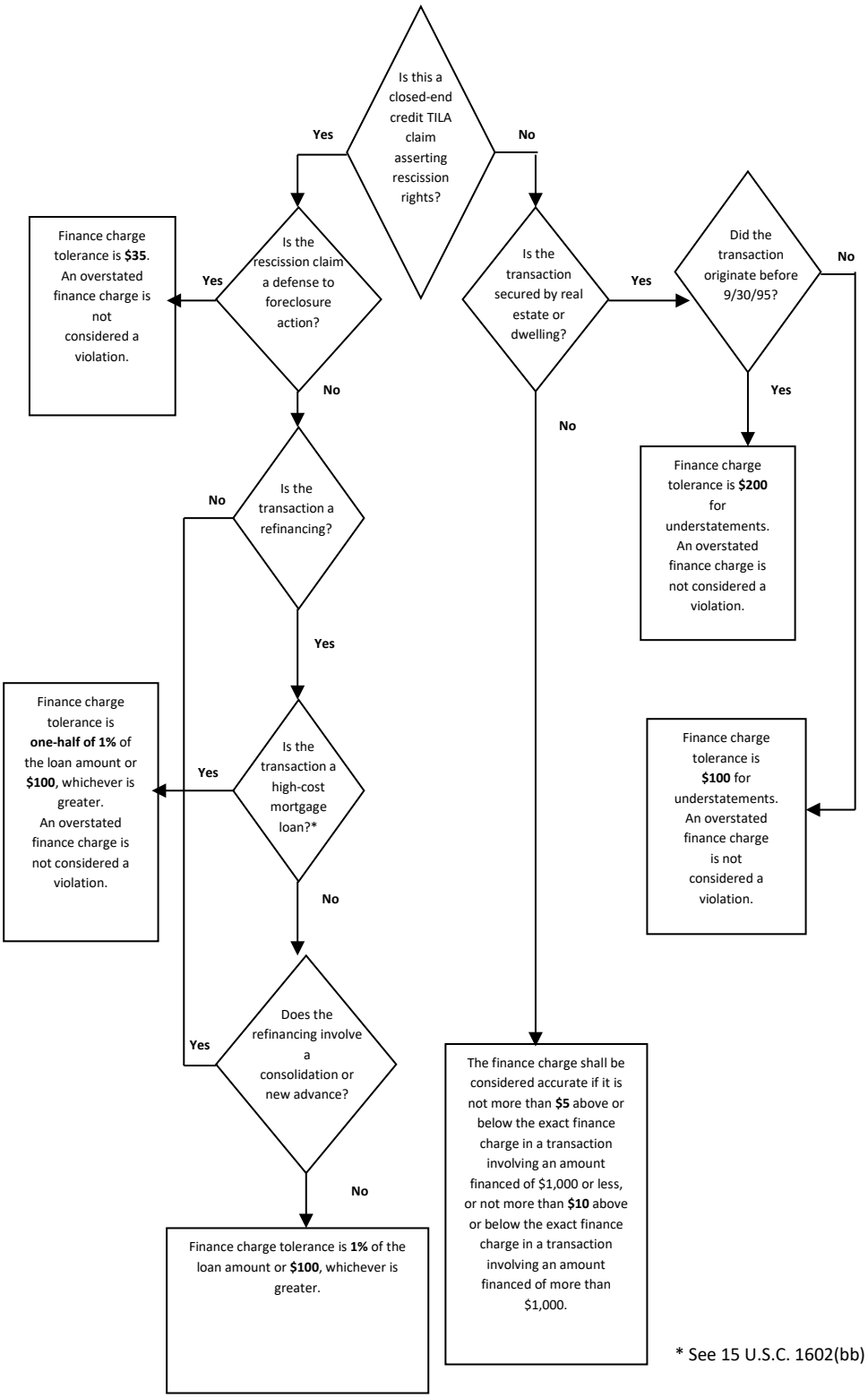
- A statement indicating the circumstances under which any prepayment penalty may be imposed, the time period during which it may be imposed, and a statement that the consumer may contact the servicer for additional information, including the maximum amount of the penalty that may be charged to the consumer.

For more information pertaining to the required format of the disclosures required under 12 CFR 1026.20(c), please see 12 CFR 1026.20(c)(3) and the model and sample forms H-4(D)(1) and (2) in Appendix H.

Exemptions to the Adjustable Rate Mortgage Disclosure Requirements – 12 CFR 1026.20(c)(1)(ii) and (d)(1)(ii)

Disclosures under 12 CFR 1026.20(c) and (d) are not required for ARMs with a term of one year or less. Likewise, disclosures under 12 CFR 1026.20(c) are not required if the first interest rate and payment adjustment occurs within the first 210 days and the new rate disclosed at consummation pursuant to 12 CFR 1026.20(d) was not an estimate. ARM disclosures for payment changes are exempt under 12 CFR 1026.20(c)(1)(ii)(C) where the servicer is a debt collector under the Fair Debt Collection Practices Act (FDCPA) and a consumer has exercised the right under FDCPA section 805(c) to prohibit debt collector communications regarding the debt.

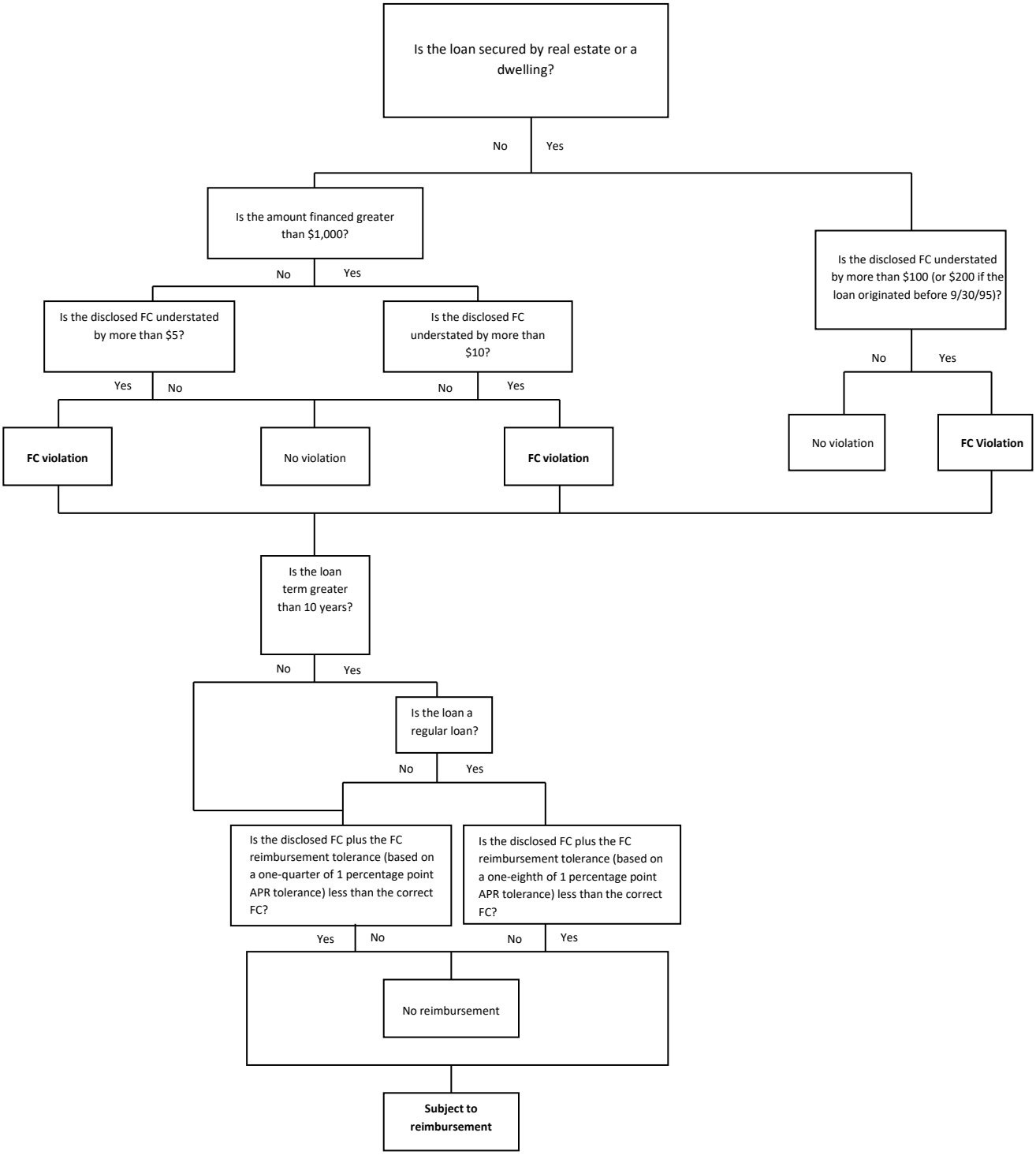
Closed-End Credit: Finance Charge Accuracy Tolerances



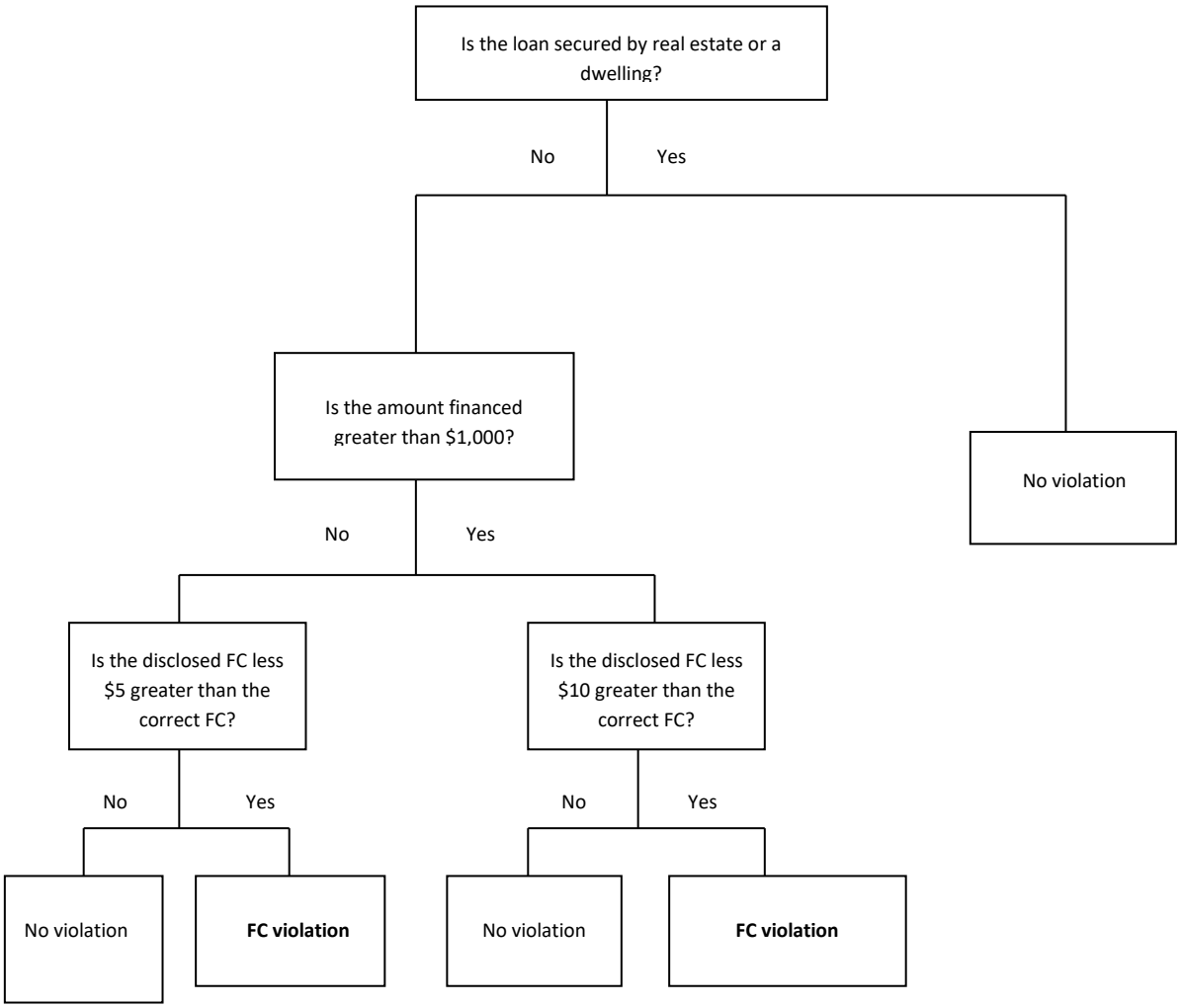
* See 15 U.S.C. 1602(bb)

and 12 CFR 1026.32

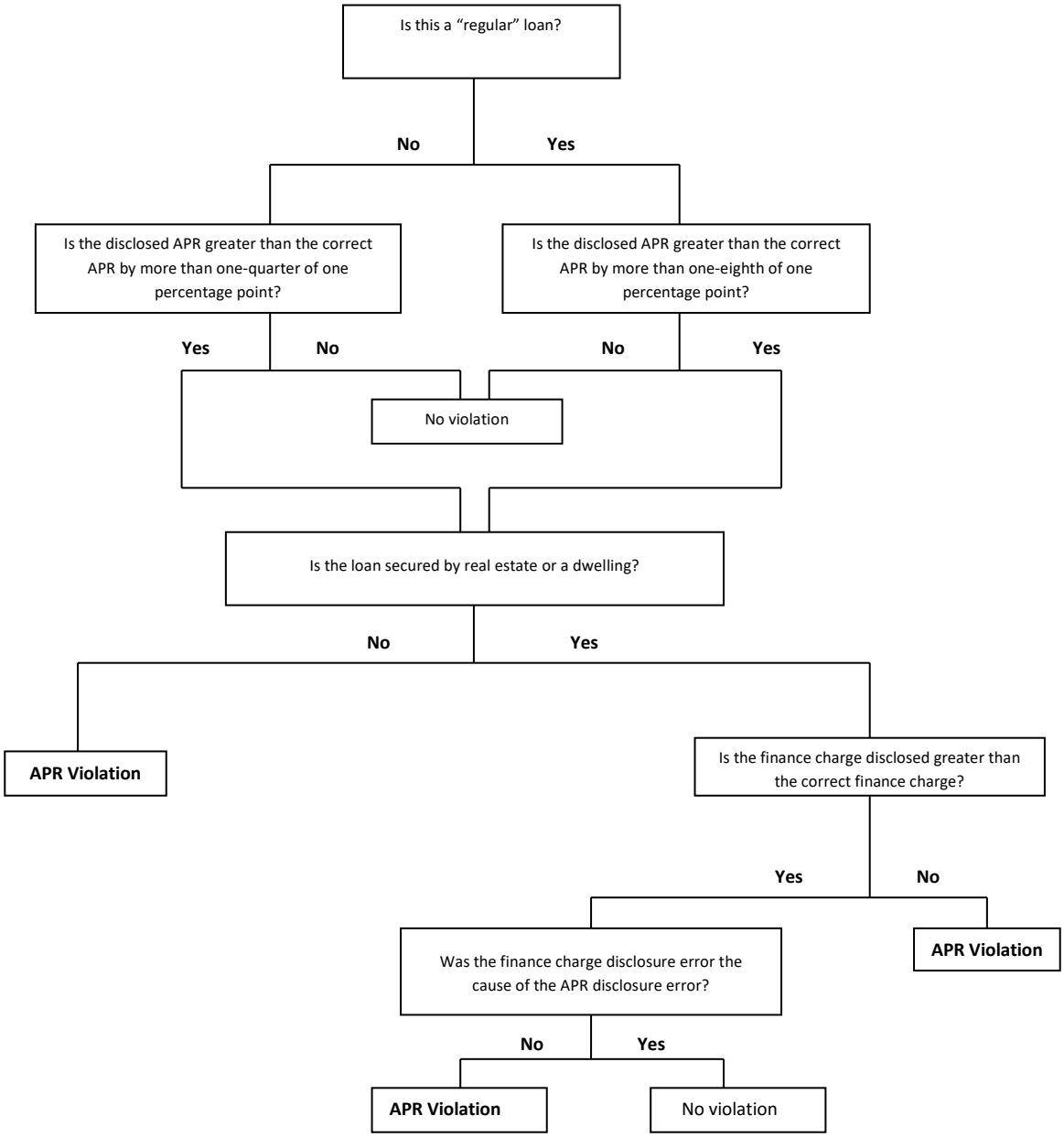
Closed-End Credit: Accuracy and Reimbursement Tolerances for UNDERSTATED FINANCE CHARGES



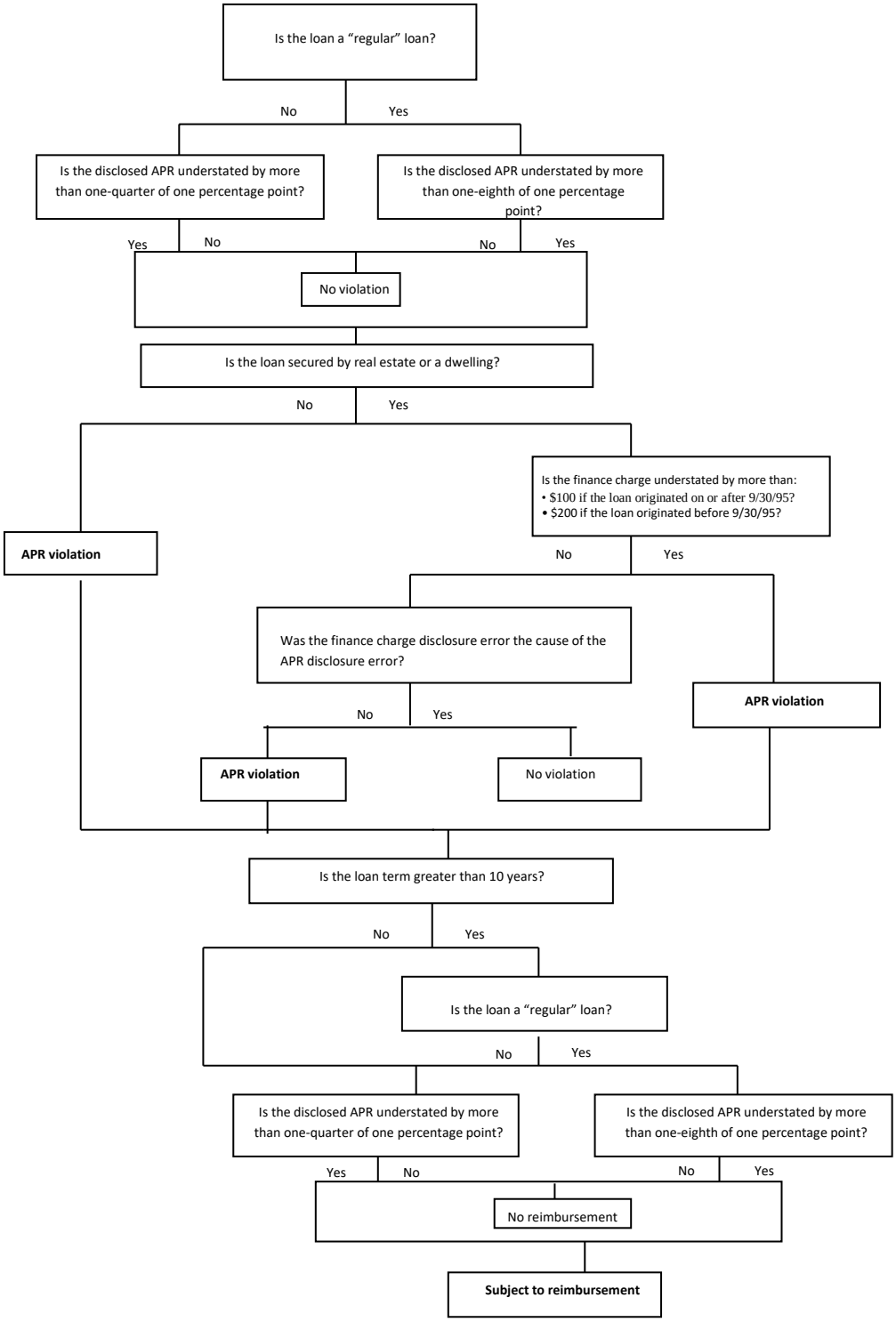
Closed-End Credit: Accuracy Tolerances for OVERSTATED FINANCE CHARGES



Closed-End Credit: Accuracy Tolerances for OVERSTATED APRs



Closed-End Credit: Accuracy and Reimbursement Tolerances for UNDERSTATED APRs



Refinancings – 12 CFR 1026.20(a)

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. (12 CFR 1026.20(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.

Escrow Cancellation Disclosures – 12 CFR 1026.20(e)

Escrow Closing Notice. Before cancelling an escrow account, an Escrow Closing Notice must be provided to any consumers for whom an escrow account was established in connection with a closed-end consumer credit transaction secured by a first lien on real property or a dwelling, except for reverse mortgages. (12 CFR 1026.20(e)(1)) For this purpose, the term escrow account has the same meaning given to it as under Regulation X, 12 CFR 1024.17(b), and the term servicer has the same meaning given to it as under Regulation X, 12 CFR 1024.2(b). There are two exceptions to the requirement to provide the notice:

- Creditors and servicers are not required to provide the notice if the escrow account that is being cancelled was established solely in connection with the consumer's delinquency or default on the underlying debt obligation. (Comment 20(e)(1)-2)
- Creditors and servicers are not required to provide the notice when the underlying debt obligation for which an escrow account was established is terminated, including by repayment, refinancing, rescission, and foreclosure. (Comment 20(e)(1)-3)

For loans subject to the Escrow Closing Notice requirement, if the creditor or servicer cancels the escrow account at the consumer's request, the creditor or servicer must ensure that the consumers receive the notice no later than three business days (i.e., all calendar days except Sundays and the legal public holidays (see 12 CFR 1026.2(a)(6), 12 CFR 1026.19(f)(1)(ii)(A) and (f)(1)(iii)) before the consumer's escrow account is canceled. (12 CFR 1026.20(e)(5)(i)) If the creditor or servicer cancels the escrow account and the cancellation is not at the consumer's request, the creditor or servicer must ensure that the consumer receives the notice no later than 30 business days before the closure of the consumer's escrow account. (12 CFR 1026.20(e)(5)(ii) If the Escrow Closing Notice is not provided to the consumer in person, the consumer is considered to have received the notice three business days after it is delivered or placed in the mail. (12 CFR 1026.20(e)(5)(iii)

The creditor or servicer must disclose (12 CFR 1026.20(e)(1)-(2)):

- The date on which the account will be closed;
- That an escrow account may also be called an impound or trust account;
- The reason why the escrow account will be closed;
- That without an escrow account, the consumer must pay all property costs, such as taxes and homeowner's insurance, directly, possibly in one or two large payments a year;
- A table, titled "Cost to you," that contains an itemization of the amount of any fee the creditor or servicer imposes on

the consumer in connection with the closure of the consumer's escrow account, labeled "Escrow Closing Fee," and a statement that the fee is for closing the escrow account;

- Under the reference "In the future":
  - The consequences if the consumer fails to pay property costs, including the actions that a state or local government may take if property taxes are not paid and the actions the creditor or servicer may take if the consumer does not pay some or all property costs, such as adding amounts to the loan balance, adding an escrow account to the loan, or purchasing a property insurance policy on the consumer's behalf that may be more expensive and provide fewer benefits than a policy that the consumer could obtain directly;
  - A telephone number that the consumer can use to request additional information about the cancellation of the escrow account;
  - Whether the creditor or servicer offers the option of keeping the escrow account open and, as applicable, a telephone number the consumer can use to request that the account be kept open; and
  - Whether there is a cut-off date by which the consumer can request that the account be kept open.

The creditor or servicer may also, at its option, disclose (12 CFR 1026.20(e)(3)):

- The creditor or servicer's name or logo;
- The consumer's name, phone number, mailing address, and property address;
- The issue date of the notice;
- The loan number; or
- The consumer's account number.

In addition, the disclosures must:

- Contain a required heading that is more conspicuous than and precedes the required disclosures discussed above. (12 CFR 1026.20(e)(4))
- Be clear and conspicuous. This standard generally requires that the disclosures in the Escrow Closing Notice be in a reasonably understandable form and readily noticeable to the consumer. (Comment 20(e)(2)-1)
- Be written in 10-point font, at a minimum. (12 CFR 1026.20(e)(4))
- Be grouped together on the front side of a one-page document. The disclosures must be separate from all other materials, with the headings, content, order, and format substantially similar to model form H-29 in Appendix H to Regulation Z. (12 CFR 1026.20(e)(4)) This requirement, however, does not preclude creditors and servicers from modifying the disclosures to accommodate particular consumer circumstances or transactions not addressed by the form or from adjusting the statement required by 12 CFR 1026.20(e)(2)(ii)(A), concerning consequences if the consumer fails to pay property costs, to the circumstances of the particular consumer. (Comment 20(e)(4)-3).

Successors In Interest – 12 CFR 1026.20(f) (*Effective April 19, 2018*)

If, upon confirmation, a servicer provides a confirmed successor in interest who is not liable on the mortgage loan obligation with an optional notice and acknowledgment form in accordance with Regulation X, 12 CFR 1024.32(c)(1), the servicer is not required to provide to the confirmed successor in interest any written disclosure required by 12 CFR 1026.20(c) (rate adjustments with corresponding change in payment), 12 CFR 1026.20(d) (initial rate adjustment), and 12 CFR 1026.20(e) (escrow account cancellation notice), unless and until the confirmed successor in interest either assumes the mortgage loan obligation under State law or has provided the servicer an executed acknowledgement form in accordance with Regulation X, 12 CFR 1024.32(c)(1)(iv) and the confirmed successor in interest has not revoked such acknowledgement form.

Treatment of Credit Balances – 12 CFR 1026.21

When a credit balance in excess of $1 is created in connection with a transaction (through transmittal of funds to a creditor in excess of the total balance due on an account, through rebates of unearned finance charges or insurance premiums, or through amounts otherwise owed to or held for the benefit of a consumer), the creditor is required to:

- Credit the amount of the credit balance to the consumer's account;
- Refund any part of the remaining credit balance, upon the written request of the consumer; and
- Make a good faith effort to refund to the consumer by cash, check, or money order, or credit to a deposit account of the consumer, any part of the credit balance remaining in the account for more than 6 months, except that no further action is required if the consumer's current location is not known to the creditor and cannot be traced through the consumer's last known address or telephone number.

Closed-end Advertising – 12 CFR 1026.24

If an advertisement for credit states specific credit terms, it must

state only those terms that actually are or will be arranged or offered by the creditor.

Disclosures required by this section must be made "clearly and conspicuously." To meet this standard in general, credit terms need not be printed in a certain type size nor appear in any particular place in the advertisement. For advertisements for credit secured by a dwelling, a clear and conspicuous disclosure means that the required information is disclosed with equal prominence and in close proximity to the advertised rates or payments triggering the required disclosures.

If an advertisement states a rate of finance charge, it must state the rate as an "annual percentage rate," using that term. If the APR may be increased after consummation, the advertisement must state that fact.

If an advertisement is for credit *not* secured by a dwelling, the advertisement must not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the APR.

If an advertisement is for credit secured by a dwelling, the advertisement must not state any other rate, except that a simple annual rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the APR. That is, an advertisement for credit secured by a dwelling may not state a periodic rate, other than a simple annual rate, that is applied to an unpaid balance.

"Triggering terms" – The following are triggering terms that require additional disclosures:

- The amount or percentage of any down payment;
- The number of payments or period of repayment;
- The amount of any payment; and
- The amount of any finance charge.

An advertisement stating a triggering term must also state the following terms as applicable:

- The amount or percentage of any down payment;
- The terms of repayment, which reflect the repayment obligations over the full term of the loan, including any balloon payment; and
- The "annual percentage rate," using that term, and, if the rate may be increased after consummation, that fact.

For any advertisement secured by a dwelling, other than television or radio advertisements, that states a simple annual rate of interest and more than one simple annual rate of interest will apply over the term of the advertised loan, the advertisement must state in a clear and conspicuous manner:

- Each simple rate of interest that will apply. In variable-rate transactions, a rate determined by adding an index and margin must be disclosed based on a reasonably current index and margin.
- The period of time during which each simple annual rate of interest will apply.
- The APR for the loan.

The regulation prohibits the following seven deceptive or misleading acts or practices in advertisements for closed-end mortgage loans:

- Stating that rates or payments for loans are "fixed" when those rates or payments can vary without adequately disclosing that the interest rate or payment amounts are "fixed" only for a limited period of time, rather than for the full term of the loan;
- Making comparisons between actual or hypothetical credit payments or rates and any payment or rate available under the advertised product that are not available for the full term of the loan, with certain exceptions for advertisements for variable rate products;
- Characterizing the products offered as "government loan programs," "government-supported loans," or otherwise endorsed or sponsored by a federal or state government entity even though the advertised products are not government-supported or -sponsored loans;
- Displaying the name of the consumer's current mortgage lender, unless the advertisement also prominently discloses that the advertisement is from a mortgage lender not affiliated with the consumer's current lender;
- Making claims of debt elimination if the product advertised would merely replace one debt obligation with another;
- Creating a false impression that the mortgage broker or lender is a "counselor" for the consumer; and
- In foreign-language advertisements, providing certain information, such as a low introductory "teaser" rate, in a foreign language, while providing required disclosures only in English.

Subpart D – Miscellaneous

Subpart D contains rules on oral disclosures (12 CFR 1026.26), disclosures in languages other than English (12 CFR 1026.27), record retention (12 CFR 1026.25), effect on state laws (12 CFR 1026.28), state exemptions (12 CFR 1026.29), and rate limitations (12 CFR 1026.30).

Record Retention – 12 CFR 1026.25

As a general rule, the creditor must retain evidence of compliance with Regulation Z (other than advertising requirements under 12 CFR 1026.16 and 12 CFR 1026.24, and other than certain requirements for mortgage loans) for two years after the date disclosures are required to be made or action is required to be taken. (12 CFR 1026.25(a)) This includes, for example, evidence that the creditor properly handled adverse credit reports in connection with amounts subject to a billing dispute under 12 CFR 1026.13, and properly handled the refunding of credit balances under 12 CFR 1026.11 and 12 CFR 1026.21. The creditor may retain the evidence by any method that reproduces records accurately (including computer programs) (Comment 25(a)-2). A creditor must permit the enforcing agency to inspect its relevant records for compliance. (12 CFR 1026.25(b))

The record retention period for mortgage loans is generally three years. (12 CFR 1026.25(c)) A creditor must retain evidence of compliance with the requirements of 12 CFR 1026.19(e) and (f) for three years after the later of the date of consummation, the date disclosures are required to be made, or the date the action is required to be taken. (12 CFR 1026.25(c)(1)(i))

For Closing Disclosures, the record retention period is five years. The creditor must retain completed closing disclosures required by 12 CFR 1026.19(f)(1)(i) or (f)(4)(i), and all documents related to such disclosures, for five years after consummation. (12 CFR 1026.25(c)(1)(ii)(A)) If a creditor sells, transfers, or otherwise disposes of its interest in a mortgage loan subject to 12 CFR 1026.19(f) and does not service the mortgage loan, the creditor must provide a copy of the closing disclosures to the owner or servicer of the mortgage, and the new owner or servicer must retain such disclosures for the remainder of the five-year period.

For loan originator compensation, creditors and loan originator organizations must retain records-related requirements for mortgage loan originator compensation and the compensation agreement that governs those payments for three years after the date of payment. (12 CFR 1026.25(c)(2))

A creditor must retain evidence to show compliance with the minimum standards for loans secured by a dwelling in 12 CFR 1026.43 for three years after consummation of a transaction covered by that section. (12 CFR 1026.25(c)(3))

Relationship to State Law – TILA 111 and 12 CFR 1026.28, .29

State laws providing rights, responsibilities, or procedures for consumers or financial institutions for consumer credit contracts may be:

- Preempted by federal law;
- Not preempted by federal law; or
- Substituted in lieu of the 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.
- Chapter 2, "Credit Transactions," which contains disclosure requirements, rescission rights, and certain credit card provisions.
- Chapter 3, "Credit Advertising," which contains consumer credit advertising rules and APR oral disclosure requirements.

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."

Conversely, state law provisions are generally 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 sections 161 (correction of billing errors) and 162 (regulation of credit reports) of the TILA; 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 sections 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 sections 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 1026.12(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 CFPB 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 CFPB determines that a disclosure required by state law (other than a requirement relating to the finance charge, APR, or the disclosures required under 12 CFR 1026.32) is substantially the same in meaning as a disclosure required under the TILA 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

Subpart E contains special rules for mortgage transactions. 12 CFR 1026.32 requires certain disclosures and provides limitations for closed-end credit transactions and open-end credit plans that have rates or fees above specified amounts or certain prepayment penalties. 12 CFR 1026.33 requires special disclosures, including the total annual loan cost rate, for reverse mortgage transactions. 12 CFR 1026.34 prohibits specific acts and practices in connection with high-cost mortgages, as defined in 12 CFR 1026.32(a). 12 CFR 1026.35 provides requirements for higher-priced mortgage loans. 12 CFR 1026.36 prohibits specific acts and practices in connection with an extension of credit secured by a dwelling. 12 CFR 1026.37 and 12 CFR 1026.38 set forth disclosure requirements for most closed-end transactions secured by real property, as required by 12 CFR 1026.19(e) and (f).

General Rules – 12 CFR 1026.31

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, reverse mortgage, and higher-priced mortgage transactions must be made clearly and conspicuously in writing, in a form that the consumer may keep and in compliance with specific timing requirements.

Requirements for High-Cost Mortgages – 12 CFR 1026.32

The requirements of this section generally apply to a high-cost mortgage, which is a consumer credit transaction secured by the consumer's principal dwelling (subject to the exemptions discussed below) that meets any one of the following three coverage tests.

- The APR will exceed the *average prime offer rate* (APOR), as defined in 12 CFR 1026.35(a)(2), applicable for a comparable transaction as of the date the interest rate is set by:
  - More than 6.5 percentage points for first-lien transactions (other than as described below);
  - More than 8.5 percentage points for first-lien transactions where the dwelling is personal property and the loan amount is less than $50,000; or
  - More than 8.5 percentage points for subordinate-lien transactions.
- The total points and fees (see definition below) for the transaction will exceed:
  - For transactions with a loan amount of $20,000 or more, 5 percent of the total loan amount, with the loan amount to be adjusted annually on January 1st by the annual percentage change in the Consumer Price Index reported on the preceding June 1st; or
  - For transactions with a loan amount of less than $20,000, the lesser of 8 percent of the total transaction amount or $1,000, with the loan amount to be adjusted annually on January 1st by the annual percentage change in the Consumer Price Index reported on the preceding June 1st.

The adjusted loan amounts will be reflected in official interpretations of 12 CFR 1026.32(a)(1)(ii). The official interpretation of 12 CFR 1026.32(a)(1)(ii) also contains a historical list of dollar amount adjustments for transactions originated prior to January 10, 2014.

NOTE: The "total loan amount" (using the face amount of the note) for closed-end credit is calculated by taking the amount financed (see 12 CFR 1026.18(b)) and deducting any cost listed in 12 CFR 1026.32(b)(1)(iii), (iv), or (vi) that is both included in points and fees and financed by the creditor. The "total loan amount" for open-end credit is the credit plan limit when the account is opened.

- The terms of the loan contract or open-end credit agreement permit the creditor to charge a prepayment penalty (see definition below) more than 36 months after consummation or account opening, or prepayment penalties that exceed more than two percent of the amount prepaid (12 CFR 1026.32(a)(1)(iii)).

NOTE: 12 CFR 1026.32(d)(6) prohibits prepayment penalties for high-cost mortgages. However, if a mortgage loan has a prepayment penalty that may be imposed more than 36 months after consummation or account opening or that is greater than two percent of the amount prepaid, the loan is a high-cost mortgage regardless of interest rate or fees. Therefore, the prepayment penalty coverage test above effectively bans transactions of the types subject to HOEPA coverage that

permit creditors to charge prepayment penalties that exceed the prescribed limits.

Exemptions from HOEPA Coverage – 12 CFR 1026.32(a)(2)

- Reverse mortgage transactions subject to 12 CFR 1026.33;
- A transaction that finances the initial construction of a dwelling;
- A transaction originated by a Housing Finance Agency, where the Housing Finance Agency is the creditor for the transaction; or
- A transaction originated pursuant to the United States Department of Agriculture's Rural Development Section 502 Direct Loan Program.

Determination of APR for High-Cost Mortgages – 12 CFR 1026.32(a)(3)

The APR used to determine whether a mortgage is a high-cost mortgage is calculated differently than the APR that is used on TILA disclosures. Specifically, the APR for HOEPA coverage is based on the following:

- If the APR will not vary during the length of the loan or credit plan (i.e., for fixed-rate transactions), the interest rate in effect as of the date the interest rate for the transaction is set (12 CFR 1026.32(a)(3)(i));
- If the interest rate may vary during the term of the loan or credit plan in accordance with an index, the interest rate that results from adding the maximum margin permitted at any time during the term of the loan or credit plan to the index rate in effect as of the date the interest rate for the transaction is set, or to the introductory interest rate, whichever is greater (12 CFR 1026.32(a)(3)(ii)); or
- If the interest rate may or will vary during the term of the loan or credit plan other than as described above (i.e., as in a step-rate transaction), the maximum interest rate that may be imposed during the life of the loan or credit plan. (12 CFR 1026.32(a)(3)(iii))

Points and Fees for High-Cost Mortgages – 12 CFR 1026.32(b)

NOTE: Points and fees calculations for high-cost mortgages depend upon whether the transaction is closed end or open end.

For a **closed-end transaction**, calculate the points and fees by including the following charges (12 CFR 1026.32(b)(1)):

- All items included in the finance charge under 12 CFR 1026.4(a) and (b), except that the following items are excluded:
  - Interest or the time-price differential;
  - Any premiums or other charges imposed in connection with a federal or state agency program for any guaranty or insurance that protects the creditor against the consumer's default or other credit loss (i.e., up-front and annual Federal Housing Administration (FHA) premiums, U.S. Department of Veterans Affairs (VA) funding fees, and USDA guarantee fees);
  - Premiums or other charges for any guaranty or insurance that protects creditors against the consumer's default or other credit loss and IS NOT in connection with a federal or state agency program (i.e., private mortgage insurance (PMI) premiums) as follows:
    - The entire amount of any premiums or other charges payable after consummation (i.e., monthly or annual PMI premiums); or
    - If the premium or other charge is payable at or before consummation, the portion of any such premium or other charge that is not in excess of the permissible up-front mortgage insurance premium for FHA loans, but only if the premium or charge is refundable on a pro rata basis and the refund is automatically issued upon the notification of the satisfaction of the underlying mortgage loan. The permissible up-front mortgage insurance premiums for FHA loans are published in HUD Mortgagee Letters, available online at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/letters/mortgagee.
  - Bona fide third-party charges not retained by the creditor, loan originator, or an affiliate of either, unless the charge is required to be included under 12 CFR 1026.32(b)(1)(i)(C), (iii), or (v);
  - Up to two bona fide discount points payable by the consumer in connection with the transaction, provided that the interest rate without any discount does not exceed:
    - The APOR for a comparable transaction by more than one percentage point; or
    - If the transaction is secured by personal property, the average rate for a loan insured under Title I of the National Housing Act by more than one percentage point, or
  - If no discount points have been excluded above, then up to one bona fide discount point payable by the consumer in connection with the transaction, provided that the interest rate without any discount does not exceed:

- The APOR for a comparable transaction by more than two percentage points; or
- If the transaction is secured by personal property, the average rate for a loan insured under Title I of the National Housing Act by more than two percentage points.

NOTE: In the case of a closed-end plan, a bona fide discount point means an amount equal to one percent of the loan amount paid by the consumer that reduces the interest rate or time-price differential applicable to the transaction based on a calculation that is consistent with established industry practices for determining the amount of reduction in the interest rate or time-price differential appropriate for the amount of discount points paid by the consumer. (12 CFR 1026.32(b)(3))

- All compensation paid directly or indirectly by a consumer or creditor to a loan originator (as defined in 12 CFR 1026.36(a)(1) that can be attributed to the transaction at the time the interest rate is set unless:
  - That compensation is paid by a consumer to a mortgage broker, as defined in 12 CFR 1026.36(a)(2), and already has been included in points and fees under 12 CFR 1026.32(b)(1)(i);
  - That compensation is paid by a mortgage broker, as defined in 12 CFR 1026.36(a)(2), to a loan originator that is an employee of the mortgage broker;
  - That compensation is paid by a creditor to a loan originator that is an employee of the creditor; or
- All items listed in 12 CFR 1026.4(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.
- Premiums or other charges paid at or before consummation, whether paid in cash or financed, for any credit life, credit disability, credit unemployment, or credit property insurance, or for any other life, accident, health, or loss-of-income insurance for which the creditor is a beneficiary, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract.
- The maximum prepayment penalty that may be charged or collected under the terms of the mortgage or credit plan; and
- The total prepayment penalty incurred by the consumer if the consumer refinances an existing mortgage loan, or terminates an existing open-end credit plan in connection with obtaining a new mortgage loan, with a new mortgage transaction extended by the current holder of the existing loan, a servicer acting on behalf of the current holder, or an affiliate of either.

For an **open-end credit plan,** points and fees mean the following charges that are known at or before account opening: (12 CFR 1026.32(b)(2))

- All items included in the finance charge under 12 CFR 1026.4(a) and (b), except that the following items are excluded:
  - Interest or the time-price differential;
  - Any premiums or other charges imposed in connection with a federal or state agency program for any guaranty or insurance that protects the creditor against the consumer's default or other credit loss (i.e., up-front and annual FHA premiums, VA funding fees, and USDA guarantee fees);
  - Premiums or other charges for any for guaranty or insurance that protects creditors against the consumer's default or other credit loss and IS NOT in connection with a federal or state agency program (i.e., private mortgage insurance (PMI) premiums) as follows:
    - If the premium or other charge is payable after account opening, the entire amount of such premium or other charge, or
    - If the premium or other charge is payable at or before account opening, the portion of any such premium or other charge that is not in excess of the permissible up-front mortgage insurance premium for FHA loans, but only if the premium or charge is refundable on a pro rata basis and the refund is automatically issued upon the notification of the satisfaction of the underlying mortgage loan. The permissible up-front mortgage insurance premiums for FHA loans are published in HUD Mortgagee Letters, available online at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/letters/mortgagee
  - Bona fide third-party charges not retained by the creditor, loan originator, or an affiliate of either, unless the charge is required to be included under 12 CFR 1026.32(b)(2)(i)(C), (iii), or (iv);
  - Up to two bona fide discount points payable by the consumer in connection with the transaction, provided

that the interest rate without any discount does not exceed:

- The APOR by more than one percentage point; or
- If the transaction is secured by personal property, the average rate for a loan insured under Title I of the National Housing Act by more than one percentage point, or

- If no discount points have been excluded above, then up to one bona fide discount point payable by the consumer in connection with the transaction, provided that the interest rate without any discount does not exceed:
  - The APOR by more than two percentage points; or
  - If the transaction is secured by personal property, the average rate for a loan insured under Title I of the National Housing Act by more than two percentage points.

  NOTE: A bona fide discount point means an amount equal to one percent of the credit limit when the account is opened, paid by the consumer, that reduces the interest rate or time-price differential applicable to the transaction based on a calculation that is consistent with established industry practices for determining the amount of reduction in the interest rate or time-price differential appropriate for the amount of discount points paid by the consumer. (12 CFR 1026.32(b)(3)(ii))

- All compensation paid directly or indirectly by a consumer or creditor to a loan originator (as defined in 12 CFR 1026.36(a)(1) that can be attributed to the transaction at the time the interest rate is set unless:
  - That compensation is paid by a consumer to a mortgage broker, as defined in 12 CFR 1026.36(a)(2) and already has been included in points and fees under 12 CFR 1026.33(b)(2)(i);
  - That compensation is paid by a mortgage broker as defined in 12 CFR 1026.36(a)(2) to a loan originator that is an employee of the mortgage broker; or
  - That compensation is paid by a creditor to a loan originator that is an employee of the creditor, or
  - That compensation is paid by a retailer of manufactured homes to its employee.

NOTE: A person is not a loan originator if the person does not take a consumer credit application or offer or negotiate credit terms available from a creditor to that consumer based on the consumer's financial characteristics, but the person performs purely administrative or clerical tasks on behalf of a person who does engage in such activities. An employee of a manufactured home retailer who does not take a consumer credit application, offer or negotiate credit terms, or advise a consumer on credit terms is not a loan originator. For purposes of 12 CFR 1026.36(a), "credit terms" include rates, fees or other costs, and a consumer's financial characteristics include any factors that may influence a credit decision, such as debts, income, assets or credit history.

- All items listed in 12 CFR 1026.4(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.
- Premiums or other charges paid at or before account opening for any credit life, credit disability, credit unemployment, or credit property insurance, or for any other life, accident, health, or loss-of-income insurance for which the creditor is a beneficiary, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract.
- The maximum prepayment penalty that may be charged or collected under the terms of the credit plan; and
- The total prepayment penalty incurred by the consumer if the consumer refinances an existing closed-end credit transaction with an open-end credit plan, or terminates an existing open-end credit plan in connection with obtaining a new open-end credit with the current holder of the existing transaction or plan, a servicer acting on behalf of the current holder, or an affiliate of either.

In addition to the charges listed above, points and fees for open-end credit plans also include the following items:

- Fees charged for participation in the credit plan, payable at or before account opening, as described in 12 CFR 1026.4(c)(4), and
- Any transaction fee that will be charged to draw funds on the credit line, as described in 12 CFR 1026.32(b)(2)(viii).

Prepayment Penalty Definition – 12 CFR 1026.32(b)(6)

For closed-end credit transactions, a prepayment penalty is a charge imposed for paying all or part of the transaction's principal before the date on which the principal is due with limited exceptions.

For open-end credit plans, a prepayment penalty is a charge imposed by the creditor if the consumer terminates the credit

plan prior to the end of its term.

NOTE: Waived, bona fide third-party charges that are later imposed if the closed-end transaction is prepaid or the consumer terminates the open-end credit plan sooner than 36 months after consummation or account opening are not considered prepayment penalties.

NOTE: For closed-end transactions insured by the Federal Housing Administration and consummated before January 21, 2015, interest charged consistent with the monthly interest accrual amortization method is not a prepayment penalty, so long as the interest is charged consistent with the monthly interest accrual amortization method used for those loans. See Comment 32(b)(6)-1(iv).

High-Cost Mortgage Disclosures – 12 CFR 1026.32(c)

In addition to the other disclosure requirements of Regulation Z, high-cost mortgages require certain additional information to be disclosed in conspicuous type size to consumers before consummation of the transaction or account opening. These disclosures include:

- Notice to the consumer using the required language in 12 CFR 1026.32(c)(1);
- The annual percentage rate (12 CFR 1026.32(c)(2));
- Specified information concerning the regular or minimum periodic payment and the amount of any balloon payment, if permitted under the high-cost mortgage limitations in 12 CFR 1026.32(d) (12 CFR 1026.32(c)(3))
- For variable-rate transactions, a statement that the interest and monthly payment may increase, and the amount of the single maximum monthly payment based on the maximum interest rate required to be included in the contract (12 CFR 1026.32(c)(4)) and
- The total amount borrowed for closed-end credit transactions or the credit limit for the plan when the account is opened for an open-end credit plan. (12 CFR 1026.32(c)(5))

  NOTE: For closed-end credit transactions, if the amount borrowed includes charges to be financed under 12 CFR 1026.34(a)(10), this fact must be stated, grouped together with the disclosure of amount borrowed. The disclosure of the amount borrowed will be treated as accurate if it is not more than $100 above or below the amount required to be disclosed.

High-Cost Mortgage Limitations – 12 CFR 1026.32(d)

Certain loan terms, including negative amortization, interest rate increases after default, and prepayment penalties are prohibited for high-cost mortgages. Others, including balloon payments and due-on-demand clauses, are restricted.

- Balloon payments, defined as payments that are more than two times a regular periodic payment, are generally prohibited for high-cost mortgages. (12 CFR 1026.32(d)(1)(i)) However, balloon payments are allowed in certain limited circumstances.
  - For closed-end transactions, balloon payments are permitted when (a) the loan has a payment schedule that is adjusted to seasonal or irregular income of the consumer; (b) the loan is a "bridge" loan made in connection with the purchase of a new dwelling and matures in 12 months or less; (c) the creditor is a small creditor operating in a rural or underserved area that meets the criteria set forth in 12 CFR 1026.43(f) for small creditor rural or underserved balloon-payment qualified mortgages; or, (d) until April 1, 2016, the creditor is a small creditor that meets the criteria set forth in 1026.43(e)(6)) for temporary balloon-payment qualified mortgages. (12 CFR 1026.32(d)(1)(ii))
  - For an open-end credit plan where the terms of the plan provide for a draw period where no payment is required, followed by a repayment period where no further draws may be taken, the initial payment required after conversion to the repayment phase of the credit plan is not considered a "balloon" payment. However, if the terms of an open-end credit plan do not provide for a separate draw period and repayment period, the balloon payment limitation applies. (12 CFR 1026.32(d)(1)(iii))
- Acceleration clauses or demand features are limited and may only permit creditors to accelerate and demand repayment of the entire outstanding balance of a high-cost mortgage if:
  - There is fraud or material misrepresentation by the consumer in connection with the loan (12 CFR 1026.32(d)(8)(i));
  - The consumer fails to meet the repayment terms of the agreement for any outstanding balance that results in a default on the loan (12 CFR 1026.32(d)(8)(ii)); or
  - There is any action (or inaction) by the consumer that adversely affects the rights of the creditor's security interest for the loan, such as the consumer failing to pay required taxes on the property. (12 CFR 1026.32(d)(8)(iii) and comments 32(d)(8)(iii)-1 and -2)

Prohibited Acts or Practices in Connection with High-Cost Mortgages – 12 CFR 1026.34

In addition to the requirements in 12 CFR 1026.32, Regulation Z imposes additional requirements for high-cost mortgages,

several of which are discussed below.

Refinancing Within One Year – 12 CFR 1026.34(a)(3)

A creditor or assignee cannot refinance a consumer's high-cost mortgage into a second high-cost mortgage within the first year of the origination of the first loan, unless the second high-cost mortgage is in the consumer's interest.

Repayment Ability for High-Cost Mortgages – 12 CFR 1026.34(a)(4)

Among other requirements, a creditor extending high-cost mortgage credit subject to 12 CFR 1026.32 must not make such loans without regard to the consumer's repayment ability as of consummation or account opening as applicable. (12 CFR 1026.34(a)(4))

For closed-end credit transactions that are high-cost mortgages, 12 CFR 1026.34(a)(4) requires a creditor to comply with the repayment ability requirements set forth in 12 CFR 1026.43.

For open-end credit plans that are high-cost mortgages, a creditor may not open a credit plan for a consumer where credit is or will be extended without regard to the consumer's repayment ability as of account opening, including the consumer's current and reasonably expected income, employment, assets other than the collateral, and current obligations, including any mortgage-related obligations.

- For the purposes of these open-end requirements, mortgage-related obligations include, among other things, property taxes, premiums and fees for mortgage-related insurance that are required by the creditor, fees and special assessments such as those imposed by a condominium association, and similar expenses required by another credit obligation undertaken prior to or at account opening and secured by the same dwelling that secures the high-cost mortgage transaction. (12 CFR 1026.34(a)(4)(i))

- A creditor must also verify both current obligations and the amounts of income or assets that it relies on to determine repayment ability using W-2s, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer's income or assets (12 CFR 1026.34(a)(4)(ii)).

For open-end high-cost mortgages, a presumption of compliance is available but only if the creditor:

- Verifies the consumer's repayment ability as required under 12 CFR 1026.34(a)(4)(ii));

- Determines the consumer's repayment ability taking into account current obligations and mortgage-related obligations, using the largest required minimum periodic payment based on the assumptions that:
  - The consumer borrows the full credit line at account opening with no additional extensions of credit;
  - The consumer makes only required minimum periodic payments during the draw period and any repayment period; and
  - If the APR can increase, the maximum APR that is included in the contract applies to the plan at account opening and will apply during the draw and any repayment period. (12 CFR 1026.34(a)(4)(iii)(B))

- Assesses the consumer's repayment ability, taking into account either the ratio of total debts to income or the income the consumer will have after paying current obligations. (12 CFR 1026.34(a)(4)(iii)(C))

- *NOTE: No presumption of compliance will be available for an open-end high-cost mortgage transaction in which the regular periodic payments, when aggregated, do not fully amortize the outstanding principal balance except for transactions with balloon payments permitted under 12 CFR 1026.32(d)(1)(ii).*

High-Cost Mortgage Pre-Loan Counseling – 12 CFR 1026.34(a)(5)

Creditors that originate high-cost mortgages must receive written certification that the consumer has obtained counseling on the advisability of the mortgage from a counselor approved by HUD, or if permitted by HUD, a state housing finance authority (specific content for the certifications can be found in 12 CFR 1026.34(a)(5)(iv)). Counseling must occur after the consumer receives a good faith estimate or initial TILA disclosure required by 12 CFR 1026.40 (or, for transactions where neither of those disclosures are provided, the disclosures required by 12 CFR 1026.32(c)). Additionally, counseling cannot be provided by a counselor who is employed by, or affiliated with, the creditor. A creditor may pay the fees for counseling but is prohibited from conditioning the payment of fees upon the consummation of the mortgage transaction or, if the consumer withdraws his or her application, upon receipt of the certification. However, a creditor may confirm that a counselor provided counseling to the consumer prior to paying these fees. Finally, a creditor is prohibited from steering a consumer to a particular counselor.

Recommended Default – 12 CFR 1026.34(a)(6)

Creditors (and mortgage brokers) are prohibited from recommending or encouraging a consumer to default on an existing loan or other debt prior to, and in connection with, the consummation or account opening of a high-cost mortgage that refinances all or any portion of the existing loan or debt.

Loan Modification and Deferral Fees – 12 CFR 1026.34(a)(7)

Creditors, successors-in-interest, assignees, or any agents of these parties may not charge a consumer any fee to modify, renew, extend, or amend a high-cost mortgage, or to defer any payment due under the terms of the mortgage.

Late Fees – 12 CFR 1026.34(a)(8)

Late payment charges for a high-cost mortgage must be permitted by the terms of the loan contract or open-end agreement and may not exceed **four** percent of the amount of the payment that is past due. Late payment charges are permitted only if payment is not received by the end of the 15-day period beginning on the day the payment is due or, where interest on each installment is paid in advance, by the end of the 30-day period beginning on the day the payment is due.

Creditors are also prohibited from "pyramiding" late fees—that is, charging late payments if any delinquency is attributable only to a late payment charge that was imposed due to a previous late payment, and the payment otherwise is considered a full payment for the applicable period (and any allowable grace period). If a consumer fails to make a timely payment by the due date, then subsequently resumes making payments but has not paid all past due payments, the creditor can continue to impose late payment charges for the payments outstanding until the default is cured.

Fees for Payoff Statements – 12 CFR 1026.34(a)(9)

A creditor or servicer may not charge a fee for providing consumers (or authorized representatives) with a payoff statement on a high-cost mortgage. Payoff statements must be provided to consumers within **five** business days after receiving the request for a statement. A creditor or servicer may charge a processing fee to cover the cost of providing the payoff statement by fax or courier only, provided that such fee may not exceed an amount that is comparable to fees imposed for similar services provided in connection with a non-high-cost mortgage and that a payoff statement be made available to the consumer by an alternative method without charge. If a creditor charges a fee for providing a payoff statement by fax or courier, the creditor must disclose the fee prior to charging the consumer and must disclose to the consumer that other methods for providing the payoff statement are available at no cost. Finally, a creditor is permitted to charge a consumer a reasonable fee for additional payoff statements during a calendar year in which four payoff statements have already been provided without charge other than permitted processing fees.

Reverse Mortgages – 12 CFR 1026.33

A reverse mortgage is a non-recourse transaction secured by the consumer's principal dwelling that ties repayment (other than upon default) to the homeowner's death or permanent move from, or transfer of the title of, the home. Special disclosure requirements apply to reverse mortgages.

Higher-Priced Mortgage Loans – 12 CFR 1026.35(a)

A mortgage loan subject to 12 CFR 1026.35 (*higher-priced mortgage loan*) is a closed-end consumer credit transaction secured by the consumer's principal dwelling with an APR that exceeds the *average prime offer rate* for a comparable transaction as of the date the interest rate is set by:

- 1.5 or more percentage points for loans secured by a first lien on a dwelling where the amount of the principal obligation at the time of consummation does not exceed the maximum principal obligation eligible for purchase by Freddie Mac;
- 2.5 or more percentage points for loans secured by a first lien on a dwelling, where the amount of the principal obligation at the time of consummation exceeds the maximum principal obligation eligible for purchase by Freddie Mac; or
- 3.5 or more percentage points for loans secured by a subordinate lien on a dwelling.

Average prime offer rate means an APR that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. The CFPB publishes average prime offer rates for a broad range of types of transactions in a table updated at least weekly, as well as the methodology it uses to derive these rates. These rates are available on the website of the Federal Financial Institutions Examination Council (FFIEC). http://www.ffiec.gov/ratespread/newcalchelp.aspx.

Additionally, creditors extending mortgage loans subject to 12 CFR 1026.43(c) must verify a consumer's ability to repay as required by 12 CFR 1026.43(c).

Finally, the regulation prohibits creditors from structuring a home-secured loan that does not meet the definition of open-end credit as an open-end plan to evade these requirements.

Higher-Priced Mortgage Loans Escrow Requirement – 12 CFR 1026.35(b)

In general, a creditor may not extend a higher-priced mortgage loan (including high-cost mortgages that also meet the definition of a higher-priced mortgage loan), secured by a first lien on a principal dwelling unless an escrow account is established before consummation for payment of property taxes and premiums for mortgage-related insurance required by the creditor.

An escrow account for a higher-priced mortgage loan need not be established for:

- a transaction secured by shares in a cooperative,

- a transaction to finance the initial construction of a dwelling,
- a temporary or "bridge" loan with a term of 12 months or less, or
- a reverse mortgage subject to 12 CFR 1026.33.

There is also a limited exemption that allows creditors to establish escrow accounts for property taxes only (rather than for both property taxes and insurance) for loans secured by dwellings in a "common interest community" under 12 CFR 1026.35(b)(2)(ii), where dwelling ownership requires participation in a governing association that is obligated to maintain a master insurance policy insuring all dwellings. (12 CFR 1026.35(b)(2)(ii))

An exemption to the higher-priced mortgage loan escrow requirement is available for first-lien higher-priced mortgage loans made by certain creditors that operate in a "rural" or "underserved" area. (12 CFR 1026.35(b)(2)(iii) and its associated commentary). To make use of this exemption, a creditor:

1. Must have made, during the preceding calendar year (or if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years), a covered transaction secured by a first lien on a property that is located in an area that meets the definition of either "rural" or "underserved" as set forth in 12 CFR 1026.35(b)(2)(iv),[21]
2. Together with its affiliates, must not have extended more than 2,000 covered transactions (secured by first liens, that were sold, assigned, or otherwise transferred to another person or subject at the time of consummation to a commitment to be acquired by another person) in the preceding calendar year (or if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years),
3. Together, with its affiliates that regularly extended[22] covered transactions (secured by first liens), must have had less than $2 billion in total assets[23] as of the preceding December 31st (or if an application was received before April 1 of the current year, as of either of the two preceding December 31sts), and
4. The creditor and its affiliates must not maintain escrow accounts for any extensions of consumer credit secured by real property or a dwelling that it or its affiliate currently services. However, such creditors (and their affiliates) are permitted to maintain escrow accounts established to comply with the rule for applications received on or after April 1, 2010, and before May 1, 2016 without losing the exemption and to offer an escrow account to accommodate distressed borrowers.

Date of Asset Size Determination	Effective Date of Exemption	Amount of Exemption Threshold
December 31, 2018	January 1, 2020	$2.202 billion, or less
December 31, 2017	January 1, 2019	$2.167 billion, or less
December 31, 2016	January 1, 2018	$2.112 billion, or less

For first-lien higher-priced mortgage loans originated by a creditor that would not be required to establish an escrow account based on the above exemption, if that creditor has obtained a commitment for a higher-priced mortgage loan to be acquired by another company that is not eligible for the exemption, an escrow account must be established. Since an escrow account will be established for this loan, however, note that if the creditor that has obtained a commitment for the higher-priced mortgage loan to be acquired by a non-exempt

[21] The regulation defines these two terms in 12 CFR 1026.35(b)(2)(iv)(A) and (B). A rural area is a county that is neither in a metropolitan statistical area or a micropolitan statistical area that is adjacent to a metropolitan statistical area; or a census block that is not in an urban area, as defined by the U.S. Census Bureau using the latest decennial census of the United States; or a county or a census block that has been designated as "rural" by the CFPB pursuant to the application process established in 2016. See Application Process for Designation of Rural Area under Federal Consumer Financial Law; Procedural Rule, 81 FR 11099 (Mar. 3, 2016). The provisions related to the application process ceased to have any force or effect on December 4, 2017. 12 CFR 1026.35(b)(2)(iv)(A)(3). An underserved area is a county defined by using HMDA data for the preceding year to determine whether it is a county in which no more than two creditors extended covered transactions secured by first liens on properties in the county five or more times. A property is in a rural or underserved area for a particular year if it is listed as a rural or underserved county by the CFPB, is identified as in a rural or underserved area by any automated tool on the Bureau's website or is not designated as located in an urban area in the most recent delineation of urban areas announced by the Census Bureau by any automated address search tool that the Census Bureau provides on its public website for that purpose.

[22] See Comment 35(b)(2)(iii)-1.iii for discussion of "regularly extended" as it applies to affiliates in 12 CFR 1026.35(b)(2)(iii)(C).

[23] The asset threshold is adjusted automatically each year, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers.

company would like to remain eligible for the exemption above, neither the creditor nor its affiliates can service the loan on or beyond the second periodic payment under the terms of the loan.

A creditor or servicer may cancel an escrow account only upon the earlier of termination of the underlying loan, or a cancellation request from the consumer five years or later after consummation. However, a creditor or servicer is not permitted to cancel an escrow account, even upon request from the consumer, unless the unpaid principal balance of the higher-priced mortgage loan is less than 80 percent of the original value of the property securing the loan and the consumer is not currently delinquent or in default on the loan. (12 CFR 1026.35(b)(3))

Higher-Priced Mortgage Loans Appraisal Requirement – 12 CFR 1026.35(c)[24]

General Requirements, Exception, and Safe Harbor

A creditor may not extend a higher-priced mortgage loan without first obtaining a written appraisal of the property to be mortgaged. The appraisal must be performed by a state-certified or licensed appraiser (defined in part as an appraiser who conducts the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) and the requirements applicable to appraisers in Title IX of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) and its implementing regulations). The appraisal must include a physical visit of the interior of the dwelling. The appraisal requirements do **not** apply to:

- Qualified mortgages (QM) under 12 CFR 1026.43 or under rules on qualified mortgages adopted by HUD or VA, or, if promulgated, by USDA or Rural Housing Service (RHS), including mortgages that meet the QM criteria for these rules and are insured, guaranteed, or administered by those agencies;
- An extension of credit equal to or less than the applicable threshold amount that is published in the official staff commentary to the regulation, which is adjusted every year as applicable to reflect increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers;[25]
- A transaction secured by a mobile home, boat, or trailer;
- A transaction to finance the initial construction of a dwelling;
- A loan with maturity of 12 months or less, if the purpose of the loan is a "bridge" loan connected with the acquisition of a dwelling intended to become the consumer's principal dwelling;
- A reverse mortgage transaction subject to 12 CFR 1026.33(a)
- A refinancing secured by a first lien, as defined in 12 CFR 1026.20(a) (except that the creditor need not be the original creditor or a holder or servicer of the original obligation), provided that the refinancing meets the following criteria:
    - The credit risk of the refinancing is retained by the person that held the credit risk of the existing obligation and there is no commitment, at consummation, to transfer the credit risk to another person; or, the refinancing is insured or guaranteed by the same Federal government agency that insured or guaranteed the existing obligation;
    - The regular periodic payments under the refinance loan do not:
        - Cause the principal balance to increase;
        - Allow the consumer to defer repayment of principal; or
        - Result in a balloon payment, as defined in 12 CFR 1026.18(s)(5)(i).
    - The proceeds from the refinancing are used solely to satisfy the existing obligation and amounts attributed solely to the costs of the refinancing.
- A transaction secured by a manufactured home under the following conditions:[26]
    - If the transaction is for a new manufactured home and land, the exemption shall only apply to the requirement that the appraiser conduct a physical visit of the interior of the new manufactured home.
    - If the transaction is for a manufactured home and not land, for which the creditor obtains one of the following and provides a copy to the consumer no later than three business days prior to consummation of the transaction:

[24] The higher-priced mortgage loans appraisal requirement was adopted pursuant to an interagency rulemaking conducted by the Board, the CFPB, the FDIC, FHFA, NCUA, and OCC. The Board codified the rule at 12 CFR 226.43, and the OCC codified the rule at 12 CFR Part 34 and 12 CFR Part 164. There is no substantive difference among these three sets of rules.

[25] From January 1, 2015, through December 31, 2015, the threshold amount was $25,500. *See* Comment 35(c)(2)(ii) – 3. Effective January 1, 2020, to December 31, 2020, the threshold is $27,200.

[26] Prior to July 18, 2015, appraisal requirements do not apply to transactions secured in whole or in part by a manufactured home (12 CFR 1026.35(c)(2)). This section describes how the exemption will work under an amendment to the rule that takes effect on July 18, 2015.

- For a new manufactured home, the manufacturer's invoice for the manufactured home securing the transaction, provided that the date of manufacture is no earlier than 18 months prior to the creditor's receipt of the consumer's application for credit;
- A cost estimate of the value of the manufactured home securing the transaction obtained from an independent cost service provider; or
- A valuation, as defined in 12 CFR 1026.42(b)(3), of the manufactured home performed by a person who has no direct or indirect interest, financial or otherwise, in the property or transaction for which the valuation is performed and has training in valuing manufactured homes.

- Transactions secured by an existing (used) manufactured home and land are not exempt from the appraisal requirement.

A creditor may obtain a safe harbor for compliance with 12 CFR 1026.35(c)(3)(i) by ordering that the appraisal be completed in conformity with USPAP and the requirements applicable to appraisers in Title IX of FIRREA and its implementing regulations, verifying that the appraiser is certified or licensed through the National Registry; and confirming that the written appraisal contains the elements listed in Appendix N of Regulation Z. In addition, the creditor must have no actual knowledge that the facts or certifications contained in the appraisal are inaccurate (12 CFR 1026.35(c)(3)(ii)).

Additional Appraisals

The appraisal provisions in 12 CFR 1026.35(c) also require creditors to obtain an additional written appraisal before extending a higher-priced mortgage loan in two instances:

- First, when the dwelling that is securing the higher-priced mortgage loan was acquired by the seller 90 or fewer days prior to the consumer's agreement to purchase the property and the price of the property has increased by more than 10 percent.
- Additionally, when the dwelling was acquired by the seller between 91 and 180 prior to the consumer's agreement to purchase the property, and the price of the property has increased by more than 20 percent.

A creditor must obtain an additional interior appraisal meeting the same requirements as the first appraisal (written report by a certified or licensed appraiser in compliance with USPAP and FIRREA based upon an interior property visit), unless the creditor can demonstrate, by exercising reasonable diligence, that the circumstances necessitating an additional appraisal do not apply. A creditor can meet the reasonable diligence requirement if it bases its determination on information contained in certain written source documents (such as a copy of the seller's recorded deed or a copy of a property tax bill). See Appendix O of Regulation Z. If, after exercising reasonable diligence, the creditor is unable to determine whether the circumstances necessitating an additional appraisal apply, the creditor must obtain an additional appraisal.

If the creditor is required to obtain an additional written appraisal, the two required appraisals must be conducted by different appraisers. Each appraisal obtained must include a physical visit of the interior of the dwelling. In instances where two appraisals are required, creditors are allowed to charge for only one of the two appraisals.

One of the two required written appraisals must contain an analysis of the difference between the price at which the seller obtained the property and the price the consumer agreed to pay to acquire the property, an analysis of changes in market conditions between when the seller acquired the property and when the consumer agreed to purchase the property, and a review of improvements made to the property between the two dates.

The higher-priced mortgage loan additional appraisal requirements do not apply to the extension of credit that finances the acquisition of a property:

- From a local, state, or federal government agency;
- From a person who acquired title to the property through foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedures as a result of the person's exercise of rights as the holder of a defaulted mortgage;
- From a non-profit entity as part of a local, state, or federal government program permitted to acquire single-family properties for resale from a person who acquired title through foreclosure, deed in lieu of foreclosure, or other similar judicial or non-judicial procedures;
- From a person who acquired title to the property by inheritance or by court order as a result of a dissolution of marriage, civil union, or domestic partnership, or of partition of joint or marital assets;
- From an employer or relocation agency in connection with the relocation of an employee;
- From a servicemember who received a deployment or permanent change of station order after the servicemember purchased the property;
- Located in a federal disaster area if the requirements of Title XI of FIRREA have been waived by the federal financial institutions regulatory agencies for as long as that waiver would apply; or

- Located in a rural county as defined by the CFPB in 12 CFR 1026.35(b)(2)(iv)(A).

Application Disclosures and Copy of Appraisal

Finally, creditors must provide consumers who apply for a loan covered by the appraisal requirements in 12 CFR 1026.35(c) with a disclosure providing information relating to appraisals. A creditor must provide consumers with disclosures no later than the third business day after the creditor receives an application for a higher-priced mortgage loan, or no later than the third business day after the loan requested becomes a higher-priced mortgage loan. Additionally, a creditor must provide, at no cost to the consumer, a copy of each written appraisal performed in connection with a loan covered by the appraisal requirements in 12 CFR 1026.35(c) no later than three business days prior to consummation or, if the loan will not be consummated, no later than 30 days after the creditor determines that the loan will not be consummated. [27]

Prohibited Acts or Practices in Connection with Credit Secured by a Consumer's Dwelling – 12 CFR 1026.36

Loan Originator – 12 CFR 1026.36(a)

The term "loan originator" means a person who, in expectation of direct or indirect compensation or other monetary gain or for direct or indirect compensation or other monetary gain, performs any of the following activities:

- Takes an application, offers, arranges, assists a consumer in obtaining or applying to obtain, negotiates, or otherwise obtains or makes an extension of consumer credit for another person; or
- Through advertising or other means of communication represents to the public that such person can or will perform any of these activities.

The term "loan originator" includes an employee, agent, or contractor of the creditor or loan originator organization if the employee, agent, or contractor meets this definition. The term "loan originator" also includes a creditor that engages in loan origination activities if the creditor does not finance the transaction at consummation out of the creditor's own resources, including by drawing on a *bona fide* warehouse line of credit or out of deposits held by the creditor.

The term "loan originator" does not include:

- A person who performs purely administrative or clerical tasks on behalf of a person who takes applications or offers or negotiates credit terms;
- An employee of a manufactured home retailer who does not take a consumer credit application, offer or negotiate credit terms, or advise consumers on available credit terms;
- A person that performs only real estate brokerage activity and is licensed or registered in accordance with applicable state law, unless that person is compensated by a creditor or loan originator for a consumer credit transaction subject to 12 CFR 1026.36;
- A seller financer that meets the criteria established in 12 CFR 1026.36(a)(4) or (a)(5); or
- A servicer, or a servicer's employees, agents, and contractors who offer or negotiate the terms of a mortgage for the purpose of renegotiating, modifying, replacing, or subordinating principal of an existing mortgage where consumers are behind in their payments, in default, or have a reasonable likelihood of becoming delinquent or defaulting. This exception does not, however, apply to such persons if they refinance a mortgage or assign a mortgage to a different consumer.

An "individual loan originator" is a natural person who meets the definition of "loan originator." Finally, a "loan originator organization" is any loan originator that is not an individual loan originator. A loan originator organization would include banks, thrifts, finance companies, credit unions and mortgage brokers.

Prohibited Loan Originator Compensation: Payments Based on a Term of a Transaction – 12 CFR 1026.36(d)(1)

With limited exceptions, loan originators cannot receive (and no person can pay directly or indirectly), compensation in connection with closed-end consumer credit transactions secured by a dwelling based on a term of a transaction, the terms of multiple transactions, or the terms of multiple transactions by multiple individual loan originators. The loan originator compensation provisions do not apply to open-end home-equity lines of credit or to credit secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D).

A "term of a transaction" is any right or obligation of the parities to a credit transaction. The amount of credit extended is not a term of a transaction, provided that such compensation is based on a fixed percentage of the amount of credit extended

[27] Creditors may use the disclosure required under the Equal Credit Opportunity Act (ECOA) valuations rule to satisfy the disclosure requirements of the higher-priced mortgage loans appraisal rule for loans covered by both. After October 3, 2015, the new Loan Estimate model form appraisal language required by the TILA-RESPA Integrated Disclosure Rule (12 CFR 1026.37(m)(1)(iii)) will meet the requirements of both the ECOA valuations rule (12 CFR 1002.14(a)(2)) and the higher-priced mortgage loans appraisal rule.

(but may be subject to a minimum or maximum dollar amount).

NOTE: A review of whether compensation, which includes salaries, commissions, and any financial or similar incentive, is based on the terms of a transaction requires an objective analysis. If compensation would have been different if a transaction term had been different, then the compensation is prohibited. The regulation does not prevent compensating loan originators differently on different transactions, provided the difference is not based on a term of a transaction or on a proxy for a term of a transaction (a factor that consistently varies with a term or terms of the transaction over a significant number of transactions and which the loan originator has the ability to manipulate).

- An individual loan originator may receive (and a person may pay):
- Compensation in the form of a contribution to a defined contribution plan that is a designated tax-advantage plan unless the contribution is tied to the terms of the individual's transaction(s); (12 CFR 1026.36.(d)(1)(iii))
- Compensation in the form of a benefit under a defined benefit plan that is a designated tax-advantaged plan (12 CFR 1026.36(d)(1)(iii))
- Compensation under a non-deferred profits-based compensation plan provided that:
  - The compensation paid to an individual loan originator is not directly or indirectly based on the terms of the individual's transaction(s); and
  - Either:
    - The compensation paid to the individual loan originator does not exceed 10 percent (in aggregate) of the individual loan originator's total compensation corresponding to the time period for which the compensation under the non-deferred profits-based compensation plan is paid; or
    - The individual loan originator was the loan originator of 10 or fewer transactions during the 12 months preceding the date the compensation was determined. (12 CFR 1026.36(d)(1)(iv))

For more information pertaining to permissible compensation, see the commentary to 12 CFR 1026.36(d).[28]

Prohibited Loan Originator Compensation: Dual Compensation – 12 CFR 1026.36(d)(2)

Loan originators that receive compensation directly from consumers in consumer credit transactions secured by a dwelling, (except for open-end home-equity lines of credit or to loans secured by a consumer's interest in a timeshare plan) may not receive additional compensation directly or indirectly from any other person in connection with that transaction. (12 CFR 1026.36(d)(1)(i)(A)(*1*)) This prohibition includes compensation received from a third-party to the transaction to pay for some or all of the consumer's costs. (12 CFR 1026.36(d)(1)(i)(B)) Further, a person is prohibited from compensating a loan originator when that person "knows or has reason to know" that the consumer has paid compensation to the loan originator. (12 CFR 1026.36(d)(2)(i)(A)(*2*))

However, even if a loan originator organization receives compensation directly from a consumer, the organization can compensate the individual loan originator, subject to 12 CFR 1026.36(d)(1). (12 CFR 1026.36(d)(2)(i)(C))

Prohibition on Steering – 12 CFR 1026.36(e)

Loan originators are prohibited from directing or "steering" consumers to loans based on the fact that the originator will receive greater compensation for the loan from the creditor than in other transactions the originator offered or could have offered to the consumer, unless the consummated transaction is in the consumer's interest. A loan originator complies with the prohibition on steering (but not the loan originator compensation provisions) by obtaining loan options from a significant number of the creditors with which the loan originator regularly does business and, for each loan type in which the consumer has expressed interest, presenting the consumer with loan options for which the loan originator believes in good faith the consumer likely qualifies, provided that the presented loan options include all of the following:

- The loan with the lowest interest rate;
- The loan with the lowest interest rate without certain enumerated risky features (such as prepayment penalties, negative amortization, or a balloon payment in the first seven years); and
- The loan with the lowest total dollar amount of discount points, origination points or origination fees (or, if two or more loans have the same total dollar amount of discount points, origination points or origination fees, the loan with the lowest interest rate that has the lowest total dollar amount of discount points, origination points or origination fees).

[28] In addition to the requirements listed here, 12 CFR 1026.25(c) imposes specific record retention requirements for creditors and loan originator organizations that compensate loan originators.

The anti-steering provisions do not apply to open-end home-equity lines of credit or to loans secured by a consumer's interest in a timeshare plan.

Loan Originator Qualification Requirements – 12 CFR 1026.36(f)

Individual loan originators and loan originator organizations must, when required under state or federal law, be registered and licensed under those laws, including the Safe and Fair Enforcement for Mortgage Licensing Action of 2008 (SAFE Act).[29] Loan originator organizations other than government agencies or state housing finance agencies must:

- Comply with all applicable state law requirements for legal existence and foreign qualification; (12 CFR 1026.36(f)(1)); and

- Ensure that each individual loan originator who works for the loan originator organization (e.g., an employee, under a brokerage agreement) is licensed or registered to the extent the individual is required to be licensed or registered under the SAFE Act prior to acting as a loan originator in a consumer credit transaction secured by a dwelling. (12 CFR 1026.36(f)(2))

The requirements are different for loan originator organizations whose employees are not required to be licensed and are not licensed pursuant to 12 CFR 1008.103 or state SAFE Act implementing laws (including employees of depository institutions and bona fide non-profits). For their employees hired on or after January 1, 2014 (or hired before this date but not subject to any statutory or regulatory background standards at the time, or for any individual loan originators regardless of when hired that the organization believes, based on reliable information do not meet the qualification standards), loan originator employers must obtain before the individual acts as a loan originator in a consumer credit transaction secured by a dwelling:

- A criminal background check through the Nationwide Mortgage Licensing System and Registry (NMLSR) or, in the case of an individual loan originator who is not a registered loan originator under NMLSR, a criminal background check from a law enforcement agency or commercial service; (12 CFR 1026.36(f)(3)(i)(A))

- A credit report from a consumer reporting agency (as defined in section 603(p) of the Fair Credit Reporting Act) secured, where applicable, in compliance with section 604(b) of FCRA; (12 CFR 1026.36(f)(3)(i)(B)) and

- Information from the NMLSR about any administrative, civil, or criminal findings by any government jurisdiction or, in the case of an individual loan originator who is not a registered loan originator under the NMLSR, such information from the individual loan originator. (12 CFR 1026.36(f)(3)(i)(C))

Based on the information obtained above and any other information reasonably available, the loan originator employer must determine for such an employee prior to allowing the individual to act as a loan originator in a consumer credit transaction secured by a dwelling:

- That the individual has not been convicted of, or pleaded guilty or *nolo contendere* to, a felony in a domestic or military court during the preceding seven-year period or, in the case of a felony involving an act of fraud, dishonesty, a breach of trust, or money laundering, at any time (12 CFR 1026.36(f)(3)(ii)(A)(*1*)); and

  NOTE: Whether the conviction of a crime is considered a felony is determined by whether the conviction was classified as a felony under the law of the jurisdiction under which the individual is convicted. Additionally, a loan originator organization may employ an individual with a felony conviction (or a plea of nolo contendere) as a loan originator if that individual has received consent from the FDIC, (or the Board, as applicable) the NCUA, or the Farm Credit Administration(FCA) under their own applicable statutory authority. (12 CFR 1026.36(f)(3)(iii))

- Has demonstrated financial responsibility, character, and general fitness such as to warrant a determination that the individual loan originator will operate honestly, fairly, and efficiently.

The loan originator organization must also provide periodic training to each such employee that covers federal and state legal requirements that apply to the individual loan originator's loan origination activities.

Name and NMLSR ID on Loan Documentation – 12 CFR 1026.36(g)

12 CFR 1026.36(g) applies to closed-end consumer credit transactions secured by a dwelling except a loan that is secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D). For purposes of 12 CFR 1026.36(g), a loan originator includes all creditors that engage in loan origination activities, not just those who table fund.

For consumer credit transactions secured by a dwelling, loan

[29] 12 CFR 1026.36(f) applies to closed-end consumer credit transactions secured by a dwelling except a loan that is secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D). For purposes of 1026.36(f), a loan originator includes all creditors that engage in loan origination activities, not just those who table fund.

originator organizations must include certain identifying information on loan documentation provided to consumers. The loan documents must include the loan originator organization's name, NMLSR ID (if applicable), and the name of the individual loan originator that is primarily responsible for the origination as it appears in the NMLSR, as well as the individual's NMLSR ID. This information is required on credit applications, the Loan Estimate, the Closing Disclosure, the note or loan contract, and the documents securing an interest in the property.

Policies and Procedures to Ensure and Monitor Compliance – 12 CFR 1026.36(j)

Depository institutions (including credit unions) must establish and maintain written policies and procedures reasonably designed to ensure and monitor compliance of the depository institution, its employees, and its subsidiaries and their employees with the requirements of 12 CFR 1026.36(d) (prohibited payments to loan originators), 1026.36(e) (prohibition on steering), 1026.36(f) (loan originator qualifications), and 1026.36(g) (name and NMLSR ID on loan documents). The written policies and procedures must be appropriate to the nature, size, complexity, and scope of the mortgage lending activities of the depository and its subsidiaries. (12 CFR 1026.36(j))

Prohibition on Mandatory Arbitration or Waivers of Certain Consumer Rights – 12 CFR 1026.36(h)

A contract or other agreement for a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling) may not include terms that require mandatory arbitration or any other non-judicial procedure to resolve any controversy arising out of the transaction. Also, a contract or other agreement relating to such a consumer credit transaction may not be applied or interpreted to bar a consumer from bringing a claim in court under any provision of law for damages or other relief in connection with an alleged violation of any federal law. However, a creditor and a consumer could agree, after a dispute or claim under the transaction arises, to settle or use arbitration or other non-judicial procedure to resolve that dispute or claim.

Prohibition on Financing Credit Insurance – 12 CFR 1026.36(i)

Creditors are prohibited from "financing" (i.e., providing a consumer the right to defer payment beyond the monthly period in which the premium or fee is due), either directly or indirectly, premiums or fees for credit insurance in connection with a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling). This prohibition includes financing fees for credit life, credit disability, credit unemployment, credit property insurance, or any other accident, loss-of-income, life, or health insurance or payment for debt cancellation or suspension. This prohibition does not apply to credit unemployment insurance where the premiums are reasonable, the creditor receives no direct or indirect compensation in connection with the premiums, and the premiums are paid under a separate insurance contract and not to an affiliate of the creditor. This prohibition also does not apply to credit insurance where premiums or fees are "calculated" and paid in full "on a monthly basis" (i.e., determined mathematically by multiplying a rate by the actual monthly outstanding balance).

Negative Amortization Counseling – 12 CFR 1026.36(k)

A creditor may not extend a negative amortizing mortgage loan to a first-time borrower in connection with a closed-end transaction secured by a dwelling, other than a reverse mortgage or a transaction secured by a timeshare, unless the creditor receives documentation that the consumer has obtained homeownership counseling from a HUD certified or approved counselor. Additionally, a creditor extending a negative amortizing mortgage loan to a first-time borrower may not steer, direct, or require the consumer to use a particular counselor.

Loan Servicing Practices

Servicers of mortgage loans are prohibited from engaging in certain practices, such as pyramiding late fees. In addition, servicers are required to credit consumers' loan payments as of the date of receipt and provide a payoff statement within a reasonable time, not to exceed seven business days of a written request.

Payment Processing – 12 CFR 1026.36(c)(1)

For a closed-end consumer credit transaction secured by a consumer's principal dwelling, a loan servicer:

- Cannot fail to credit a periodic payment to the consumer's loan account as of the date of receipt, except in instances where the delay will not result in a charge to the consumer or in the reporting of negative information to a consumer reporting agency.

  NOTE: For the purposes of 12 CFR 1026.36(c) a periodic payment is "an amount sufficient to cover principal, interest, and escrow for any given billing cycle." If the consumer owes late fees, other fees, or non-escrow payments but makes a full periodic payment, the servicer must credit the periodic payment as of the date of receipt.

- Cannot retain a partial payment (any amount less than a periodic payment) in a suspense or unapplied payment account without disclosing to the consumer in the periodic statement (if required) the total amount(s) held in the suspense account and applying the payment to the balance upon accumulation of sufficient funds to equal a periodic payment.

If a servicer has provided written requirements for accepting payments in writing but then accepts payments that do not conform to the written requirements, the servicer must credit the

payment as of five days after receipt.

If a loan contract has not been permanently modified but the consumer has agreed to a temporary loss mitigation program, a periodic payment under § 1026.36(c)(1)(i) is the amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle under the loan contract, regardless of the payment due under the temporary loss mitigation program. (Comment 1026.36(c)(1)(i)-4). If a loan contract has been permanently modified, a periodic payment under § 1026.36(c)(1)(i) is an amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle under the modified loan contract. (Comment 1026.36(c)(1)(i)-5).

Pyramiding of Late Fees – 12 CFR 1026.36(c)(2)

In connection with a closed-end consumer credit transaction secured by a consumer's principal dwelling, a servicer may not impose on the consumer any late fee or delinquency charge in connection with a payment, when the only delinquency is attributable to late fees or delinquency charges assessed on an earlier payment, and the payment is otherwise a periodic payment for the applicable period and is received on its due date or within any applicable courtesy period.

Providing Payoff Statements – 12 CFR 1026.36(c)(3)

For consumer credit transactions secured by a consumer's dwelling, including home equity lines of credit under 12 CFR 1026.40(a), a creditor, assignee, or servicer may not fail to provide, within a reasonable time, but no more than seven business days, after receiving a written request from the consumer or person acting on behalf of the consumer, an accurate statement of the total outstanding balance that would be required to pay the consumer's obligation in full as of a specific date.

NOTE: For purposes of 12 CFR 1026.36(c)(3), when a creditor, assignee, or servicer is not able to provide the statement within seven business days because a loan is in bankruptcy or foreclosure, because the loan is a reverse mortgage or shared appreciation mortgage, or because of natural disasters or similar circumstances, the payoff statement must be provided within a reasonable time.

TILA-RESPA Integrated Disclosures – 12 CFR 1026.37 and 12 CFR 1026.38

For most closed-end consumer mortgages, creditors must provide two disclosures, the Loan Estimate and the Closing Disclosure, to consumers for mortgage applications received on or after October 3, 2015. The Loan Estimate is a three-page form that provides disclosures to help consumers understand the key features, costs, and risks of the mortgage loan for which they are applying. This form must be delivered or placed in the mail no later than three business days after the creditor receives a consumer's mortgage loan application. The Closing Disclosure is a five-page form that helps consumers understand all of the costs of the transaction. This form generally must be received by the consumer at least three business days before consummation. Both forms use similar language and design to make it easier for consumers to locate key information, such as the interest rate, monthly payments, and costs to close the loan.

The Loan Estimate form replaces the Good Faith Estimate designed by HUD under RESPA, and the "early" Truth in Lending disclosure designed by the Federal Reserve Board under TILA. The regulation and the Official Interpretations contain detailed instructions as to how each line on the Loan Estimate form should be completed. There are sample forms for different types of loan products. See CFPB's TILA-RESPA Integrated Disclosure, Guide to the Loan Estimate and Closing Disclosure forms (TILA-RESPA Guide to Forms) for a detailed, step-by-step walk-through for completing the Loan Estimate and the Closing Disclosure. The Loan Estimate form also incorporates new disclosures required by Congress under the Dodd-Frank Act.

The Closing Disclosure form replaces the HUD-1 for loan closing, which was designed by HUD under RESPA. It also replaces the revised Truth in Lending disclosure designed by the Board under TILA. The rule and the Official Interpretations contain detailed instructions as to how each line on the Closing Disclosure form should be completed. The Closing Disclosure form contains additional new disclosures required by the Dodd-Frank Act and a detailed accounting of the settlement transaction. See CFPB's TILA-RESPA Guide to Forms for a detailed, step-by-step walk-through for completing the Loan Estimate and the Closing Disclosure.

The rules on who provides the disclosures, timing, limits on when fees can be charged, early estimates, and limits on increases in charges are in 12 CFR 1026.19(e) and (f), described in subpart A.

Loan Estimate – Content of Disclosures for Certain Mortgage Transactions – 12 CFR 1026.37

Loan Estimate form required (12 CFR 1026.37(o))

The Loan Estimate generally must provide consumers with a good faith estimate of credit costs and transaction terms, and satisfy timing and delivery requirements set forth in the rule.

For any transactions subject to 12 CFR 1026.19(e) that are federally-related mortgage loans subject to RESPA (which will include most mortgages), creditors must use form H-24, set forth in Appendix H. (12 CFR 1026.37(o)(3)(i)) (See also 12 CFR 1024.2(b) for definition of federally related mortgage loan.)

For other loans subject to 12 CFR 1026.19(e) that are not federally related mortgage loans, the disclosures must be made with headings, content, and format substantially similar to form H-24. (12 CFR 1026.37(o)(3)(ii))

The disclosures may be provided to the consumer in electronic

form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 *et seq*.). (12 CFR 1026.37(o)(3)(iii))

Information required on the Loan Estimate form. Most disclosures on the Loan Estimate form are required to be labeled using specific nomenclature, headings, and formatting. For example, the regulation requires that the form disclose the contract sale price, labeled "Sale Price" (or if there is no seller, the estimated value of the property, labeled "Prop. Value"). Further, in some instances, the regulation directs lines on the disclosure to be left blank where there is no charge (see, e.g., 12 CFR 1026.37(g)(2)(v)) or sets forth the maximum number of items that may be disclosed (see, e.g., 12 CFR 1026.37(g)(3)(v)). See the regulation, Form H-24, and the Regulation Z procedures for specific obligations regarding each required disclosure.

Rounding. Dollar amounts must be rounded to the nearest whole dollar where noted in the regulation, including adjustments after consummation for loan amount, interest rate, and periodic payment; and details about prepayment penalties and balloon payments, minimum and maximum amounts for principal and interest payments and range of payments, maximum mortgage insurance premiums, escrows, taxes and insurance and assessments, closing costs (loan costs and other costs), cash to close, and adjustable payment and comparisons. (12 CFR 1026.37(o)(4)(i)(A))

The per diem amount for prepaid interest paid per day and the monthly amounts required to be disclosed for escrows of homeowner's insurance, mortgage insurance, or property taxes must not be rounded. (12 CFR 1026.37(o)(4)(i)(B))

If an amount is required to be rounded but is composed of other amounts that are **not** required or permitted to be rounded, the unrounded amounts should be used to calculate the total, and the final sum should be rounded. Conversely, if an amount is required to be rounded and is composed of rounded amounts, the rounded amounts should be used to calculate the total. (Comment 37(o)(4)-2)

Percentage amounts may not be rounded and should be disclosed up to two or three decimals, as needed. These include the interest rate, adjustments after consummation (to the loan amount, interest rate, or periodic payment), points itemized under origination charges, adjustable interest rate and total interest percentage or "TIP." The annual percentage rate must be disclosed up to three decimal places and is not rounded. If a percentage amount is a whole number, only the whole number should be disclosed, with no decimals. (12 CFR 1026.37(o)(4)(ii); Comment 37(o)(4)(ii)-1)

Page 1: General information, loan terms, projected payments, and costs at closing.

Page 1 of the Loan Estimate discloses general information about the creditor, the applicant(s), and the loan. It also includes a Loan Terms table with descriptions of applicable information about the loan, a Projected Payments table, a summary Costs at Closing table, and a link for consumers to obtain more information about loans secured by real property at a website maintained by the CFPB. (12 CFR 1026.37(a)-(e))

General information. Page 1 of the Loan Estimate requires the title "Loan Estimate" and the statement "Save this Loan Estimate to compare with your Closing Disclosure." (12 CFR 1026.37(a)(1), (2)) The top of page 1 also requires the name and address of the creditor. (12 CFR 1026.37(a)(3)) A logo can be used for, and a slogan included along with, the creditor's name and address, so long as the logo or slogan does not cause this information to exceed the space provided on Form H-24 for that information. (12 CFR 1026.37(o)(5)(iii)) If there are multiple creditors, only the name of the creditor completing the Loan Estimate should be used. (Comment 37(a)(3)-1) If a mortgage broker is completing the Loan Estimate, the mortgage broker should make a good faith effort to disclose the name and address of the creditor as required by 12 CFR 1026.19(e)(1)(i). However, if the name of the creditor is not yet known, this space may be left blank. (Comment 37(a)(3)-2)

Below the creditor information, the form requires the date the creditor mails or delivers the disclosures to the consumer; the name and mailing address of the consumer(s) applying for the credit; the address, including the zip code, of the property that secures or will secure the transaction, or if the address is unavailable, the location of such property, including a zip code; and the contract sale price (or if there is no seller, the estimated value of the property). (12 CFR 1026.37(a)(4)-(6))

On the top right side of the first page, the form requires the loan term to maturity (stated in years or months, or both, as applicable; and loan purpose (purchase, refinance, construction or home equity loan). (12 CFR 1026.37(a)(8)-(9)) This section of the form also requires the product type (adjustable rate, step rate, or fixed rate) and, preceding the type, any features that may change the periodic payment, including negative amortization, interest only, step payment, balloon payment, or seasonal payment features, as applicable. If the product has an adjustable or step rate, or a feature that may change the periodic payment, the product disclosure must also be preceded by a disclosure of the duration of any introductory rate or payment period, and the first adjustment period, as applicable. (12 CFR 1026.37(a)(10) This section of the form also requires the loan type (conventional, FHA, VA, or other), and loan ID#. (12 CFR 1026.37(a)(11)-(12)) Further, there must be a statement of whether the interest rate is locked for a specific time, and if so, the date and time when that period ends. It must also include a statement that the interest rate, any points, and any lender credits may change unless the interest rate has been locked, and the date and time (including the applicable time zone) at which estimated closing costs expire. (12 CFR 1026.37(a)(13))

Loan Terms table.

The Loan Terms table follows the general information

requirements on page 1 of the Loan Estimate. For the Loan Terms table, the creditor must disclose the loan amount (the amount of credit to be extended under the terms of the legal obligation), interest rate applicable to the transaction at consummation, and specified principal and interest payments. (12 CFR 1026.37(b)(1)-(3)) For each such element, the disclosure must answer the question, either affirmatively or negatively, whether the amount can increase after consummation. If the amount can increase, the loan must disclose additional information. (12 CFR 1026.37(b)(6)) The Loan Terms table must also include information about prepayment penalties and balloon payments.

Loan amount. If the loan amount may increase after consummation, the disclosure must include the maximum principal balance for the transaction and the due date of the last payment that may cause the principal balance to increase. The disclosure must also indicate whether the maximum principal balance is potential or is scheduled to occur under the terms of the legal obligation. (12 CFR 1026.37(b)(6)(i))

Interest rate. If it is an adjustable rate transaction where the interest rate at consummation is not known, the disclosed rate is the fully indexed rate (which means the index value and margin at the time of consummation) (12 CFR 1026.37(b)(2)). If the interest may increase after consummation, the creditor must disclose the frequency of interest rate adjustments, the date when the interest rate may first adjust, the maximum interest rate, and the first date when the interest rate can reach the maximum interest rate, followed by a reference to the adjustable rate table required by 12 CFR 1026.37(j) in the Closing Cost Details section of the Loan Estimate. If the loan term may increase based on an interest rate adjustment, that fact must be included, as well as the maximum possible loan term determined in accordance with 12 CFR 1026.37(a)(8). (12 CFR 1026.37(b)(6)(ii))

Principal and interest payment. The creditor must disclose the initial periodic payment that will be due under the terms of the legal obligation, immediately preceded by the applicable unit period, and a statement referring to the payment amount that includes any mortgage insurance and escrow payments that is required to be disclosed in the Projected Payments table. (12 CFR 1026.37(b)(3)) If the monthly principal and interest payment can increase after closing, the creditor must also disclose: the scheduled frequency of adjustments to the periodic principal and interest payment; the due date of the first adjusted principal and interest payment; the maximum possible periodic principal and interest payment; and the date when the periodic principal and interest payment may first equal the maximum principal and interest payment. If any adjustments to the principal and interest payment are not the result of a change to the interest rate, the creditor must reference the adjustable payment table disclosure required by 12 CFR 1026.37(i). If there is a period during which only interest is required to be paid, the disclosure must also state that fact and the due date of the last periodic payment of such period. (12 CFR 1026.37(b)(6)(iii))

Prepayment penalties and balloon payments. The Loan Terms table must also state affirmatively or negatively whether the transaction includes a prepayment penalty (for these purposes, a charge imposed for paying all or part of a transaction's principal before the date on which the principal is due, other than a waived, bona fide third-party charge that the creditor imposes if the consumer prepays all of the transaction's principal sooner than 36 months after consummation) or a balloon payment (for these purposes, a payment that is more than two times a regular periodic payment). (12 CFR 1026.37(b)(4) and (5))

Projected Payments table.

The Projected Payments table is located directly below the Loan Terms table on page 1 of the Loan Estimate. The Projected Payments table shows estimates of the periodic payments that the consumer will make over the life of the loan. Creditors must disclose estimates of the following periodic payment amounts in the Projected Payments table: periodic principal and interest (or range of periodic payments); mortgage insurance; estimated escrow; and estimated total monthly payment. (12 CFR 1026.37(c)(2)) Creditors must also disclose estimated taxes, insurance, and assessments, even if not paid with escrow funds (and whether these items will be paid with funds from the consumer’s escrow account). (12 CFR 1026.37(c)(4))

Generally, the creditor will show in one column the initial periodic payment (or range of payments if required). Depending on the features of the loan, subsequent periodic payments also may be required to be disclosed. However, no more than four separate periodic payments or ranges of payments may be disclosed, beginning with the initial periodic payment. Events that require disclosure of separate periodic payments or ranges include: changes to the periodic principal and interest payment; a scheduled balloon payment: an automatic termination of mortgage insurance or its equivalent; and the anniversary of the due date of the initial periodic payment or range of payments that immediately follows the occurrence of multiple events that change the periodic principal and interest. The regulation addresses how to disclose these events when the event occurs after the third separate periodic payment or range of payments disclosed. (12 CFR 1026.37(c)(1))

Each separate payment or range of payments must be itemized according to the regulation, including the amount payable for principal and interest. The regulation provides instructions for itemizing payments that include an interest only payment, payments on loans with an adjustable interest rate, and payments on a loan that has both an adjustable interest rate and a negative amortization feature. Additionally, the regulation requires that each separate periodic payment or range of payments itemize the maximum corresponding payable for mortgage insurance premiums and the amount payable into escrow (with a statement that the amount disclosed may increase over time and a calculation of the total monthly payment). (12 CFR 1026.37(c)(2))

Below the estimated total monthly payment, the Projected Payments table discloses estimated taxes, insurance, and assessments. These are stated as a monthly amount and include a statement that the amount may increase over time. The creditor provides these estimates even if there will be no escrow account established for these costs. The table also requires a statement of whether the amount disclosed includes payments for property taxes or other amounts; a description of any such other amounts; and an indication of whether such amounts will be paid by the creditor using escrow account funds. It includes a statement that the consumer must separately pay the taxes, insurance, and assessments that are not paid by the creditor using escrow account funds; and a reference to the information disclosed under the subheading on the Loan Estimate titled "Initial Escrow Payment at Closing." (12 CFR 1026.37(c)(4))

The creditor estimates property taxes and homeowner's insurance using the taxable assessed value of the real property securing the transaction after consummation, including the value of any improvements on the property or to be constructed on the property, if known, whether or not such construction will be financed from the proceeds of the transaction, for property taxes; and the replacement costs of the property during the initial year after the transaction, for premiums or other charges for insurance against loss of or damage to property identified in 12 CFR 1026.4(b)(8). (12 CFR 1026.37(c)(5))

Costs at Closing table.

This table, located at the bottom of page 1, provides disclosures on estimated Closing Costs and estimated Cash to Close. (12 CFR 1026.37(d)(1)) These disclosures offer the consumer a high-level summary of estimated closing costs and cash required to close (including closing costs) and reference the more detailed itemizations found on page 2 of the Loan Estimate. (12 CFR 1026.37(d)(1)(i)(E) and 1026.37(d)(1)(ii)(B))

Items that are disclosed include an estimate of Total Closing Costs, as well as the key inputs making up this total: Loan Costs, Other Costs, and Lender Credits (and the fact that total closing costs include these amounts). (12 CFR 1026.37(d)(1)(i)) These disclosures also provide a high-level summary of the estimated amount of cash required to close, which is also itemized more specifically on page 2 of the Loan Estimate. (12 CFR 1026.37(d)(1)(ii)) The regulation provides an optional alternative Cash to Close table for transactions that do not involve a seller. The creditor may alternatively disclose, using the label "Cash to Close," the cash to or from the consumer (pursuant to 12 CFR 1026.37(h)(2)(iv)), a statement of whether the disclosed estimated amount is due from or to the consumer, and a statement referring the consumer to the alternative Calculating Cash to Close table for transactions without a seller (pursuant to 12 CFR 1026.37(h)(2)). (12 CFR 1026.37(d)(2))

Page 2: Closing cost details

Page 2 of the Loan Estimate contains a good faith itemization of the "Loan Costs" and "Other Costs" associated with the loan. (12 CFR 1026.37(f) and (g)) Generally, Loan Costs are those costs paid by the consumer to the creditor and third-party providers of services the creditor requires to be obtained by the consumer during the origination of the loan. (12 CFR 1026.37(f)) Other Costs include taxes, governmental recording fees, and certain other payments involved in the real estate closing process. (12 CFR 1026.37(g)) Page 2 also includes an itemized "Calculating Cash to Close" table to show the consumer how the amount of cash needed at closing is calculated. (12 CFR 1026.37(h)) In addition, for transactions with adjustable monthly payments not based on changes to the interest rate, page 2 must include an Adjustable Payment (AP) table with relevant information about how the monthly payments will change. (12 CFR 1026.37(i)) Further, for transactions with adjustable interest rates, page 2 must include an Adjustable Interest Rate (AIR) table with relevant information about how the interest rate will change. (12 CFR 1026.37(j))

If state law requires additional disclosures, those additional disclosures may be made on a document whose pages are separate from, and not presented as part of, the Loan Estimate. (Comments 37(f)(6)-1 and 37(g)(8)-1)

Loan Costs table. This table includes all loan costs associated with the transaction, broken down into an itemization of three types of costs:

- Origination charges the consumer will pay to each creditor and loan originator for originating and extending credit (including separate itemization for points paid to the creditor to reduce the interest rate as both a percentage of the amount of credit extended and dollar amount) (up to 13 line items); the following items should be itemized separately in the Origination Charges subheading:
    - Compensation paid directly by a consumer to a loan originator that is **not** also the creditor (Comments 37(f)(1)-2 and -5); or
    - Any charge imposed to pay for a loan level pricing adjustment assessed on the creditor that is passed on to the consumer as a cost at consummation and **not** as an adjustment to the interest rate. (Comment 37(f)(1)-5)
- Services the consumer cannot shop for (items provided by persons other than the creditor or mortgage broker that the consumer cannot shop for and will pay for at settlement, such as appraisal fees and credit report fees) (up to 13 line items); and
- Services the consumer can shop for (such as a pest inspection fee, survey fee, or closing agent fee) (up to 14 line items) (12 CFR 1026.37(f)(2) and (3)).

Regarding origination fees, only charges paid directly by the consumer to compensate a loan originator are included in the itemization. Compensation of a loan originator paid indirectly by the creditor through the interest rate is not itemized (but is itemized on the Closing Disclosure; see below). (Comment 37(f)(1)-2)

NOTE: Items that are a component of title insurance must include the introductory description of "Title -." (12 CFR 1026.37(f)(2)(i) and (g)(4)(i))

NOTE: The disclosure of "lender credits," as identified in 12 CFR 1026.37(g)(6)(ii), is required by 12 CFR 1026.19(e)(1)(i). "Lender credits," as identified in 12 CFR 1026.37(g)(6)(ii), represents the sum of non-specific lender credits and specific lender credits. Non-specific lender credits are generalized payments from the creditor to the consumer that do not pay for a particular fee on the disclosures provided pursuant to 12 CFR 1026.19(e)(1). Specific lender credits are specific payments, such as a credit, rebate, or reimbursement, from a creditor to the consumer to pay for a specific fee. Non-specific lender credits and specific lender credits are negative charges to the consumer. (Comment 19(e)(3)(i) -5).

The sum of these amounts must be disclosed as Total Loan Costs. The regulation includes a required order and terminology for each item. (12 CFR 1026.37(f)(1)-(5)) If the creditor does not have enough lines for each subheading, it must disclose the remaining items as an aggregate number. (12 CFR 1026.37(f)(6)(i)) An addendum is not permitted for origination charges or charges the consumer cannot shop for that exceed the maximum number of lines but is permitted for services the consumer can shop for, provided the creditor appropriately references the addendum (12 CFR 1026.37(f)(6)(ii)).

Other Costs table. The Other Costs table captures costs established by government action, determined by standard calculations applied to ongoing fixed costs, or based on an obligation incurred by the consumer independently of any requirement imposed by the creditor. (Comment 37(g)-1) The table includes:

- Taxes and other governmental fees (recording fees and other taxes, and transfer taxes paid by the consumer, separately itemized);
- Prepaids (amounts paid by the consumer before the first scheduled payment, such as homeowner insurance premiums, mortgage insurance premiums, prepaid interest, and property taxes, plus up to 3 additional line items);
- Initial escrow payment at closing (items that the consumer will be expected to place into a reserve or escrow account at consummation to be applied to recurring periodic charges; these include homeowner's insurance, mortgage insurance, and property taxes, plus up to 5 additional line items); and
- Other amounts the consumer is likely to pay (such as real estate agent commissions, up to 5 line items). (12 CFR 1026.37(g)(1)-(4), Comment 37(g)(4)-4)

NOTE: Items that disclose any premiums paid for separate insurance, warranty, guarantee, or event-coverage products not required by the creditor must include the parenthetical description (optional) at the end of the label. (12 CFR 1026.37(g)(4)(ii))

As with Loan Costs, the regulation includes a required order, terminology, and specific information regarding each Other Costs line item, such as the applicable time period covered by the amount paid at consummation and the total amount to be paid. Items that disclose any premiums paid for separate insurance, warranty, guarantee, or event-coverage products not required by the creditor must include the parenthetical description (optional) at the end of the label. (12 CFR 1026.37(g)(4)(ii)) An addendum is not permitted; if the creditor does not have enough lines for each subheading, it must disclose the remaining items as an aggregate number. (12 CFR 1026.37(g)(8)) The sum of these amounts must be disclosed as a line item as Total Other Costs. (12 CFR 1026.37(g)(5)) Below this total, the sum of Total Loan Costs and Total Other Costs, less any lender credits (separately itemized), must be disclosed as a line item as Total Closing Costs. (12 CFR 1026.37(g)(6))

Calculating Cash to Close table. The Calculating Cash to Close table shows the consumer how the amount of cash needed at closing is calculated. (12 CFR 1026.37(h)(1)) The creditor must itemize the total amount of cash or other funds that the consumer must provide at consummation. The itemization includes:

- Total closing costs (12 CFR 1026.37(h)(1)(i));
- Closing costs to be financed (i.e., paid out of loan proceeds, disclosed as a negative number) (12 CFR 1026.37(h)(1)(ii));
- Down payment and other funds from the borrower (in a purchase transaction, the difference between purchase price of property and principal amount of loan, disclosed as a positive number; in other transactions, estimated funds from the consumer—see "funds for the borrower" below) (12 CFR 1026.37(h)(1)(iii));
- Deposit (in a purchase transaction, the amount that is paid to the seller or held in trust or escrow by an attorney or other party under the terms of the agreement for the sale of the property, disclosed as a negative number, and labeled "deposit;" in all other transactions, the amount of $0, labeled "deposit") (12 CFR 1026.37(h)(1)(iv));
- Funds for the borrower (determined by subtracting the principal amount of the credit extended from the total amount of existing credit being satisfied, and if the amount is a positive number, disclosed as that number, but if the

amount is $0 or a negative number, it is disclosed as $0) (12 CFR 1026.37(h)(1)(v));

- Seller credits (the amount the seller will pay for total loan costs and total other costs, to the extent known, disclosed as a negative number) (12 CFR 1026.37(h)(1)(vi); and
- Adjustments and other credits. (12 CFR 1026.37(h)(1)(vii))
- Estimated Cash to Close is calculated and disclosed in the same table based on these amounts listed in 12 CFR 1026.37(h)(1)(i) to (vii). (12 CFR 1026.37(h)(1)(viii))

For transactions without a seller, the creditor can use the optional alternative table and provide, under the heading Closing Cost Details, the total amount of cash or other funds that must be provided by the consumer at consummation with an itemization of the following component amounts: (12 CFR 1026.37(h)(2))

- Loan amount (disclosed under 12 CFR 1026.37(b)(1)) (12 CFR 1026.37(h)(2)(i));
- Total closing costs (disclosed under 12 CFR 1026.37(g)(6) (12 CFR 1026.37(h)(2)(ii));
- Payoffs and payments – the total amount of payoffs and payments to third parties not otherwise disclosed under 12 CFR 1026.37(f) and (g) (12 CFR 1026.37(h)(2)(iii));
- Cash to or from consumer – the amount of cash or other funds due from or to the consumer and a statement of whether the disclosed estimated amount is due from or to the consumer, calculated by the sum of the loan amount, total closing costs and payoffs and payments under 12 CFR 1026.37(h)(2)(i)-(iii)), only to the extent that the sum is greater than zero and less than the total closing costs (12 CFR 1026.37(g)(6)) and labeled "Cash to Close" (12 CFR 1026.37(h)(2)(iv));
- Closing costs financed – the sum of the amounts disclosed under 12 CFR 1026.37(h)(2)(i) and (iii) (loan amount and payoffs and payments), but only to the extent that the sum is greater than zero and less than the total closing costs (12 CFR 1026.37(g)(6)), labeled "Closing Costs Financed (Paid from your Loan Amount)." (12 CFR 1026.37(h)(2)(v))

Adjustable Payment (AP) table.

This table is for transactions with adjustable monthly payments for reasons other than adjustments to the interest rate, or if the transaction is a seasonal payment product. The table provides consumers with relevant information about how the monthly payments will change. If the transaction does not contain such terms, the table may not be on the Loan Estimate (12 CFR 1026.37(i); Comment 37(i)-1).

The AP table requires answers to the following questions:

- Whether there are interest only payments, and, if so, the period during which the interest only payment would apply (12 CFR 1026.37(i)(1));
- Whether the amount of any periodic payment can be selected by the consumer as an optional payment and, if so, the period during which the consumer can select optional payments (12 CFR 1026.37(i)(2));
- Whether the loan is a step payment product and, if so, the period during which the regular periodic payments are scheduled to increase (12 CFR 1026.37(i)(3));
- Whether the loan is a seasonal payment product, and, if so, the period during which the periodic payments are not scheduled (12 CFR 1026.37(i)(4)); and
- A subheading of monthly principal and interest payments, with specified information about the first payment change and amount; frequency of subsequent changes; and maximum periodic payment that may occur during the loan term (and first date the maximum is possible) (12 CFR 1026.37(i)(5)

Adjustable Interest Rate (AIR) table.

For transactions with adjustable interest rates, an Adjustable Interest Rate (AIR) table provides consumers with relevant information about how the interest rate will change. (12 CFR 1026.37(j)) The adjustable interest rate table must be completed if the interest rate may increase after consummation. However, if the legal obligation does not permit the interest rate to adjust after consummation, this table is not permitted to appear on the Loan Estimate. (12 CFR 1026.37(j)(1); Comment 37(j)-1))

The AIR table includes the following information (12 CFR 1026.37(j)):

- For non-step-rate products, the index upon which adjustments to the interest rate will be based and the margin that is added to the index to determine the interest rate (12 CFR 1026.37(j)(1));
- For step rate products, the maximum amount of any adjustments to the interest rate that are scheduled and pre-determined (12 CFR 1026.37(j)(2));
- The initial interest rate at consummation (12 CFR 1026.37(j)(3));
- The minimum/maximum interest rate for the loan, after any introductory period expires (12 CFR 1026.37(j)(4));
- The frequency of adjustments (first and subsequent adjustments) (12 CFR 1026.37(j)(5)); and

- Any limits on interest rate changes (12 CFR 1026.37(j)(6)).

Page 3: Additional information about the loan

Page 3 of the Loan Estimate contains contact information, a Comparisons table, an Other Considerations table, and, if desired, a Signature Statement for the consumer to sign to acknowledge receipt. (See 12 CFR 1026.37(k), (l), (m), and (n))

Contact information

The top of page 3 includes the name and NMLSR or License ID number for the creditor and mortgage broker, if any; and name and NMLSR or License ID of individual loan officer who is the primary contact for the consumer, along with that person's email address and phone number. (12 CFR 1026.37(k))

Comparisons table

The Comparisons table follows the contact information and allows consumers to compare loans. Each of these disclosures must be accompanied by a specified descriptive statement. (12 CFR 1026.37(l))

The creditor must provide the:

- Total dollar amount of principal, interest, mortgage insurance, and loan costs scheduled to be paid through the end of the 60th month after the due date of the first periodic payment;
- Total dollar amount of principal scheduled to be paid through the end of the 60th month after the due date of the first periodic payment;
- Annual percentage rate using that term and the abbreviation "APR" and expressed as a percentage; and
- Total interest percentage that the consumer will pay over the life of the loan, expressed as a percentage of the amount of credit extended, using the term "Total Interest Percentage" and the abbreviation "TIP."

The TIP calculation is the same for the Loan Estimate and for the Closing Disclosure: total interest (including prepaid interest) that the consumer will pay over the life of the loan is divided by the loan amount to arrive at the total interest percentage (TIP). 12 CFR 1026.37(l)(3); 12 CFR 1026.38(o)(5). The TIP is computed assuming that the consumer makes each monthly payment in full and on time, and does not make any overpayments. 15 U.S.C. 1638(a)(19); 12 CFR 1026.37(l)(3); Comment 37(l)(3)-1.

To calculate the TIP for fixed rate loans add the sum of interest payments for the full term of the loan to the amount of prepaid interest and divide that total by the loan amount. To calculate the TIP for a variable rate loan, compute the amount of interest that the consumer will pay according to the terms of the loan. If the loan has an index and margin, use the index existing at consummation. (12 CFR 1026.37(b)(2); Comment 17(c)(1)-10). For Adjustable Rate products under 12 CFR 1026.37(a)(10)(i)(A), compute the TIP in accordance with comment 17(c)(1)-10. (Comment 37(l)(3)-2.) Comment 17(c)(1)-10 provides guidance and examples for adjustable mortgages with discounted and premium variable-rate terms. Where the initial rate is not based upon the index used for later interest rate adjustments, the total interest should include the initial interest rate and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation. The rate at consummation need not be used if a contract provides for a delay in the implementation of changes in an index value. For example, if the contract specifies that rate changes are based on the index value in effect 45 days before the change date, creditors may use any index value in effect during the 45 day period before consummation in calculating a composite annual percentage rate. (Comment 17(c)(1)-10). For step-rate products under 12 CFR 1026.37(a)(10)(i)(B),compute the TIP in accordance with §1026.17(c)(1) and its associated commentary. (Comment 37(l)(3)-2). For loans that have a negative amortization feature under 12 CFR 1026.37(a)(10)(ii)(A), compute the TIP using the scheduled payment, even if it is a negatively amortizing payment amount, until the consumer must begin making fully amortizing payments under the terms of the legal obligation. (Comment 37(l)(3)-3).

Other Considerations

Below the Comparisons table is a section regarding "other considerations" about the loan. This section includes disclosures on appraisals, assumptions, whether homeowner's insurance is required, applicable late payment fees, a warning about refinancing, whether the creditor intends to service the loan or transfer servicing, liability after foreclosure, and an optional statement that a revised Loan Estimate can be provided up to 60 days prior to consummation when the loan is for new construction. (12 CFR 1026.37(m))

The consumer is not required to sign the Loan Estimate. If the creditor adds a signature statement on page 3 of the Loan Estimate to confirm receipt by the consumer, it must use the model form language. If the creditor chooses not to use the confirm receipt table, it must include a statement that "You do not have to accept this loan because you have received this form or signed a loan application." (12 CFR 1026.37(n))

Closing Disclosure – Content of Disclosures for Certain Mortgage Transactions – 12 CFR 1026.38

Closing Disclosure form required (12 CFR 1026.38(t)(3)(i))

The Closing Disclosure generally must contain the actual terms and costs of the transaction and must satisfy timing and delivery

requirements set forth in the rule.

For any loans subject to 12 CFR 1026.19(f) that are federally-related mortgage loans subject to RESPA (which will include most mortgages), creditors must use form H-25, set forth in Appendix H. (12 CFR 1026.38(t)(3)(i) (See also 12 CFR 1024.2(b) for definition of federally related mortgage loan.)

For other loans subject to 12 CFR 1026.19(f) that are not federally related mortgage loans, the disclosures must contain the exact same information and be made with headings, content, and format substantially similar to form H-25. (12 CFR 1026.38(t)(3)(ii))

Information required on the Closing Disclosure. As with the Loan Estimate, most disclosures on the Closing Disclosure form are required to be labeled using specific nomenclature, headings, and formatting. Similarly, in some instances, the regulation directs lines on the disclosure to be left blank where there is no charge or sets forth the maximum number of items that may be disclosed. See the regulation, Form H-25, and the Regulation Z procedures for specific obligations regarding each required disclosure.

Rounding. Dollar amounts generally must **not** be rounded except where noted in the regulation. (12 CFR 1026.38(t)(4)(i)) If an amount must be rounded but is composed of other amounts that are **not** required or permitted to be rounded, the unrounded amounts should be used to calculate the total, and the final sum should be rounded. Conversely, if an amount is required to be rounded and is composed of rounded amounts, the rounded amounts should be used to calculate the total. (Comment 38(t)(4)-2) Percentage amounts should not be rounded and are disclosed up to two or three decimals, as needed, except where noted in the regulation. If a percentage amount is a whole number, only the whole number should be disclosed, with no decimals. (12 CFR 1026.38(t)(4)(ii))

Page 1: General information, loan terms, projected payments, and costs at closing

General information, the Loan Terms table, the Projected Payments table, and the Costs at Closing table are disclosed on the first page of the Closing Disclosure. (12 CFR 1026.38(a), (b), (c), and (d)) These disclosures mirror the disclosures in the Loan Estimate, and there is a required statement to compare the document with the Loan Estimate. (12 CFR 1026.38(a)(2)).

Page 1 of the Closing Disclosure is similar, but not identical, to the Loan Estimate. Page 1 of the Closing Disclosure provides general closing, transaction, and loan information. It also includes a Loan Terms table with descriptions of applicable information about the loan, a Projected Payments table, and a summary Costs at Closing table. (12 CFR 1026.38(a)-(d))

General information

The top of page 1 of the Closing Disclosure requires the title "Closing Disclosure" and a specified statement to compare the disclosure with the Loan Estimate. (12 CFR 1026.38(a)(1) and (2)) The top of page 1 also requires general closing, transaction, and loan information.

Closing information includes the date the Closing Disclosure was delivered to the consumer, closing date, (i.e., the date of consummation), the disbursement date, settlement agent conducting the closing, file number assigned by the settlement agent, property address or location, and sale price (or appraised property value if there is no seller). (12 CFR 1026.38(a)(3)) For transactions without a seller for which the creditor has not obtained an appraisal, the creditor may disclose the estimated value of the property, using the estimate provided by the consumer at application or the estimate the creditor used to determine approval of the credit transaction. Comment 38(a)(3)(vii)-1

Transaction information includes the borrower's name and mailing address, the seller's name and mailing address, and the name of the creditor making the disclosure. (12 CFR 1026.38(a)(4))

Loan information includes the loan term, purpose, product, loan type, loan ID number (using the same number as on the Loan Estimate), and mortgage insurance case number (MIC #), if required by the creditor. (12 CFR 1026.38(a)(5)) Other than the MIC #, this information is determined by the same definitions for those items on the Loan Estimate, updated to reflect the terms of the legal obligation at consummation. (Comment 38(a)(5)-1)

Loan Terms table

The Loan Terms table is located under the above described general information disclosures. The information for this table is the same as that required in the Loan Estimate under 12 CFR 1026.37(b), updated to reflect the terms of the legal obligation at consummation. (12 CFR 1026.38(b))

Projected Payments table

The Projected Payments table is located directly below the Loan Terms table on page 1 of the Closing Disclosure. The information for this table is generally the same as that required in the Loan Estimate under 12 CFR 1026.37(c)(1) through (4), updated to reflect the terms of the legal obligation at consummation (other than the reference to closing cost details required by 12 CFR 1026.37(c)(4)(vi)). The estimated escrow payments disclosed on the Closing Disclosure for transactions subject to RESPA are determined under the escrow account analysis described in Regulation X, 12 CFR 1024.17. For transactions not subject to RESPA, estimated escrow payments may be determined under the escrow account analysis described in Regulation X, 12 CFR 1024.17 or in the manner set forth in 12 CFR 1026.37(c)(5). There is also a required reference to the detailed escrow account disclosures on page 4 of the Closing

Disclosure. (12 CFR 1026.38(c))

Costs at Closing table

This table, located at the bottom of page 1, provides disclosures on Closing Costs and Cash to Close. (12 CFR 1026.38(d)) These disclosures offer the consumer a high-level summary of closing costs and reference the more detailed itemizations found on pages 2 and 3 of the Closing Disclosure. (12 CFR 1026.38(d)(1)(i)(E) and 1026.38(d)(1)(ii)(B))

Items that are disclosed on the Cash at Closing table include Total Closing Costs, as well as the key inputs making up this total: Loan Costs and Other Costs, less Lender Credits (and the fact that total closing costs include these amounts). (12 CFR 1026.38(d)(1)(i)) The table also discloses Cash Required to Close. (12 CFR 1026.38(d)(1)(ii)) For transactions without a seller, the creditor must use the alternative Calculating Cash to Close table when the alternative costs at closing table was used on the Loan Estimate. (12 CFR 1026.38(d)(2))

Page 2: Closing Cost Details; Loan costs and other costs

Page 2 of the Closing Disclosure contains an itemization of the "Loan Costs" and "Other Costs" associated with the loan. (12 CFR 1026.38(f), (g), and (h)). In each case, the amounts paid by the consumer, seller, and others are separately disclosed. For items paid by the consumer or seller, amounts that are paid at closing are disclosed in a column separately from amounts paid before closing. (12 CFR 1026.38(f)

The number of items in the Loan Costs and Other Costs tables can be expanded and deleted to accommodate the disclosure of additional line items and to keep the Loan Costs and Other Costs tables on page 2 of the Closing Disclosure. (12 CFR 1026.38(t)(5)(iv)(A); Comment 38(t)(5)(iv)-2) However, items that are required to be disclosed even if they are not charged to the consumer (such as Points in the Origination Charges subheading) cannot be deleted. (Comment 38(t)(5)(iv)-1)

Further, the Loan Costs and Other Costs tables can be disclosed on two separate pages of the Closing Disclosure, but only if the page cannot accommodate all of the costs required to be disclosed on one page. (12 CFR 1026.38(t)(5)(iv)(B); Comment 38(t)(5)(iv)-2). When used, these pages are numbered page 2a and 2b. (Comment 38(t)(5)(iv)-3). For an example of this permissible change to the Closing Disclosure, see form H-25(H) of Appendix H to Regulation Z.

Loan Costs table

All loan costs associated with the transaction are listed in a table under the heading "Loan Costs," with the items and amounts listed under four subheadings:

- Origination charges;
- Services borrower did not shop for;
- Services borrower did shop for; and
- Total loan costs. (12 CFR 1026.38(f)(1)-(5)).

Items should generally be the same as disclosed on the Loan Estimate, updated to reflect the terms of the legal obligation at consummation, except as discussed below. (12 CFR 1026.38(f))

Origination Charges. All loan originator compensation is disclosed as an origination charge, including compensation from the creditor to a third-party loan originator (which was not disclosed on the Loan Estimate). Compensation from the consumer to a third-party loan originator is designated as Borrower-Paid at Closing or before closing on the Closing Disclosure. (12 CFR 1026.38(f)(1); Comment 38(f)(1)-2) Compensation from the creditor to a third-party loan originator is designated as Paid by Others on the Closing Disclosure. (Comment 38(f)(1)-2) This line item must also disclose the name of the loan originator ultimately receiving the payment. (12 CFR 1026.38(f)(1)) A designation of "(L)" can be listed with the amount to indicate that the creditor pays the compensation at consummation. This is the same as the amount of third-party compensation included in points and fees for purposes of determining the consumer's ability to repay the loan. Compensation to individual loan originators is not calculated or disclosed on the Closing Disclosure. (Comment 38(f)(1)-3)

Services the consumer did or did not shop for. The following are disclosed under "Services Borrower Did Not Shop For," regardless of where it was located on the Loan Estimate:

- Items that the consumer could have shopped for, but did not.
- When a consumer chooses a provider that is on the written list of providers for a service on the Loan Estimate. (12 CFR 1026.38(f)(2))

Items are re-alphabetized when an item is added to or removed from a particular subheading.

The amounts that are designated as Borrower-Paid at or before closing are subtotaled as Total Loan Costs (Borrower-Paid). (12 CFR 1026.38(f)(5)) Amounts designated as Seller-Paid or Paid by Others are not included in this subtotal (rather, they are included elsewhere in the Closing Cost Subtotal). (Comment 38(f)(5)-1; 12 CFR 1026.38(h)(2))

Other Costs table

Items should generally be the same as disclosed on the Loan Estimate, updated to reflect the terms of the legal obligation at consummation, except as discussed below. (12 CFR 1026.38(g))

Taxes and other government fees. Itemized transfer taxes paid

by the consumer and by the seller are disclosed, instead of just the sum total of transfer taxes to be paid by the consumer (12 CFR 1026.38(g)(1)).

Prepaids. An itemization of homeowner's insurance premiums, mortgage insurance premiums, prepaid interest, property taxes and a maximum of three additional items (see 12 CFR 1026.37(g)(2)), the name of the person ultimately receiving the payment or government entity assessing the property tax, and the total of all such itemized amounts that are designated Borrower-Paid at or before closing. ((12 CFR 1026.38(g)(2)).

Initial escrow payment at closing. Property taxes paid during different time periods may be disclosed as separate items. (12 CFR 1026.38(g)(3))

This section of the table also includes, as the last item disclosed, an Aggregate Adjustment calculated pursuant to Regulation X, 12 CFR 1024.17(d)(2). (12 CFR 1026.38(g)(3))

Other. This section of the table includes charges for services that are required or obtained in the real estate closing by the consumer, the seller, or other party, and the name of the person ultimately receiving the payment, even if not initially disclosed on the Loan Estimate. (12 CFR 1026.38(g)(4)) This includes all real estate brokerage fees, homeowner's or condominium association charges paid at consummation, home warranties, inspection fees, and other fees that are part of the real estate closing but not required by the creditor or not disclosed elsewhere on the Closing Disclosure. (Comment 38(g)(4)-1) The amount of real estate commissions paid must be the total amount paid to any real estate brokerage as a commission, regardless of the identity of the party holding any earnest money deposit. (Comment 38(g)(4)-4)

If there are costs that are a component of title insurance services, their label must begin with "Title -" and, if there are costs designated Borrower-Paid at or before closing for any premiums paid for separate insurance, warranty, guarantee, or event-coverage products, they must be labeled "(optional)." (12 CFR 1026.38(g)(4)(i) and (ii))

The sum of any of these amounts that are Borrower-Paid must be disclosed as a line item as Total Other Costs (Borrower-Paid). (12 CFR 1026.38(g)(5)) Below this total, the sum of Total Loan Costs and Total Other Costs (Borrower-Paid), less any lender credits (separately itemized), must be disclosed as a line item as Total Closing Costs (Borrower-Paid). (12 CFR 1026.38(g) and (h))

Page 3: Calculating cash to close, summaries of transactions, and alternatives for transactions without a seller

Page 3 of the Closing Disclosure contains the Calculating Cash to Close table and Summaries of Transactions tables. (12 CFR 1026.38(i), (j), and (k))

Calculating Cash to Close

The Calculating Cash to Close table permits the consumer to see what costs have changed from the Loan Estimate. This table contains nine items:

- Total Closing Costs;
- Closing Costs Paid before Closing;
- Closing Costs Financed;
- Down Payment/Funds from Borrower;
- Deposit;
- Funds for Borrower;
- Seller Credits;
- Adjustments and other Credits; and
- Total Cash to Close. (12 CFR 1026.38(i))

The table has three columns that disclose (1) the amount for each item as it was disclosed on the Loan Estimate, (2) the final amount for the item, and (3) an answer to the question "Did this change?" (12 CFR 1026.38(i)) Generally, the amounts disclosed in the Loan Estimate column will be the amounts disclosed on the Loan Estimate (or a revised Loan Estimate). (12 CFR 1026.38(i)(1)(i), (3)(i), (4)(i), (5)(i), (6)(i), (7)(i), (8)(i), (9)(i))

Funds from the borrower and funds for the borrower are determined by subtracting the principal amount of the credit extended (excluding the actual amount of the closing costs that are to be paid out of loan proceeds, if any, stated as a negative number, disclosed pursuant to 12 CFR 1026.38(i)(3)(ii)) from the total amount of all existing debt being satisfied in the real estate closing and disclosed as the amounts the consumer owes or is reimbursing to the seller under 12 CFR 1026.38(j)(1)(v), (except for the amount of debt satisfied and disclosed as other costs in the closing costs details under 12 CFR 1026.38(g)). (12 CFR 1026.38(i)(6)(iv) and (j)(1)(v)) If this amount is positive, it is disclosed as $0 under the heading "Funds for Borrower." If this amount is a negative number, it is disclosed under the heading "Funds for Borrower" stated as a negative number, and $0 must be disclosed under "Funds from Borrower." If the amount is $0, then $0 must be disclosed under both the headings for "Funds from Borrower" and "Funds for Borrower." (12 CFR 1026.38(i)(6)(iv))

When amounts have changed, the disclosure must indicate where the consumer can find the amounts that have changed on the Loan Estimate. For example, if the Seller Credit amount changed, the creditor can indicate that the consumer should "See Seller Credits in Section L." (Comment 38(i)-3) Other examples of language for these items are found in example form H-25(B) in Appendix H of Regulation Z.

Increases in total closing costs that exceed legal limits. When

the increase in Total Closing Costs exceeds the legal limits on closing costs set forth in 12 CFR 1026.19(e)(3), the form must disclose a statement that an increase in closing costs exceeds the legal limits by the dollar amount of the excess in the "Did this change?" column. (12 CFR 1026.38(i)(1)(iii)(A)(3)) A statement directing the consumer to the Lender Credit on page 2 must also be included if a credit to the consumer at closing for the excess amount is provided by the creditor. (Comment 38(i)(1)(iii)(A)-3) The dollar amount must be the sum of all excess amounts, taking into account the different methods of calculating excesses of the limitations on increases in closing costs under 12 CFR 1026.19(e)(3)(i) and (ii). (12 CFR 1026.38(i)(1)(iii)(A)(3))

Closing Costs Paid Before Closing. The amount disclosed in the Loan Estimate column for the "Closing Costs Paid Before Closing" item is $0. (12 CFR 1026.38(i)(2)(i)) The Final column should disclose the same amount designated as Borrower-Paid Before Closing in the Closing Costs Subtotals of the Other Costs table on page 2 of the Closing Disclosure. Under the subheading "Did this change?" if the amount disclosed here is different from the amount disclosed in the Loan Estimate, include a statement of that fact; and if it is equal to the amount disclosed on the Loan Estimate, include a statement of that fact. (12 CFR 1026.38(i)(2)(iii))

Alternative Calculating Cash to Close table

For transactions without a seller where the alternative Calculating Cash to Close table was used on the Loan Estimate, the Closing Disclosure must also use the alternative Calculating Cash to Close table under 12 CFR 1026.38(e). These items include:

- Loan amount;
- Total closing costs;
- Closing costs paid before closing;
- Payoffs and payments;
- Cash to or from consumer; and
- Closing costs financed.

The table has three columns that disclose (1) the amount for each item as it was disclosed on the Loan Estimate, (2) the final amount for the item, and (3) an answer to the question "Did this change?" along with a statement of whether the amount increased, decreased or is equal to the amount disclosed in the Loan Estimate. (12 CFR 1026.38(e)) Generally, the amounts disclosed in the Loan Estimate column will be the Loan Amount, Total Closing Costs, Closing Costs Paid before Closing, and the Total Payoffs and Payments. (12 CFR 1026.38(e)(1)(i), (2)(i), (3)(i), (4)(i))

Cash to or from the consumer is disclosed in the first two columns of the row labeled Cash to Close. The first column contains amounts disclosed in the Loan Estimate. The second column discloses the final amount due from or to the consumer, calculated by the sum of the amounts disclosed (pursuant to 12 CFR 1026.38(e)(1)(i), (2)(i), (3)(i), (4)(i)) as final Loan Amount, Total Closing Costs, Closing Costs Paid before Closing, and the Total Payoffs and Payments, disclosed as a positive number with the statement of whether the funds are due from or to the consumer. (12 CFR 1026.38(e)(5))

Closing Costs Financed are disclosed in the third column of the row labeled Cash to Close in the Calculating Cash to Close table. This amount is calculated by the sum of the final Loan Amount (12 CFR 1026.38(e)(1)(ii)) and the final Total Payoffs and Payments (12 CFR 1026.38(e)(4)(ii)), but only to the extent that the sum is greater than zero and less than or equal to the sum of borrower paid closing costs (disclosed under 12 CFR 1026.38(h)(2)) designated Borrower-Paid Before Closing . (12 CFR 1026.38(e)(6))

Summaries of Transactions table.

The Summaries of Transactions table contains required itemizations of the borrower's and the seller's transactions. (12 CFR 1026.38(j)-(k)) The table discloses amounts due from or payable to the consumer and seller at closing, as applicable. (12 CFR 1026.38(k)(1) and (2)) A separate Closing Disclosure can be provided to the consumer and the seller that does not reflect the other party's costs and credits by omitting specified disclosures on each separate Closing Disclosure. (12 CFR 1026.38(t)(5)(v),(vi),(ix))

Additional pages may be attached to the Closing Disclosure to add lines to provide a complete listing of all items required to be shown on the Closing Disclosure and for customary recitals and information used locally in real estate closings (for example, breakdown of payoff figures, a breakdown of the consumer's total monthly mortgage payments, an accounting of debits received and check disbursements, a statement stating receipt of funds, applicable special stipulations between consumer and seller, and the date funds are transferred). (Comment 38(j)-6)

Generally, the Summaries of Transactions table is similar to the Summary of Borrower's Transaction and Summary of Seller's Transaction tables on the HUD-1 Settlement Statement provided under Regulation X prior to the TILA-RESPA Integrated Disclosure rule taking effect. There are some modifications to the Closing Disclosure related to the handling of the disclosure of the consumer's deposit, the disclosure of credits, and specific guidance on other matters that may not have been clear in the HUD-1 instructions.

In transactions without a seller, the Seller-Paid column for Closing Costs may be deleted on page 2, and a Payoffs and Payments table may be substituted for the Summaries of Transactions table and placed before the alternative Calculating Cash to Close table on page 3 of the closing Disclosure. (12 CFR 1026.38(t)(5)(vii)(B)). For an example, see page 3 of form

H-25(J) of Appendix H to Regulation Z.

Borrower's Transaction

Amounts due from the borrower. The sale price of the property, sale price of any personal property included in the sale, and total amount of closing costs designated Borrower-Paid at Closing, calculated with lender credits as a negative number pursuant to 12 CFR 1026.38(h)(2) and (h)(3). (12 CFR 1026.38(j)(1)(ii)-(iv)). The contract sale price of the property does not include the price of tangible personal property if the buyer and seller have agreed to a separate price for such items. Manufactured homes are not considered personal property for this disclosure. (Comment 38(j)(1)(ii)-1)

Adjustments. This includes additional items that the seller has paid prior to the real estate closing, but reimbursed by the consumer at closing. These are items such as rent the consumer will collect after closing, a tenant's security deposit, or outstanding real estate property taxes where there is not a corresponding credit in the seller's transaction. (Comments 38(j)(1)(v)-1 and -2)

Adjustments for items paid by seller in advance. The prorated amount of prepaid taxes due from the consumer to reimburse the seller, and the time periods. The taxes are labeled city/town taxes, county taxes, and/or assessments as appropriate. (12 CFR 1026.38(j)(1)(vi)-(ix)) If there are additional items paid by the seller and due from the consumer, they are also itemized. Examples include taxes paid in advance, flood or insurance premiums if the insurance is under the same policy, mortgage insurance for assumed loans, condominium assessments, fuel or supplies on hand, and ground rent paid in advance. (Comment 38(j)(1)(x)-1)

Itemization of amounts already paid by or on behalf of borrower. These amounts are itemized in the second part of the Summary of Transactions table. These include the following:

- Deposits, and if there is no deposit, this line is left blank. If the deposit was reduced to pay closing charges prior to closing, the reduction should be shown in the Closing Cost Detail table designated as Borrower-Paid Before Closing. (Comments 38(j)(2)(ii)-1 and -2)

- The loan amount is the construction or purchase loan amount for a structure or purchase of a new manufactured home that is real property. For construction loans or loans for manufactured homes that are real property under state law, the loan amount for the current transaction must be disclosed, and the sales price of the land and the construction cost or the price of the manufactured home should be disclosed separately (Comment 38(j)(2)(iii)-1).

- Existing loans assumed or taken subject to are itemized with the outstanding amount of any loans that the consumer is assuming or taking title subject to. (Comment 38(j)(2)(iv)-1)

- If the seller is providing a lump sum at closing that is not otherwise itemized, to pay for loan costs and any other obligations of the seller to be paid directly to the consumer, this amount is labeled Seller Credit. (12 CFR 1026.38(j)(2)(v)) When the consumer receives a generalized credit from the seller for closing costs or where the seller (typically a builder) is making an allowance to the consumer for items to purchase separately, the amount of the credit must be disclosed. However, if the Seller Credit is attributable to a specific loan cost or other cost listed in the Closing Cost Details tables, that amount should be reflected in the Seller-Paid column in the Closing Cost Details tables.

- Any other obligations of the seller to be paid directly to the consumer, such as for issues identified at a walk-through of the property prior to closing, are disclosed here. (Comments 38(j)(2)(v)-1 and-2)

- Other credits are itemized with a description and the amounts paid by or on behalf of the consumer, and not otherwise disclosed. Examples of other credits include credits from a real estate agent, subordinate financing proceeds, satisfaction of existing subordinate liens by consumer, transferred escrow balances, and gift funds. (Comments 38(j)(2)(vi)-1 to -5)

Adjustments for items unpaid by seller include prorated unpaid taxes due from the seller to reimburse the consumer at closing, along with the time period and labeled city/town taxes, county taxes, and/or assessments as appropriate. (12 CFR 1026.38(j)(2)(vii)–(x)) If there are additional items that have not been paid and that the consumer is expected to pay after closing but which are attributable to the time prior to closing, they are itemized here. (12 CFR 1026.38(j)(2)(xi)). Examples include utilities used but not paid for by the seller, rent collected in advance, or interest on a loan assumption. (Comment 38(j)(2)(xi)-1)

Calculation of the borrower's transaction is disclosed by including the Total Due from Borrower at Closing, the amount labeled Total Paid Already by or on Behalf of Borrower at Closing, if any, disclosed as a negative number, and a statement that the resulting amount is due from or to the consumer, and labeled Cash to Close. (12 CFR 1026.38(j)(3))

Items paid outside of closing are costs that are not paid from closing funds but would otherwise be part of the borrower's transaction table should be marked as "P.O.C." for paid outside of closing. There must also be a statement of the party making the payment, such as the consumer, seller, loan originator, real estate agent, or any other person. For an example, see form H-25(D) of Appendix H. (Comment 38(j)(4)(i)-1)

Seller's Transaction

Amounts due to the seller include the sale price of the property, sale price of any personal property included in the sale, and a description and the amount of other items paid to the seller by

the consumer pursuant to a contract, such as charges that were not disclosed on the Loan Estimate, or items paid by the seller prior to closing but reimbursed by the consumer at closing. (12 CFR 1026.38(k)(1)(ii)-(iv))

Adjustments for items paid by seller in advance include the prorated amount of prepaid taxes due from the consumer to reimburse the seller, and the time periods. The taxes are labeled city/town taxes, county taxes, and/or assessments as appropriate. (12 CFR 1026.38(k)(1)(v)-(viii)) If there are additional items paid by the seller and due from the consumer, they are also itemized. (12 CFR 1026.38(k)(1)(ix))

Itemization of amounts due from seller at closing are itemized in the second part of the Summary of Transactions table. These include the amount of any deposits disbursed to the seller prior to closing and seller-paid closing costs. The itemization also includes the amount of any existing loans that the consumer is assuming and the amounts of any loan secured by a first lien or a second lien on the property that will be paid off. In addition, the itemization includes seller credits, an amount that the seller will provide at the closing as a lump sum, not otherwise itemized, to pay for loan costs and other costs and any other obligations of the seller to be paid directly to the consumer. The amounts and a description of any and all other obligations required to be paid by the seller at closing are disclosed, including any lien-related payoffs, fees, or obligations. (12 CFR 1026.38(k)(2)(ii)–(vii))

Adjustments for items unpaid by seller include prorated unpaid taxes due from the seller to reimburse the consumer at closing, along with the time period and labeled city/town taxes, county taxes, and/or assessments as appropriate. (12 CFR 1026.38(k)(2)(x)–(xii)) If there are additional items that have not been paid and that the consumer is expected to pay after closing but which are attributable to the time prior to closing, they are itemized here. (12 CFR 1026.38(k)(2)(xiii))

Calculation of the seller's transaction is disclosed by including the Total Due to Seller at Closing, the amount labeled Total Due from Seller at Closing, if any, disclosed as a negative number, and a statement that the resulting amount is due from or to the seller, and labeled Cash. (12 CFR 1026.38(k)(3))

Items paid outside of closing are costs that are not paid from closing funds but that would otherwise be part of the seller's transaction table should be marked as "P.O.C." for paid outside of closing. There must also be a statement of the party making the payment. (12 CFR 1026.38(k)(4))

Page 4: Additional information about this loan

Page 4 of the Closing Disclosure groups several required loan disclosures together, generally using specified language, including:

- Information concerning future assumption of the loan by a subsequent purchaser required by 12 CFR 1026.37(m)(2) (12 CFR 1026.38(l)(1));
- Whether the legal obligation contains a demand feature that can require early payment of the loan; (12 CFR 1026.38(l)(2));
- The terms of the legal obligation that impose a fee for a late payment, including the amount of time that passes before a fee is imposed and the amount of such fee or how it is calculated (as required by 12 CFR 1026.37(m)(4)) (12 CFR 1026.38(l)(3));
- Whether the regular periodic payments can cause the principal balance of the loan to increase (i.e., whether there could be negative amortization) (12 CFR 1026.38(l)(4));
- The creditor's policy regarding partial payments by the consumer (12 CFR 1026.38(l)(5));
- A statement that the consumer is granting a security interest in the property (along with an identification of the property) (12 CFR 1026.38(l)(6)); and
- Specified information related to any escrow account held by the servicer, including specified estimated escrow costs over the first year after consummation (or a statement that an escrow account has not been established, with a description of specified estimated property costs during the first year after consummation). (12 CFR 1026.38(l)(7))

If the periodic principal and interest payment may change after consummation, other than due to a change in interest rate or where the loan is a seasonal payment product, page 4 of the Closing Disclosure must also include an Adjustable Payment (AP) table. (12 CFR 1026.38(m)) If the loan's interest rate may increase after consummation, page 4 of the Closing Disclosure must also include the Adjustable Interest Rate (AIR) table. (12 CFR 1026.38(n)) These are the tables required in the Loan Estimate at 12 CFR 1026.37(i) and (j), respectively, updated to reflect the terms of the loan at consummation.

Page 5: Loan calculations, other disclosures, and contact information

Page 5 of the Closing Disclosure discloses a Loan Calculations table, as well as specified other disclosures, contact information for the CFPB for questions, and contact information for participants in the transaction, and if desired by the creditor, a signature table to confirm receipt of the Closing Disclosure. (12 CFR 1026.38(o)-(s))

Loan Calculations table

The Loan Calculations table discloses:

- Total of Payments (total paid after all scheduled payments of principal, interest, mortgage insurance, and loan costs are made);
- Finance Charge;

- Amount Financed;
- Annual Percentage Rate (APR); and;
- Total Interest Percentage (TIP) (the total amount of interest paid over the loan term as a percentage of the loan amount). (12 CFR 1026.38(o); 12 CFR 1026.37(l)(3) and its commentary)

The APR and TIP amounts should be updated from the amounts disclosed on the Loan Estimate to reflect the terms of the legal obligation at consummation. The TIP calculation is set forth in 12 CFR 1026.37(l)(3) and its commentary.

Note: See the discussion on calculating the TIP for the comparison table on page 3 of the Loan Estimate

Other Disclosures table

The Other Disclosures table requires a notice regarding the lender's obligation to provide a free copy of the appraisal (for higher-priced mortgage loans under 12 CFR 1026.35 and loans covered by the Equal Credit Opportunity Act); a specified warning about consequences of nonpayment under the contract, whether state law provides for continued consumer liability after foreclosure, a statement concerning the consumer's ability to refinance the loan, and a statement concerning the extent that the interest on the loan can be included as a tax deduction by the consumer. (12 CFR 1026.38(p))

Contact information table

For each of the lender, mortgage broker, real estate broker (buyer and seller), and settlement agent, the contact information table discloses the name, address, NMLS or state license ID (as applicable), contact name of an individual primary contact for the consumer (and NMLSR ID or license ID for that person), email, and phone number. (12 CFR 1026.38(r))

Mortgage Transfer Disclosures – 12 CFR 1026.39

Notice of new owner – No later than 30 calendar days after the date on which a mortgage loan is acquired by or otherwise sold, assigned, or otherwise transferred[30] to a third party, the "covered person"[31] shall notify the consumer clearly and conspicuously in writing, in a form that the consumer may keep, of such transfer and include:

- Identification of the loan that was sold, assigned, or otherwise transferred;
- Name, address, and telephone number of the covered person;
- Date of transfer;
- Name, address, and telephone number of an agent or party having authority, on behalf of the covered person, to receive notice of the right to rescind and resolve issues concerning the consumer's payments on the mortgage loan;
- Location where transfer of ownership of the debt to the covered person is or may be recorded in public records or, alternatively, that the transfer of ownership has not been recorded in public records at the time the disclosure is provided; and
- At the option of the covered person, any other information regarding the transaction.

This notice of sale or transfer must be provided for any consumer credit transaction that is secured by the principal dwelling of a consumer, as well as a closed-end consumer credit transaction secured by a dwelling or real property. Thus, it applies to both closed-end mortgage loans and open-end home equity lines of credit. This notification is required of the covered person even if the loan servicer remains the same.

Regulation Z also establishes special rules regarding the delivery of the notice when there is more than one covered person. In a joint acquisition of a loan, the covered persons must provide a single disclosure that lists the contact information for all covered persons. However, if one of the covered persons is authorized to receive a notice of rescission and to resolve issues concerning the consumer's payments, the disclosure may state contact information only for that covered person. In addition, if the multiple covered persons each acquire a partial interest in the loan pursuant to separate and unrelated agreements, they may provide either a single notice or separate notices. Finally, if a covered person acquires a loan and subsequently transfers it to another covered person, a single notice may be provided on behalf of both of them, as long as the notice satisfies the timing and content requirements with respect to each of them.

In addition, there are three exceptions to the notice requirement to provide the notice of sale or transfer:

[30] The date of transfer to the covered person may, at the covered person's option, be either the date of acquisition recognized in the books and records of the acquiring party or the date of transfer recognized in the books and records of the transferring party.

[31] A "covered person" means any person, as defined in 12 CFR 1026.2(a)(22), that becomes the owner of an existing mortgage loan by acquiring legal title to the debt obligation, whether through a purchase, assignment, or other transfer, and who acquires more than one mortgage loan in any 12-month period. For purposes of this section, a servicer of a mortgage loan shall not be treated as the owner of the obligation if the servicer holds title to the loan or it is assigned to the servicer solely for the administrative convenience of the servicer in servicing the obligation. See 12 CFR 1026.39(a)(1).

- The covered person sells, assigns, or otherwise transfers legal title to the mortgage loan on or before the 30th calendar day following the date of transfer on which it acquired the mortgage loan;
- The mortgage loan is transferred to the covered person in connection with a repurchase agreement that obligates the transferring party to repurchase the mortgage loan (unless the transferring party does not repurchase the mortgage loan); or
- The covered person acquires only a partial interest in the mortgage loan and the agent or party authorized to receive the consumer's rescission notice and resolve issues concerning the consumer's payments on the mortgage loan does not change as a result of that transfer.

Effective April 19, 2018, if, upon confirmation, a servicer provides a confirmed successor in interest who is not liable on the mortgage loan obligation with an optional notice and acknowledgment form in accordance with Regulation X, 12 CFR 1024.32(c)(1), the servicer is not required to provide to the confirmed successor in interest the notice of sale or transfer unless and until the confirmed successor in interest either assumes the mortgage loan obligation under State law or has provided the servicer an executed acknowledgment in accordance with Regulation X, 12 CFR 1024.32(c)(1)(iv) that the confirmed successor in interest has not revoked. (12 CFR 1026.39(f)).

Mortgage transfer notices – partial payment policies. If a creditor or servicer is required by Regulation Z to provide mortgage transfer notices when the ownership of a mortgage loan is being transferred, the notice must include information related to the partial payment policy that will apply to the mortgage loan. This post-consummation partial payment disclosure is required for a closed-end consumer credit transaction secured by a dwelling or real property, other than a reverse mortgage. (12 CFR 1026.39(a) and (d))

The partial payment disclosure must include: (12 CFR 1026.39(d)(5))

- The heading "Partial Payment" over all of the following additional information:
  - If periodic payments that are less than the full amount due are accepted, a statement that the covered person, using the term "lender," may accept partial payments and apply such payments to the consumer's loan;
  - If periodic payments that are less than the full amount due are accepted but not applied to a consumer's loan until the consumer pays the remainder of the full amount due, a statement that the covered person, using the term "lender," may hold partial payments in a separate account until the consumer pays the remainder of the payment and then apply the full periodic payment to the consumer's loan;
  - If periodic payments that are less than the full amount due are not accepted, a statement that the covered person, using the term "lender," does not accept any partial payments; and
  - A statement that, if the loan is sold, the new covered person, using the term "lender," may have a different policy.

The text illustrating the disclosure in form H-25 may be modified to suit the format of the mortgage transfer notice. (Comment 39(d)(5)-1)

Periodic Statements for Residential Mortgage Loans – 12 CFR 1026.41

Creditors, assignees, or servicers[32] of closed-end mortgages are generally required to provide consumers with periodic statements for each billing cycle unless the loan is a fixed rate loan and the servicer provides the consumer with a coupon book meeting certain conditions. Periodic statements must be provided by the servicer within a reasonably prompt time after the payment is due, or at the end of any courtesy period provided by the servicer for the previous billing cycle. Delivering, emailing or placing the periodic statements in the mail within four days of the close of the courtesy period of the previous billing cycle is generally acceptable. However, periodic statements are not required for:

- Reverse mortgage transactions covered under 12 CFR 1026.33;
- Mortgage loans secured by a consumer's interest in a timeshare plan;
- Fixed-rate loans where the servicer currently provides consumers with coupon books that contain certain specified account information, contact information for the servicer,

[32] Creditors, assignees, and servicers are all subject to the requirements of 12 CFR 1026.41, as applicable. Creditors, assignees, or servicers may decide among themselves which of them will provide the required disclosures. However, establishing a business relationship where one party agrees to provide disclosures on behalf of the other parties does not absolve all other parties from their legal obligations. However, a creditor or assignee that currently does not own the mortgage loan or mortgage servicing rights is not subject to the periodic statement requirement.

delinquency information (if applicable), and information that consumers can use to obtain more information about their account; and

- Creditors, assignees, or servicers that meet the "small servicer" exemption.

NOTE: 12 CFR 1026.41(e)(4)(ii) and (iii) define a "small servicer" and provide clarification how a small servicer will be determined. A small servicer is a servicer that: (1) services, together with any affiliates, 5,000 or fewer mortgage loans, for all of which it or an affiliate is the creditor or assignee, (2) meets the definition of a Housing Finance Agency under 24 CFR 266.5, or (3) is a nonprofit entity (defined in 12 CFR 1026.41(e)(4)(ii)(C)(*1*)) that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities (defined in 12 CFR 1026.41(e)(4)(ii)(C)(*2*)), for all of which the servicer or an associated nonprofit entity is the creditor. To determine whether a servicer is a small servicer, generally, a servicer should be evaluated based on the mortgage loans serviced by the servicer and any affiliate as of January 1 for the remainder of the calendar year. However, to determine small servicer status under the nonprofit small servicer definition, a nonprofit servicer should be evaluated based on the mortgage loans serviced by the servicer (and not those serviced by associated nonprofit entities) as of January 1 for the remainder of the calendar year. A servicer that ceases to qualify as a small servicer has the later of six months from the time it ceases to qualify or until the next January 1 to come into compliance with the requirements of 12 CFR 1026.41. Under 12 CFR 1026.41(e)(4)(iii), the following mortgage loans are not considered in determining whether a servicer qualifies as a small servicer: (a) mortgage loans voluntarily serviced by the servicer for a non-affiliate of the servicer and for which the servicer does not receive any compensation or fees; (b) reverse mortgage transactions; (c) mortgage loans secured by consumers' interests in timeshare plans; and (d) certain seller-financed transactions that meet the criteria identified in 12 CFR 1026.36(a)(5).

- A mortgage loan while the consumer is a debtor in bankruptcy under Title 11 of the United States Code. Servicers, however, are required to send modified periodic statements (or coupon books) to consumers who have filed for bankruptcy, subject to certain exceptions. (See the **Certain Consumers in Bankruptcy** discussion below*)*

- Charged-off loans, if the servicer will not charge any additional fees or interest on the account and provides a periodic statement including additional disclosures related to the effects of charge-off in accordance with 12 CFR 1026.41(e)(6).
- A successor in interest under certain conditions: if, upon confirmation, a servicer provides a confirmed successor in interest who is not liable on the mortgage loan obligation with an optional notice and acknowledgment form in accordance with Regulation X, 12 CFR 1024.32(c)(1), the servicer is not required to provide to the confirmed successor in interest a periodic statement unless and until the confirmed successor in interest either assumes the mortgage loan obligation under State law or has provided the servicer an executed acknowledgment in accordance with Regulation X, 12 CFR1024.32(c)(1)(iv) that the confirmed successor in interest has not revoked. (12 CFR 1026.41(g)). (*Effective April 19, 2018*).

Servicers must provide consumers with the following information in the specified format on the periodic statements:

Amount Due

- The payment due date, the amount of any late payment fee, the date that late payment fees will be assessed to the consumer's account if timely payment is not made, and the amount due, which must be shown more prominently than other disclosures on the page;

  NOTE: If the transaction has multiple payment options, the amount due under each of the payment options must be provided.

The commentary to Regulation Z clarifies how servicers must disclose the amount due on periodic statements when the mortgage loan has been accelerated, is in a temporary loss mitigation program, or has been permanently modified. The commentary states the following:

- Acceleration. If the balance of a mortgage loan has been accelerated but the servicer will accept a lesser amount to reinstate the loan, the amount due must identify only the lesser amount that will be accepted to reinstate the loan. The periodic statement must be accurate when provided and should indicate, if applicable, that the amount due is accurate only for a specified period of time. For example, the statement may include language such as "as of [date]" or "good through [date]" and provide an amount due that will reinstate the loan as of that date or good through that date, respectively. (Comment 1026.41(d)(1)-1).

- Temporary loss mitigation programs. If the consumer has agreed to a temporary loss mitigation program, the amount due may identify either the payment due under the temporary loss mitigation program or the amount due according to the loan contract. (Comment 1026.41(d)(1)-2).

- Permanent loan modifications. If the loan contract has been permanently modified, the amount due must identify only the amount due under the modified loan contract. (Comment 1026.41(d)(1)-3).

Explanation of Amount Due

- An explanation of the amount due, including the monthly payment amount with a breakdown of how much will be applied to principal, interest, and escrow, the total sum of

any fees/charges imposed since the last statement, and any payment amount past due. Mortgage loans with multiple payment options must also have a breakdown of each payment option, along with information regarding how each payment option will impact the principal;

NOTE: The commentary to Regulation Z clarifies the explanation of amount due disclosures that must be included on periodic statements when mortgage loans have been accelerated or are in temporary loss mitigation programs. The commentary states the following:

- Acceleration. If the balance of a mortgage loan has been accelerated but the servicer will accept a lesser amount to reinstate the loan, the explanation of amount due must list both the reinstatement amount that is disclosed as the amount due and the accelerated amount. The servicer is not required to list the monthly payment amount that would otherwise be required under 12 CFR 1026.41(d)(2)(i).

- The periodic statement must also include an explanation that the reinstatement amount will be accepted to reinstate the loan through the "as of [date]" or "good through [date]," as applicable, along with any special instructions for submitting the payment. The explanation should be on the front page of the statement or, alternatively, may be included on a separate page enclosed with the periodic statement. The explanation may include related information, such as a statement that the amount disclosed is "not a payoff amount." (Comment 1026.41(d)(2)-1).

- Temporary loss mitigation programs. If the consumer has agreed to a temporary loss mitigation program and the amount due identifies the payment due under the temporary loss mitigation program, the explanation of amount due must include both the amount due according to the loan contract and the payment due under the temporary loss mitigation program. The statement must also include an explanation that the amount due is being disclosed as a different amount because of the temporary loss mitigation program. The explanation should be on the front page of the statement or, alternatively, may be included on a separate page enclosed with the periodic statement or in a separate letter. (Comment 1026.41(d)(2)-2).

Past Payment Breakdown

- The total of all payments received since the last statement and the total of all payments received since the start of the calendar year, including, for each payment, a breakdown of how the payment(s) was applied to principal, interest, escrow, and/or fees and charges, and any amount held in a suspense or unapplied funds account (if applicable);

Transaction Activity

- A list of transaction activity (including dates, a brief description, and amount) for the current billing cycle, including any credits or debits that affect the current amount due, with the date, amount, and brief description of each transaction;

Partial Payment Information

- If a statement reflects a past partial payment held in a suspense or unapplied funds account, information explaining what the consumer must do to have the payment applied to the mortgage. Information must be on the front page or a separate page of the statement or separate letter;

Contact Information

- Contact information for the servicer, including a toll-free telephone number and email address (if applicable) that the consumer may use to obtain information regarding the account. Contact information must be on the front page of the statement; and

Account Information

- Account information, including the outstanding principal balance, the current interest rate, the date after which the interest rate may change if the loan is an ARM, and any prepayment penalty, as well as the web address for CFPB's or HUD's list of homeownership counselors or counseling organizations and the HUD toll-free telephone number to contact the counselors or counseling organizations.

Delinquency Information

Servicers must provide consumers that are more than 45 days delinquent on past payments additional information regarding their accounts on their periodic statements. For purposes of 12 CFR 1026.41(d)(8), the length of a consumer's delinquency is measured as of the date of the periodic statement or the date of the written notice provided under 12 CFR 1026.41(e)(3)(iv). A consumer's delinquency begins on the date an amount sufficient to cover a periodic payment of principal, interest, and escrow, if applicable, becomes due and unpaid, even if the consumer is afforded a period after the due date to pay before the servicer assesses a late fee. A consumer is delinquent if one or more periodic payments of principal, interest, and escrow, if applicable, are due and unpaid. (Comment 1026.41(d)(8)-1).

These items must be grouped together in close proximity to each other. To meet this requirement, the items to be provided in close proximity must be grouped together, and set off from other groupings of items. Items in close proximity may not have an unrelated text between them. Text is unrelated if it does not explain or expand upon the required disclosures. This may be accomplished in a variety of ways, for example, by presenting the information in boxes, or by arranging the items on the document and including spacing between the groupings. Items in close proximity may not have any unrelated text between them. Text is unrelated if it does not explain or expand upon the required disclosures.(Comment 1026.41(d)-1). Furthermore, the additional information must include:

- The length of the consumer's delinquency;
- A notification of the possible risks of being delinquent, such as foreclosure and related expenses;
- An account history for either the previous six months or the period since the last time the account was current (whichever is shorter), which details the amount past due from each billing cycle and the date on which payments were credited to the account as fully paid;
- A notice stating any loss mitigation program that the consumer has agreed to (if applicable);
- A notice stating whether the servicer has initiated a foreclosure process;
- Total payments necessary to bring the account current; and
- A reference to homeownership counseling information (see **Account Information** above).

The regulation does not prohibit adding to the required disclosures, as long as the additional information does not overwhelm or obscure the required disclosures. For example, while certain information about the escrow account (such as the account balance) is not required on the periodic statement, this information may be included.

The periodic statement may be provided electronically if the consumer agrees. The consumer must give affirmative consent to receive statements electronically.

For sample periodic statements, see Appendix H-30.

NOTE: Servicers may modify the sample forms for periodic statements provided in Appendix H–30 to remove language that could suggest liability under the mortgage loan agreement if such language is not applicable. For example, in the case of a confirmed successor in interest who has not assumed the mortgage loan obligation under State law and is not otherwise liable on the mortgage loan obligation, a servicer may modify the forms to:

- *Use "this mortgage" or "the mortgage" instead of "your mortgage."*
- *Use "The payments on this mortgage are late" instead of "You are late on your mortgage payments."*
- *Use "This is the amount needed to bring the loan current" instead of "You must pay this amount to bring your loan current."*

(Comment 1026.41(c)-5) *(Effective April 19, 2018).*

Certain Consumers in Bankruptcy – 12 CFR 1026.41(e)(5) and 12 CFR 1026.41(f) (*Effective April 19, 2018*)

Servicers must send modified periodic statements (or coupon books) to certain consumers while any consumer on a mortgage loan is a debtor in a bankruptcy under title 11 of the United States Code, or if such consumer has discharged personal liability for the mortgage loan under Chapter 7, 11, 12, or 13 bankruptcy. (12 CFR 1026.41(f)). The modified periodic statement requirements, however, are subject to certain exemptions.

Under 12 CFR 1026.41(e)(5)(i), a servicer is exempt from the periodic statement requirements with regard to a mortgage loan if:

- Any consumer on the loan is a debtor in bankruptcy under title 11 of the United States Code, or if such consumer has discharged personal liability for the mortgage loan under Chapter 7, 11, 12, or 13 bankruptcy or the consumer has discharged personal liability for mortgage loan through bankruptcy; *and*
- With regard to any consumer on the mortgage loan:
- The consumer requests in writing that the servicer cease providing a periodic statement or coupon book;
    - The consumer's bankruptcy plan provides that the consumer will surrender the dwelling securing the mortgage loan, provides for the avoidance of the lien securing the mortgage loan, or otherwise does not provide for the payment of the pre-bankruptcy arrearage or the maintenance of payments due under the mortgage loan;
    - A court enters an order in the bankruptcy case providing for the avoidance of the lien securing the mortgage loan, lifting the automatic stay pursuant to 11 U.S.C. 362 with regard to the dwelling securing the mortgage loan, or requiring the servicer to cease providing a periodic statement or coupon book; *or*
    - The consumer files with the bankruptcy court a statement of intention pursuant to 11 U.S.C. 521(a) identifying an intent to surrender the dwelling and the consumer has not made any partial or periodic payment on the mortgage loan after the commencement of the bankruptcy case.

The bankruptcy exemption will no longer apply, however, if the consumer reaffirms personal liability for the loan or any consumer on the loan requests in writing that the servicer provide a periodic statement or coupon book, unless a court enters an order in the bankruptcy case requiring the servicer to cease providing a periodic statement or coupon book.

Servicers not meeting the above exemption must send modified periodic statements or coupon books with regard to a mortgage loan as required by 12 CFR 1026.41(f) while any consumer on a mortgage loan is a debtor in a bankruptcy under title 11 of the

United States Code, or if such consumer has discharged personal liability for the mortgage loan under Chapter 7, 11, 12, or 13 bankruptcy. The content of the periodic statements will vary depending on whether the consumer is a debtor in a chapter 7 or 11 bankruptcy case, or a chapter 12 or 13 bankruptcy case. Appendix H-30(E) includes a Sample Form of Periodic Statement for Consumer in Chapter 7 or Chapter 11 Bankruptcy and Appendix H-30(F) includes a Sample Form of Periodic Statement for Consumer in Chapter 12 or Chapter 13 Bankruptcy that servicers may use for consumers in bankruptcy to ensure compliance with 12 CFR 1026.41.
Servicers not meeting the above exemption must send modified periodic statements or coupon books as required by 12 CFR 1026.41(f).

Valuation Independence – 12 CFR 1026.42

Regulation Z seeks to ensure that real estate appraisers, and others preparing valuations, are free to use their independent professional judgment in assigning home values without influence or pressure from those with interests in the transactions. Regulation Z also seeks to ensure that appraisers receive customary and reasonable payments for their services. Regulation Z's valuation rules apply to creditors and settlement services providers for consumer credit transactions secured by the consumer's principal dwelling ("covered transaction") and includes several provisions that protect the integrity of the appraisal process when a consumer's principal dwelling is securing the loan. In general, the rule prohibits "covered persons" from engaging in coercion, bribery, and other similar actions designed to cause anyone who prepares a valuation to base the value of the property on factors other than the person's independent judgment.[33] More specifically, Regulation Z:

- Prohibits coercion and other similar actions designed to cause appraisers to base the appraised value of properties on factors other than their independent judgment;
- Prohibits appraisers and appraisal management companies hired by lenders from having financial or other interests in the properties or the credit transactions;
- Prohibits creditors from extending credit based on appraisals if they know beforehand of violations involving appraiser coercion or conflicts of interest, unless the creditors determine that the values of the properties are not materially misstated;
- Prohibits a person that prepares a valuation from materially misrepresenting the value of the consumer's principal dwelling, and prohibits a covered person other than the person that prepares valuations from materially altering a valuation. A misrepresentation or alteration is material if it is likely to significantly affect the value assigned to the consumer's principal dwelling;
- Prohibits any covered person from falsifying a valuation or inducing a misrepresentation, falsification, or alteration of value;
- Requires that creditors or settlement service providers that have information about appraiser misconduct file reports with the appropriate state licensing authorities if the misconduct is material (i.e., likely to significantly affect the value assigned to the consumer's principal dwelling; and
- Requires the payment of reasonable and customary compensation to appraisers who are not employees of the creditors or of the appraisal management companies hired by the creditors.

Minimum Standards for Transactions Secured by a Dwelling (Ability to Repay and Qualified Mortgages) – 12 CFR 1026.43

Minimum standards for transactions secured by a dwelling – 12 CFR 1026.43(a), (g), (h)

Creditors originating certain mortgage loans are required to make a reasonable and good faith determination at or before consummation that a consumer will have the ability to repay the loan. The ability-to-repay requirement applies to most closed-end mortgage loans; however, there are some exclusions, including:

- Home equity lines of credit;[34]
- Mortgages secured by an interest in a timeshare plan;
- Reverse mortgages;
- A temporary bridge loan with a term of 12 months or less, such as a loan to finance the purchase of a new dwelling where the consumer plans to sell a current dwelling within 12 months or a loan to finance the initial construction of a dwelling;
- A construction phase of 12 months or less of a construction-to-permanent loan; and
- An extension of credit made pursuant to a program authorized by sections 101 and 109 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211; 5219).

NOTE: There are additional exclusions under 12 CFR

[33] This section applies to any consumer credit transaction secured by a dwelling. A "covered person" means a creditor with respect to a covered transaction. A "covered transaction" means an extension of consumer credit that is or will be secured by a dwelling, as defined in 12 CFR 1026.2(a)(19).

[34] For open-end credit transactions that are high-cost mortgages as defined in 12 CFR 1026.32, creditors are required to determine a borrower's ability to repay under 12 CFR 1026.34.

1026.43(a) that generally include extensions of credit by various state or federal government agencies or programs or by creditors with specific designations under such programs or extensions of credit that meet certain criteria and are extended by certain creditors that the IRS has determined are 501(c)(3) non-profits. For a full list and criteria, please see 12 CFR 1026.43(a)(3)(iv)–(vii).

Generally, loans covered under this section (which, for purposes of the prepayment penalty provisions in 12 CFR 1026.43(g), includes reverse mortgages and temporary loans otherwise excluded[35] from the ability-to-repay provisions) may not have prepayment penalties; however, there are exceptions for certain fixed-rate and step-rate qualified mortgages that are not higher-priced mortgage loans (as defined in 12 CFR 1026.35(a)), and only if otherwise permitted by law. For such mortgages, the prepayment penalties must be limited to the first three years of the loan and may not exceed two percent for the first two years and one percent for the third year. The creditor must offer the consumer an alternative loan without such penalties that the creditor has a good faith belief that the consumer likely qualifies for, with the same term, a fixed rate or step rate, substantially equal payments, and limited points and fees (see 12 CFR 1026.43(g)).

Ability to Repay – 12 CFR 1026.43(c)

Except as provided under 12 CFR 1026.43(d) (refinancing of non-standard mortgages), (e) (qualified mortgages), and (f) (balloon payment qualified mortgages by certain creditors), creditors must consider the following eight underwriting factors when making a determination of the consumer's ability to repay:

- The consumer's current or reasonably expected income or assets (excluding the value of the dwelling and any attached real property);
- The consumer's current employment status if the creditor relies on the consumer's income in determining repayment ability;
- The consumer's monthly payment for the mortgage loan;
- The consumer's monthly payment on any simultaneous loan (i.e., a covered transaction or HELOC that is being consummated generally at the same or similar time) secured by the same dwelling that the creditor knows or has reason to know will be made, calculated in accordance with 12 CFR 1026.43(c)(6);
- The consumer's monthly payment for mortgage-related obligations, including property taxes;
- The consumer's current debt obligations, alimony, and child support;
- The consumer's monthly debt-to-income ratio or residual income, calculated in accordance with 12 CFR 1026.43(c)(7); and
- The consumer's credit history.

Creditors are required to verify this information using reasonably reliable third-party records, with specific rules for verification of income or assets and employment status. In the case of the consumer's income or assets, the creditor must use third-party records that provide reasonably reliable evidence of such income or assets. Creditors may verify the information considered using the consumer's income tax return transcripts issued by the IRS, copies of tax returns filed by the consumer, W-2s or similar documentation, payroll statements, financial institution records, receipts from check-cashing or fund transfer services, and records from the consumer's employer or other specified records. (12 CFR 1026.43(c)(4))

Regulation Z also provides rules for how creditors must apply certain underwriting factors when determining whether a consumer has the ability to repay the mortgage. For example, creditors must calculate the monthly payment for the covered transaction using the greater of the fully indexed rate or any introductory interest rate, and the monthly, fully amortizing payments that are substantially equal during the loan term. However, special rules apply to mortgages with a balloon payment, interest-only loans, and negative amortization loans due to the unique characteristics of the mortgage. (12 CFR 1026.43(c)(5))

Finally, creditors may not evade the ability-to-repay requirements by structuring a closed-end loan secured by a dwelling as open-end credit that does not meet the definition of open-end credit plan.

Exemption from ATR Requirements for Refinancing of Non-Standard Mortgages – 12 CFR 1026.43(d)

12 CFR 1026.43(d) provides special rules for refinancing a "non-standard mortgage" into a "standard mortgage."

[35] These include a temporary or "bridge" loan with a term of 12 months or less; a construction phase of 12 months or less of a construction-to-permanent loan; or an extension of credit made pursuant to a program administered by a housing finance agency; by certain community development or non-profit lenders, as specified in 12 CFR 1026.43(a)(3)(v); or in connection with certain federal emergency economic stabilization programs. 12 CFR 1026.43(a)(3)

A "non-standard mortgage" is a covered transaction[36] as defined under 12 CFR 1026.43(a) that is:

- An adjustable rate mortgage with an introductory fixed interest rate for a period of one year or longer;
- An interest-only loan; or
- A negative amortization loan.

A "standard mortgage" is a covered transaction as defined under 12 CFR 1026.43(a) with:

- Periodic payments that do not cause the principal balance to increase, do not allow the consumer to defer repayment of the principal, or do not result in balloon payments;
- Total points and fees that are not more than those allowed in 12 CFR 1026.43(e)(3);
- A term that does not exceed 40 years;
- An interest rate that is fixed for the first five years of the loan; and
- Proceeds that are used solely to pay off the outstanding principal on the non-standard mortgage and closing or settlement costs (that are required to be disclosed under RESPA).

Current holders of non-standard mortgages or their servicers (collectively referred to here as "holders") can refinance non-standard mortgages into standard mortgages without considering a consumer's ability to repay under 12 CFR 1026.43(c), if certain conditions are met.

To qualify for the exemption from the ability-to-repay requirements, the standard mortgage must have:

- A monthly payment that is "materially lower"[37] than the non-standard mortgage,
- The creditor must receive a written application from the consumer for the standard mortgage no later than two months after the non-standard mortgage is recast, and
- On the non-standard mortgage, consumers must have made no more than one payment more than 30 days late during the preceding 12 months and must have made no late payments more than 30 days late in the preceding six months of the holder receiving the application for a standard mortgage.

For non-standard loans consummated on or after January 10, 2014, that are refinanced into standard mortgages, the exemption from the ability-to-repay requirements for the refinancing is available only if the non-standard mortgage met the repayment ability requirements under 12 CFR 1026.43(c) or the qualified mortgage requirements under 12 CFR 1026.43(e) as applicable.

If these conditions are satisfied and if the holder has considered whether the standard mortgage is likely to prevent the consumer from defaulting on the non-standard mortgage once the loan terms are recast, the holder is not required to meet the ability-to-repay requirements in 12 CFR 1026.43(c). Finally, holders refinancing a non-standard mortgage to a standard mortgage may offer consumers rate discounts and terms that are the same as (or better than) rate discounts and terms that the holder offers to new consumers, consistent with the holder's documented underwriting practices and to the extent not prohibited by applicable laws. For example, a holder would comply with this requirement if it has documented underwriting practices that provide for offering rate discounts to consumers with credit scores above a certain threshold, even though the consumer would not normally qualify for that discounted rate.

Qualified Mortgages: Rebuttable Presumption and Safe Harbor – 12 CFR 1026.43(e)

The rule provides a presumption of compliance with the ability-to-repay requirements for creditors that originate certain types of loans called "qualified mortgages." There are several categories of qualified mortgages, which are discussed below. Qualified mortgages afford creditors and assignees greater protection against liability under the ability-to-repay provisions. Qualified

[36] A covered transaction is a consumer credit transaction that is secured by a dwelling, including any real property attached to the dwelling. A covered transaction is not a home equity line of credit under 12 CFR 1026.40; a mortgage secured by a consumer's interest in a timeshare plan; a reverse mortgage under 12 CFR 1026.33; a temporary or "bridge" loan with a term of 12 months or less; a construction phase of 12 months or less of a construction-to-permanent loan; or an extension of credit made: pursuant to a program administered by a housing finance agency; by certain community development or non-profit lenders, as specified in 12 CFR 1026.43(a)(3)(v); or in connection with certain federal emergency economic stabilization programs.

[37] When comparing the payments, the holder must calculate the payment for the standard mortgage based on substantially equal, monthly, fully amortizing payments based on the maximum interest rate that may apply in the first five years. The holder must calculate the non-standard mortgage payment based on substantially equal, monthly, fully amortizing payments of principal and interest using:

- The fully indexed rate as of a reasonable period of time before or after the date on which the creditor receives the consumer's application for the standard mortgage;
- The term of the loan remaining as of the date on which the recast occurs, assuming all scheduled payments have been made up to the recast date and the payment due on the recast date is made and credited as of that date; and
- The remaining loan amount, which is calculated differently depending on whether the loan is an adjustable rate mortgage, interest-only loan, or negative amortization loan.

mortgages that are not higher-priced covered transactions receive a safe harbor under the ability-to-repay provisions, which means the presumption of compliance cannot be rebutted. A qualified mortgage is higher priced if the loan's APR exceeds the APOR by 1.5 percentage points or more for first-lien loans that either fall within the general qualified mortgage definition or the temporary qualified mortgage definition for loans that are eligible to be purchased, guaranteed or insured by GSEs or federal agencies, and 3.5 percentage points for first-lien loans that fall within the small creditor balloon payment, temporary small creditor balloon payment, or small creditor portfolio qualified mortgage definitions, or for second-lien loans.

Generally, the safe harbor provides a conclusive presumption that the creditor made a good faith and reasonable determination of the consumer's ability to repay. Qualified mortgages that are higher priced receive a rebuttable presumption of compliance rather than a safe harbor with the ability-to-repay provisions. This means that the loan is presumed to comply with the ability-to-repay provisions, but, for example, the consumer would have the opportunity to rebut that presumption in future ability-to-repay litigation.

For a qualified mortgage that is a higher-priced covered transaction, the presumption of compliance is rebuttable by showing that at consummation, the consumer's income, debt obligations, alimony, child support, and monthly payments on the loan and mortgage-related obligations and simultaneous loans of which the creditor was aware at consummation would leave the consumer with insufficient residual income or assets (other than the value of the dwelling and real property) to meet living expenses (including recurring and material non-debt obligations that the creditor was aware of at consummation).

Requirements for Qualified Mortgages - Generally – 12 CFR 1026.43(e)(2) and (3)

Loans that are qualified mortgages under the general definition may not have negative amortization, interest-only payments, balloon payments, or terms exceeding 30 years. A qualified mortgage for loans greater than or equal to $100,000 may not have points and fees paid by the consumer that exceed three percent of the total loan amount (although certain "bona fide discount points" are excluded for certain loans with pricing within prescribed ranges of APOR—the average prime offer rate). The rule provides guidance on calculating points and fees and thresholds for smaller loans.[38]

The rule also provides a period of time for a creditor or assignee to review a transaction's points and fees and, if points and fees exceed the applicable threshold, to pay the consumer the excess points and fees, along with interest on the excess points and fees (calculated using the contract interest rate). This cure is generally allowed within 210 days after consummation unless the consumer has instituted an action in connection with the loan, or notified the creditor, assignee, or servicer in writing that the points and fees exceed the applicable threshold, or the consumer is 60 days past due. To be eligible for a points and fees cure, the loan must meet all other applicable requirements to be a qualified mortgage and the creditor or assignee, as applicable, must maintain and follow policies and procedures for post-consummation review of points and fees and for making cure payments to consumers. This cure provision applies to the points and fees limits for all of the qualified mortgage types defined in Regulation Z.

The rule also provides underwriting criteria for qualified mortgages. Generally, the rule requires that monthly payments be calculated based on the highest payment that will apply in the first five years of the loan after the date on which the first periodic payment is due and that the consumer have a total (or "back-end") debt-to-income ratio that is less than or equal to 43 percent. Appendix Q, drawing upon Federal Housing Administration guidelines, details the calculation of debt-to-income for these purposes. The rule also requires that the creditor consider and verify the consumer's current or reasonably expected income or assets and current debt obligations, alimony and child support, also in accordance with Appendix Q.

Temporary Category of Qualified Mortgages – 12 CFR 1026.43(e)(4)

Regulation Z provides a temporary category of qualified mortgages that—except with regard to matters that are wholly unrelated to ability to repay—satisfy the underwriting requirements of, and are therefore eligible to be purchased, guaranteed or insured by, either (1) the Government Sponsored Enterprises (Fannie Mae and Freddie Mac) while they operate under federal conservatorship or receivership; or (2) the U.S. Department of Housing and Urban Development, the U.S. Department of Veterans Affairs, the U.S. Department of Agriculture, or the Rural Housing Service. This temporary provision will phase out over time as the various federal agencies issue their own qualified mortgage rules[39] or if GSE conservatorship ends, and in any event after seven years (January 10, 2021). These mortgages must satisfy certain requirements applicable to qualified mortgages, including prohibitions on negative-amortization, interest-only, and balloon payment features; maximum loan terms of 30 years; and points-and-fees restrictions. However, the flat 43 percent debt-to-income threshold for qualified mortgages does not apply.

[38] The definition and calculation rules for points and fees are the same as those used to determine whether a closed-end mortgage is a HOEPA loan, discussed above at 12 CFR 1026.32(b)(2)

[39] This temporary QM rule does not apply to HUD loans or to VA loans because HUD issued its final QM rule, effective January 10, 2014 (78 Fed. Reg. 75215, December 11, 2013), and VA issued its interim final QM rule, effective May 9, 2014 (79 Fed. Reg. 26620, May 9, 2014).

Qualified Mortgage – Small Creditor Portfolio Loans – 12 CFR 1026.43(e)(5)

Mortgages that are originated and held in portfolio by certain small creditors are also qualified mortgages if they meet certain requirements.

These mortgages must generally satisfy the requirements applicable to qualified mortgages, including prohibitions on negative-amortization, balloon-payment, and interest-only features; maximum loan terms of 30 years; and points-and-fees restrictions. However, while the creditor must consider and verify the consumer's current or reasonably expected income or assets and current debt obligations, alimony, and child support, it may do so without regard to the standards in Appendix Q. In addition, debt-to-income ratios must be considered and verified, but the 43 percent threshold for qualified mortgages under the general definition does not apply.

A small creditor that satisfies the exemption criteria in 12 CFR 1026.35(b)(2)(iii)(B) and (C) is eligible to make small creditor portfolio qualified mortgages. (In contrast to 12 CFR 1026.43(f), below, eligibility for this qualified mortgage category is not conditioned on the small creditor operating in a rural or underserved area). For a period of three years after consummation, the creditor may not transfer the loan, or the loan will lose its status as a qualified mortgage. The qualified mortgage status continues under 12 CFR 1026.43(e)(5)(ii), however, if the creditor transfers the loan to another creditor that meets the requirements to be a small lender, or when the loan is transferred due to a capital restoration plan, bankruptcy, or state or federal governmental agency order, or if the mortgage is transferred pursuant to a merger or acquisition of the creditor. A qualified mortgage can be transferred after three years without losing its status.

Small Creditor Rural or Underserved Balloon-Payment Qualified Mortgages and Temporary Balloon-Payment Qualified Mortgages – 12 CFR 1026.43(f) and 1026.43(e)(6)

Balloon-payment mortgages are qualified mortgages if they are originated and held in portfolio by small creditors operating in a rural or underserved area (*see* 12 CFR 1026.43(f)) and meet certain other requirements. These mortgages must satisfy certain requirements applicable to qualified mortgages, including prohibitions on negative-amortization and interest-only features; maximum loan terms of 30 years; and points-and-fees restrictions. These loans must have a term of at least five years, a fixed interest rate, and meet certain basic underwriting standards; debt-to-income ratios must be considered and verified, but the 43 percent threshold for qualified mortgages under the general definition does not apply. The rule also requires that the creditor consider and verify the consumer's current or reasonably expected income or assets and current debt obligations, alimony, and child support, but without regard to the standards in Appendix Q. This category of qualified mortgage is not available for a loan that, at origination, is subject to a forward commitment to be acquired by a person that does not itself qualify for the category (under the requirements outlined in the next paragraph).

A small creditor that satisfies the exemption criteria in 12 CFR 1026.35(b)(2)(iii)(A), (B), and (C) (higher-priced mortgage escrow requirements) is eligible to make rural or underserved balloon-payment qualified mortgages. For a period of three years after consummation, the creditor may not transfer the loan, or it will lose its status as a qualified mortgage. The qualified mortgage status continues under 12 CFR 1026.43(f)(2), however, if the creditor transfers the loan to another creditor that meets the requirements to be a small rural lender, or when the loan is transferred due to a capital restoration plan, bankruptcy, or state or federal governmental agency order, or if the mortgage is transferred pursuant to a merger or acquisition of the creditor. A qualified mortgage can be transferred after three years without losing its status.

There is also a temporary qualified mortgage category for balloon-payment mortgages that would otherwise meet the requirements of 12 CFR 1026.43(f), but that are originated by small creditors that do not operate in a rural or underserved area. This category is applicable to covered transactions for which the application was received before April 1, 2016. (12 CFR 1026.43(e)(6)(ii))

Subpart F – Special Rules for Private Education Loans

Subpart F relates to private education loans. It contains rules on disclosures (12 CFR 1026.46), the right to cancel the loan, (12 CFR 1026.47), and limitations on changes in terms after approval and on co-branding in the marketing of private education loans (12 CFR 1026.48).

Special Disclosure Requirements for Private Education Loans – 12 CFR 1026.46

The disclosures required under Subpart F apply only to private education loans. Except where specifically provided otherwise, the requirements and limitations of Subpart F are in addition to the requirements of the other subparts of Regulation Z.

A private education loan means an extension of credit that:

- Is not made, insured, or guaranteed under title IV of the Higher Education Act of 1965;
- Is extended to a consumer expressly, in whole or part, for postsecondary educational expenses, regardless of whether the loan is provided by the educational institution that the student attends; and
- Does not include open-end credit or any loan that is secured by real property or a dwelling.

A private education loan does not include an extension of credit in which the covered educational institution is the creditor if:

- The term of the extension of credit is 90 days or less, or
- An interest rate will not be applied to the credit balance and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments.

Content of Disclosures – 12 CFR 1026.47

Disclosure Requirements

This section establishes the content that a creditor must include in its disclosures to a consumer at three different stages in the private education loan origination process:

- Application or Solicitation Disclosures – With any application or solicitation;
- Approval Disclosures – With any notice of approval of the private education loan; and
- Final Disclosures – After the consumer accepts the loan. In addition, 12 CFR 1026.48(d) requires that the disclosures must be provided at least three business days prior to disbursement of the loan funds.

Rights of the Consumer

The creditor must disclose that, if approved for the loan, the consumer has the right to accept the loan on the terms approved for up to 30 calendar days. The disclosure must inform the consumer that the rate and terms of the loan will not change during this period, except for changes to the rate based on adjustments to the index used for the loan and other changes permitted by law. The creditor must disclose that the consumer also has the right to cancel the loan, without penalty, until midnight of the third business day following the date on which the consumer receives the final disclosures.

Limitations on Private Educational Loans – 12 CFR 1026.48

This section contains rules and limitations on private education loans, including:

1. A prohibition on co-branding in the marketing of private education loans;
2. Rules governing the 30-day acceptance period and three business-day cancellation period and prohibition on disbursement of loan proceeds until the cancellation period has expired;
3. The requirement that the creditor obtain a self-certification form from the consumer before consummation; and
4. The requirement that creditors in preferred lender arrangements provide certain information to covered educational institutions.

Co-Branding Prohibited

Regulation Z prohibits creditors from using the name, emblem, mascot, or logo of a covered institution (or other words, pictures, or symbols readily identified with a covered institution) in the marketing of private education loans in a way that implies endorsement by the educational institution. Marketing that refers to an educational institution does not imply endorsement if the marketing includes a clear and conspicuous disclosure that is equally prominent and closely proximate to the reference to the institution that the educational institution does not endorse the creditor's loans, and that the creditor is not affiliated with the educational institution. There is also an exception in cases where the educational institution actually does endorse the creditor's loans, but the marketing must make a clear and conspicuous disclosure that is equally prominent and closely proximate to the reference to the institution that the creditor, and not the educational institution, is making the loan.

Subpart G – Special Rules Applicable To Credit Card Accounts and Open-End Credit Offered To College Students

Subpart G relates to credit card accounts under an open-end (not home-secured) consumer credit plan (except for 12 CFR 1026.57(c), which applies to all open-end credit plans). This subpart contains rules regarding credit and charge card application and solicitation disclosures (12 CFR 1026.60), as well as hybrid prepaid-credit cards (12 CFR 1026.61). It also contains rules on evaluation of a consumer's ability to make the required payments under the terms of an account (12 CFR 1026.51), limits the fees that a consumer can be required to pay (12 CFR 1026.52), and contains rules on allocation of payments in excess of the minimum payment (12 CFR 1026.53). It also sets forth certain limitations on the imposition of finance charges as the result of a loss of a grace period (12 CFR 1026.54) and on increases in annual percentage rates, fees, and charges for credit card accounts (12 CFR 1026.55), including the reevaluation of rate increases (12 CFR 1026.59). This subpart prohibits the assessment of fees or charges for over-the-limit transactions unless the consumer affirmatively consents to the creditor's payment of over-the-limit transactions (12 CFR 1026.56). This subpart also sets forth rules for reporting and marketing of college student open-end credit (12 CFR 1026.57). Finally, it sets forth requirements for the Internet posting of credit card accounts under an open-end (not home-secured) consumer credit plan (12 CFR 1026.58).

Evaluation of the Consumer's Ability to Pay – 12 CFR 1026.51

Regulation Z requires credit card issuers to consider a consumer's ability to pay before opening a new credit card account or increasing the credit limit for an existing credit card account. Additionally, the rule provides specific requirements that must be met before opening a new credit card account or increasing the credit limit on an existing account when the consumer is under the age of 21.

When evaluating a consumer's ability to pay, credit card issuers must perform a review of a consumer's income or assets and current obligations. Card issuers are permitted, however, to rely on information provided by the consumer. The rule does not require card issuers to verify a consumer's statements; a card issuer may base its determination of ability to repay on facts and circumstances known to the card issuer (Comment 1026.51(a)(1)(i)-2). A card issuer may also consider information obtained through any empirically derived, demonstrably and statistically sound model that reasonably estimates a consumer's income or assets.

Card issuers may consider any income and assets to which the consumer has a reasonable expectation of access or may limit their consideration to the consumer's independent income and assets. The rule also requires that issuers consider at least one of the following:

- The ratio of debt obligations to income;
- The ratio of debt obligations to assets; or
- The income the consumer will have after paying debt obligations (i.e., residual income).

The rule also provides that it would be unreasonable for a card issuer not to review any information about a consumer's income, assets, or current obligations, or to issue a credit card to a consumer who does not have any income or assets.

Because credit card accounts typically require consumers to make a minimum monthly payment that is a percentage of the total balance (plus, in some cases, accrued interest and fees), card issuers are required to consider the consumer's ability to make the required minimum payments. Card issuers must also establish and maintain reasonable written policies and procedures to consider a consumer's income or assets and current obligations. Because the minimum payment is unknown at account opening, the rule requires that card issuers use a reasonable method to estimate a consumer's minimum payment. The regulation provides a safe harbor for card issuers to estimate the required minimum periodic payment if the card issuer:

1. Assumes utilization, from the first day of the billing cycle, of the full credit line that the card issuer is considering offering to the consumer; and
2. Uses a minimum payment formula employed by the card issuer for the product the card issuer is considering offering to the consumer or, in the case of an existing account, the minimum payment formula that currently applies to that account, provided that:
    a. If the minimum payment formula includes interest charges, the card issuer estimates those charges using an interest rate that the card issuer is considering offering to the consumer for purchases or, in the case of an existing account, the interest rate that currently applies to purchases; and
    b. If the applicable minimum payment formula includes mandatory fees, the card issuer must assume that such fees have been charged to the account.

Specific Requirements for Underage Consumers – 12 CFR 1026.51(b)(1)

Regulation Z prohibits the issuance of a credit card to a consumer who has not attained the age of 21 unless the consumer has submitted a written application and the creditor has:

- Information indicating that the underage consumer has an independent ability to make the required minimum payments on the account; or
- The signature of a cosigner, guarantor, or joint applicant who has attained the age of 21, who has the ability to repay debts (based on 12 CFR 1026.51) incurred by the underage consumer in connection with the account, and who assumes joint liability for all debts or secondary liability for any debts incurred before the underage consumer attains 21 years of age.

For credit line increases:

- If an account was opened based on the underage consumer's independent ability to repay, in order to increase the consumer's credit line before he or she turns 21, the issuer either must determine that the consumer has an independent ability to make the required minimum payments at the time of the contemplated increase, or must obtain an agreement from a cosigner, guarantor, or joint applicant who is 21 or older and who has the ability to repay debts to assume liability for any debt incurred on the account.
- If the account was opened based on the ability of a cosigner over the age of 21 to pay, the issuer must obtain written consent from that cosigner before increasing the credit limit.

Limitations of Fees – 12 CFR 1026.52

Limitations on Fees During First Year After Account Opening – 12 CFR 1026.52(a)

During the first year after account opening, issuers are prohibited from requiring consumers to pay fees (other than fees for late payments, returned payments, and exceeding the credit limit) that in the aggregate exceed 25 percent of the initial credit limit in effect when the account is opened. An account is considered open no earlier than the date on which the account may first be used by the consumer to engage in transactions. With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid

prepaid-credit card, where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, this restriction also applies to fees or charges imposed on the asset feature of the prepaid account that are charges imposed as part of the plan under 12 CFR 1026.6(b)(3). (Comments 6(b)(3)(iii)(D)-1 and 52(a)(2)-2)

NOTE: The 25 percent limitation on fees does not apply to fees assessed prior to opening the account.

Limitations on Penalty Fees – 12 CFR 1026.52(b)

TILA requires that penalty fees imposed by card issuers be reasonable and proportional to the violation of the account terms. Among other things, the regulation prohibits credit card issuers from charging a penalty fee of more than $29 for paying late or otherwise violating the account's terms for the first violation, $40 for an additional violation of the same type during the same billing cycle or one of the next six billing cycles, or three percent of the delinquent balance on the charge card account that requires payment of outstanding balances in full at the end of each billing cycle if payment has not been received for two or more consecutive billing cycles unless the issuer determines that a higher fee represents a reasonable proportion of the costs it incurs as a result of that type of violation and reevaluates that determination at least once every 12 months.[40] With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card, where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, this provision also applies to any fee for violating the terms or other requirements of the credit feature, regardless of whether those fees are imposed on the credit or asset feature of the prepaid account. (Comment 52(b)-3)

Credit card issuers are not permitted to charge penalty fees that exceed the dollar amount associated with the consumer's violation of the terms or other requirements of the credit card account. For example, card issuers are not permitted to charge a $40 fee when a consumer is late making a $20 minimum payment. Instead, in this example, the fee cannot exceed $20. The regulation also bans imposition of penalty fees when there is no dollar amount associated with the violation, such as fees based on "inactivity" fees based on the consumer's failure to use the account to make new purchases, or declined transaction fees for credit transactions that the card issuer declines to authorize. With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, the regulation prohibits a card issuer from imposing declined transaction fees in connection with the credit feature, regardless of whether the declined transaction fee is imposed on the credit feature or on the asset feature of the prepaid account. (Comment 52(b)(2)(i)-7) It also prohibits issuers from charging multiple penalty fees based on a single late payment or other violation of the account terms.

Payment Allocation – 12 CFR 1026.53

When different rates apply to different balances on a credit card account, issuers are generally required to allocate payments in excess of the minimum payment first to the balance with the highest APR and then to any remaining portion to the other balances in descending order based on the applicable APR.

For deferred interest programs, however, issuers must allocate excess payments first to the deferred interest balance during the last two billing cycles of the deferred interest period. In addition, during a deferred interest period, issuers are permitted (but not required) to allocate excess payments in the manner requested by the consumer.

For accounts with secured balances, issuers are permitted (but not required) to allocate excess payments to the secured balance if requested by the consumer.

Double-Cycle Billing and Partial Grace Period – 12 CFR 1026.54

Issuers are generally prohibited from imposing finance charges on balances for days in previous billing cycles as a result of the loss of a grace period. In addition, when a consumer pays some, but not all, of a balance prior to the expiration of a grace period, an issuer is prohibited from imposing finance charges on the portion of the balance that has been repaid.

Restrictions on Applying Increased Rates to Existing Balances and Increasing Certain Fees and Charges – 12 CFR 1026.55

Unless an exception applies, a card issuer must not increase an annual percentage rate or a fee or charge required to be disclosed under 12 CFR 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) on a credit card account. With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, this restriction applies regardless of whether these fees or annual percentage rates are imposed on the asset feature of the prepaid account or on the credit feature. (Comment 55(a)-3). There are some general exceptions to the prohibition against applying increased rates to existing balances and increasing certain fees or charges:

- A temporary or promotional rate or temporary fee or charge that lasts at least six months, and that is required to be disclosed under 12 CFR 1026.6(b)(2)(ii), (b)(2)(iii), or

[40] Amounts are adjusted annually by the CFPB to reflect changes in the Consumer Price Index. See 12 CFR 1026.52(b)(1)(ii)(D); Comment 52(b)(1)(ii) – 2.

(b)(2)(xii), provided that the card issuer complied with applicable disclosure requirements. Fees and charges required to be disclosed under 12 CFR 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) are periodic fees for issuance or availability of an open-end plan (such as an annual fee); a fixed finance charge (and any minimum interest charge) that exceeds $1; or a charge for required insurance, debt cancellation, or debt suspension;

- The rate is increased due to the operation of an index available to the general public and not under the card issuer's control (i.e., the rate is a variable rate);
- The minimum payment has not been received within 60 days after the due date, provided that the card issuer complied with applicable disclosure requirements and adheres to certain requirements when a series of on time payments are received;
- The consumer successfully completes or fails to comply with the terms of a workout arrangement, provided that card issuer complied with applicable disclosure requirements and adheres to certain requirements upon the completion or failure of the arrangement; and
- The APR on an existing balance or a fee or charge required to be disclosed under 12 CFR 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) has been reduced pursuant to the Servicemembers Civil Relief Act (SCRA) or a similar federal or state statute or regulation. The creditor is permitted to increase the rate, fee, or charge once the SCRA ceases to apply, but only to the rate, fee, or charge that applied prior to the reduction.

Regulation Z's limitations on the application of increased rates and certain fees and charges to existing balances continue to apply when the account is closed, acquired by another institution through a merger or the sale of a credit card portfolio, or when the balance is transferred to another credit account issued by the same creditor (or its affiliate or subsidiary).

Issuers are generally prevented from increasing the APR applicable to new transactions or a fee or charge subject to 12 CFR 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) during the first year after an account is opened. After the first year, issuers are permitted to increase the APRs that apply to new transactions or a fee or charge subject to 12 CFR 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) so long as the creditor complies with the regulation's 45-day advance notice requirement (12 CFR 1026.9).

Regulation Z's limitations on the application of increased rates to existing balances and limitations on the increase of certain fees or charges apply upon cessation of a waiver or rebate of interest, fees, or charges if the issuer promotes the waiver or rebate.

Fees for Transactions that Exceed the Credit Limit – 12 CFR 1026.56

Consumer consent requirement

Regulation Z requires an issuer to obtain a consumer's express consent (or opt in) before the issuer may impose any fees on a consumer's credit card account for making an extension of credit that exceeds the account's credit limit. Prior to providing such consent, the consumer must be notified by the issuer of any fees that may be assessed for an over-the-limit transaction. If the consumer consents, the issuer is also required to provide written confirmation (or electronic confirmation if the consumer agrees) of the consumer's consent and a notice of the consumer's right to revoke that consent on the front page of any periodic statement that reflects the imposition of an over-the-limit fee.

Prior to obtaining a consumer's consent to the payment of over-the-limit transactions, the issuer must provide the consumer with a notice disclosing, among other things, the dollar amount of any charges that will be assessed for an over-the-limit transaction, as well as any increased rate that may apply if the consumer exceeds the credit limit. Issuers are prevented from assessing any over-the-limit fee or charge on an account unless the consumer consents to the payment of transactions that exceed the credit limit.

Prohibited practices – Even if the consumer has affirmatively consented to the issuer's payment of over-the-limit transactions, Regulation Z prohibits certain issuer practices in connection with the assessment of over-the-limit fees or charges. An issuer can only charge one over-the-limit fee or charge per billing cycle. In addition, an issuer cannot impose an over-the-limit fee on the account for the same transaction in more than three billing cycles. Furthermore, fees may not be imposed for the same transaction in the second or third billing cycle unless the consumer has failed to reduce the account balance below the credit limit by the payment due date in that cycle.

Regulation Z also prohibits unfair or deceptive acts or practices in connection with the manipulation of credit limits in order to increase over-the-limit fees or other penalty charges. Specifically, issuers are prohibited from engaging in three practices:

- Assessing an over-the-limit fee because the creditor failed to promptly replenish the consumer's available credit;
- Conditioning the amount of available credit on the consumer's consent to the payment of over-the-limit transactions (e.g., opting in to an over-the-limit service to obtain a higher credit limit); and
- Imposing any over-the-limit fee if the credit limit is exceeded solely because of the issuer's assessment of accrued interest charges or fees on the consumer's account.

Special Rules for Marketing to Students – 12 CFR 1026.57

Regulation Z establishes several requirements related to the marketing of credit cards and other open-end consumer credit plans to students at an institution of higher education. ., including the marketing of a covered separate credit feature accessible by a hybrid prepaid–credit card and prepaid account and a prepaid account where a covered separate credit feature accessible by a hybrid prepaid-credit card may be added in the future, to students at an institution of higher education. (Comments 57(a)(1)-1, 57(a)(5)-1, and 57(c)-7). The regulation limits a creditor's ability to offer a college student any tangible item to induce the student to apply for or participate in an open-end consumer credit plan offered by the creditor. Specifically, Regulation Z prohibits a card issuer from offering tangible items as an inducement:

- On the campus of an institution of higher education;
- Near the campus of an institution of higher education; or
- At an event sponsored by or related to an institution of higher education

A tangible item means physical items, such as gift cards, t-shirts, or magazine subscriptions, but does not include non-physical items such as discounts, reward points, or promotional credit terms. With respect to offers "near" the campus, the commentary to the regulation states that a location that is within 1,000 feet of the border of the campus is considered near the campus.

Regulation Z also requires card issuers to submit an annual report to the CFPB containing the terms and conditions of business, marketing, or promotional agreements with an institution of higher education or an alumni organization or foundation affiliated with an institution of higher education.

Online Disclosure of Credit Card Agreements – 12 CFR 1026.58

The regulation requires that issuers post credit card agreements on their websites and to submit those agreements to the CFPB for posting on a website maintained by the CFPB. There are three exceptions for when issuers are not required to provide statements to the CFPB:

- The issuer has fewer than 10,000 open credit card accounts; or
- The agreement currently is not offered to the public and the agreement is used only for one or more private label credit card plans with credit cards usable only at a single merchant or group of affiliated merchants and that involves fewer than 10,000 open accounts; or
- The agreement currently is not offered to the public and the agreement is for one or more plans offered to test a new product offered only to a limited group of consumers for a limited time that involves fewer than 10,000 open accounts.

Reevaluation of Rate Increases – 12 CFR 1026.59

For any rate increase imposed on or after January 1, 2009, that requires 45 days advance notice, the regulation requires card issuers to review the account no less frequently than once each six months and, if appropriate based on that review, reduce the annual percentage rate. The requirement to reevaluate rate increases applies both to increases in annual percentage rates based on consumer-specific factors, such as changes in the consumer's creditworthiness, and to increases in annual percentage rates imposed based on factors that are not specific to the consumer, such as changes in market conditions or the issuer's cost of funds. If based on its review a card issuer is required to reduce the rate applicable to an account, the final regulation requires that the rate be reduced within 45 days after completion of the evaluation.

This review must consider either the same factors on which the increase was originally based or the factors the card issuer currently considers in determining the annual percentage rate applicable to similar new credit card accounts.

Hybrid Prepaid-Credit Cards - 12 CFR 1026.61

Generally, this section applies to credit offered in connection with a prepaid account. A prepaid card is a hybrid prepaid-credit card when it has a separate accessible credit feature or a credit feature structured as a negative balance on the asset feature of the prepaid account (except as described below). Further, a hybrid prepaid-credit card is a credit card for the purposes of this regulation with respect to those credit features.

A prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature when it is a single device that can be used from time to time to access the separate credit feature where the following two conditions are both satisfied: (1) the card can be used to draw, transfer, or authorize the draw or transfer of credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. A separate credit feature that is accessed by a hybrid prepaid-credit card is described as a "covered separate credit feature." A prepaid card is not a hybrid prepaid-credit card with respect to a separate credit feature if it does not meet the two conditions discussed above, although that separate credit feature may be subject to other provisions of Regulation Z depending on its own terms and conditions, independent of the connection to the prepaid account.

Generally, the regulation prohibits structuring a hybrid prepaid-credit card to access credit through a negative balance on the asset feature of a prepaid account. However, a prepaid card is not a hybrid prepaid-credit card with respect to credit extended

through a negative balance on the asset feature of a prepaid account if several conditions are met. One condition is that the prepaid card cannot access credit from a covered separate credit feature that is offered by a prepaid account issuer or its affiliate. In addition, the prepaid account issuer must have an established policy and practice of either: declining to authorize any transaction for which it reasonably believes a consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is authorized to cover the amount of the transaction; or declining to authorize such transactions except when (1) the amount of the transaction will not cause the asset feature balance to become negative by more than $10 at the time of the authorization, or (2) the issuer has received an instruction, confirmation, or request to load funds from a separate asset account to the prepaid account, but the funds have not yet settled and the amount of the transaction will not cause the asset balance to become negative at the time of the authorization by more than the incoming or requested load amount. Furthermore, under this exception, the issuer may not impose any of the following fees or charges on the asset feature of the prepaid account:

- Fees or charges for opening, issuing, or holding a negative balance on the asset feature, or for the availability of credit, whether imposed on a one-time or periodic basis;[41]
- Fees or charges that will be imposed only when credit is extended on the asset feature or when there is a negative balance on the asset feature;[42] and
- Fees or charges where the amount of the fee or charge is higher when credit is extended on the asset feature or when there is a negative balance on the asset feature.
- Issuers must wait at least 30 days after a prepaid account is registered before opening a covered separate credit feature accessible by a hybrid prepaid-credit card, making a solicitation or providing an application to open a covered separate credit feature that could be accessible by the hybrid prepaid-credit card, or allowing an existing credit feature opened prior to the consumer obtaining the prepaid account to become a covered separate credit feature accessible by the hybrid prepaid-credit card. Issuers must obtain an application or specific request from the consumer to link such a credit feature to a prepaid account. (Comment 12(a)(1)-7.ii)

Liability and Defenses

Civil Liability – TILA Sections 129B, 129C, 130 and 131

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
- Cost of any successful legal action together with reasonable attorney's fees.

The creditor also may be held liable for any of the following:

- In an individual action, twice the amount of the finance charge involved.
- In an individual action relating to an open-end credit transaction that is not secured by real property or a dwelling, twice the amount of the finance charge involved, with a minimum of $500 and a maximum of $5,000 or such higher amount as may be appropriate in the case of an established pattern or practice of such failure.
- In an individual action relating to a closed-end credit transaction secured by real property or a dwelling, not less than $400 and not more than $4,000.
- In a class action, such amount as the court may allow (with no minimum recovery for each class member). However, the total amount of recovery in any class actions arising out of the same failure to comply by the same creditor cannot be more than $1 million or 1 percent of the creditor's net worth, whichever is less.

A creditor that fails to comply with section 129 of TILA, 15 U.S.C. section 1639, (requirements for certain mortgages) may be held liable to the consumer for all finance charges and fees paid by the consumer unless the creditor demonstrates that the failure was not material. A mortgage originator that is not a creditor and that fails to comply with section 129B (requirements for mortgage loan originators) also may be liable to consumers for the greater of actual damages or an amount equal to three times the total amount of direct and indirect compensation or gain to the mortgage originator in connection with the loan, plus costs, including reasonable attorney's fees. In addition, TILA section 130(a) provides that a creditor may be liable for failure to comply with the ability-to-repay requirements of TILA section 129C(a) unless the creditor demonstrates that the failure to comply was not material.

Generally, civil actions that may be brought against a creditor may be maintained against any assignee of the creditor only if the violation is apparent on the face of the disclosure statement or other documents assigned, except where the assignment was involuntary. For high-cost mortgage loans (under 12 CFR

[41] This provision does not prohibit fees or charges to open, issue, or hold the prepaid account generally, where the amount of the fee or charge imposed on the asset feature is not higher based on whether credit might be offered or has been accepted, whether or how much credit the consumer has accessed, or the amount of credit available.

[42] This provision does not prohibit fees or charges for the actual costs of collecting the credit extended, if otherwise permitted by law.

1026.32(a)), any subsequent purchaser or 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 a high-cost mortgage loan subject to 12 CFR 1026.32.

In specified circumstances, the creditor or assignee has no liability if it corrects identified errors within 60 days of discovering the errors and prior to the institution of a civil action or the receipt of written notice of the error from the obligor. Additionally, a creditor and assignee will not be liable for bona fide errors that occurred despite the maintenance of procedures reasonably adapted to avoid any such error.

Moreover, the TILA also provides consumers with the right to assert a violation of the TILA's anti-steering provisions or the ability-to-repay standards for residential mortgage loan requirements "as a matter of defense by recoupment or setoff" against a foreclosure action. In general, the amount of recoupment or setoff shall be equal to the amount that the consumer would be entitled to generally under 15 U.S.C. 1640(a) for a valid claim, plus the cost to the consumer of the action (including reasonable attorney's fees).

Refer to Sections 129B, 129C, 130 and 131 of TILA for more information.

Criminal Liability – TILA Section 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 – TILA Section 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 under section 131 (15 U.S.C. 1641).

Specific Defenses – TILA Section 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 – TILA Sections 108, 129, 129B, 129C, 129D, 129E, 129F, 129G, 129H, and 130

In general, civil actions may be brought within one year after the violation occurred. For private education loans, civil actions may be brought within one year from the date on which the first regular payment of principal and interest is due. 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.

A civil action for a violation of TILA section 129 (requirements for certain mortgages), 129B (residential mortgage loan origination), or 129C (minimum standards for residential mortgage loans) may be brought three years from the date of the occurrence of the violation (as compared to one year for most other TILA violations). TILA section 130(e).

Moreover, TILA provides that when a creditor, assignee, other holder or anyone acting on such a person's on behalf initiates a foreclosure action on, or any other action to collect the debt in connection with a residential mortgage loan, a consumer may assert a violation of TILA section 129B(c)(1) or (2) or 129C(a) "as a matter of defense by recoupment or set off." TILA section 130(k). There is no time limit on the use of this defense and the amount of recoupment or setoff is limited, with respect to the special statutory damages, to no more than three years of finance charges and fees.

Criminal actions and actions brought by regulators[43] are not subject to the general one-year statute of limitations. Actions brought by a state attorney general to enforce a violation of section 129, 129B, 129C, 129D, 129E, 129F, 129G, or 129H, may be brought not later than 3 years after the date on which the violation occurs.

However, administrative enforcement actions under the policy guide involving erroneously disclosed APRs and finance charges may be 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 general summary of the various time limitations that otherwise apply 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) – 12 CFR 1026.15 and 1026.23

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 as security for the credit. A higher-priced mortgage loan (whether or not it is a HOEPA loan) having a prepayment penalty that does not conform to the prepayment penalty limitations (12 CFR 1026.32(c) and (d) and 12 CFR 1026.43(g), (subject to certain exclusions)) is also subject to a three-year right of rescission. Transactions exempt from the right of rescission include residential mortgage transactions (12 CFR 1026.2(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:

- Consummation of the transaction,
- Delivery of material TILA disclosures, or

[43] However, reimbursement required by regulatory action may be limited to the last examination conducted at the institution.

- Receipt[44] 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 (12 CFR 1026.2(a)(6)). The term "material disclosures" is defined in 12 CFR 1026.23(a)(3) to mean the required disclosures of the APR, the finance charge, the amount financed, the total of payments, the payment schedule, and the disclosures and limitations referred to in 12 CFR 1026.32(c) and (d) and 12 CFR 1026.43(g).

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[45]

1. To appraise the quality of the financial institution's compliance management system for the Truth in Lending Act and Regulation Z (12 CFR part 1026).

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 Truth in Lending Act.

Examination Procedures[46]

General Procedures

I. 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).

II. Through discussions with management and review of the below 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

III. Review compliance review and audit workpapers and determine whether:

- The procedures used address all regulatory provisions (see Transactional Testing section).
- Steps are taken to follow up on previously identified deficiencies.
- The procedures used include samples that cover all product types and decision centers.

[44] 12 CFR 1026.15(b) and 1026.23(b)(1) were amended to include the electronic delivery of the notice of the right to rescind. If a paper notice of the right to rescind is used, a creditor must deliver two copies of the notice to each consumer entitled to rescind. However, under the final rule on electronic delivery of disclosures if the notice is in electronic form, in accordance with the consumer consent and other applicable provisions of the E-Sign Act, only one copy to each customer is required.

[45] These procedures include amendments to TILA and Regulation Z through April 2016 and the mortgage servicing amendments effective in October 2017, unless otherwise indicated. These procedures do not include the 2017 Know Before You Owe Integrated Disclosure Rule amendments nor the Prepaid Rule amendments.

[46] This reflects the interagency examination procedures in their entirety.

- The work performed is accurate (through a review of some transactions).
- Significant deficiencies, and the root cause of the deficiencies, are included in reports to management/board.
- Corrective actions are timely and appropriate.
- The area is reviewed at an appropriate interval, based upon appropriate risks.

IV. Review the financial institution's record retention practices to determine whether the required documentation or evidence of compliance is retained for at least:

- Two years after the disclosures were required to be made or other action was required to be taken, other than for the advertising requirements, requirements for mortgages subject to 12 CFR 1026.19(e) and (f), and certain requirements for mortgages, which are described below. (12 CFR 1026.25(a))
- Three years after the later of the date of consummation, the date disclosures are required to be made, or the date action is required to be taken, for evidence of compliance with 12 CFR 1026.19(e)-(f) (regarding closed-end loans that are secured by real property and subject to those sections) other than as set forth in 4.c below. (12 CFR 1026.25(c)(1)(i))
- Five years after consummation for completed Closing Disclosure forms, and all documents related to these disclosures, as required by 12 CFR 1026.19(f)(1)(i) or (f)(4)(i). If the loan is sold, transferred, or otherwise disposed of during that time, the creditor must provide a copy of the Closing Disclosure to the owner or servicer as part of the loan file transfer, who must retain the disclosure for the remainder of the five-year period. (12 CFR 1026.25(c)(1)(ii))
- Three years after the date of receipt of payment to show compliance with loan originator compensation requirements. (12 CFR 1026.25(c)(2))
- Three years after consummation to show compliance with ability-to-repay minimum standards (12 CFR 1026.43(c)-(f)) and prepayment penalty restrictions (12 CFR 1026.43(g)) for loans secured by a dwelling. (12 CFR 1026.25(c)(3))

Disclosure Forms

V. Determine if the financial institution has changed any TILA disclosure forms or if there are forms that have not been previously reviewed for accuracy. If so:

Verify the accuracy of each disclosure by reviewing the following as applicable:

- Credit card application/solicitation disclosures (12 CFR 1026.60(b)-(e)).
- HELOC disclosures (12 CFR 1026.40(d) and (e)).
- Initial disclosures (12 CFR 1026.6) and, if applicable, additional HELOC disclosures (12 CFR 1026.40).
- Periodic statement disclosures (12 CFR 1026.7 and 1026.41).
- Statement of billing rights and change in terms notice (12 CFR 1026.9(a),(b),(c) or (g)).
- Note and/or contract forms (including those furnished to dealers).
- Notice of Right to Rescind/Cancel (12 CFR 1026.15(b), 12 CFR 1026.23(b)(1)) and 12 CFR 1026.47(c)(4).
- Loan Estimate (12 CFR 1026.19(e) and 12 CFR 1026.37).
- Closing Disclosure (12 CFR 1026.19(f) and 12 CFR 1026.38).
- Special information booklet (12 CFR 1026.19(g)).
- Other closed-end credit transaction disclosures not subject to 12 CFR 1026.19(e) or (f) (12 CFR 1026.17(a) and 12 CFR 1026.18).
- ARM disclosures (12 CFR 1026.19(b) 1026.20(c) – (d)).
- High-cost mortgage disclosures (12 CFR 1026.32(c)).
- Reverse mortgage disclosures (12 CFR 1026.33(b)).
- Payoff statement disclosures. (12 CFR 1026.36(c)(3))
- Private education loan disclosures (12 CFR 1026.47).

Closed-End Credit Disclosure Forms Review Procedures

Closed-end consumer credit transactions secured by real property, other than a reverse mortgage subject to 12 CFR 1026.33, are subject to the disclosure, timing, and other requirements under the TILA-RESPA Integrated Disclosure rule (TILA-RESPA or TRID). Thus, for most closed-end mortgages, including construction-only loans and loans secured by vacant land or by 25 or more acres, creditors must provide the Loan Estimate and the Closing Disclosure. There is a partial exemption in 12 CFR 1026.3(h) from the requirement to provide the Loan Estimate and Closing Disclosure if the loan is (i) a subordinate lien; (ii) a loan for home buyer assistance, such as down payments or closing costs, rehabilitation loans, energy efficiency assistance, or foreclosure prevention; (iii) a loan that does not require the payment of interest; (iv) a loan for which repayment that is forgiven, deferred for 20 years, or deferred

until the property is sold or is no longer the consumer's principal dwelling; and (v) a loan where the total costs of the transaction are less than one percent of the loan and include fees only for recording, application, and housing counseling. For those transactions, creditors must provide other applicable TILA disclosures.

NOTE: a creditor may not use the TILA-RESPA Integrated Disclosure forms instead of the GFE, HUD-1, and Truth in Lending forms for transactions that continue to be covered by the remaining disclosure requirements of TILA or RESPA (e.g., reverse mortgages) or before the effective date of the TILA-RESPA Integrated Disclosure Rule (October 3, 2015). (12 CFR 1026.19(e), (f)).

Closed-End Credit Disclosure Forms – For transactions under 12 CFR 1026.19(e) and (f)

NOTE: These procedures have not been updated to reflect the Know Before You Owe (KBYO) final rule issued on July 7, 2017. The 2017 TILA-RESPA rule includes an optional compliance period, which began on October 10, 2017 and is for transactions for which a creditor or mortgage broker receives an application prior to October 1, 2018. During this period, early compliance with the 2017 rule is allowed, but not required.

I. For a closed-end credit transaction subject to 12 CFR 1026.19(e) and (f), determine whether the creditor provides disclosures required under 12 CFR 1026.37 (Loan Estimate) and 12 CFR 1026.38 (Closing Disclosure). (12 CFR 1026.19(e) and 12 CFR 1026.19(f))

II. For loans subject to 12 CFR 1026.19(e), determine whether the creditor provides the good faith disclosures in the form required by 12 CFR 1026.37 and conforming to the Loan Estimate in Appendix H (12 CFR 1026.19(e), 12 CFR 1026.37(o)).

III. For loans subject to 12 CFR 1026.19(f), determine whether the creditor provides the Closing Disclosure in the form required by 12 CFR 1026.38 and conforming to the Closing Disclosure attached at Appendix H (12 CFR 1026.19(f), 12 CFR 1027.38(t)).

NOTE: Use of the Loan Estimate and Closing Disclosure is mandatory for RESPA- covered transactions. For transactions not covered by RESPA, the Loan Estimate and Closing Disclosure may be considered a model form.

Loan Estimate – 12 CFR 1026.37(a) (Page 1 of the Loan Estimate)

I. *Loan Estimate.* Determine whether the disclosures required for the Loan Estimate are accurately completed and include the following disclosures on the first page (12 CFR 1026.37(a)). Disclosures are detailed below according to the designations made on the Loan Estimate form:

The statement: "Save this Loan Estimate to compare with your Closing Disclosure" (12 CFR 1026.37(a)(2));

- *Name and address of creditor.* (12 CFR 1026.37(a)(3));
- *Date Issued.* (12 CFR 1026.37(a)(4));
- *Applicants.* (12 CFR 1026.37(a)(5));
- *Property.* The property address, including zip code (12 CFR 1026.37(a)(6));
- *Sales Price/ Prop. Value* (estimated value where there is no seller). (12 CFR 1026.37(a)(7));
- *Loan Term.* Stated in years, months, or both, as applicable (12 CFR 1026.37(a)(8));
- *Purpose.* Loan purpose, categorized as "Purchase," "Refinance," or "Construction." All other loan purposes must be categorized as "Home Equity Loan" (12 CFR 1026.37(a)(9));
- *Product.* Product type, including the type of interest rate categorized as "Adjustable Rate," "Step Rate," or "Fixed Rate." This disclosure must be preceded by the type of feature that may change the consumer's periodic payment, such as "Negative Amortization," "Interest Only," "Step Payment," "Balloon Payment," or "Seasonal Payment," with the duration of any introductory rate or payment period and the first adjustment period if applicable (12 CFR 1026.37(a)(10)(i)-(iii));
- *Loan Type.* Categorized as "Conventional," " FHA," "VA," or "Other" (12 CFR 1026.37(a)(11));
- *Loan ID #.* (12 CFR 1026.37(a)(12)); and
- *Rate Lock.* A statement of whether the disclosed rate is locked for a specific period. If so, the date and time (including time zone) that the lock will expire, along with an accompanying statement that the interest rate, any points, and any lender credits may change unless the interest rate has been locked (12 CFR 1026.37(a)(13)).

Loan Terms – 12 CFR 1026.37(b) (Page 1 of the Loan Estimate)

I. *Loan Terms.* Determine whether, under the heading "Loan Terms," all disclosures are completed and accurate (12 CFR 1026.37(b)):

- *Loan Amount.* (12 CFR 1026.37(b)(1));
- *Interest Rate.* (12 CFR 1026.37(b)(2));

- *Principal and Interest.* The applicable unit period (i.e., bi-weekly, monthly, yearly) must precede the label "Principal and Interest" (12 CFR 1026.37(b)(3));

- *Prepayment Penalty.* A statement of whether the loan contains a prepayment penalty, an affirmative or negative response to the question, the maximum amount of the prepayment penalty that may be imposed, and the date on which the penalty may no longer be applied. (12 CFR 1026.37(b)(4), 12 CFR 1026.37(b)(7)(i)) If the date is disclosed (for an affirmative response), determine whether it is disclosed as the year in which the event occurs, counting from the date of consummation (12 CFR 1026.37(b)(8)(iii);

- *Balloon Payment.* A statement of whether the loan contains a balloon payment, an affirmative or negative response to the question, the maximum amount of the balloon payment, and the due date of such payment. (12 CFR 1026.37(b)(5), 12 CFR 1026.37(b)(7)(ii)) If the date is disclosed (for an affirmative response), determine whether it is disclosed as the year in which the event occurs, counting from the due date of the initial periodic payment (12 CFR 1026.37(b)(8)(ii)); and

- Whether the loan amount, interest rate, or monthly principal and interest can increase after closing (12 CFR 1026.37(b)(6)) and, if so, the information required by 12 CFR 1026.37(b)(6)(i)-(iii) and 12 CFR 1026.37(b)(8)(i)-(ii).

Projected Payments – 12 CFR 1026.37(c) (Page 1 of the Loan Estimate)

1. *Projected Payments.* Determine whether, under the heading "Projected Payments" (12 CFR 1026.37(c))):

    a. All required fields in the table are completed, follow the formatting and statement requirements, are accurate, and itemize the periodic payments or range of payments together with an itemized estimate of taxes, insurance, assessments, and payments to be made with escrow account funds (12 CFR 1026.37(c)(1) – (5));

    b. Each separate periodic payment or range of payments is itemized as follows (12 CFR 1026.37(c)(2)):

        i. *Principal and Interest.* The amount payable for principal and interest, including the term "only interest" if the payment or range of payments includes any interest only payment (12 CFR 1026.37(c)(2)(i));

            A. *Adjustable Rate Loans.* The maximum principal and interest payment must be determined by assuming that the interest rate in effect throughout the loan term is the maximum possible interest rate. The minimum amounts must be determined by assuming that the interest rate in effect throughout the loan term is the minimum possible interest rate (12 CFR 1026.37(c)(2)(i)(A));

            B. *Adjustable Rate and Negative Amortization Loans.* The maximum principal and interest amounts (after the loan term period for which the loan principal balance may increase) must be determined by assuming the maximum principal amount permitted under the terms of the legal obligation at the end of the loan term period. The minimum amounts must be determined by assuming that the interest rate in effect throughout the loan term is the minimum possible interest rate (12 CFR 12 CFR 1026.37(c)(2)(i)(B));

        ii. *Mortgage Insurance.* The maximum amount payable for mortgage insurance premiums corresponding to the principal and interest payment disclosed (12 CFR 1026.37(c)(2)(ii));

        iii. *Escrow.* The amount payable into an escrow account to pay some or all of the charges described in 12 CFR 1026.37(c)(2)(iii). If estimates are used for property taxes and homeowner's insurance, they must reflect (12 CFR 1026.37(c)(5)):

            A. The taxable assessed value of the real property securing the transaction after consummation, including the value of any improvements on the property or to be constructed on the property if known. The disclosure must be made whether or not such construction will be financed from the proceeds of the transaction for property taxes (12 CFR 1026.37(c)(5)(i)); and

            B. The replacement costs of the property during the initial year after the transaction, defined as premiums or other charges for insurance against loss of or damage to property, or against liability arising out of ownership or use of property (12 CFR 1026.37(c)(5)(ii));

        iv. *Total Monthly Payment.* The total periodic payment, calculated as the sums disclosed as the "Principal and Interest," "Mortgage Insurance," and "Escrow." (12 CFR 1026.37(c)(2)(iv));

NOTE: The headings noted for the Projected Payments table must be listed under the master heading "Payment Calculation" (12 CFR 1026.37(c)(3)(i)).

a. If the amount of a periodic monthly payment may change, additional, separate periodic payments or range of payments have been disclosed. Events requiring additional disclosure(s) include: (i) the change of the periodic principal and interest payment or range of such payments, (ii) a scheduled balloon payment, (iii) the automatic termination of mortgage insurance, or (iv) the anniversary of the due date of the initial periodic payment or range of payments immediately following the occurrence of a change in the principal and interest payment or range of such payments (12 CFR 1026.37(c)(1)(i));

b. The creditor has met the following in disclosing a range of payments (12 CFR 1026.37(c)(1)(iii)):

   i. The creditor has disclosed both the minimum and maximum amount for both the principal and interest payment and the total periodic payment (12 CFR 1026.37(c)(1)(iii));

   ii. The creditor has accurately disclosed a range of payments where multiple events are combined into a single range of payments in order to meet the requirement that only four disclosures may be made (12 CFR 1026.37(c)(1)(iii)(A));

   iii. The creditor has accurately disclosed a range of payments where multiple events occur during a single year or an event occurs during the same year as the initial periodic payment or range of payments. If the event occurs during the same year as the initial periodic payment or range of payments, the creditor has disclosed the range that would apply during the year in which the events will occur (12 CFR 1026.37(c)(1)(iii)(B));

   iv. The creditor has accurately disclosed a range of payments if the periodic principal and interest payment may adjust based on index rates at the time an interest rate adjustment may occur (12 CFR 1026.37(c)(1)(iii)(C));

c. The creditor has not disclosed more than four separate periodic payments or ranges of payments. (12 CFR 1026.37(c)(1)(ii)):

   i. If additional separate periodic payments or range of payments disclosures are required after the third separate periodic payment or range of payment disclosure, and the transaction does not involve a balloon payment, determine whether the creditor has disclosed the additional separate periodic payment or range of payments as a single fourth range of payments disclosure. (12 CFR 1026.37(c)(1)(ii));

   ii. If additional separate periodic payments or range of payments disclosures are required and the transaction involves a final balloon payment, determine whether the creditor has disclosed the additional separate periodic payment or range of payments as a single range of payments after the second separate periodic payment disclosure. Disclosure of the final balloon payment must appear as the final disclosure, under the heading *"Final Payment."* (12 CFR 1026.37(c)(1)(ii)(A), 12 CFR 1026.37(c)(3)(iii)); and

   iii. The automatic termination of mortgage insurance requires disclosure of an additional separate periodic payment or range of payments only if the total number of separate periodic payments or ranges of payments does not exceed three (12 CFR 1026.37(c)(1)(ii)(B));

   iv. Each separate periodic payment or range of payments must be disclosed under a subheading stating the years of the loan during which that payment or range of payments will apply. The years must be disclosed in sequence of whole years from the due date of the initial periodic payment (12 CFR 1026.37(c)(3)(ii));

   NOTE: See the Narrative for further discussion of requirements related to the Projected Payments table.

d. *Taxes, Insurance, and Assessments.* Determine whether the creditor accurately discloses (12 CFR 1026.37(c)(4)):

   i. The sum of all mortgage-related obligations, expressed as a monthly amount, even if no escrow account for the payment of some or any of such charges will be established (12 CFR 1026.37(c)(4)(ii));

   NOTE: Mortgage-related obligations, as used here, takes the definition used in 12 CFR 1026.43(b)(8); however, it does not include amounts identified in 12 CFR 1026.4(b)(5). Amounts that must be disclosed as "Taxes, Insurance & Assessment" include premiums or other charges for credit life, accident, health, or loss-of-income insurance; premiums or other charges for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property; or premiums or charges paid for debt cancellation or debt suspension coverage. (12 CFR 1026.43(b)(8))

   ii. A statement that the mortgage-related obligations disclosed can increase over time (12 CFR 1026.37(c)(4)(iii)). If estimates are used for property taxes and homeowner's insurance, they must reflect (12 CFR 1026.37(c)(5)):

A. The taxable assessed value of the real property securing the transaction after consummation, including the value of any improvements on the property or to be constructed on the property if known. The disclosure must be made whether or not such construction will be financed from the proceeds of the transaction for property taxes (12 CFR 1026.37(c)(5)(i)); and

B. The replacement costs of the property during the initial year after the transaction for premiums or other charges for insurance against loss of or damage to property, or against liability arising out of ownership or use of property (12 CFR 1026.37(c)(5)(ii));

iii. A statement of whether the mortgage-related obligations include payments for property taxes; premiums or other charges for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property; or as otherwise identified by 12 CFR 1026.43(b)(8). The creditor must disclose whether the amounts will be paid by the creditor using escrow account funds. (12 CFR 1026.37(c)(4)(iv));

iv. A statement that the consumer must pay separately any mortgage-related obligations that are not paid by the creditor using escrow account funds (12 CFR 1026.37(c)(4)(v));

v. A reference to the escrow account information contained on page 2 of the Loan Estimate, captioned "Initial Escrow Payment at Closing" (12 CFR 1026.37(c)(4)(vi)).

Costs at Closing – 12 CFR 1026.37(d) (Page 1 of the Loan Estimate)

1. *Costs at Closing.* Determine whether, under the heading "Costs at Closing" the creditor discloses the Estimated Closing Costs (including Loan Costs and Other Costs, less Lender Credits) and the Estimated Cash to Close (including Closing Costs), based upon the calculations required by 12 CFR 1026.37(f), (g), and (h) (and found on page 2 of the Loan Estimate). (12 CFR 1026.37(d)(1))

2. *Optional Alternative Table for Transactions without a Seller.* Determine whether, for transactions that do not involve a seller, the creditor chose to use the alternative "Cash to Close" table. If so, determine whether the amount is calculated in accordance with 12 CFR 1026.37(h)(2)(iv) (Calculating Cash to Close), includes a statement of whether the disclosed estimated amount is due from or to the consumer; and includes a statement referring the consumer to the alternative "Calculating Cash to Close" table pursuant to 12 CFR 1026.37(h)(2) and the model form found in Appendix H-24(G). (12 CFR 1026.37(d)(2))

NOTE: See the Narrative for further discussion of requirements related to the Costs at Closing table.

Website Disclosure – 12 CFR 1026.37(e) (Page 1 of the Loan Estimate)

1. *Website Reference.* Determine whether the creditor discloses that the consumer may obtain general information and tools on the Bureau's website and has included a link to the site specified in 12 CFR 1026.37(e). (12 CFR 1026.37(e))

Closing Cost Details: Loan Costs – 12 CFR 1026.37(f) (Page 2 of the Loan Estimate)

1. *Loan Costs.* Determine on page 2 whether, under the heading "Loan Costs," the creditor makes the following disclosures (12 CFR 1026.37(f)):

a. *Origination charges.* Accurately itemized to reflect each amount and a subtotal of all amounts that the consumer will pay to each creditor and loan originator for originating and extending the credit. Determine whether the points paid to the creditor to reduce the interest rate are itemized separately, as both a percentage of the amount of credit extended and a dollar amount, and using the label "__% of Loan Amount (Points)." Determine whether points paid is the first item listed. If points to reduce the interest rate are not paid, this disclosure must be left blank (12 CFR 1026.37(f)(1));

b. *Services You Cannot Shop For.* An accurate itemization, limited to 13 items, of each amount and subtotal of all amounts that the consumer will pay for settlement services that the consumer cannot shop for and that are provided by persons other than the creditor or mortgage broker. Determine whether the terms related to title insurance include "Title" as an introductory description (12 CFR 1026.37)(f)(2);

c. *Services You Can Shop For.* An accurate itemization, limited to 14 items, of each amount and subtotal of all amounts that the consumer will pay for settlement services that the consumer can shop for and that are provided by persons other than the creditor or mortgage broker. Determine whether the terms related to title insurance include "Title" as an introductory description (12 CFR 1026.37)(f)(3));

d. *Total Loan Costs.* An accurate sum of the subtotals required to be disclosed under 12 CFR 1026.37(f) as Origination Charges, Services You Cannot Shop For and Services You Can Shop For (12 CFR 1026.37(f)(4)); and

e. Other than as noted in item 1.a. above, determine that items are ordered alphabetically by label under the applicable subheading. If there are more than the maximum allowable number of line items, determine that the remaining charges are disclosed in the aggregate in the last line as *"Additional Charges."* (12 CFR 1026.37(f)(5) and (f)(6))

Closing Cost Details: Other Costs – 12 CFR 1026.37(g) (Page 2 of the Loan Estimate)

1. *Other Costs.* Determine whether the creditor makes the following disclosures (12 CFR 1026.37(g)):

   a. *Taxes and Other Government Fees.* Accurately itemized to reflect amounts to be paid to state and local governments for taxes and other government fees, including subtotals for recording fees and other taxes. A separate line must be included for transfer taxes paid by the consumer. If not charged to the consumer, these fields must be left blank ((12 CFR 1026.37(g)(1));

   b. *Prepaids.* Accurately itemized to reflect amounts to be paid by the consumer in advance of the first scheduled payment and the subtotals of all such amounts. The disclosures must follow the required order and include the number of months and the total dollar amount to be paid at consummation for homeowner's insurance and mortgage insurance premiums; the prepaid interest to be paid at consummation, based on daily interest, number of days, interest rate, and the total to be collected; the number of months for which property taxes are to be paid; and the amount the consumer will pay at consummation. If any of these items are not charged to the consumer, the field must be left blank. A maximum of three additional items may be disclosed (including applicable time period covered by the payment at consummation and total to be paid) as Prepaids (12 CFR 1026.37(g)(2));

   c. *Initial Escrow Payment at Closing.* Accurately itemized to reflect the amounts that the consumer will be expected to place into an escrow account at consummation to be applied to recurring periodic charges and subtotals of all amounts. The disclosure must provide the amount escrowed each month, the number of months of escrow, and the total amount to be paid into the escrow account by the consumer at consummation. Homeowner's insurance premiums, mortgage insurance premiums, and property taxes must be separately subtotaled. If any of these items are not charged to the consumer, that field must be left blank. A maximum of five additional items may be disclosed as part of Initial Escrow Payment at Closing (12 CFR 1026.37(g)(3));

   d. *Other.* An accurate itemization of costs that the consumer is likely to pay, or has contracted with a person other than the creditor or loan originator to pay, at closing and of which the creditor is aware at the time of issuing the Loan Estimate. Determine whether the creditor has used a descriptive label for each such amount and provided the subtotal of all such amounts. Determine whether the terms related to title insurance include "Title" as an introductory description and whether the parenthetical description "(optional)" is used at the end of the label for items disclosing any premiums paid for separate insurance, warranty, guarantee, or event-coverage products. A maximum of five items may be disclosed as "Other" (12 CFR 1026.37(g)(4));

   e. *Total Other Costs.* An accurate sum of the subtotals for Taxes and Other Government Fees, Prepaids, Initial Escrow Payment at Closing, and Other disclosed pursuant to 12 CFR 1026.37(g)(1) through (4) (12 CFR 1026.37(g)(5));

   f. *Total Closing Costs.* Accurate component amounts and sum of the following (12 CFR 1026.37(g)(6)):

      i. *D+I.* A sum of the Total Loan Costs and Total Other Costs (12 CFR 1026.37(g)(6)(i)); and

      ii. *Lender Credits.* The amount of any lender credits, disclosed as a negative number. If no such amount is disclosed, this line must be left blank (12 CFR 1026.37(g)(6)(ii));

      NOTE: The disclosure of "lender credits," as identified in 12 CFR 1026.37(g)(6)(ii), is required by 12 CFR12 CFR 1026.19(e)(1)(i). "Lender credits," as identified in 12 CFR 1026.37(g)(6)(ii), represent the sum of non-specific lender credits and specific lender credits. Non-specific lender credits are generalized payments from the creditor to the consumer that do not pay for a particular fee on the disclosures provided pursuant to 12 CFR 1026.19(e)(1). Specific lender credits are specific payments, such as a credit, rebate, or reimbursement, from a creditor to the consumer to pay for a specific fee. Non-specific lender credits and specific lender credits are negative charges to the consumer. (Comment 19(e)(3)(i)-5)).

   g. Determine that items follow the alphabetical ordering and addenda restrictions of 12 CFR 1026.37(g)(7) and (g)(8).

Closing Cost Details: Calculating Cash to Close – 12 CFR 1026.37(h) (Page 2 of the Loan Estimate)

1. *Calculating Cash to Close.* Determine whether, under the heading "Calculating Cash to Close," the creditor has accurately disclosed the total amount of cash or other funds

that must be provided by the consumer at consummation, itemized into the following component amounts: (12 CFR 1026.37(h)(1))

a. *Total Closing Costs.* The amount must be disclosed as a positive number (12 CFR 1026.37(h)(1)(i));

b. *Closing Costs Financed (Paid from your Loan Amount).* The amount of any closing costs to be paid out of loan proceeds, disclosed as a negative number (12 CFR 1026.37(h)(1)(ii));

c. *Downpayment/Funds from Borrower.* Disclosed:

   i. for a purchase transaction, as the amount of the difference between the purchase price of the property and the principal amount of the loan, as a positive number;

   ii. for all other transactions, as the estimated funds from the consumer determined in calculating "Funds for Borrower" under 12 CFR 1026.37(h)(1)(v) (12 CFR 1026.37(h)(1)(iii));

d. *Deposit.* Disclosed:

   i. for a purchase transaction, as the amount that is paid to the seller or held in trust or escrow by an attorney or other party under the terms of the agreement for the sale of the property, as a negative number;

   ii. for all other transactions, disclosed as $0 (12 CFR 1026.37(h)(1)(iv));

e. *Funds for Borrower.* Disclosed as the amount of funds for the consumer, determined by subtracting the principal amount of the credit extended (excluding any amount disclosed as closing costs to be financed pursuant to 12 CFR 1026.37(h)(1)(ii)) from the total amount of all existing debt being satisfied in the transaction (except to the extent the satisfaction of such existing debt is disclosed as Other Costs under 12 CFR 1026.37(g)) (12 CFR 1026.37(h)(1)(v)):

   i. If the calculation yields a positive number, that amount is disclosed under the heading "Down Payment/Funds from Borrower," (12 CFR 1026.37(h)(1)(iii)(B)) and $0 is disclosed under the heading "Funds for Borrower," under 12 CFR 1026.37(h)(1)(v) (12 CFR 1026.37(h)(1)(v)(A));

   ii. If the calculation yields a negative amount, the creditor discloses that amount as a negative number under the heading "Funds for Borrower," (12 CFR 1026.37(h)(1)(v)) and as $0 under the heading "Down Payment/Funds from Borrower under 12 CFR 1026.37(h)(1)(iii)(B)) (12 CFR 1026.37(h)(1)(v)(B));

   iii. If the calculation yields "0," then $0 is disclosed under both headings under 12 CFR 1026.37(h)(1)(iii)(B) and (h)(1)(v) (12 CFR 1026.37(h)(1)(v)(C));

f. *Seller Credits.* Determined by totaling the amount the seller will pay for Total Loan Costs under 12 CFR 1026.37(f)(4) and Total Other Costs under 12 CFR 1026.37(g)(5)), to the extent known. This must be disclosed as a negative number (12 CFR 1026.37(h)(1)(vi));

g. *Adjustments and Other Credits.* Determined by combining the Total Loan Costs (determined under 12 CFR 1026.37(f)) and Total Other Costs (determined under 12 CFR 1026.37(g)) that are paid by persons other than the loan originator, creditor, consumer, or seller, together with any other amounts that are required to be paid by the consumer at closing pursuant to a purchase and sale contract. Must be disclosed as a negative number (12 CFR 1026.37(h)(1)(vii)); and

h. *Estimated Cash to Close.* The sum of the amounts of the components required for Calculating Cash to Close disclosed as under 12 CFR 1026.37(h)(1)(i) through (vii) (12 CFR 1026.37(h)(1)(viii)).

Closing Cost Details: Alternative Calculating Cash to Close Table for Transactions without a Seller – 12 CFR 1026.37(h)(2) (Page 2 of the Loan Estimate)

1. *Alternative Calculating Cash to Close Table for Transactions Without a Seller.* If the transaction does not involve a seller and the creditor has chosen to provide the optional Alternative Calculating Cash to Close table modeled in Appendix H-24(G), determine whether the creditor accurately discloses the total amount of cash or other funds that must be provided by the consumer as consummation, itemized into the following component amounts (12 CFR 1026.37(h)(2)):

   a. *Loan Amount.* (12 CFR 1026.37(h)(2)(i));

   b. *Total Closing Costs.* Disclosed as a negative number (12 CFR 1026.37(h)(2)(ii));

   c. *Total Payoffs and Payments.* Disclosed as the total amount of payoffs and payments to be made to third parties that are not otherwise disclosed, as a negative number (12 CFR 1026.37(h)(2)(iii));

   d. *Cash to Close.* Disclosed as the amount of cash or other funds due from or to the consumer and a statement of whether the disclosed estimated amount is due from or to the consumer. The amount must be calculated as the sum of the amounts disclosed under

"Loan Amount," "Total Closing Costs," and "Total Payoffs and Payments." (12 CFR 1026.37(h)(2)(iv));

e. *Closing Costs Financed (Paid from your Loan Amount).* Disclosed as the sum of the amounts under "Loan Amount," and "Total Payoffs and Payments." The sum is disclosed only to the extent it is greater than "0," and it is less than or equal to the amount disclosed under "Total Closing Costs." (12 CFR 1026.37(h)(2)(v))

NOTE: If a creditor chooses to provide the optional Alternative Calculating Cash to Close table for transactions without a seller, the alternative table must also be used in the Closing Disclosure.

Closing Cost Details: Adjustable Payment (AP) Table – 12 CFR 1026.37(i) (Page 2 of the Loan Estimate)

1. *Adjustable Payment (AP) Table.* For loans where the periodic principal and interest payment may change after consummation based on a factor other than an interest rate adjustment, or for seasonal payment products as described in 12 CFR 1026.37(a)(10)(ii)(E), determine whether the creditor discloses a separate table under the master headings "Closing Cost Details" and "Adjustable Payment (AP) Table" that contains the following information and satisfies the following requirements:

   NOTE: The AP table is not to appear where it is inapplicable because the payments after consummation change for reasons other than an adjustment to the interest rate.

   a. *Interest Only Payments.* The disclosure states yes or no to the question of whether the transaction is an interest only product under 12 CFR 1026.37(a)(10)(ii)(B) and, if the answer is yes, the disclosure states the period during which interest only periodic payments are scheduled (12 CFR 1026.37(i)(1));

   b. *Optional Payments.* The disclosure states yes or no to the question whether the terms of the legal obligation expressly provide that the consumer may elect to pay a specified periodic principal and interest payment in an amount other than the scheduled amount of the payment, and, if the answer is yes, the disclosure states the period during which the consumer may elect to make such payments (12 CFR 1026.37(i)(2));

   c. *Step Payments.* The disclosure states yes or no to the question whether the transaction is a step payment product under 12 CFR 1026.37(a)(10)(ii)(C) and, if the answer is yes, the disclosure states the period during which the regular periodic payments are scheduled to increase (12 CFR 1026.37(i)(3));

   d. *Seasonal Payments.* The disclosure states yes or no to the question whether the transaction is a seasonal payment product under 12 CFR 1026.37(a)(10)(ii)(E) and, if the answer is yes, the disclosure states the period during which periodic payments are not scheduled (12 CFR 1026.37(i)(4));

   e. *Principal and Interest Payments.* This label is immediately preceded by the applicable unit period, and the disclosures must contain the following information:

      i. The number of the payment of the first periodic principal and interest payment that may change under the terms of the legal obligation (counting from the first periodic payment due after consummation), and the amount or range of the periodic principal and interest payment for such payment, labeled *"First Change/Amount"* (12 CFR 1026.37(i)(5)(i));

      ii. The frequency of subsequent changes to the periodic principal and interest payment, labeled *"Subsequent Changes"* (12 CFR 1026.37(i)(5)(ii)); and

      iii. The maximum periodic principal and interest payment that may occur during the term of the transaction, and the first periodic principal and interest payment that can reach such maximum, counting from the first periodic payment due after consummation, labeled *"Maximum Payment"* (12 CFR 1026.37(i)(5)(iii)).

Closing Cost Details: Adjustable Interest Rate (AIR) Table – 12 CFR 1026.37(j) (Page 2 of the Loan Estimate)

1. *Adjustable Interest Rate (AIR) Table.* If the interest rate may increase after consummation, determine whether the creditor discloses, as a separate table under the master headings "Closing Cost Details" and "Adjustable Interest Rate (AIR) Table," the following information and satisfies the following requirements: (12 CFR 1026.37(j))

   NOTE: The AIR table is not to appear where it is inapplicable because the interest rate does not adjust after consummation.

   a. *Index + Margin.* Disclosed if the interest rate may adjust and the product type is not a "Step Rate" under 12 CFR 1026.37(a)(10)(i)(B). The disclosure must show the index upon which the adjustments to the interest rate are based and the margin that is added to the index to determine the interest rate (12 CFR 1026.37(j)(1);

   b. *Interest Rate Adjustments.* If the product type is a "Step Rate" and not also an "Adjustable Rate" under

12 CFR 1026.37(a)(10)(i)(A), the disclosure must show the maximum amount of any adjustments to the interest rate that are scheduled and predetermined (12 CFR 1026.37(j)(2));

c. *Initial Interest Rate.* The disclosure must show the initial interest rate at consummation of the loan transaction (12 CFR 1026.37(j)(3));

d. *Minimum and Maximum Interest Rates.* The disclosure must show the minimum and maximum interest rates for the loan, after any introductory period expires (12 CFR 1026.37(j)(4);

e. *Change Frequency.* The disclosure must show the month when the interest rate after consummation may first change, calculated from the date interest for the first scheduled periodic payment begins to accrue, labeled "First Change;" and the frequency of interest rate adjustments after the initial adjustment to the interest rate, labeled, "Subsequent Changes" (12 CFR 1026.37(j);

f. *Limits on Interest Rate Changes.* The disclosures must show the maximum possible change for the first adjustment of the interest rate after consummation, labeled "First Change;" and the maximum possible change for subsequent adjustments of the interest rate after consummation, labeled "Subsequent Changes." (12 CFR 1026.37(j)

Additional Information About This Loan – 12 CFR 1026.37(k) (Page 3 of the Loan Estimate)

1. Additional Information About This Loan. Determine whether the creditor accurately discloses contact and NMLSR information as follows:

   a. *Lender/Mortgage Broker.* The name and "NMLS ID/License ID" for the creditor ("Lender") and the mortgage broker, if any. If the creditor or mortgage broker has not been assigned an NMLSR ID, the license number or other unique identifier issued to the creditor or mortgage broker by the applicable jurisdiction or regulating body must be disclosed, with the abbreviation for the state of the applicable jurisdiction or regulatory body stated before the word "License" in the label, if any (12 CFR 1026.37(k)(1));

   b. *Loan Officer.* The name and NMLSR ID of the individual loan officer of the creditor and the mortgage broker, if any, who is the primary contact for the consumer. If the individual loan officer has not been assigned an NMLSR ID, the license number or other unique identifier issued by the applicable jurisdiction or regulating body with which the loan officer is licensed and/or registered shall be disclosed, with the abbreviation for the state of the applicable jurisdiction or regulatory body stated before the word "License" in the label, if any (12 CFR 1026.37(k)(2)); and

   c. *Email/Phone (respectively).* The email address and telephone number of the loan officer. (12 CFR 1026.37(k)(3))

Additional Information About This Loan: Comparisons – 12 CFR 1026.37(l) (Page 3 of the Loan Estimate)

1. *Comparisons.* Determine whether the creditor accurately discloses the following information for comparison purposes and includes the statement "Use these measures to compare this loan with other loans" (12 CFR 1026.37(l):

   a. *In 5 years* (12 CFR 1026.37(l)(l));

      i. The total principal, interest, mortgage insurance, and loan costs scheduled to be paid through the end of the 60th month after the due date of the first periodic payment, expressed as a dollar amount, along with the statement "Total you will have paid in principal, interest, mortgage insurance, and loan costs;" and

      ii. The principal scheduled to be paid through the end of the 60th month after the due date of the first periodic payment, expressed as a dollar amount, along with the statement "Principal you will have paid off;"

   b. *Annual Percentage Rate (APR).* Expressed as a percentage, and the statement "Your costs over the loan term expressed as a rate. This is not your interest rate." (12 CFR 1026.37(l)(2)); and

   c. *Total Interest Percentage (TIP).* The total amount of interest that the consumer will pay over the life of the loan, expressed as a percentage of the amount of credit extended and the statement "The total amount of interest that you will pay over the loan term as a percentage of your loan amount" (12 CFR 1026.37(l)(3).

Additional Information About This Loan: Other Considerations – 12 CFR 1026.37(m) (Page 3 of the Loan Estimate)

1. *Other Considerations.* Determine whether the creditor accurately discloses the following (12 CFR 1026.37(m):

   a. *Appraisal.* For transactions subject to 15 U.S.C. 1639h or 1691(e), as implemented in this part or Regulation B, 12 CFR part 1002, respectively, a statement, labeled "Appraisal" that explains (12 CFR 1026.37(m)(1)):

      i. The creditor may order an appraisal to determine the value of the property identified in 12 CFR

1026.37(a)(6) and may charge the consumer for that appraisal;

ii. The creditor will promptly provide the consumer a copy of any appraisal, even if the transaction is not consummated; and

iii. The consumer may choose to pay for an additional appraisal of the property for the consumer's use;

b. *Assumption.* A statement of whether a subsequent purchaser of the property may be permitted to assume the remaining loan obligation on its original terms (12 CFR 1026.37(m)(2);

c. *Homeowner's Insurance.* At the option of the creditor, a statement that homeowner's insurance is required on the property and that the consumer may choose the insurance provider (12 CFR 1026.37(m)(3);

d. *Late Payment.* A statement detailing any charge that may be imposed for a late payment, stated as a dollar amount or percentage charge of the late payment amount, and the number of days that a payment must be late to trigger the late payment fee (12 CFR 1026.37(m)(4);

e. *Refinance.* The following statement: "Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan." (12 CFR 1026.37(m)(5));

f. *Servicing.* A statement of whether the creditor intends to service the loan or transfer the loan to another servicer (12 CFR 1026.37(m)(6));

g. *Liability after Foreclosure.* If the purpose of the credit transaction is to refinance an extension of credit as described in 12 CFR 1026.37(a)(9)(ii), a brief statement that certain state law protections against liability for any deficiency after foreclosure may be lost, the potential consequences of the loss of such protections, and a statement that the consumer should consult an attorney for additional information (12 CFR 1026.37(m)(7)); and

h. *Construction Loans.* In a transaction that involves a new construction, if the creditor reasonably expects settlement will occur more than 60 days after the Loan Estimate is issued and wishes to retain the option to provide a revised disclosure, a clear and conspicuous statement that a revised disclosure may be issued any time prior to 60 days before consummation. (12 CFR 1026.37(m)(8))

Additional Information About This Loan: Confirm Receipt – 12 CFR 1026.37(n) (Page 3 of the Loan Estimate)

1. *Confirm Receipt.* If the creditor choses to provide a signature statement, determine whether the creditor accurately provides the following: "By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form." If the creditor does not include a line for the consumer's signature, the creditor discloses the following statement (labeled "Loan Acceptance"): "You do not have to accept this loan because you have received this form or signed a loan application." (12 CFR 1026.37(n))

Form of Disclosures – 12 CFR 1026.37(o)

1. *Form of disclosures.*[47] Determine whether the creditor made the disclosures required by 12 CFR 1026.37 clearly and conspicuously in writing, in a form that the consumer may keep, with disclosures grouped together and segregated from everything else, containing only the information required by 12 CFR 1026.37 (a) through (n), made in the same order, and positioned relative to the master headings, headings, subheadings, labels, and similar designations in the same manner, as shown in form H-24, set forth in Appendix H (12 CFR 1026.37(o)(1) and (2):

   a. *Form H-24 required.* Determine whether, for a transaction subject to 12 CFR 1026.19(e) that is a federally related mortgage loan, as defined in Regulation X, 12 CFR 1024.2, the creditor uses form H-24, set forth in Appendix H (12 CFR 1026.37(o)(3)(i)); or

   b. *Substantially similar disclosures.* Determine whether the creditor makes the disclosures with headings, content, and format substantially similar to form H-24, set forth in Appendix H for any other transaction subject to 12 CFR 1026.37 and (12 CFR 1026.37(o)(3)(ii))

   c. *Rounding - nearest dollar*. Determine whether the creditor accurately rounds the following figures to the nearest whole dollar disclosed pursuant to 12 CFR (12 CFR 1026.37(o)(4)(i)(A)):

      i. The dollar amounts for Loan Terms required by 12 CFR 1026.37(b)(6)-(7), (i.e., adjustments after consummation and details about prepayment penalty and balloon payments);

[47] Limited changes to the disclosure forms are permitted, including substitution of "monthly" with the applicable unit period, making disclosures in languages other than English, and the creditor's logo in the space allotted for the identification of the creditor. (12 CFR 1026.37(o)(5)).

ii. The dollar amounts for Projected Payments or range of payments required by 12 CFR 1026.37(c)(1)(iii) (i.e., minimum and maximum amounts of principal and interest for projected periodic payments or range of payments);

iii. The dollar amounts for Mortgage Insurance required to be disclosed by 12 CFR 1026.37(c)(2)(ii) (i.e., itemization of maximum amount of mortgage insurance premiums);

iv. The dollar amounts for Escrow required to be disclosed by 12 CFR 1026.37(c)(2)(iii);

v. The dollar amounts for Taxes, Insurance, and Assessments required to be disclosed by 12 CFR 1026.37(c)(4)(ii);

vi. The dollar amounts for Loan Costs required to be disclosed by 12 CFR 1026.37(f) (i.e., Origination Charges, Services You Cannot Shop For, Services You Can Shop For, and Total Loan Costs);

vii. The dollar amounts for Other Costs required by 12 CFR 1026.37(g) (i.e., Taxes and Other Government Fees, Prepaids, Initial Escrow Payment at Closing, Other, Total Other Costs, and Total Closing Costs) except as noted for percentages;

viii. The dollar amounts for Calculating Cash to Close required to be disclosed by 12 CFR 1026.37(h);

ix. The dollar amounts for the Adjustable Payment (AP) Table required to be disclosed by 12 CFR 1026.37(i); and

x. The dollar amounts for Comparisons required to be disclosed by 12 CFR 1026.37(l).

d. *No rounding - dollars.* Determine that the creditor did not round the following: (12 CFR 1026.37(o)(4)(i)(A))

i. The per diem amount required by 12 CFR 1026.37(g)(2)(iii) (prepaid interest paid per day); and

ii. The figures disclosed pursuant to 12 CFR 1026.37(g)(3)(i)-(iii) (initial escrow payment at closing for homeowner's insurance, mortgage insurance, and property taxes) and 12 CFR 1026.37(g)(3)(v) (additional escrow items).

e. *Loan amount.* Determine that the creditor did not round the loan amount disclosed pursuant to 12 CFR 1026.37(b)(1) and truncated whole numbers at the decimal point. (12 CFR 1026.37(o)(4)(i)(B))

f. *Total periodic payment*. Determine that the creditor accurately rounds the total periodic payment disclosed pursuant to 12 CFR 1026.37(c)(2)(iv), if any of the component amounts of the figures disclosed pursuant to 12 CFR 1026.37(o)(4)(i)(A) are rounded to the nearest whole dollar. (12 CFR 1026.37(o)(4)(i)(C))

g. *Percentages*. Determine that the creditor does not round the following percentage amounts and discloses them using up to the required number of decimal places (12 CFR 1026.37(o)(4)(ii)):

i. Three decimal places. The Annual Percentage Rate (APR) disclosed pursuant to 12 CFR 1026.37(l)(2) is disclosed up to three decimal places, and if the amount is a whole number, the amount is truncated at the decimal point.

ii. Two to three decimal places. The following percentages are disclosed up to two or three decimal places, and if the amount is a whole number, the amount is truncated at the decimal point for:

A. Interest rate and adjustments after consummation, disclosed pursuant to 12 CFR 1026.37(b)(2) and (6);

B. Points as a percentage of the loan amount, disclosed pursuant to 12 CFR 1026.37(f)(1)(i);

C. Percentage of prepaid interest to be paid per day, disclosed pursuant to 12 CFR 1026.37(g)(2)(iii);

D. Index + Margin, Initial Interest Rate, Minimum/Maximum Interest Rate, and Limits on Interest Rate Changes (as disclosed on the Adjustable Interest Rate (AIR) Table), disclosed pursuant to 12 CFR 1026.37(j); and

E. Total interest percentage, disclosed pursuant to 12 CFR 1026.37(l)(3).(12 CFR 1026.37(o)(4)(ii)).

Closing Disclosure – 12 CFR 1026.38(a)

1. Determine whether the disclosures required for the Closing Disclosure are accurately completed and include the statement: "This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate." (12 CFR 1026.38(a)(2))

Closing Information – 12 CFR 1026.38(a)(3) (Page 1 of the Closing Disclosure)

1. *Closing Information.* Determine whether all fields required by 12 CFR 1026.38(a)(3) are complete and accurate:

a. *Date Issued*. Indicating the date disclosures are delivered (12 CFR 1026.38(a)(3)(i));

b. *Closing Date*. (12 CFR 1026.38(a)(3)(ii));

c. *Disbursement Date*. (12 CFR 1026.38(a)(3)(iii));

d. *Settlement Agent.* (12 CFR 1026.38(a)(3)(iv));

e. *File #.* Disclosing the identification number assigned to the transaction by the settlement agent (12 CFR 1026.38(a)(3)(v));

f. *Property*. The address or location of the property as disclosed in the Loan Estimate (12 CFR 1026.38(a)(3)(vi)); and

g. *Sale Price/Appraised Prop. Value.* For transactions where there is a seller, the sale price, and where there is no seller, the appraised property value (12 CFR 1026.38(a)(3)(vii)(A)-(B)). If the creditor disclosed an estimated value, the creditor must use the label *"Estimated Prop. Value."* (Comment 38.(a)(3)(vii)-1)

Transaction Information – 12 CFR 1026.38(a)(4) (Page 1 of the Closing Disclosure)

1. *Transaction information.* Determine whether all fields required by 12 CFR 1026.38(a)(4) are complete and accurate:

   a. *Borrower.* The consumer's name and mailing address (12 CFR 1026.38(a)(4)(i));

   b. *Seller.* Where applicable, the seller's name and mailing address (12 CFR 1026.38(a)(4)(ii));

   c. *Lender*. The name of the creditor making the disclosure (12 CFR 1026.38(a)(4)(iii)).

Loan Information – 12 CFR 1026.38(a)(5) (Page 1 of the Closing Disclosure)

1. *Loan Information.* Determine whether all fields required by 12 CFR 1026.38(5) are complete and accurate:

   a. *Loan Term.* (12 CFR 1026.38(a)(5)(i));

   b. *Purpose.* (12 CFR 1026.38(a)(5)(ii));

   c. *Product.* (12 CFR 1026.38(a)(5)(iii));

   d. *Loan Type.* (12 CFR 1026.38(a)(5)(iv));

   e. *Loan ID #.* (12 CFR 1026.38(a)(5)(v)); and

   f. *MIC #.* The case number for any mortgage insurance policy, if required by the creditor (12 CFR 1026.38(a)(5)(vi)).

Loan Terms – 12 CFR 1026.38(b) (Page 1 of the Closing Disclosure)

1. *Loan Terms.* Determine whether the creditor discloses, in a separate table labeled "Loan Terms," the information required to be disclosed on the Loan Estimate under 12 CFR 1026.37(b) reflecting the terms of the legal obligation at consummation (12 CFR 1026.38(b)).

Projected Payments – 12 CFR 1026.38(c) (Page 1 of the Closing Disclosure)

1. *Projected Payments.* Determine whether the creditor discloses, in a separate table labeled "Projected Payments," the projected payments or range of payments (in the same manner as required on the Loan Estimate under 12 CFR 1026.37(c)(1) through (4)(v)) reflecting the terms of the legal obligation at consummation. Determine whether the creditor referred to the Escrow Account disclosure required by 12 CFR 1026.38(l)(7) and calculated the estimated escrow payments (12 CFR 1026.38(c)(1)-(2)):

   a. For transactions subject to RESPA, under the escrow account analysis described in Regulation X, 12 CFR 1024.17 (12 CFR 1026.38(c)(1)(i)); and

   b. For transactions not subject to RESPA, either calculated under the escrow account analysis described in Regulation X, 12 CFR 1024.17, or in the manner set forth in 12 CFR 1026.37(c)(5), (12 CFR 1026.38(c)(1)(ii)).

Costs at Closing – 12 CFR 1026.38(d) (Page 1 of the Closing Disclosure)

1. *Costs at Closing*. Determine whether the creditor discloses:

   a. *Closing Costs.* Disclosed as the sum of the dollar amounts disclosed on page 2 of the Closing Disclosure, pursuant to 12 CFR12 CFR 1026.38(f)(4) (Loan Costs), 12 CFR 1026.38(g)(5) (Other Costs), and 12 CFR 1026.38(h)(3) (Lender Credits), together with a statement referring the consumer to the disclosures on page 2 (12 CFR 1026.38(d)(i)(A)-(E));

   b. *Cash to Close*. Disclosed as the sum of the dollar amounts calculated in accordance with the Calculating Cash to Close table (12 CFR 1026.38(i)(9)(ii)), together with a statement referring the consumer to the disclosures on page 2 (12 CFR 1026.38(d)(ii)(A) – (B)); or

   c. *Cash to Close (Alternative for transactions without a seller).* Disclosed as the amount calculated according to 12 CFR 1026.38(e)(5)(ii), together with a statement of whether the amount is due from or to the consumer and a reference to the Alternative Calculating Cash to Close table required pursuant to 12 CFR 1026.38(e), (12 CFR 1026.38(d)(2)(i) – (iii)).

Closing Cost Details: Loan Costs – 12 CFR 1026.38(f) (Page 2 of the Closing Disclosure)

1. *Loan Costs.* Determine whether the creditor disclosed all costs associated with the transaction, with columns stating whether the charge was borrower-paid at or before closing, seller-paid at or before closing, or paid by others, under the following subheadings:

    a. *Origination Charges*. Itemized amounts paid for charges disclosed on the Loan Estimate (12 CFR 1026.37(f)(1)) and the total of Borrower-Paid amounts paid at or before closing; together with:

        i. The compensation paid by the creditor to a third-party loan originator, and

        ii. The name of the third-party loan originator receiving payment (12 CFR 1026.38(f)(1));

    b. *Services Borrower Did Not Shop For.* Itemized costs for each settlement service the creditor required but did not allow the consumer to shop for, with name of recipient, amount, and total costs designated Borrower-Paid at or before closing. Items listed in the Loan Estimate (12 CFR 1026.37(f)(3)) are disclosed here if the consumer was provided a written list of settlement service providers under 12 CFR 1026.19(e)(1)(vi)(C), and the consumer selected a settlement service provider from that written list (12 CFR 1026.38(f)(2));

    c. *Services Borrower Did Shop For.* Itemized costs for each service required by the creditor, that the consumer shopped for in accordance with 12 CFR 1026.19(e)(1)(vi)(A), with the amount, the name of recipient, and the total costs designated as Borrower-Paid at or before closing. If these items were disclosed on the Loan Estimate pursuant to 12 CFR 1026.37(f)(3), they are disclosed here if the consumer was provided a written list of settlement service providers and did not select a settlement service provider from that written list (12 CFR 1026.38(f)(3));

    d. *Total Loan Costs (Borrower-Paid).* The sum of the amounts disclosed under 12 CFR 1026.38(f)(5) as Borrower-Paid for the origination charge, services the borrower did not shop for, and services the borrower did shop for (12 CFR 1026.38(f)(4));

    e. *Loan Costs Subtotals.* Calculation of the total borrower-paid costs at or before closing, showing each subtotal for the origination charge, services the borrower did not shop for, and services the borrower did shop for. (12 CFR 1026.38(f)(5))

Closing Cost Details: Other Costs – 12 CFR 1026.38(g) (Page 2 of the Closing Disclosure)

1. *Other Costs.* Determine whether the creditor disclosed all costs associated with the transaction (other than those disclosed in the "Loan Costs" table) with columns stating whether the charge was borrower-paid at or before closing, seller-paid at or before closing or paid by others, including:

    a. *Taxes and Other Government Fees.* All taxes and government fees to be paid by the borrower at or before closing, including recording fees and transfer taxes, accurately itemized. Determine that the itemized transfer tax is accompanied by the name of the government entity assessing the transfer tax. (12 CFR 1026.38(g)(1)(i)-(ii))

    b. *Prepaids.* Accurately itemized prepaid charges described in the borrower's Loan Estimate as required by 12 CFR 1026.37(g)(2); the name of the person ultimately receiving the prepaid payment or the government entity assessing the property tax charged; and the total of all amounts designated as Borrower-Paid at or before closing. (12 CFR 1026.38(g)(2))

    c. *Initial Escrow Payment at Closing.* Accurate itemizations of each escrow amount required at closing as described on the borrower's Loan Estimate pursuant to 12 CFR 1026.37(g)(3) (e.g., homeowner's insurance, mortgage insurance, property taxes, etc.); applicable aggregate adjustments pursuant to 12 CFR 1024.17(d)(2); and the total of all amounts designated as Borrower-Paid at or before closing. (12 CFR 1026.38(g)(3))

    d. *Other.* All charges, accurately itemized, for services required or related to the borrower's transaction that are in addition to the charges disclosed in the Loan Costs table (12 CFR 1026.38(f)) and in the preceding 12 CFR of the Other Costs table (12 CFR 1026.38(g)(1)-(3)), for services required or obtained in the real estate closing by the consumer, the seller, or other party and the name of the person ultimately receiving the payment; and the total of all such itemized amounts that are designated Borrower-Paid at or before closing, with the applicable designations for items that are optional or are components of title insurance services. (12 CFR 1026.38(g)(4)(i)-(ii))

    e. *Total Other Costs (Borrower--Paid).* Accurately totaled and disclosed sum of all amounts disclosed as Borrower-Paid. (12 CFR 1026.38(g)(5))

    f. *Other Costs Subtotals.* Accurately added individual subtotals in the "Closing Cost Details – Other Costs" table disclosed under 12 CFR 1026.38(g)(1)-(4) to produce the total. (12 CFR 1026.38(g)(6))

Closing Cost Details: Total Closing Costs – 12 CFR 1026.38(h) (Page 2 of the Closing Disclosure)

1. *Total Closing Costs (Borrower-Paid).* Determine whether the creditor:

   a. Follows the description, labeling, and ordering requirements for this table; (12 CFR 1026.38(h)(4)) and

   b. Accurately discloses the following closing costs totals:

      i. *Total Closing Costs (Borrower-Paid).* The sum of subtotals for Closing Costs (12 CFR 1026.38(h)(2)) and Lender Credits (12 CFR 1026.38(h)(3)) (i.e., the following two items in this list). (12 CFR 1026.38(h)(1))

      ii. *Closing Costs Subtotals.* Consisting of the sum of "Loan Cost Subtotals" (12 CFR 1026.38(f)(5) and the "Other Costs Subtotals" (12 CFR 1026.38(g)(6)), designated as Borrower-Paid at or before closing; and the sum of costs paid at and before closing by the seller or other parties (as disclosed pursuant to 12 CFR 1026.38(f) and (g)). (12 CFR 1026.38(h)(2))

      iii. *Lender Credits.* For general credits from the creditor for closing costs (as described in 12 CFR 1026.37(g)(6)(ii), shown as a negative number, and designated as Borrower-Paid at closing. (12 CFR 1026.38(h)(3))

      NOTE: Credits that are for specific charges should be reflected in the Paid by Others column in the Closing Cost Details table (with a notation of "(L)" for lender permitted) under 12 CFR 1026.38(f) and (g). (12 CFR 1026.38(h)(3); Comment 38(h)(3)-1)

         A. If a refund is provided pursuant to 12 CFR 1026.19(f)(2)(v), determine whether the creditor has provided a statement explaining that the refund (the amount described in the Loan Estimate under 12 CFR 1026.37(g)(6)(ii)) includes a credit for the amount that exceeds the limitations on increases in closing costs under 12 CFR 1026.19(e)(3), and the amount of such credit.

Calculating Cash to Close – 12 CFR 1026.38(i) (Page 3 of the Closing Disclosure)

1. *Calculating Cash to Close.* Determine whether the creditor, for each of the following items, accurately includes the amount from the Loan Estimate, compared to the amount disclosed in the "Final" column, and provides the necessary answer to the question "Did This Change?" (with items in the latter column disclosed more prominently than other disclosures) (12 CFR 1026.38(i)(1)(i)-(iii)):

   a. *Total Closing Costs.* The Total Closing Costs on the Calculating Cash to Close table of the Loan Estimate disclosed under 12 CFR 1026.37(h)(1)(i) compared to the final "Total Closing Costs" disclosed under 12 CFR 1026.38(h)(1), and:

      i. If the amounts are different (unless due to rounding), the creditor has provided: (12 CFR 1026.38(i)(1)(i)-(ii))

         A. A statement of that fact, and (12 CFR 1026.38(i)(1)(iii)(A)(1))

         B. If the difference in the "Total Closing Costs" is attributable to differences in itemized charges that are included in either or both subtotals, a statement that the consumer should see the Total Loan Costs (under 12 CFR 1026.38(f)(4)) and Total Other Costs (under 12 CFR 1026.38(g)(5)) subtotals (together with references to such disclosures), as applicable; and (12 CFR 1026.38(i)(1)(A)(2))

         C. If the increase exceeds the limitations on increases in closing costs under 12 CFR 1026.19(e)(3), a statement that such increase exceeds the legal limits by the dollar amount of the excess, and if any refund is provided pursuant to 12 CFR 1026.19(f)(2)(v), a statement directing the consumer to the disclosure required under 12 CFR 1026.38(h)(3). The dollar amount must equal the sum total of all excesses of the limitations on increases in closing costs under 12 CFR 1026.19(e)(3), taking into account the different methods of calculating excesses of the limitations on increases in closing costs under 12 CFR 1026.19(e)(3)(i) and (ii). (12 CFR 1026.38(i)(1)(iii)(A)(3))

      ii. If the amount disclosed under 12 CFR 1026.38(i)(1)(ii) (i.e., amount in the Final column) is equal to the amount disclosed under 12 CFR 1026.38(i)(1)(i) (i.e., amount copied over from the Loan Estimate), a statement of that fact. (12 CFR 1026.38(i)(1)(iii)(B))

   b. *Closing Costs Paid Before Closing.* Under the subheading "Loan Estimate," the dollar amount "$0," compared to the final amount of "Total Closing Costs" disclosed under 12 CFR 1026.38(h)(2) and designated as Borrower-Paid before closing, stated as a negative number, and (12 CFR 1026.38(i)(2)(i)-(iii)):

      i. If these amounts are different (unless the difference is due to rounding), the creditor has provided a statement of that fact, along with a

statement that the consumer paid such amounts prior to consummation of the transaction (12 CFR 1026.38(i)(2)(iii)(A)); or if the amount disclosed under 12 CFR 1026.38(i)(2)(ii) (i.e., amount in the Final column) is equal to the amount disclosed under 12 CFR 1026.38(i)(2)(i) (i.e., $0), a statement of that fact; (12 CFR 1026.38(i)(2)(iii)(B))

c. *Closing Costs Financed (Paid from your Loan Amount).* Under the subheading "Loan Estimate," the amount disclosed on Calculating Cash to Close table on the Loan Estimate under 12 CFR 1026.37(h)(1)(ii), compared to the actual amount of the closing costs that are to be paid out of loan proceeds, if any, stated as a negative number (12 CFR 1026.38(i)(3)(i)-(iii)); and

   i. If the amounts are different (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer included the closing costs in the loan amount, which increased the loan amount (12 CFR 1026.38(i)(3)(iii)(A)); or

   ii. If the amount disclosed under 12 CFR 1026.38(i)(3)(ii) (i.e., amount in the Final column) is equal to the amount disclosed pursuant to 12 CFR 1026.38(i)(3)(i) (i.e., amount copied over from the Loan Estimate), a statement of that fact. (12 CFR 1026.38(i)(3)(iii)(B))

d. *Down Payment/Funds from Borrower.* For purchase transactions, under the subheading "Loan Estimate," the Down Payment/Funds from Buyer amount disclosed on the Calculating Cash to Close table on the Loan Estimate under 12 CFR 1026.37(h)(1)(iii), compared to the difference between the purchase price of the property and the principal amount of the credit extended, stated as a positive number in the "Final" column. For transactions that are not purchases, the amount in the "Final" column is determined according to 12 CFR 1026.38(i)(6)(iv), discussed below. (12 CFR 1026.38(i)(4)(i)-(ii))

   i. If the amount disclosed under 12 CFR 1026.38(i)(4)(ii) (i.e., amount in the Final column) is different, unless due to rounding, from the amount disclosed under 12 CFR 1026.38(i)(4)(i) (i.e., amount copied over from the Loan Estimate), a statement of that fact, along with a statement that the consumer increased or decreased this payment and can see further details in the "Summaries of Transactions" table (12 CFR 1026.38(i)(4)(iii)(A)); or

   ii. If the amount disclosed under 12 CFR 1026.38(i)(4)(ii) is equal to the amount disclosed under 12 CFR 1026.38(i)(4)(i), a statement of that fact. (12 CFR 1026.38(i)(4)(iii)(B))

e. *Deposit.* Under the subheading "Loan Estimate," the Deposit amount disclosed on the Calculating Cash to Close table on the Loan Estimate under 12 CFR 1026.37(h)(1)(iv), compared to the amount listed as "Deposit" on the Summaries of Transactions table on the Closing Document pursuant to 12 CFR 1026.38(j)(2)(ii), stated as a negative number, (12 CFR 1026.38(i)(5)(i)-(ii)) and

   i. If the amounts are different, unless due to rounding, a statement of that fact, along with a statement that the consumer increased or decreased this payment, as applicable, and that the consumer should see the details disclosed under 12 CFR 1026.38(j)(2)(ii) (i.e., in Section L in the Summaries of Transactions table) (12 CFR 1026.38(i)(5)(iii)(A)); or

   ii. If the amount disclosed under 12 CFR 1026.38(i)(5)(ii) (i.e., amount in the Final column) is equal to the amount disclosed under 12 CFR 1026.38(i)(5)(i) (i.e., amount copied over from the Loan Estimate), a statement of that fact. (12 CFR 1026.38(i)(5)(iii)(B))

f. *Funds for Borrower.* Under the subheading "Loan Estimate," the amount disclosed on the Calculating Cash to Close table on the Loan Estimate under 12 CFR 1026.37(h)(1)(v), compared to the amount listed in the Final column calculated pursuant to 12 CFR 1026.38(i)(6)(iv) (NOTE: see next item for calculation); (12 CFR 1026.38(i)(6)(i)-(iii)), and

   i. If the amounts are different, unless due to rounding, a statement of that fact, along with a statement that the consumer's available funds from the loan amount have increased or decreased, as applicable (12 CFR 1026.38(i)(6)(iii)(A)); or

   ii. If the amount disclosed under 12 CFR 1026.38(i)(6)(ii) (i.e., amount in the Final column) is equal to the amount disclosed under 12 CFR 1026.38(i)(6)(i) (i.e., amount copied over from the Loan Estimate), a statement of that fact. (12 CFR 1026.38(i)(6)(iii)(B))

g. *Funds for Borrower*. Determine whether the creditor accurately calculates the "Funds for Borrower" for non-purchase transactions and the final "Funds for Borrower" by subtracting the principal amount of the credit extended (excluding any amount disclosed pursuant to 12 CFR 1026.38(i)(3)(ii)) from the total amount of all existing debt being satisfied in the real estate closing disclosed on the Summaries of

Transactions table pursuant to 12 CFR 1026.38(j)(1)(v) (except to the extent the satisfaction of such existing debt is disclosed under 12 CFR 1026.38(g)), and (12 CFR 1026.38(i)(6)(iv)).

i. If the calculation yields a positive number, it is disclosed as described above in the Final Down Payment/Funds from Borrower column under 12 CFR 1026.38(i)(4)(ii)(B), and $0 is disclosed as described above in the Final Funds for Borrower column under 12 CFR 1026.38(i)(6)(ii). (12 CFR 1026.38(i)(6)(iv)(A))

ii. If the calculation under 12 CFR 1026.38(i)(6)(iv) yields a negative number, it is disclosed under 12 CFR 1026.38(i)(6)(ii), as a negative number in the Final Funds for Borrower column described above, and $0 is disclosed as described above in the Final Down Payment/Funds from Borrower column under 12 CFR 1026.38(i)(4)(ii)(B). (12 CFR 1026.38(i)(6)(iv)(B))

iii. If the calculation under 12 CFR 1026.38(i)(6)(iv) yields $0, then $0 is disclosed in both the Final Down Payment/Funds from Borrower column under 12 CFR 1026.38(i)(4)(ii)(B) and in the Final Funds for Borrower column described above under 12 CFR 1026.38(i)(6)(ii). (12 CFR 1026.38(i)(6)(iv)(C))

h. *Seller Credits.* Under the subheading "Loan Estimate," the amount disclosed on the Calculating Cash to Close table on the Loan Estimate under 12 CFR 1026.37(h)(1)(vi), compared to the amount listed pursuant to 12 CFR 1026.38(j)(2)(v), stated as a negative number (12 CFR 1026.38(i)(7)(i)-(ii)), and

i. If the amounts are different, unless due to rounding, a statement of that fact, along with a statement that the consumer should see the details disclosed under 12 CFR 1026.38(j)(2)(v) (i.e., in Section L in the Summaries of Transactions table) (12 CFR 1026.38(i)(7)(iii)(A)), or

ii. If the amount disclosed under 12 CFR 1026.38(i)(7)(ii) (i.e., amount in the Final column) is equal to the amount disclosed under 12 CFR 1026.38(i)(7)(i) (i.e., amount copied over from the Loan Estimate), a statement of that fact. (12 CFR 1026.38(i)(7)(iii)(B))

i. *Adjustments and Other Credits.* Under the subheading "Loan Estimate," the amount disclosed on the Calculating Cash to Close table on the Loan Estimate under 12 CFR 1026.37(h)(1)(vii), compared to the amount listed pursuant to 12 CFR 1026.38(j)(1)(iii) and (v) through (x) (see exam procedures below on Itemization of Amounts Due From Borrower) reduced by the total of the amounts disclosed under 12 CFR 1026.38(j)(2)(vi) through (xi) (see exam procedures below on Itemization of Amounts Already Paid By or On Behalf of Borrower). (12 CFR 1026.38(i)(8)(i)-(ii))

i. If the amounts are different, unless due to rounding, statement of that fact, along with a statement that the consumer should see the details disclosed under 12 CFR 1026.38(j)(1)(iii) and (v) through (x) and (j)(2)(vi) through (xi) (i.e., in Sections K and L in the Summaries of Transactions table) (12 CFR 1026.38(i)(8)(iii)(A)); or

ii. If the amount disclosed under 12 CFR 1026.38(i)(8)(ii) (i.e., amount in the Final column) is equal to the amount disclosed 12 CFR 1026.38(i)(8)(i) (i.e., amount copied over from the Loan Estimate), a statement of that fact. (12 CFR 1026.38(i)(8)(iii)(B))

j. *Cash to Close.* Under the subheading "Loan Estimate," the amount disclosed on the Calculating Cash to Close table on the Loan Estimate under 12 CFR 1026.37(h)(1)(viii), compared to the amount listed pursuant to 12 CFR 1026.38(i)(1) through (i)(8), and each disclosed more prominently than the other disclosures in this section. (12 CFR 1026.38(i)(9)(i)-(ii))

Alternative Cash to Close Table for Transactions Without a Seller – 12 CFR 1026.38(e) (Page 3 of the Closing Disclosure)

1. Determine whether, for transactions without a seller, the creditor uses the alternative table in the Loan Estimate (12 CFR 1026.37(h)(2)), and if so, determine whether the creditor provides, instead of the table described in 12 CFR 1026.38(i), a separate table, "Calculating Cash to Close," with the statement "Use this table to see what has changed from your Loan Estimate." Determine whether the table includes:

a. *Loan Amount.* Disclosed on the Loan Estimate under 12 CFR 1026.37(b)(1) and the final loan amount disclosed under 12 CFR 1026.38(b), disclosed more prominently than other disclosures in this section, with the question "Did this change?" If the amounts are different (unless due to rounding), a statement of that fact along with a statement of whether this amount increased or decreased. If there is no change, a statement of that fact. (12 CFR 1026.38(e)(1)(i) – (iii))

b. *Total Closing Costs.* Disclosed on the Loan Estimate under 12 CFR 1026.37(h)(2)(ii) and the final Total Closing Costs disclosed under 12 CFR 1026.38(h)(1), disclosed as a negative number and disclosed more prominently than other disclosures, with the question "Did this change?" If there is no change, a statement of

that fact. (12 CFR 1026.38(e)(2)) If the amounts are different (unless due to rounding):

i. A statement of that fact.

ii. If there is a change because of differences in itemized charges that are included in either or both subtotals, a statement that the consumer should look at the Total Loan Costs and Total Other Costs subtotals disclosed below, together with references to those disclosures (12 CFR 1026.38(e)(2)(iii)(A)(2)); and

iii. If the increase exceeds the legal limits for increases in closing costs under 12 CFR 1026.19(e)(3); a statement of that fact, the dollar amount of the excess; and, if any refund is provided, a reference to the disclosure required for including the refund in a lender credit under 12 CFR 1026.38(h)(3). (12 CFR 1026.38(e)(2)(A)(3))

c. *Closing Costs Paid before Closing.* Disclosed under the subheading "Loan Estimate," the amount of $0; and under the subheading "Final," any amount designated as Borrower-Paid before closing under 12 CFR 1026.38(h)(2), disclosed as a positive number. Determine whether these disclosures are disclosed more prominently than other disclosures, with the question "Did This Change?" If so (unless the difference is due to rounding), a statement of that fact. If there is no change, a statement of that fact. (12 CFR 1026.38(e)(3))

i. If the amount disclosed under 12 CFR 1026.38(e)(3)(ii) is different than the amount disclosed under 12 CFR 1026.38(e)(3)(i), unless due to rounding, a statement of that fact along with a statement that the consumer paid such amounts prior to consummation (12 CFR 1026.38(e)(3)(iii)(A)); or

ii. If the amount disclosed under 12 CFR 1026.38(e)(3)(ii) is equal to the amount disclosed under 12 CFR 1026.38(e)(3)(i), a statement of that fact. (12 CFR 1026.38(e)(3)(iii)(B))

d. *Total Payoffs and Payments.* Includes the total payoffs and payments disclosed on the Loan Estimate under 12 CFR 1026.37(h)(2)(iii) and the final total amount of payoffs and payments made to third parties not otherwise disclosed under 12 CFR 1026.38(t)(5)(vii)(B), to the extent known, disclosed as a negative number. Determine whether these disclosures are disclosed more prominently than other disclosures with the question "Did This Change?" If so (unless the difference is due to rounding), a statement of that fact. If there is no change, a statement of that fact. (12 CFR 1026.38(e)(4))

i. If the amount disclosed under 12 CFR 1026.38(e)(4)(ii) is different than the amount disclosed under 12 CFR 1026.38(e)(4)(i)(unless the difference is due to rounding), a statement that the consumer included the closing costs in the loan amount, which increased the loan amount, along with a reference to the "Payoffs and Payments" table that may be added pursuant to 12 CFR 1026.38(t)(5)(viii)(B)) (12 CFR 1026.38(e)(4)); or

ii. If the amount disclosed under 12 CFR 1026.38(e)(4)(ii) is equal to the amount disclosed under 12 CFR 1026.38(e)(4)(i), a statement of that fact. (12 CFR 1026.38(e)(4)(iii)(B))

e. *Cash to Close.* The estimated Cash to Close disclosed on the Loan Estimate, along with the statement of whether the estimated amount is due from or to the consumer, and a disclosure of the final amount due from or to the consumer.(12 CFR 1026.38(e)(5)(i) – (ii)

f. *Closing Costs Financed (Paid from your Loan Amount).* Disclosed as the sum of the amounts disclosed under 12 CFR 1026.38(e)(1)(ii) and (e)(4)(ii) (i.e., the amounts in the Final Column of the Loan Amount and Total Payoffs and Payments). However, the amount is disclosed only to the extent that the sum is greater than zero and less than or equal to the sum disclosed under 12 CFR 1026.38(h)(1) (Total Closing Costs) minus the sum disclosed under 12 CFR 1026.38(h)(2) designated as Borrower-Paid before closing. (12 CFR 1026.38(e)(6))

Summaries of Transactions: Borrower's Transaction – 12 CFR 1026.38(j) (Page 3 of the Closing Disclosure)

Borrower's Transaction – Itemization of Amounts Due from Borrower at Closing (Page 3 of the Closing Disclosure)

1. Due from Borrower at Closing. Determine whether the creditor accurately discloses the total amount due from the consumer at closing, calculated as the sum of items required to be disclosed by 12 CFR 1026.38(j)(1)(ii) through (x) (i.e., the items described in this procedure), excluding items paid from funds other than closing funds as described in 12 CFR 1026.38(j)(4)(i). Determine whether the creditor completes the summary of the borrower's transaction as follows: (12 CFR 1026.38(j)(1))

a. *Sale Price of Property.* The amount of the contract sales price of the property being sold in a purchase real estate transaction, excluding the price of any tangible personal property if the consumer and seller have

agreed to a separate price for such items (12 CFR 1026.38(j)(1)(ii));

b. *Sale Price of Any Personal Property Included in Sale.* The amount of the sales price of any tangible personal property excluded from the contract sales price pursuant to 12 CFR 1026.38(j)(1)(ii) (12 CFR 1026.38(j)(1)(iii));

c. *Closing Costs Paid at Closing.* The total amount of closing costs disclosed that are designated Borrower-Paid at closing, calculated pursuant to 12 CFR 1026.38(h)(2) and (h)(3) (see procedure above regarding Closing Costs Subtotals)(12 CFR 1026.38(j)(1)(iv));

d. A description and the amount of any additional items that the seller has paid prior to the real estate closing, but reimbursed by the consumer at the real estate closing, and a description and the amount of any other items owed by the consumer at the real estate closing not otherwise disclosed pursuant to 12 CFR 1026.38(f), (g), or (j) (12 CFR 1026.38(j)(1)(v));

e. The description "Adjustments for Items Paid by Seller in Advance" (12 CFR 1026.38(j)(1)(vi));

f. *City/Town Taxes.* The prorated amount of any prepaid taxes due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount (12 CFR 1026.38(j)(1)(vii));

g. *County Taxes.* The prorated amount of any prepaid taxes due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount (12 CFR 1026.38(j)(1)(viii));

h. *Assessments.* The prorated amount of any prepaid assessments due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount (12 CFR 1026.38(j)(1)(ix)); and

i. A description and the amount of any additional items paid by the seller prior to the real estate closing that are due from the consumer at the real estate closing (12 CFR 1026.38(j)(1)(x)).

Borrower's Transaction – Itemization of Amounts Paid Already By or On Behalf of Borrower at Closing (Page 3 of the Closing Disclosure)

1. *Paid Already by or on Behalf of Borrower at Closing.* Determine whether the creditor accurately discloses the sum of the amounts disclosed in 12 CFR 1026.38(j)(2)(ii) through (xi) (i.e., the items described in this procedure), excluding items paid from funds other than closing funds as described in 12 CFR 1026.38(j)(4)(i). Determine whether the creditor accurately completes the summary of borrower's transaction as follows (12 CFR 1026.38(j)(2)(i)):

a. *Deposit.* Any amount that is paid to the seller or held in trust or escrow by an attorney or other party under the terms of the agreement for the sale of the property (12 CFR 1026.38(j)(2)(ii));

b. *Loan Amount.* The amount of the consumer's new loan amount or first user loan as disclosed pursuant to 12 CFR 1026.38(b) (12 CFR 1026.38(j)(2)(iii));

c. *Existing Loan(s) Assumed or Taken Subject To*. The amount of any existing loans that the consumer is assuming, or any loans subject to which the consumer is talking title to the property (12 CFR 1026.38(j)(2)(iv));

d. *Seller Credit.* The total amount of money that the seller will provide at the real estate closing as a lump sum not otherwise itemized to pay for loan costs as determined by 12 CFR 1026.38(f) and other costs as determined by 12 CFR 1026.38(g) and any other obligations of the seller to be paid directly to the consumer (12 CFR 1026.38(j)(2)(v));

e. *Other Credits.* A description and amount of other items paid by or on behalf of the consumer and not otherwise disclosed pursuant to 12 CFR 1026.38(f), (g), (h), and (j)(2) (12 CFR 1026.38(j)(2)(vi));

f. The description "Adjustments for Items Unpaid by Seller" (12 CFR 1026.38(j)(2)(vii));

g. *City/Town Taxes.* The prorated amount of any unpaid taxes due from the seller to reimburse the consumer at the real estate closing, and the time period corresponding to that amount (12 CFR 1026.38(j)(2)(viii)ix));

h. *County Taxes.* The prorated amount of any unpaid taxes due from the seller to reimburse the consumer at the real estate closing, and the time period corresponding to that amount (12 CFR 1026.38(j)(2)(ix);

i. *Assessments.* The prorated amount of any unpaid assessments due from the seller to reimburse the consumer at the real estate closing, and the time period corresponding that amount (12 CFR 1026.38(j)(2)(x)); and

j. A description and the amount of any additional items which have not yet been paid and which the consumer is expected to pay after the real estate closing, but

which are attributable in part to a period of time prior to the real estate closing (12 CFR 1026.38(j)(2)(xi)).

Borrower's Transaction – Calculation of Borrower's Transaction (Page 3 of the Closing Disclosure)

1. *Calculation.* Determine whether the creditor accurately discloses the total amount due from, and already paid by, the consumer at closing by the following calculation: (12 CFR 1026.38(j)(3))

   a. *Total Due from Borrower at Closing*. The amount disclosed in the Closing Disclosure, on the line captioned "Due from Borrower at Closing" (12 CFR 1026.38(j)(3)(i));

   b. *Total Paid Already by or on Behalf of Borrower at Closing.* The amount disclosed in the Closing Disclosure, on the line captioned "Paid Already by or on Behalf of Borrower at Closing," if any, disclosed as a negative number (12 CFR 1026.38(j)(3)(ii)); and

   c. *Cash to Close.* A statement that the disclosed amount is due from or to the consumer, and the amount due from or to the consumer at the real estate closing, calculated by the sum of the amounts disclosed as the "Total Due from Borrower at Closing" and "Total Paid Already by or on Behalf of Borrower at Closing" (12 CFR 1026.38(j)(3)(iii)).

1. *Paid Outside of Closing.* Determine whether the creditor discloses other costs that are not paid out of closing costs but would otherwise be disclosed; describes the funds as "Paid Outside of Closing" or the abbreviation "P.O.C.," and includes the name of the party making the payment. (12 CFR 1026.38(j)(4)(i))

   NOTE: For purposes of 12 CFR 1026.38(j), "closing funds" means funds collected and disbursed at real estate closing. (12 CFR 1026.38(j)(4)(ii))

Summaries of Transactions: Seller's Transaction – 12 CFR 1026.38(k) (Page 3 of the Closing Disclosure)

Seller's Transaction – Itemization of Amounts Due to Seller at Closing (Page 3 of the Closing Disclosure)

1. *Due to Seller at Closing.* Determine whether the creditor accurately discloses the total amount due to the seller at the real estate closing, calculated as the sum of items required to be disclosed pursuant to 12 CFR 1026.38(k)(1)(ii) through (ix) (i.e., the items in this procedure), excluding items paid from funds other than closing funds as described in 12 CFR 1026.38(k)(4)(i). Determine whether the creditor accurately completes the summary of seller's transaction as follows (12 CFR 1026.38)(k)(1)(i)):

   a. *Sale Price of Property.* The amount of the contract sales price of the property being sold, excluding the price of any tangible personal property if the consumer and seller have agreed to a separate price for such items (12 CFR 1026.38(k)(1)(ii));

   b. *Sale Price of Any Personal Property Included in Sale.* The amount of the sales price of any tangible personal property excluded from the contract sales price pursuant to 12 CFR 1026.38(k)(1)(ii) (12 CFR 1026.38(k)(1)(iii));

   c. A description and the amount of other items paid to the seller by the consumer pursuant to the contract of sale or other agreement, such as charges that were not disclosed pursuant to 12 CFR 1026.37 on the Loan Estimate or items paid by the seller prior to the real estate closing but reimbursed by the consumer at the real estate closing (12 CFR 1026.38(k)(1)(iv));

   d. The description "Adjustments for Items Paid by Seller in Advance" (12 CFR 1026.38(k)(1)(v));

   e. *City/Town Taxes.* The prorated amount of any prepaid taxes due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount (12 CFR 1026.38(k)(1)(vi);

   f. *County Taxes.* The prorated amount of any prepaid taxes due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount (12 CFR 1026.38(k)(1)(vii));

   g. *Assessments.* The prorated amount of any unpaid assessments due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding that amount (12 CFR 1026.38(k)(1)(viii)); and

   h. A description and the amount of additional items paid by the seller prior to the real estate closing that are reimbursed by the consumer at the real estate closing (12 CFR 1026.38(k)(1)(ix)).

Seller's Transaction – Itemization of Amounts Due from Seller at Closing (Page 3 of the Closing Disclosure)

1. *Due from Seller at Closing.* Determine whether the creditor accurately discloses the sum of the amounts disclosed in 12 CFR 1026.38(k)(2)(ii) through 12 CFR 1026.38(k)(2)(xiii) (i.e., the items in this procedure), excluding items paid from funds other than closing funds described in 12 CFR 1026.38(k)(4)(i). Determine whether the creditor accurately completes the summary of the seller's transaction as follows (12 CFR 1026.38(k)(2)(i)):

   a. *Excess Deposit.* The amount of any excess deposit disbursed prior to closing, (12 CFR 1026.38(k)(2)(ii));

b. *Closing Costs Paid at Closing.* The amount of closing costs designated Seller-Paid at closing and disclosed pursuant to 12 CFR 1026.38(h)(2) (12 CFR 1026.38(k)(2)(iii));

c. *Existing Loan(s) Assumed or Taken Subject To.* The amount of any existing loans assumed or taken subject to by the consumer (12 CFR 1026.38(k)(2)(iv));

d. *Payoff of First Mortgage Loan.* The amount of a first lien loan secured by the property being sold that will be paid off at closing (12 CFR 1026.38(k)(2)(v));

e. *Payoff of Second Mortgage Loan.* The amount of any loan secured by a second lien on the property that will be paid off as part of the real estate closing (12 CFR 1026.38(k)(2)(vi));

f. *Seller Credit.* The total amount of seller funds to be provided at closing as a lump sum that has not otherwise been itemized to pay for loan costs as determined by 12 CFR 1026.38(f) and other costs as determined by 12 CFR 1026.38(g) and any other obligations of the seller to be paid directly to the consumer (12 CFR 1026.38(k)(2)(vii);

g. A description and amount of all other items paid to be paid by the seller at closing, including any lien-related payoffs, fees, or obligations (12 CFR 1026.38(k)(2)(viii));

h. The description "Adjustments for Items Unpaid by Seller" (12 CFR 1026.38(k)(2)(ix));

i. *City/Town Taxes.* The prorated amount of unpaid taxes due from the seller to reimburse the consumer at the real estate closing, and the time period corresponding to that amount (12 CFR 1026.38(k)(2)(x);

j. *County Taxes.* The prorated amount of any unpaid taxes due from the seller to the consumer at the real estate closing, and the time period corresponding to that amount (12 CFR 1026.38(k)(2)(xi));

k. *Assessments.* The prorated amount of any unpaid assessments due from the seller to reimburse the consumer at the real estate closing, and the time period corresponding to that amount (12 CFR 1026.38(k)(2)(xii)); and

l. A description and the amount of any additional items which have not yet been paid and which the consumer is expected to pay after the real estate closing, but which are attributable in part to a period of time prior to the real estate closing (12 CFR 1026.38(k)(2)(xiii)).

Seller's Transaction – Calculation of Seller's Transaction (Page 3 of the Closing Disclosure)

1. *Calculation.* Determine whether the creditor accurately discloses the total amount due to and from the seller at closing by the following calculation (12 CFR 1026.38(k)(3)):

   a. *Total Due to Seller Closing.* The amount disclosed in the Closing Disclosure, on the line captioned "Due from Seller at Closing" (12 CFR 1026.38(k)(3)(i));

   b. *Total Due from Seller at Closing.* The amount disclosed in the Closing Disclosure on the line captioned "Due from Seller at Closing," disclosed as a negative number (12 CFR 1026.38(k)(3)(ii));

   c. *Cash.* A statement that the disclosed amount is due from or to the seller and the amount due, calculated by the sum of the amounts disclosed as the "Total Due to Seller at Closing" and "Total Due from Seller at Closing" (12 CFR 1026.38(k)(3)(iii)).

Seller's Transaction – Items Paid Outside of Closing Funds (Page 3 of Closing Disclosure)

1. Determine whether the creditor discloses other costs that are not paid out of closing funds but would otherwise be disclosed in the Summaries of Transactions: Seller's Transaction table; describing the funds as "Paid Outside of Closing" or the abbreviation "P.O.C.," and including the name of the party making the payment. (12 CFR 1026.38(k)(4)(i))

   NOTE: For purposes of 12 CFR 1026.38(k), "closing funds" means funds collected and disbursed at real estate closing. (12 CFR 1026.38(k)(4)(ii))

Payoffs and Payments Table for Transactions Without a Seller – 12 CFR 1026.38(t)(5)(vii)(B) (Page 3 of the Closing Disclosure)

1. *Payoff and Payments.* For transactions without a seller, determine whether a creditor, using an optional modified Closing Disclosure (as illustrated by form H-25(J) in Appendix H), has provided alternative tables for Cash to Close, pursuant to 12 CFR 1026.38(d)(2), and for Calculating Cash to Close pursuant to 12 CFR 1026.38(e), and that the creditor itemizes the amounts of payments made at consummation to other parties from the credit extended to the consumer or funds provided by the consumer in connection with the transaction, including designees of the consumer, the payees, and a description of the purpose of such disbursements under the subheading "To;" and the total amount of such payments (12 CFR 1026.38(t)(5)(vii)(B)).

Additional Information About This Loan: Loan Disclosures – 12 CFR 1026.38(l) (Page 4 of the Closing Disclosure)

1. *Loan Disclosures.* Determine whether the creditor accurately provides the required disclosures (12 CFR 1026.38(l)):

   a. *Assumption*. Whether the loan obligations may be assumed by a subsequent purchaser (12 CFR 1026.38(l)(1));

   b. *Demand Feature.* Whether the legal obligation includes a demand feature, and, if it does, a reference to the note or other loan contract for details (12 CFR 1026.38(l)(2));

   c. *Late Payment.* The dollar amount or percentage charge of any fee designated as a late payment (information required on the Loan Estimate by 12 CFR 1026.37(m)(4)) and the number of days after which such a charge will be triggered (12 CFR 1026.38(l)(3));

   d. *Negative Amortization (Increase in Loan Amount).* Whether the regular period payments may cause the principal balance to increase, and:

      i. If the regular periodic payments do not cover all of the interest due, the creditor provides a statement that the borrower's principal balance will increase, such balance will likely become larger than the original loan amount, and increases in such balance lower the consumer's equity in the property; and

      ii. If the consumer may make regular periodic payments that do not cover all of the interest due, the creditor provides a statement that, if the consumer chooses a monthly payment option that does not cover all of the interest due, the principal balance may become larger than the original loan amount and the increases in the principal balance lower the consumer's equity in the property. (12 CFR 1026.38(l)(4)(i)-(ii))

   e. *Partial Payments.* Whether the creditor that accepts less than the full amount due has provided a statement that the "lender," (using that label) may accept partial payments and apply such payments to the consumer's loan, and:

      i. If periodic payments that are less than the full amount due are accepted but not applied to a consumer's loan until the consumer pays the remainder of the full amount due, a statement that the lender may hold partial payments in a separate account until the consumer pays the remainder of the payment and then apply the full periodic payment to the consumer's loan;

      ii. If periodic payments that are less than the full amount due are not accepted, the lender does not accept any partial payments; and

      iii. A statement that, if the loan is sold, the new lender may have a different policy. (12 CFR 1026.38(l)(5)(i)-(iv))

   f. *Security Interest.* Whether the creditor states that the consumer is granting a security interest in the property securing the transaction, and that the borrower may lose the property if required payments are not made or otherwise fails to satisfy the requirements of the legal obligation. Determine that the creditor has included the property address and zip code (12 CFR 1026.38(l)(6));

   g. *Escrow Account.* Whether the creditor states whether it has established, will establish, or will not establish an escrow account for the consumer in connection with the loan transaction at or before consummation;

      i. Under the reference *"For now,"*

         A. Whether the creditor provides a statement that an escrow account may also be called an impound or trust account; whether the creditor has established or will establish, at or before consummation, an escrow account in connection with the transaction for the costs that will be paid using escrow account funds; that the creditor may be liable for penalties and interest if it fails to make a payment for any cost for which the escrow account is established; and that the consumer would have to pay such costs directly in the absence of the escrow account; (12 CFR 1026.38(l)(7)(i) and (l)(7)(i)(A)).Whether, if an escrow account is or will be established, the creditor accurately discloses the following items based upon the escrow analysis required under 12 CFR 1024.17, in tabular form:

            1) The total amount that the consumer will be required to pay into the account over the first year after consummation for the payment of the charges described in 12 CFR 1026.37(c)(4)(ii) together with a descriptive name of each such charge calculated as the Monthly Escrow Payment multiplied by the number of periodic payments scheduled to be made to the escrow account during the first year after consummation. (12 CFR 1026.38(l)(7)(i)(A)(1))

2) The estimated amount for taxes, insurance, and assessments that the consumer is likely to pay during the first year after consummation, as described in 12 CFR 1027.37(c)(4)(ii), that are known to the creditor and that will not be paid using escrow account funds, labeled "Non-Escrowed Property Costs over Year 1," together with a descriptive name of each such charge and a statement that the consumer may have to pay other costs that are not listed. (12 CFR 1026.38(l)(7)(i)(A)(2))

3) The total amount disclosed and a reference to the disclosure made on the Closing Disclosure under the heading "Other Costs, Initial Escrow Payment at Closing," pursuant to 12 CFR 1026.38(g)(3), and a statement that the payment is a cushion for the escrow account, labeled "Initial Escrow Payment." (12 CFR 1026.38(l)(7)(i)(A)(3))

4) The amount the consumer will be required to pay into the escrow account with each periodic payment during the first year after consummation for payment of the charges described in the Loan Estimate pursuant to 12 CFR 1026.37(c)(4)(ii), labeled "Monthly Escrow Payment." (12 CFR 1026.38(l)(7)(i)(A)(4))

ii. *No Escrow.* If an escrow account will not be established for the consumer, determine whether there is a statement that the consumer will not have an escrow account; the reason why an escrow account will not be established; a statement that the consumer must pay all property costs, such as taxes and homeowner's insurance, directly; a statement that the consumer may contact the creditor to inquire about the availability of an escrow account; and a table, titled "No Escrow" that itemizes the estimated total amount the consumer will pay directly for charges described in the Loan Estimate under 12 CFR 1026.37(c)(4)(ii) during the first year after consummation that are known to the creditor; and a statement that, without an escrow account, the consumer must pay the identified costs, possibly in one or two large payments, labeled "Property Costs over Year 1;" along with the amount of any fee the creditor imposes on the consumer for not establishing an escrow account in connection with the transaction, labeled "Escrow Waiver Fee." (12 CFR 1026.38(l)(7)(i)(B))

A. Under the reference "In the future," determine whether the creditor has disclosed under the reference "In the future:" (12 CFR 1026.38(l)(7)(ii))

1) A statement that the consumer's property costs may change and that, as a result, the consumer's escrow payment may change; (12 CFR 1026.38(l)(7)(ii)(A))

2) A statement that the consumer may be able to cancel any escrow account that has been established but that the consumer is responsible for directly paying all property costs in the absence of an escrow account; (12 CFR 1026.38(l)(7)(ii)(B)) and

3) A description of the consequences if the consumer fails to pay property costs, including the actions that a state or local government may take if property taxes are not paid and the actions the creditor may take if the consumer does not pay some or all property costs, such as adding amounts to the loan balance, adding an escrow account to the loan, or purchasing a property insurance policy on the consumer's behalf that may be more expensive and provide fewer benefits than what the consumer could obtain directly. (12 CFR 1026.38(l)(7)(ii)(C))

Additional Information About This Loan: Adjustable Payment (AP) Table – 12 CFR 1026.38(m) (Page 4 of the Closing Disclosure)

1. *Adjustable Payment (AP) Table.* Determine whether the creditor provides the AP disclosure required for the Loan Estimate under 12 CFR 1026.37(i). (12 CFR 1026.38(m))

Additional Information About This Loan: Adjustable Interest Rate (AIR) Table – 12 CFR 1026.38(n) (Page 4 of the Closing Disclosure)

1. *Adjustable Interest Rate (AIR) Table.* Determine whether the creditor provides the AIR disclosures required for the Loan Estimate by 12 CFR 1026.37(j). (12 CFR 1026.38(n))

Loan Calculations – 12 CFR 1026.38(o) (Page 5 of the Closing Disclosure)

1. *Loan Calculations.* Determine whether the creditor provides a separate table and accurately discloses the following information (12 CFR 1026.38(o)):

a. *Total of Payments.* Expressed as a dollar amount, and a statement that the disclosure is the total the consumer

will have paid after making all payments of principal, interest, mortgage insurance, and loan costs, as scheduled (12 CFR 1026.38(o)(1));

b. *Finance Charge.* Expressed as a dollar amount, and the statement "The dollar amount the loan will cost you." The finance charge and other disclosures affected by the disclosed finance charge (including the amount financed and the annual percentage rate) is accurately calculated if the amount disclosed as the finance charge:

i. Is understated by no more than $100; or

ii. Is greater than the amount required to be disclosed. (12 CFR 1026.38(o)(2))

c. *Amount Financed.* Expressed as a dollar amount, and the following statement: "The loan amount available after paying your up-front finance charge" (12 CFR 1026.38(o)(3));

d. *Annual Percentage Rate (APR).* Expressed as a percentage, with the following statement: "Your costs over the loan term expressed as a rate. This is not your interest rate." (12 CFR 1026.38(o)(4));

e. *Total Interest Percentage (TIP).* Expressed as a percentage; with the following statement: "The total amount of interest that you will pay over the loan term as a percentage of your loan amount." (12 CFR 1026.38(o)(5))

Other Disclosures – 12 CFR 1026.38(p) (Page 5 of the Closing Disclosure)

1. *Other Disclosures.* Determine whether the creditor accurately provides the following disclosures:

a. *Appraisal.* For transactions subject to 15 U.S.C. 1639h or 1691(e), as implemented in this part or Regulation B, 12 CFR part 1002, respectively, under the subheading "Appraisal:" (12 CFR 1026.38(p)(1))

i. If there was an appraisal of the property in connection with the loan, the creditor is required to provide the consumer with a copy at no additional cost to the consumer at least three days prior to consummation; (12 CFR 1026.38(p)(1)(i)) and

ii. If the consumer has not yet received a copy of the appraisal, the consumer should contact the creditor using the information disclosed in the Closing Disclosure. (12 CFR 1026.38(p)(1)(ii))

b. *Contract Details*. A statement that the consumer should refer to the appropriate loan document and security instrument for information about nonpayment, what constitutes a default under the legal obligation, circumstances under which the creditor may accelerate the maturity of the obligation, and prepayment rebates and penalties. (12 CFR 1026.38(p)(2))

c. *Liability after Foreclosure.* A brief statement of whether, and the conditions under which, the consumer may remain responsible for any deficiency after foreclosure under applicable state law, a brief statement that certain protections may be lost if the consumer refinances or incurs additional debt on the property, and a statement that the consumer should consult an attorney for additional information. (12 CFR 1026.38(p)(3))

d. *Refinance*. The statement required on the Loan Estimate by 12 CFR 1026.37(m)(5) that "Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan." (12 CFR 1026.38(p)(4))

e. *Tax Deductions.* A statement that, if the extension of credit exceeds the fair market value of the property, the interest on the portion of the credit extension that is greater than the fair market value of the property is not tax deductible for Federal income tax purposes and a statement that the consumer should consult a tax adviser for further information. (12 CFR 1026.38(p)(5))

f. *Loan Acceptance.* If the creditor does not provide a line for the consumer's signature, the creditor must include with the other disclosures the same statement required in the Loan Estimate that "You do not have to accept this loan because you have received this form or signed a loan application." This is the same requirement as in the Loan Estimate under 12 CFR 1026.37(n)(2). (12 CFR 1026.38(s)(2))

Questions Notice – 12 CFR 1026.38(q) (Page 5 of the Closing Disclosure)

1. *Questions.* Determine whether the creditor provides a separate questions notice. The creditor must include a prominent question mark, a statement directing the consumer to use the contact information for questions, and a reference to CFPB's website for more information and to submit a complaint, and a link to www.consumerfinance.gov/mortgage-closing (12 CFR 1026.38(q)(1)-(3)).

Contact Information – 12 CFR 1026.38(r) (Page 5 of the Closing Disclosure)

1. *Contact Information.* Determine whether the creditor provides the required contact information for each lender, mortgage broker, consumer's real estate broker, seller's real

estate broker, and settlement agent participating in the transaction; the name of the person, address, NMLSR ID number, or if none, state and License ID; the name of the natural person who is the primary contact for the consumer at each entity, identified as "Contact," along with that person's Contact NMLS ID or Contact License ID, email address, and phone number. (12 CFR 1026.38(r)(1)-(7))

Confirm Receipt – 12 CFR 1026.38(s) (Page 5 of the Closing Disclosure)

1. *Confirm Receipt.* Determine whether, if the creditor chooses to provide a signature statement, the creditor discloses, above the signature line, the statement "By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form." (12 CFR 1026.38(s)(1))

   NOTE: If the creditor does not provide a line for the consumer's signature, the creditor must include the following statement, labeled "Loan Acceptance:" "You do not have to accept this loan because you have received this form or signed a loan application." (12 CFR 1026.38(s)(2)

Form of Disclosures – 12 CFR 1026.38(t)

1. Determine whether the creditor follows the format and content of form H-25, set forth in Appendix H, changes formatting only if there is an exception, including acceptable modifications in Appendix H for transactions without a seller, and complies with the following rounding rules for dollar amounts and percentages:

   a. *Rounding - nearest dollar*. The following dollar amounts are rounded to the nearest whole dollar:

      i. The dollar amounts for Loan Terms (required to be disclosed by 12 CFR 1026.38(b)) that are required to be rounded by 12 CFR 1026.37(o)(4)(i)(A) when disclosed under 12 CFR 1026.37(b)(6) and (7) (i.e., adjustments after consummation and details about prepayment penalty and balloon payments);

      ii. The dollar amounts for projected payments or range of payments required by 12 CFR 1026.38(c) that are required to be rounded by 12 CFR 1026.37(o)(4)(i)(A) when disclosed under 12 CFR 1026.37(c)(1)(iii) (i.e., minimum and maximum amounts of principal and interest for projected periodic payments or range of payments);

      iii. The dollar amounts required to be disclosed by 12 CFR 1026.38(e) (Alternative Calculating Cash to Close table for transactions without a seller) and 12 CFR 1026.38(i) (Calculating Cash to Close table) under the subheading "Loan Estimate;"

      iv. The dollar amounts required to be disclosed by 12 CFR 1026.38(m) (adjustable payment table); and

      v. The dollar amounts required to be disclosed by 12 CFR 1026.38(c) (projected payments) that are required to be rounded by 12 CFR 1026.37(o)(4)(i)(C) when disclosed under 12 CFR 1026.37(c)(2)(iv) (i.e., total monthly payment).

   b. *Percentages.* The percentage amounts disclosed under 12 CFR 1026.38(b) (i.e., loan terms), (f)(1)(i) (i.e., origination charges), (g)(2)(iii) (i.e., prepaids), (l)(3) (i.e., late payment), (n) (i.e., adjustable interest rate table), and (o)(5)(i.e., total interest percentage or TIP) are not rounded and are disclosed up to two or three decimal places. The percentage amount required to be disclosed under 12 CFR 1026.38(o)(4) (APR) is not rounded and is disclosed up to three decimal places. Amounts that are whole numbers are disclosed truncated at the decimal point.

   c. *Loan amount.* The dollar amount of the loan amount (required to be disclosed by 12 CFR 1026.38(b) as required by 12 CFR 1026.37(b)(1)) is disclosed as an unrounded number, except that if the amount is a whole number, then the amount disclosed is truncated at the decimal point. (12 CFR 1026.38(t)(1)-(5))

Content Of Forms Not Subject to 12 CFR 1026.19(e)-(f)– Forms Review and Timing Requirements

Content of Forms Not Subject to 12 CFR 1026.19(e)-(f) - General (12 CFR 1026.18)

1. Determine that the disclosures are clear, conspicuous, and grouped together or segregated as required, in a form the consumer may keep.

   a. For loans subject to 12 CFR 1026.18(s), the terms "Finance Charge" and "Annual Percentage Rate" and corresponding rates or amounts should be more conspicuous than other terms, except for the creditor's identity. (12 CFR 1026.17(a)(2))

   b. For reverse mortgages subject to 1024.33 in Regulation X, the disclosures required under 12 CFR 1026.33(b).

   c. For private student loans, the term "Annual Percentage Rate" and corresponding rate must be less conspicuous than the term "finance charge" and the corresponding amount, as well as less conspicuous than the interest rate, the notice of the right to cancel, and creditor's identity. (12 CFR 1026.17(a)(2))

2. For a closed-end transaction not subject to 12 CFR 1026.19(e) and (f), determine whether the disclosures are accurately completed and include the following disclosures as applicable.

a. Identity of the creditor (12 CFR 1026.18(a))

b. Amount financed (12 CFR 1026.18(b))

c. Itemization of amount financed (12 CFR 1026.18(c))

d. Brief description of the APR (12 CFR 1026.18(e))

e. Variable rate information (12 CFR 1026.18(f)(1) or (2))

f. Payment schedule (12 CFR 1026.18(g))

g. Brief description of the total of payments (12 CFR 1026.18)(h))

h. Demand feature (12 CFR 1026.18(i))

i. Description of total sales price in a credit sale (12 CFR 1026.18(j))

j. Prepayment penalties or rebates (12 CFR 1026.18(k))

k. Late payment amount or percentage (12 CFR 1026.18(l))

l. Description for security interest (12 CFR 1026.18(m))

m. Insurance conditions for finance charge exclusions (12 CFR 1026.4(d) and 12 CFR 1026.18(n))

n. Statement concerning certain security interest charges (12 CFR 1026.4(e) and 12 CFR 1026.18(o))

o. Statement referring to the contract (12 CFR 1026.18(p))

p. Statement regarding assumption of the note (12 CFR 1026.18(q))

q. Statement regarding required deposits (12 CFR 1026.18(r))

r. Interest rate and payment summary for mortgage transactions (12 CFR 1026.18(s))

3. Determine that for transactions other than transactions subject to 12 CFR 1026.19(e) and (f), the creditor discloses the number, amounts, and timing of payments scheduled to repay the obligation (other than for a transaction that is subject to 12 CFR 1026.18(s)[48]. (12 CFR 1026.18(g))

4. For a closed-end transaction secured by real property or a dwelling (other than a transaction subject to 12 CFR 1026.19(e) and (f)), determine that the creditor discloses the following information about the interest rate and payments, as applicable (12 CFR 1026.18(s)):

a. **Interest Rates**

i. ***For a fixed-rate mortgage***, the interest rate at consummation. (12 CFR 1026.18(s)(2)(i)(A))

ii. ***For an adjustable-rate or step-rate mortgage*** (12 CFR 1026.18(s)(2)(i)(B)):

A. The interest rate at consummation and the period of time until the first interest rate adjustment may occur, labeled as the "introductory rate and monthly payment;"

NOTE: As set forth in comment 18(s)-1, if periodic payments are not due monthly, the creditor should use the appropriate term, such as "quarterly" or "annually."

B. The maximum interest rate that may apply during the first five years after the date on which the first regular periodic payment will be due and the earliest date on which that rate may apply, labeled as "maximum during first five years;" and

C. The maximum interest rate that may apply during the life of the loan and the earliest date on which that rate may apply, labeled as "maximum ever."

iii. ***For a loan that provides for payment increases occurring without regard to an interest rate adjustment***[49] (as described in 12 CFR 1026.18(s)(3)(i)(B)), the interest rate in effect at the time the first such payment increase is scheduled to occur and the date on which the increase will occur, labeled as "first adjustment" if the loan is an adjustable-rate mortgage or, otherwise, labeled as "first increase."[50] (12 CFR 1026.18(s)(2)(i)(C))

iv. ***For a negative amortization loan***[51] (12 CFR 1026.18(s)(2)(ii)):

[48] For example, home construction loans that are secured by real property or a dwelling are subject to §1026.18(s) and not §1026.18 (g). See comment App. D-6 of Regulation Z.

[49] Note: this category includes interest-only loans, as set forth in comment §1026.18(s)(2)(i)(C)-1.

[50] Because model forms and clauses published by the CFPB are safe harbors, this rate may also be labeled "Maximum Ever," pursuant to §1026.18(s)(2)(i)((B)(3).

[51] The term "negative amortization loan" means a loan, other than a reverse mortgage subject to 12 CFR 1026.33 that provides for a minimum periodic payment that covers only a portion of the accrued interest, resulting in negative amortization. (12 CFR 1026.18(s)(7)(v))

A. The interest rate at consummation and, if it will adjust after consummation, the length of time until it will adjust, and the label "introductory" or "intro;"

B. The maximum interest rate that could apply when the consumer must begin making fully amortizing payments under the terms of the legal obligation;

C. If the minimum required payment will increase before the consumer must begin making fully amortizing payments, the maximum interest rate that could apply at the time of the first payment increase and the date the increase is scheduled to occur; and

D. If a second increase in the minimum required payment may occur before the consumer must begin making fully amortizing payments, the maximum interest rate that could apply at the time of the second payment increase and the date the increase is scheduled to occur.

v. ***Introductory rate for an amortizing adjustable-rate mortgage***, if the interest rate at consummation is less than the fully indexed rate, the following (placed in a box directly beneath the table required by 12 CFR 1026.18 (s)(1) of the regulation, in a format substantially similar to Model Clause H–4(I) in the regulation's Appendix H):

A. The interest rate that applies at consummation and the period of time for which it applies;

B. A statement that, even if market rates do not change, the interest rate will increase at the first adjustment and a designation of the place in sequence of the month or year, as applicable, of such rate adjustment (e.g., "in the third year"); and

C. The fully-indexed rate.

b. **Payments for Amortizing Loans**

i. ***Principal and interest payments***. If all periodic payments will be applied to accrued interest and principal, for each interest rate disclosed under 12 CFR 1026.18(s)(2)(i) (12 CFR 1026.18(s)(3)(i)):

A. The corresponding periodic principal and interest payment, labeled as "principal and interest;"

B. If the periodic payment may increase without regard to an interest rate adjustment, the payment that corresponds to the first such increase and the earliest date on which the increase could occur;

C. If an escrow account is established, an estimate of the amount of taxes and insurance, including any mortgage insurance payable with each periodic payment; and

D. The sum of the amounts disclosed under 12 CFR 1026.18(s)(3)(i)(A) and (C) or (s)(3)(i)(B) and (C), as applicable, labeled as "total estimated monthly payment."

ii. ***Interest-only payments***. If the loan is an interest-only loan, for each interest rate disclosed under 12 CFR 1026.18(s)(2)(i), the corresponding periodic payment and (12 CFR 1026.18(s)(3)(ii)):

A. If the payment will be applied to only accrued interest, the amount applied to interest, labeled as "interest payment," and a statement that none of the payment is being applied to principal;

B. If the payment will be applied to accrued interest and principal, an itemization of the amount of the first such payment applied to accrued interest and to principal, labeled as "interest payment" and "principal payment," respectively;

C. The escrow information described in 12 CFR 1026.18(s)(3)(i)(C); and

D. The sum of all amounts required to be disclosed under 12 CFR 1026.18(s)(3)(ii)(A) and (C) or (s)(3)(ii)(B) and (C), as applicable, labeled as "total estimated monthly payment."

iii. ***Payments for negative amortization loans***. If the loan is a negative amortization loan (12 CFR 1026.18(s)(4)):

A. The minimum periodic payment required until the first payment increase or interest rate increase, corresponding to the interest rate disclosed under 12 CFR 1026.18(s)(2)(ii)(A);

B. The minimum periodic payment that would be due at the first payment increase and the second, if any, corresponding to the interest rates described in 12 CFR 1026.18(s)(2)(ii)(C) and (D);

C. A statement that the minimum payment pays only some interest, does not repay any principal, and will cause the loan amount to increase;

D. The fully amortizing periodic payment amount at the earliest time when such a payment must be made, corresponding to the interest rate disclosed under 12 CFR 1026.18 (s)(2)(ii)(B); and

E. If applicable, in addition to the payments in 12 CFR 1026.18(s)(4)(i) and (ii), for each interest rate disclosed under 12 CFR 1026.18(s)(2)(ii), the amount of the fully amortizing periodic payment, labeled as the "full payment option," and a statement that these payments pay all principal and all accrued interest.

NOTE: The information in 12 CFR 1026.18(s)(2)–(4) must be disclosed in the form of a table with no more than five columns, and with headings and format substantially similar to Model Clause H–4(E), H–4(F), H–4(G), or H–4(H) in Appendix H of the regulation. The table should contain only the information required in 12 CFR 1026.18 (s)(2)–(4), be placed in a prominent location, and be in a minimum 10-point font. (12 CFR 1026.18(s)(1))

iv. ***Balloon payments***. For loans with balloon payments (defined as a payment that is more than two times a regular periodic payment) (12 CFR 1026.18(s)(5)):

A. Except as provided below, the balloon payment is disclosed separately from other periodic payments disclosed in the table (i.e., is outside the table and in a manner substantially similar to Model Clause H–4(J) in Appendix H to the regulation);

B. If the balloon payment is scheduled to occur at the same time as another payment required to be disclosed in the table, the balloon payment must be disclosed in the table.

5. For a closed-end transaction secured by real property or a dwelling (other than a transaction that is subject to 12 CFR 1026.19(e) and (f)) that is a negative amortization loan, determine that the following information is disclosed (in close proximity to the table required in 12 CFR 1026.18(s)(1), with headings, content, and format substantially similar to Model Clause H–4(G) in Appendix H to this part) (12 CFR 1026.18(s)(6)):

a. The maximum interest rate, the shortest period of time in which such interest rate could be reached, the amount of estimated taxes and insurance included in each payment disclosed, and a statement that the loan offers payment options, two of which are shown; and

b. The dollar amount of the increase in the loan's principal balance if the consumer makes only the minimum required payments for the maximum possible time and the earliest date on which the consumer must begin making fully amortizing payments, assuming that the maximum interest rate is reached at the earliest possible time.

6. For a closed-end transaction secured by real property or a dwelling (other than a transaction that is subject to 12 CFR 1026.19(e) and (f)), determine that the creditor disclosed a statement that there is no guarantee the consumer can refinance the transaction to lower the interest rate or periodic payments. (12 CFR 1026.18(t)(1))

NOTE: The statement required by 12 CFR 1026.18(t)(1) should be in a form substantially similar to Model Clause H–4(K) in Appendix H to the regulation. (12 CFR 1026.18(t)(2))

7. Determine all variable rate loans (other than a transaction that is subject to 12 CFR 1026.19(e) and (f)) with a maturity greater than one year, secured by a principal dwelling are given the following disclosures at the time of application. (12 CFR 1026.19(b))

a. Consumer Handbook on Adjustable Rate Mortgages or substitute

b. Statement that interest rate payments and or terms can change

c. The index/formula and a source of information

d. Explanation of the interest rate/payment determination and margin

e. Statement that the consumer should ask for the current interest rate and margin

f. Statement that the interest rate is discounted, if applicable

g. Frequency of interest rate and payment changes

h. Rules relating to all changes

i. 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

j. Explanation of how to compute the loan payment, giving an example

k. Demand feature, if applicable

l. Statement of content and timing of adjustment notices

m. Statement that other variable rate loan program disclosures are available, if applicable

Disclosure of Post Consummation Events - Rate Adjustments – 12 CFR 1026.20(c)-(d)

8. Determine that for any closed-end adjustable-rate mortgage with a maturity date greater than one year and secured by a principal dwelling, the creditor, assignee, or servicer provides the following initial rate adjustment disclosures (for disclosure timing requirements, see **Timing Requirements** below): (12 CFR 1026.20(d)(2))

   a. The date of the disclosure;

   b. An explanation that under the terms of the consumer's adjustable rate mortgage, the time frame that the current rate has been in effect, when the current rate is scheduled to expire, the effective date of the new rate, when additional future interest rate adjustments are scheduled to occur and any other changes to loan terms, features, and options taking effect on the same date, and how the rate change may affect the payment and other loan terms;

   c. A table explaining the current interest rate and payment, the new interest rate and payment, and the date the first new payment is due;

      NOTE: For interest-only and negative amortization adjustable-rate mortgages, the table must include how the current and new rates and payment will be allocated to interest, principal, and escrow (if applicable). See 12 CFR 1026.20(d)(2)(iii)(C) for more on payment allocation disclosure requirements.

   d. An explanation of how the interest rate is determined, including the specific index or formula used and a source of information about that index or formula, and the type and amount of any adjustment, including a margin and an explanation that a margin is the addition of a certain number of percentage points to the index;

   e. Any limits on the interest rate or payment increases at each interest rate adjustment and over the life of the loan (as applicable), including the extent to which such limits result in the creditor, assignee, or servicer foregoing any increase in the interest rate and the earliest date that such foregone interest rate increases may apply to future interest rate adjustments, subject to those limits;

   f. An explanation of how the new payment was determined, including the index or formula used to determine the new interest rate;

   g. Any adjustments to the index or formula used to determine the new payment, such as the addition of a margin;

   h. The expected loan balance on the date of the interest rate adjustment;

   i. The remaining loan term expected on the date of the interest rate adjustment and any changes to the term that may have occurred due to the interest rate change;

   j. If an estimated rate payment is provided, a statement that another disclosure with the actual interest rate will be provided to the consumer between two and four months prior to the first payment at the adjusted level is due, and that the creditor is using an estimated rate;

   k. If applicable, a statement that the new payment will not be allocated to pay loan principal and will not reduce the loan balance. If the new payment will result in negative amortization, a statement that the new payment will not be allocated to pay loan principal and that only part of the interest will be paid, which will add to the loan balance. If the new payment will result in negative amortization as a result of the interest rate adjustment, the statement must set forth the payment required to fully amortize the remaining balance at the new interest rate over the remainder of the loan term;

   l. A statement indicating the circumstances under which any prepayment penalty may be imposed, the time period during which it may be imposed, and a statement that the consumer may contact the servicer for additional information, including the maximum amount of the penalty that may be charged to the consumer;

   m. A telephone number of the creditor, assignee, or servicer to call if the consumer anticipates not being able to make the new payment;

   n. A statement listing alternatives that consumers may pursue if they anticipate not being able to make the new payment;

   o. A web address to access either the CFPB or the Department of Housing and Urban Development's (HUD) approved list of homeownership counselors and counseling organizations, the HUD toll-free number to access the HUD list of homeownership counselors and counseling organizations, and the Bureau website to access state housing finance authorities' contact information.

9. Determine that for any closed-end adjustable-rate mortgage with a maturity date greater than one year, secured by a principal dwelling, the creditor, assignee, or servicer provides the following rate adjustment disclosures for rate adjustments with a corresponding payment change (for disclosure timing requirements see **Timing Requirements** below): (12 CFR 1026.20(c))

   NOTE: A creditor, assignee or servicer subject to the Fair Debt Collection Practices Act (FDCPA) that has received the consumer's notification to cease communication pursuant to FDCPA section 805(c) is exempt from this requirement.

   a. An explanation that under the terms of the consumer's adjustable rate mortgage, the time frame that the current rate has been in effect is ending and the interest rate and payment will change, the effective date of the new rate, when additional future interest rate adjustments are scheduled to occur and any other changes to loan terms, features, and options taking effect on the same date, such as the expiration of interest-only or payment-option features; a table explaining the current interest rate and payment, the new interest rate and payment, and the date the first new payment is due;

   NOTE: For interest-only and negatively amortizing payments, the table must include how the current and new rates and payment will be allocated to interest, principal, and escrow (if applicable). See 12 CFR 1026.20(d)(2)(iii)(C) for more on payment allocation disclosure requirements.

   b. An explanation of how the interest rate is determined, including the specific index or formula used and a source of information about that index or formula, and the type and amount of any adjustment, including a margin and an explanation that a margin is the addition of a certain number of percentage points to the index, and any application of previously foregone interest rate increases from past rate adjustments;

   c. Any limits on the interest rate or payment increases at each interest rate adjustment and over the life of the loan (as applicable), including the extent to which such limits result in the creditor, assignee, or servicer foregoing any increase in the interest rate and the earliest date that such foregone interest rate increases may apply to future interest rate adjustments, subject to those limits;

   d. An explanation of how the new payment is determined, including the index or formula used to determine the new interest rate;

   e. Any adjustments to the index or formula used to determine the new payment, such as the addition of a margin or the application of any previously foregone interest rate increases from past interest rate adjustments;

   f. The expected loan balance on the date of the interest rate adjustment;

   g. The remaining loan term expected on the date of the interest rate adjustment and any changes to the term that may have occurred due to the interest rate change;

   h. If applicable, a statement that the new payment will not be allocated to pay loan principal and will not reduce the loan balance. If the new payment will result in negative amortization, a statement that the new payment will not be allocated to pay loan principal and that only part of the interest will be paid, which will add to the loan balance. If the new payment will result in negative amortization as a result of the interest rate adjustment, the statement must set forth the payment required to fully amortize the remaining balance at the new interest rate over the remainder of the loan term;

   i. A statement indicating the circumstances under which any prepayment penalty may be imposed, the time period during which it may be imposed, and a statement that the consumer may contact the servicer for additional information, including the maximum amount of the penalty that may be charged to the consumer;

   NOTE: Model and sample disclosures H-4(D)(1) through (4) containing all necessary information can be found in Appendix H. The disclosures required under section 12 CFR 1026.20(c) and (d) generally should be in the form of a table and in the same order as, and with headings and format substantially similar to, the model disclosures (12 CFR 1026.20(c)(3) and (d)(3)).

   NOTE: When examining a creditor, an assignee, or a servicer that continues to own the loan, if the entity states that another entity has the obligation to provide the disclosures, examiners should determine whether the entity takes steps to ensure that the other party (the creditor, assignee, or servicer, as applicable) is complying with the obligation to provide the disclosures.

Escrow Cancellation Notice – 12 CFR 1026.20(e)(1)

1. *Escrow cancellation notice.* For a closed-end loan secured by a first lien on real property or a dwelling (other than a reverse mortgage) where an escrow account (as defined under 1024.17(b)) is cancelled, determine whether: (12 CFR 1026.20(e))

   a. The creditor or servicer provided an Escrow Closing Notice with the following clearly and conspicuously disclosed: (12 CFR 1026.20(e)(1)

i. A statement informing the consumer of the date on which the consumer will no longer have an escrow account;

ii. A statement that an escrow account may also be called an impound or trust account;

iii. A statement of the reason why the escrow account will be closed;

iv. A statement that without an escrow account, the consumer must pay all property costs, such as taxes and homeowner's insurance, directly, possibly in one or two large payments a year; and

v. A table, titled "Cost to you," that contains an itemization of the amount of any fee the creditor or servicer imposes on the consumer in connection with the closure of the consumer's escrow account, labeled "Escrow Closing Fee," and a statement that the fee is for closing the escrow account; (12 CFR 1026.20(e)(2)(i))

vi. Information under the reference "In the future" that includes: (12 CFR 1026.20(e)(2)(ii))

A. A statement of the consequences if the consumer fails to pay property costs, including the actions that a state or local government may take if property taxes are not paid and the actions the creditor or servicer may take if the consumer does not pay some or all property costs, such as adding amounts to the loan balance, adding an escrow account to the loan, or purchasing a property insurance policy on the consumer's behalf that may be more expensive and provide fewer benefits than a policy that the consumer could obtain directly; (12 CFR 1026.20(e)(2)(ii)(A))

B. A statement with a telephone number that the consumer can use to request additional information about the cancellation of the escrow account; (12 CFR 1026.20(e)(2)(ii)(B))

C. A statement of whether the creditor or servicer offers the option of keeping the escrow account open and, as applicable, a telephone number the consumer can use to request that the account be kept open; and (12 CFR 1026.20(e)(2)(ii)(C))

D. A statement of whether there is a cut-off date by which the consumer can request that the account be kept open. (12 CFR 1026.20(e)(2)(ii)(D))

2. *Form.* The disclosure meets the formatting requirements of 12 CFR 1026.20(e)(4) and is substantially similar to model form H-29 in Appendix H. (12 CFR 1026.20(e)(4))

3. *Timing.* The creditor or servicer ensures that the consumer receives the Escrow Closing Notice in the following time periods:

i. If the cancellation is upon the consumer's request, no later than three business days before the closure of the consumer's escrow account; (12 CFR 1026.20(e)(5)(i))

ii. If cancellation is other than upon the consumer's request, no later than 30 business days before the closure of the consumer's escrow account. (12 CFR 1026.20(e)(5)(ii))

NOTE: If the disclosures are not provided in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail. (12 CFR 1026.20(e)(5)(iii))

Successors In Interest – 12 CFR 1026.20(f) *(effective April 19, 2018)*

1. If, upon confirmation, a servicer provided a confirmed successor in interest who is not liable on the mortgage loan obligation with an optional notice and acknowledgement form in accordance with Regulation X, 12 CFR 1024.32(c)(1), determine whether the servicer provided to a confirmed successor in interest any written disclosure required by the following (if applicable): 12 CFR 1026.20(c) (rate adjustments with corresponding change in payment), 12 CFR 1026.20(d) (initial rate adjustment), or 12 CFR 1026.20(e) (escrow account cancellation notice), once the confirmed successor in interest either assumed the mortgage loan obligation under State law or provided the servicer an executed acknowledgement form in accordance with Regulation X, 12 CFR 1024.32(c)(1)(iv) that the confirmed successor in interest has not revoked.

High-Cost Mortgages – 12 CFR 1026.32

1. Determine that the disclosures required for high-cost mortgage transactions (12 CFR 1026.32) clearly and conspicuously include the items below. (12 CFR 1026.32(c), see Form H-16 in Appendix H)

a. 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."

a. The APR.

b. 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 the commentary to 12 CFR 1026.32(c)(3)).

a. d. Statement that the interest rate may increase and monthly payment may increase, and the amount of the single maximum monthly payment, based on the maximum interest rate allowed under the contract, if applicable. The amount borrowed. For a closed-end mortgage, the amount borrowed is 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 (grouped together with the amount borrowed), that fact shall be stated. For an open-end credit plan, the amount borrowed is the credit limit for the plan when the account is opened.

Notice of Transfer – 12 CFR 1026.39

1. For any open-end loan secured by a principal dwelling or for any closed-end mortgage loan secured by a dwelling or real property that was sold, assigned, or otherwise transferred to the covered person, determine that the covered person notifies the borrower clearly and conspicuously in writing, in a form that the consumer may keep of such transfer, including (12 CFR 1026.39):

   a. An identification of the loan that was sold, assigned, or otherwise transferred;

   b. The name, address, and telephone number of the covered person who owns the mortgage loan;

   c. The date of transfer (either the date of acquisition recognized in the books and records of the covered person or that of the transferring party) identified by the covered person;

   d. The name, address, and telephone number of an agent or party having authority, on behalf of the covered person, to receive notice of the right to rescind and resolve issues concerning the consumer's payments on the mortgage loan;

   e. Where transfer of ownership of the debt to the covered person is or may be recorded in public records or, alternatively, that the transfer of ownership has not been recorded in public records at the time the disclosure is provided; and,

   f. At the option of the covered person, any other relevant information regarding the transaction.

   g. If there are multiple covered persons, contact information for each of them, unless one of them has been authorized to receive the consumer's notice of the right to rescind and resolve issues concerning the consumer's payments on the loan.

      i. If the loan is a closed-end consumer mortgage loan secured by a dwelling or real property, other than a reverse mortgage transaction subject to section 12 CFR 1026.33 of this part, the following information about the covered person's partial payment policy, under the subheading "Partial Payment":

      ii. If periodic payments that are less than the full amount due are accepted, a statement that the covered person, using the term "lender," may accept partial payments and apply such payments to the consumer's loan;

      iii. If periodic payments that are less than the full amount due are accepted, but not applied to a consumer's loan until the consumer pays the remainder of the full amount due, a statement that the covered person, using the term "lender," may hold partial payments in a separate account until the consumer pays the remainder of the payment and then apply the full periodic payment to the consumer's loan;

      iv. If periodic payments that are less than the full amount due are not accepted, a statement that the covered person, using the term "lender," does not accept any partial payments; and

      v. A statement that, if the loan is sold, the new covered person, using the term "lender," may have a different policy.

NOTE: The format of the disclosure illustrated by form H-25 of Appendix H may be used (for the information required to be disclosed by section 12 CFR 102612 CFR 1026.38(l)(5)). The text on that form may be modified to suit the format of the covered person's disclosure under section 12 CFR 102612 CFR 1026.39. Any modifications must be appropriate and not affect the substance, clarity, or meaningful sequence of the disclosure. (Comment 12 CFR 1026.39(d)(5)-1.)

NOTE: This notice of sale or transfer must be provided for any consumer credit transaction that is secured by the principal dwelling of a consumer, except as noted above. This notification is required of the covered person even if the loan servicer remains the same. In addition, if more

than one consumer is liable on the obligation, the covered person may mail or deliver the disclosure notice to any consumer who is primarily liable. And, if an acquisition involves multiple covered persons who each acquire a partial interest in the loan pursuant to separate and unrelated agreements, each covered person has a duty to ensure that disclosures related to its acquisition are accurate and provided in a timely manner unless an exception in 12 CFR 1026.39(c) applies. The parties may, but are not required to, provide a single notice that satisfies the timing and content requirements applicable to each covered person. (Commentary 12 CFR 1026.39(b)(5)–2)

NOTE: Each covered person must provide the notice of transfer or sale to confirmed successors in interest unless the exemption under 12 CFR 1026.39(f) applies. (*Effective April 19, 2018*).

Treatment of Credit Balances – 12 CFR 1026.21

1. If an account's credit balance is in excess of $1, determine whether the creditor:

    a. Credited the amount of the credit balance to the consumer's account;

    b. Refunded any part of the remaining credit balance, upon the written request of the consumer; and

    c. Made a good faith effort to refund to the consumer by cash, check, or money order, or credit to a deposit account of the consumer, any part of the credit balance remaining in the account for more than 6 months, unless the consumer's location was not known to the creditor and could not be traced through the consumer's last known address or telephone number.

Private Education Loans – 12 CFR 1026.46 – 12 CFR 1026.48

1. For private education loans subject to Subpart F, ensure that the required disclosures are accurate (12 CFR 1026.47) and contain the following information:

    a. Application or solicitation disclosures disclose the following:

        i. Interest rate, including:

            A. Rate or range, and if the rate depends in part on a determination of the borrower's creditworthiness or other factors, a statement to that effect;

            B. Whether rate is fixed or variable;

            C. If rate may increase after consummation, any limitations, or lack thereof, and if the limitation is imposed by law, that fact. Also, the creditor must state that the consumer's actual rate may be higher or lower than that disclosed, if applicable; and

            D. Whether the rate will typically be higher if the loan is not co-signed or guaranteed.

        ii. Fees and default or late payment costs.

        iii. Repayment terms, including:

            A. Term of the loan, which is the period during which regularly scheduled payments of principal and interest will be due.

            B. Deferral options, or if consumer does not have the option to defer, that fact.

            C. For each available deferral option applicable, information as to:

                1) Whether interest will accrue during deferral period; and

                2) If interest accrues, whether payment of interest may be deferred and added to the principal balance; and

            D. A statement that, if the consumer files bankruptcy, the consumer may still be required to repay the loan.

        iv. Cost estimates, based on an example of the total cost of the loan, calculated using:

            A. The highest interest rate and including all applicable finance charges,

            B. An amount financed of $10,000, or $5,000, if the creditor offers loans less than $10,000; and

            C. Calculated for each payment option.

        v. Eligibility (e.g., any age or school enrollment eligibility requirements).

        vi. Alternatives to private education loans, including:

            A. A statement that the consumer may qualify for federal student loans,

            B. The interest rates available for each program available under title IV of the Higher Education Act of 1965, and whether the rate is variable or fixed;

            C. A statement that the consumer may obtain additional information regarding student

federal financial assistance from his school or U.S. Department of Education, including an appropriate website; and

D. A statement that a covered educational institution may have school specific educational loan benefits and terms not detailed in the loan disclosure forms.

vii. A statement that if the loan is approved, that the loan will be available for 30 days and the terms will not change, except for changes to the interest rate in the case of a variable rate and other changes permitted by law.

viii. A statement that before consummation, the borrower must complete a self-certification form obtained from the student's institution of higher education.

b. For approval disclosures, the following information is required under 12 CFR 1026.47(b):

i. Interest rate, information, including:

A. Interest rate applicable to the loan

B. Whether the interest rate is variable or fixed; and

C. If the interest rate may increase after consummation, any limitations on the rate adjustments, or lack thereof.

ii. Fees and default or late payment costs, including:

A. An itemization of the fees or range of fees required to obtain the loan; and

B. Any fees, changes to the interest rate, and adjustments to principal based on the consumer's defaults or late payments.

iii. Repayment terms, including:

A. Principal amount;

B. Term of the loan;

C. A description of the payment deferral option chosen by the consumer, if applicable, and any other payment deferral options that the consumer may elect at a later time;

D. Any payments required while the student is enrolled at the educational institution, based on the deferral option chosen by the consumer;

E. Amount of any unpaid interest that will accrue while the student is enrolled in school, based upon the deferral option chosen by the consumer;

F. A statement that if the consumer files for bankruptcy, that the consumer may still be required to pay back the loan;

G. An estimate of the total amount of payments calculated based upon:

1) The interest rate applicable to the loan (compliance with 12 CFR 1026.18(h) constitutes compliance with this requirement);

2) The maximum possible rate of interest for the loan, or, if a maximum rate cannot be determined, a rate of 25 percent.

3) If a maximum rate cannot be determined, the estimate of the total amount for repayment must include a statement that there is no maximum rate and that the total amount for repayment disclosed is an estimate.

H. The maximum monthly payment based on the maximum rate of interest for the loan, or, if a maximum rate of interest cannot be determined, a rated of 25 percent. If a maximum cannot be determined, a statement that there is no maximum rate and that the monthly payment amount disclosed is an estimate and will be higher if the applicable interest rate increases.

iv. Alternatives to private education loans, including:

A. A statement that the consumer may qualify for federal student loans,

B. The interest rates available for each program available under title IV of the Higher Education Act of 1965, and whether the rate is variable or fixed; and

C. A statement that the consumer may obtain additional information regarding student federal financial assistance from his school or U.S. Department of Education, including an appropriate website.

v. A statement that the consumer may accept the terms of the loan until the acceptance period under 12 CFR 1026.48(c)(1) has expired. The statement must include:

A. The specific date on which the acceptance period expires, based on the date upon which the consumer receives the disclosures required under this subsection for the loan;

B. The method or methods by which the consumer may communicate the acceptance (written, oral, or by electronic means; and

C. A statement that except for changes to the interest rate and other changes permitted by law, the rates and the terms of the loan may not be changed by the creditor during the 30-day acceptance period.

c. After the consumer has accepted the loan in accordance with 12 CFR 1026.48(c)(1), final disclosures must disclose the information required under 12 CFR 1026.47(c) and the following:

i. Interest rate, including:

A. Interest rate applicable to the loan

B. Whether the interest rate is variable or fixed; and

C. If the interest rate may increase after consummation, any limitations on the rate adjustments, or lack thereof.

ii. Fees and default or late payment costs, including:

A. An itemization of the fees or range of fees required to obtain the loan; and

B. Any fees, changes to the interest rate, and adjustments to principal based on the consumer's defaults or late payments.

iii. Repayment terms, including:

A. Principal amount;

B. Term of the loan;

C. A description of the payment deferral option chosen by the consumer, if applicable, and any other payment deferral options that the consumer may elect at a later time;

D. Any payments required while the student is enrolled at the educational institution, based on the deferral option chosen by the consumer;

E. Amount of any unpaid interest that will accrue while the student is enrolled in school, based upon the deferral option chosen by the consumer;

F. A statement that if the consumer files for bankruptcy, that the consumer may still be required to pay back the loan;

G. An estimate of the total amount of payments calculated based upon:

1) The interest rate applicable to the loan (compliance with 12 CFR 1026.18(h) constitutes compliance with this requirement);

2) The maximum possible rate of interest for the loan, or, if a maximum rate cannot be determined, a rate of 25 percent;

3) If a maximum rate cannot be determined, the estimate of the total amount for repayment must include a statement that there is no maximum rate and that the total amount for repayment disclosed is an estimate.

H. The maximum monthly payment based on the maximum rate of interest for the loan, or, if a maximum rate of interest cannot be determined, a rated of 25 percent. If a maximum cannot be determined, a statement that there is no maximum rate and that the monthly payment amount disclosed is an estimate and will be higher if the applicable interest rate increases.

iv. In a text more conspicuous than any other required disclosure, except for the finance charge, the interest rate, and the creditor's identify the following disclosures:

A. A statement that the consumer has the right to cancel the loan, without penalty, at any time before the midnight of the third business day following the date on which the consumer receives the final loan disclosures. The statement must include the specific date on which the cancellation period expires and that the consumer may cancel by that date. (12 CFR 1026.47(c)(4)(i))

B. A statement that the loan proceeds will not be disbursed until the cancellation period expires. (12 CFR 1026.47(c)(4)(ii))

C. The method or methods by which the consumer may cancel; (12 CFR 1026.47(c)(4)(ii)) and

D. If the creditor permits cancellation by mail, the statement specifying that the consumer's mailed request will be deemed timely if placed in the mail not later than the cancellation date specified on the disclosures. (12 CFR 1026.47(c)(4)(ii))

Open-End Credit Forms Review Procedures

NOTE: 12 CFR 1026.61(a) sets forth the definition of hybrid prepaid-credit card. A covered separate credit feature accessible by a hybrid prepaid-credit card is a credit card account under an open-end (not home-secured) consumer credit plan as defined in 12 CFR 1026.2(a)(15)(ii) if the covered separate credit feature is an open-end credit plan that is not home-secured.

1. Determine that the creditor made the disclosures clearly and conspicuously. (12 CFR 1026.5(a))

2. Determine that the creditor made the applicable disclosures in writing, in a form that the consumer may keep, except (12 CFR 1026.5(a)(1)(ii)):

   a. The following disclosures need not be written: Disclosures under 12 CFR 1026.6(b)(3) of charges that are imposed as part of an open-end (not home-secured) plan that are not required to be disclosed under 12 CFR 1026.6(b)(2) and related disclosures of charges under 12 CFR 1026.9(c)(2)(iii)(B); disclosures under 12 CFR 1026.9(c)(2)(vi); disclosures under 12 CFR 1026.9(d) when a finance charge is imposed at the time of the transaction; and disclosures under 12 CFR 1026.56(b)(1)(i).

   b. The following disclosures need not be in a retainable form: Disclosures that need not be written under paragraph 12 CFR 1026.5(a)(1)(ii)(A) of this section; the alternative summary billing-rights statement under 12 CFR 1026.9(a)(2); the credit and charge card renewal disclosures required under 12 CFR 1026.9(e); the payment requirements under 12 CFR 1026.10(b), except as provided in 12 CFR 1026.7(b)(13); ; home-equity disclosures under 12 CFR 1026.40(d); and disclosures for credit and charge card applications and solicitations under 12 CFR 1026.60.

   c. The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The disclosures required by 12 CFR 1026.60, 12 CFR 1026.40, and 12 CFR 1026.16 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections.

3. Determine that the terminology used in providing the disclosures required by 12 CFR 1026.5 is consistent. (12 CFR 1026.5(a)(2)(i))

4. Determine that, for home-equity plans subject to 12 CFR 1026.40, the terms *finance charge* and *annual percentage rate (APR)*, when required to be disclosed with a corresponding amount or percentage rate, shall be more conspicuous than any other required disclosure. The terms need not be more conspicuous when used for periodic statement disclosures under 12 CFR 1026.7(a)(4) and for advertisements under 12 CFR 1026.16. (12 CFR 1026.5(a)(2)(ii))

5. Determine that, if disclosures are required to be presented in a tabular format pursuant to 12 CFR 1026.5(a)(3), that the term *penalty APR* shall be used, as applicable. (12 CFR 1026.5(a)(2)(iii))

   NOTE: The term penalty APR need not be used in reference to the annual percentage rate that applies with the loss of a promotional rate, assuming the annual percentage rate that applies is not greater than the annual percentage rate that would have applied at the end of the promotional period; or if the annual percentage rate that applies with the loss of a promotional rate is a variable rate, the annual percentage rate is calculated using the same index and margin as would have been used to calculate the annual percentage rate that would have applied at the end of the promotional period. If credit insurance or debt cancellation or debt suspension coverage is required as part of the plan, the term required shall be used and the program shall be identified by its name. If an annual percentage rate is required to be presented in a tabular format pursuant to paragraph (a)(3)(i) or (a)(3)(iii) of this section, the term fixed, or a similar term, may not be used to describe such rate unless the creditor also specifies a time period that the rate will be fixed and the rate will not increase during that period, or if no such time period is provided, the rate will not increase while the plan is open.

6. Determine whether the credit offered in connection with a prepaid account is subject to this regulation as set forth in 12 CFR 1026.61(a)(2)(i). (12 CFR 1026.61(a)(2)(i))

Credit and Charge Card Application and Solicitation Disclosures – 12 CFR 1026.60

1. Determine that the credit card solicitation or application disclosures were made clearly and conspicuously on or with a solicitation or an application. (12 CFR 1026.60)

2. For the disclosures in 12 CFR 1026.60(b)(1) through (5) (except for (b)(1)(iv)(B) and (b)(7) through (15), determine that the creditor made the disclosures required for 12 CFR 1026.60(c), (d)(2), (e)(1) and (f) in the form of a table with headings, content, and format substantially similar to the applicable tables found in G-10 in Appendix G. (12 CFR 1026.60(a)(2)(i))

   NOTE: Review any fees or charges imposed on the asset feature of a prepaid account that are charges imposed as part of the plan under 12 CFR 1026.6(b)(3), (b)(13), and (b)(14). Those fees or charges must be included in the disclosures on or with an application or solicitation to the extent those fees or charges fall within the categories of fees or charges required to be disclosed under 12 CFR 1026.60(b).

3. Determine that the table required by 12 CFR 1026.60(a)(2)(i) contains only the information required or permitted by that section. If the creditor provides other information, determine that such information appears outside the table. (12 CFR 1026.60(a)(2)(ii))

4. Determine that the disclosures required by 12 CFR 1026.60(b)(1)(iv)(B), (b)(1)(iv)(C), and (b)(6) are placed directly beneath the table required by 12 CFR 1026.60(a)(2)(i). (12 CFR 1026.60(a)(2)(iii))

5. When a tabular format is required, determine that the following disclosures are disclosed in bold text (12 CFR 1026.60(a)(2)(iv)):

   a. Annual percentage rate required to be disclosed pursuant to paragraph (b)(1) of this section,

   b. Introductory rate required to be disclosed pursuant to paragraph (b)(1)(ii) of this section,

   c. Rate that will apply after a premium initial rate expires required to be disclosed under paragraph (b)(1)(iii) of this section, and

   d. Fee or percentage amounts or maximum limits on fee amounts required to be disclosed pursuant to paragraphs (b)(2), (b)(4), (b)(8) through (b)(13).

   NOTE: Bold text shall not be used for the amount of any periodic fee disclosed pursuant to paragraph (b)(2) of this section that is not an annualized amount, and other APRs or fee amounts disclosed in the table. (12 CFR 1026.60(a)(2)(iv))

7. Determine that the card issuer discloses, on or with an solicitation or application: (12 CFR 1026.60(b))

   a. **Annual percentage rate**. Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an annual percentage rate. When more than one rate applies for a category of transactions, determine that the range of balances to which each rate is applicable is also disclosed. (12 CFR 1026.60(b)(1))

   NOTE: The APR for purchases disclosed pursuant to 12 CFR 1026.60(b)(1) shall be in at least 16-point type, except for the following: Oral disclosures of the annual percentage rate for purchases; or a penalty rate that may apply upon the occurrence of one or more specific events.

      i. ***Variable rate information***. If a rate is a variable rate, determine that the card issuer discloses the fact that the rate may vary and how the rate is determined. Determine that the card issuer identifies the type of index or formula that is used in setting the rate. Determine that the value of the index and the amount of the margin that are used to calculate the variable rate are not disclosed in the table. Determine further that any applicable limitations on rate increases are not included in the table. (12 CFR 1026.60(b)(1)(i))

      ii. ***Discounted initial rate***. If the initial rate is an introductory rate, determine that the card issuer discloses in the table the introductory rate, the time period during which the introductory rate will remain in effect, and the term "introductory" or "intro" in immediate proximity to the introductory rate. Determine further that the card issuer discloses, as applicable, either the variable or fixed rate that would otherwise apply to the account. (12 CFR 1026.60(b)(1)(ii))

      iii. ***Premium initial rate***. If the initial rate is temporary and is higher than the rate that will apply after the temporary rate expires, determine that the card issuer discloses the premium initial rate and the time period during which the premium initial rate will remain in effect. Determine that the premium initial rate for purchases is in at least 16-point type. Determine that the issuer discloses in the table the rate that will apply after the premium initial rate expires, in at least 16-point type. (12 CFR 1026.60(b)(1)(iii))

      iv. ***Penalty rates***. Except as for provided introductory rate or employee preferential rate requirements (discussed below), if a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, determine that the card issuer discloses the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. (12 CFR 1026.60(b)(1)(iv)(A))

v. ***Introductory rate***. If the issuer discloses an introductory rate in the table or in any written or electronic promotional materials accompanying applications or solicitations (and subject to paragraph (c) or (e) of 12 CFR 1026.60), determine that the issuer briefly discloses, directly beneath the table, the circumstances, if any, under which the introductory rate may be revoked, and the type of rate that will apply after the introductory rate is revoked. (12 CFR 1026.60(b)(1)(iv)(B))

vi. ***Employee preferential rates***. If the issuer discloses in the table a preferential APR for which only employees of the card issuer, employees of a third party, or other individuals with similar affiliations with the card issuer or third party are eligible, determine that the issuer briefly discloses directly beneath the table the circumstances under which such preferential rate may be revoked and the rate that will apply after such preferential rate is revoked. (12 CFR 1026.60(b)(1)(iv)(C))

vii. ***Rates that depend on consumer's creditworthiness***. If a rate cannot be determined at the time disclosures are given because the rate depends, at least in part, on a later determination of the consumer's creditworthiness, determine that the card issuer discloses the specific rates or the range of rates that could apply and a statement that the rate for which the consumer may qualify at account opening will depend on the consumer's creditworthiness, and other factors if applicable. (12 CFR 1026.60(b)(1)(v))

NOTE: If the rate that depends, at least in part, on a later determination of the consumer's creditworthiness is a penalty rate, as described in 12 CFR 1026.60(b)(1)(iv), the card issuer at its option may disclose the highest rate that could apply, instead of disclosing the specific rates or the range of rates that could apply. (12 CFR 1026.60(b)(1)(v))

viii. ***APRs that vary by state***. Determine that the card issuer does not list annual percentage rates for multiple states in the table. Note, however, that issuers imposing annual percentage rates that vary by state may, at the issuer's option, disclose in the table: the specific annual percentage rate applicable to the consumer's account; or the range of the annual percentage rates, if the disclosure includes a statement that the annual percentage rate varies by state and refers the consumer to a disclosure provided with the table where the annual percentage rate applicable to the consumer's account is disclosed. (12 CFR 1026.60(b)(1)(vi))

b. ***Fees for issuance or availability***. Determine that the card issuer discloses any annual or other periodic fee, expressed as an annualized amount, or any other fee that may be imposed for the issuance or availability of a credit or charge card, including any fee based on account activity or inactivity. (12 CFR 1026.60(b)(2))

NOTE: A charge card issuer must disclose the applicable items in 12 CFR 1026.60(b)(2), (4), (7) through (12), and (15). For a covered separate credit feature that is a charge card account accessible by a hybrid prepaid-credit card, as defined in 12 CFR 1026.61, a charge card issuer also must disclose the applicable items in 12 CFR 1026.60(b)(3), (13), and (14).

c. ***Fixed finance charge; minimum interest charge***. Determine that the creditor discloses any fixed finance charge that could be imposed during a billing cycle, as well as a brief description of that charge. Determine that the creditor discloses any minimum interest charge if it exceeds $1.00 that could be imposed during a billing cycle, and a brief description of the charge. (12 CFR 1026.60(b)(3))

d. ***Transaction charge***. Determine that the creditor discloses any transaction charge imposed for the use of the card for purchases. (12 CFR 1026.60(b)(4))

e. ***Grace period***. Determine that the issuer discloses the date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. If no grace period is provided, determine that this fact is disclosed. In disclosing in the tabular format a grace period that applies to all types of purchases, determine that the issuer uses the phrase "How to Avoid Paying Interest on Purchases" as the heading for the row describing the grace period. If a grace period is not offered on all types of purchases, in disclosing this fact in the tabular format, determine that the issuer uses the phrase "Paying Interest" as the heading for the row describing this fact.

NOTE: If the length of the grace period varies, the card issuer may disclose the range of days, the minimum number of days, or the average number of days in the grace period, if the disclosure is identified as a range, minimum, or average. (12 CFR 1026.60(b)(5))

f. ***Balance computation method***. Determine that the creditor disclosed the name of the balance computation method that is used to determine the balance on which the finance charge is computed, or an explanation of the method used if it is not listed. In determining which balance computation method to disclose, the creditor should have assumed that the credit extended

will not be repaid within any grace period. (12 CFR 1026.60(b)(6))

NOTE: Disclosures required by 12 CFR 1026.60(b)(6) must be placed directly beneath the table.

g. ***Statement on charge card payments***. Determine that the creditor discloses a statement that charges incurred by use of the charge card are due when the periodic statement is received. (12 CFR 1026.60(b)(7))

h. ***Cash advance fee***. Determine that the creditor disclosed any fee imposed for an extension of credit in the form of cash or its equivalent. (12 CFR 1026.60(b)(8))

i. ***Late payment fee***. Determine that the creditor disclosed any fee imposed for a late payment. (12 CFR 1026.60(b)(9))

j. ***Over-the-limit fee***. Determine that the creditor disclosed any fee imposed for exceeding the credit limit. (12 CFR 1026.60(b)(10))

k. ***Balance transfer fee***. Determine that the creditor disclosed any fee imposed to transfer a balance. (12 CFR 1026.60(b)(11))

l. ***Returned payment fee***. Determine that the creditor disclosed any fee imposed for a returned payment. (12 CFR 1026.60(b)(12))

m. ***Required insurance, debt cancellation, or debt suspension coverage***. Determine that the fee imposed required insurance, debt cancellation or suspension coverage is disclosed if the insurance, debt cancellation or coverage is required as part of the plan. (12 CFR 1026.60(b)(13))

n. ***Available credit***. Determine whether total of required fees for the issuance or availability of credit and/or security deposit debited to the account at account opening equal or exceed 15 percent of minimum credit limit for the account. If so, determine that the creditor disclosed, as applicable, the available credit remaining after the fees and/or security deposit are debited to the account. (12 CFR 1026.60(b)(14))

o. ***Website reference***. Determine that the creditor disclosed a reference to the website established by the CFPB and a statement that the consumers may obtain on the website information about shopping for and using credit cards. (12 CFR 1026.60(b)(15))

Requirements for Home Equity Plans – 12 CFR 1026.40

1. Determine that the following home equity disclosures were made clearly and conspicuously, at the time of application. (12 CFR 1026.40)

   a. Home equity brochure

   b. Statement that the consumer should retain a copy of the disclosure

   c. Statement of the time the specific terms are available

   d. Statement that terms are subject to change before the plan opens

   e. Statement that the consumer may receive a full refund of all fees

   f. Statement that the consumer's dwelling secures the credit

   g. Statement that the consumer could lose the dwelling

   h. Creditors right to change, freeze, or terminate the account

   i. Statement that information about conditions for adverse action are available upon request

   j. 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

   k. A recent APR imposed under the plan and a statement that the rate does not include costs other than interest (fixed rate plans only)

   l. Itemization of all fees paid to creditor

   m. 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

   n. Statement regarding negative amortization, as applicable

   o. Transaction requirements

   p. Statement that the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan

   q. 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 APR 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 historical example, based on a $10,000 balance, reflecting all significant plan terms

xii. Statement that rate information will be provided on or with each periodic statement.

2. For home-equity plans subject to 12 CFR 1026.40, determine that the terms finance charge and annual percentage rate, when required to be disclosed with a corresponding amount or percentage rate, are more conspicuous than any other required disclosure.

NOTE: The terms need not be more conspicuous when used for periodic statement disclosures under 12 CFR 1026.7(a)(4) and for advertisements under 12 CFR 1026.16. (12 CFR 1026.5(a)(2)(ii))

Account Opening Initial Disclosures – 12 CFR 1026.6

1. The following requirements apply only to home-equity plans subject to the requirements of 12 CFR 1026.40. Determine that the creditor discloses, as applicable (12 CFR 1026.6(a)):

a. ***Finance charge***. The circumstances under which a finance charge will be imposed and an explanation of how it will be determined, including: a statement of when finance charges begin to accrue, and an explanation of whether or not any time period exists within which any credit extended may be repaid without incurring a finance charge; a disclosure of each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable, and the corresponding annual percentage rate; an explanation of the method used to determine the balance on which the finance charge may be computed; and, an explanation of how the amount of any finance charge will be determined, including a description of how any finance charge other than the periodic rate will be determined. (12 CFR 1026.6(a)(1))

If a creditor offers a variable-rate plan, determine that the creditor discloses: the circumstances under which the rate(s) may increase; any limitations on the increase; and the effect(s) of an increase. When different periodic rates apply to different types of transactions, determine that the types of transactions to which the periodic rates shall apply shall also be disclosed. (12 CFR 1026.6(a)(1))

b. ***Other charges***. The amount of any charge other than a finance charge that may be imposed as part of the plan, or an explanation of how the charge will be determined. (12 CFR 1026.6(a)(2))

c. ***Home-equity plan information***. The following disclosures, as applicable (12 CFR 1026.6(a)(3)):

i. A statement of the conditions under which the creditor may take certain action, as described in 12 CFR 1026.40(d)(4)(i), such as terminating the plan or changing the terms.

ii. The payment information described in 12 CFR 1026.40(d)(5)(i) and (ii) for both the draw period and any repayment period.

iii. A statement that negative amortization may occur as described in 12 CFR 1026.40(d)(9).

iv. A statement of any transaction requirements as described in 12 CFR 1026.40(d)(10).

v. A statement regarding the tax implications as described in 12 CFR 1026.40(d)(11).

vi. A statement that the annual percentage rate imposed under the plan does not include costs other than interest as described in 12 CFR 1026.40(d)(6) and (d)(12)(ii).

vii. The variable-rate disclosures described in 12 CFR 1026.40(d)(12)(viii), (d)(12)(x), (d)(12)(xi), and (d)(12)(xii), as well as the disclosure described in 12 CFR 1026.40(d)(5)(iii), unless the disclosures provided with the application were in a form the consumer could keep and included a representative payment example for the category of payment option chosen by the consumer.

d. ***Security interests***. The fact that the creditor has or will acquire a security interest in the property purchased under the plan, or in other property identified by item or type. (12 CFR 1026.6(a)(4))

e. ***Statement of billing rights***. A statement that outlines the consumer's rights and the creditor's

responsibilities under 12 CFR 1026.12(c) and 12 CFR 1026.13 and that is substantially similar to the statement found in Model Form G–3 or, at the creditor's option, G–3(A), in Appendix G to this part. (12 CFR 1026.6(a)(5))

2. For open-end (not home-secured) plans determine that the creditor provided the account-opening disclosures specified in 12 CFR 1026.6(b)(2)(i) through (b)(2)(v) (except for 12 CFR 1026.6 (b)(2)(i)(D)(2) and 12 CFR 1026.6 (b)(2)(vii) through (b)(2)(xiv) in the form of a table with the headings, content, and format substantially similar to any of the applicable tables in G–17 in Appendix G. (12 CFR 1026.6(b)(1))

3. For open-end (not home-secured) plans, determine that the following disclosures are disclosed in bold text (12 CFR 1026.6(b)(1)(i)):

   a. Any APR required to be disclosed pursuant to 12 CFR 1026.6(b)(2)(i);

   b. Any introductory rate permitted to be disclosed pursuant to paragraph (b)(2)(i)(B) or required to be disclosed under paragraph (b)(2)(i)(F) of this section;

   c. Any rate that will apply after a premium initial rate expires permitted to be disclosed pursuant to paragraph (b)(2)(i)(C) or required to be disclosed pursuant to paragraph (b)(2)(i)(F); and

   d. Any fee or percentage amounts or maximum limits on fee amounts disclosed pursuant to paragraphs (b)(2)(ii), (b)(2)(iv), (b)(2)(vii) through (b)(2)(xii).

4. Determine that bold text is not used for: The amount of any periodic fee disclosed pursuant to paragraph (b)(2) of this section that is not an annualized amount; and other annual percentage rates or fee amounts disclosed in the table. (12 CFR 1026.6(b)(1)(i))

5. Determine that only the information required or permitted by 12 CFR 1026.6 (b)(2)(i) through (b)(2)(v) (except for (b)(2)(i)(D)(2)) and (b)(2)(vii) through (b)(2)(xiv) are provided in the table. Disclosures required by paragraphs (b)(2)(i)(D)(2), (b)(2)(i)(D)(3), (b)(2)(vi) and (b)(2)(xv) of this section shall be placed directly below the table required by 12 CFR 1026.6(b)(1). (12 CFR 1026.6(b)(1)(ii))

   NOTE: Disclosures required by 12 CFR 1026.6(b)(3) through (b)(5) that are not otherwise required to be in the table and other information may be presented with the account agreement or account-opening disclosure statement, provided such information appears outside the required table.

6. For creditors that impose fees referred to in 12 CFR 1026.6(b)(2)(vii) through (b)(2)(xi) that vary by state and that provide the disclosures required by 12 CFR 1026.6(b) in person at the time the open-end (not home-secured) plan is established in connection with financing the purchase of goods or services determine that the creditor discloses in the account-opening table either:

   a. The specific fee applicable to the consumer's account, or

   b. The range of fees, a statement that the amount of the fee varies by state, and a reference to the account agreement or other disclosure provided with the account-opening table where the amount of the fee applicable to the consumer's account is disclosed. (12 CFR 1026.6(b)(1)(iii))

   NOTE: A creditor is not permitted to list fees for multiple states in the account-opening summary table (12 CFR 1026.6(b)(1)(iii)).

   c. If the amount of any fee required to be disclosed under this section is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee. (12 CFR 1026.6(b)(1)(iv))

7. The following requirements apply to open-end (not home-secured). Determine that the creditor discloses in the appropriate format, as applicable:

   Review any fees or charges imposed on a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61. A creditor is required to disclose under 12 CFR 1026.6(b)(2) any fees or charges imposed on the asset feature that are charges imposed as part of the plan under 12 CFR 1026.6(b)(3) to the extent those fees fall within the categories of fees or charges required to be disclosed under 12 CFR 1026.6(b)(2).

   a. ***Annual percentage rate***. Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an APR. When more than one rate applies for a category of transactions, determine that the creditor discloses the range of balances to which each rate is applicable. Ensure that the APR for purchases disclosed pursuant to this paragraph is in at least 16-point type, except for a penalty rate that may apply upon the occurrence of one or more specific events. (12 CFR 1026.6(b)(2)(i))

   b. ***Variable rate information***. If the rate is a variable rate, determine that the creditor also disclosed the fact that the rate may vary and how the rate is determined (i.e., identify the type of index or formula used in setting the rate). (12 CFR 1026.6(b)(2)(i)(A))

c. ***Discounted initial rate***. If the initial rate is an introductory rate, determine that the creditor disclosed that the rate would otherwise apply to the account. Where the rate is not tied to an index or formula, determine that the creditor disclosed the rate that will apply after the introductory rate expires. For a variable rate account, determine that the creditor disclosed a rate based on the applicable index or formula in accordance with the accuracy requirements. (12 CFR 1026.6(b)(2)(i)(B))

d. ***Premium initial rate***. If the initial rate is temporary and is higher than the rate that will apply after the temporary rate expires, determine that the creditor disclosed the premium initial rate. Determine that the premium rate for purchases is in at least 16-point type. (12 CFR 1026.6(b)(2)(i)(C))

e. ***Penalty rates***. Except for introductory rates and employee preferential rates (discussed below), if the rate is a penalty rate, determine that the creditor disclosed as part of the APR disclosure the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. (12 CFR 1026.6(b)(2)(i)(D)(1))

f. ***Introductory rates***. If the creditor discloses in the table an introductory rate, as that term is defined in 12 CFR 1026.16(g)(2)(ii), determine that the creditor briefly disclosed directly beneath the table the circumstances under which the introductory rate may be revoked, and the rate that will apply after the introductory rate is revoked. (12 CFR 1026.6(b)(2)(i)(D)(2))

g. ***Employee preferential rates***. If the creditor discloses in the table a preferential APR for which only employees of the creditor, employees of a third party, or other individuals with similar affiliations with the creditor or third party are eligible, determine that the creditor briefly disclosed directly beneath the table the circumstances under which the preferential rate may be revoked, and the rate that will apply after the preferential rate is revoked. (12 CFR 1026.6(b)(2)(i)(D)(3))

h. ***Point of sale where APRs vary by state or based on creditworthiness***. If the creditor imposes an APR that varies by state or based on the consumer's creditworthiness and provides required disclosures in person at the time the open-end (not home-secured) plan is established in connection with financing the purchase of goods or services, determine that the creditor discloses either (12 CFR 1026.6(b)(2)(i)(E)):

   i. The specific APR applicable to the consumer's account, or

   ii. The range of the APRs, if the disclosure includes a statement that the APR varies by state or will be determined based on the consumer's creditworthiness and refers the consumer to the account agreement or other disclosure provided with the account-opening table where the AP applicable to the consumer's account is disclosed. Determine that the creditor does not list APRs for multiple states in the account opening table.

i. ***Credit card accounts under an open-end (not home-secured) consumer credit plan***. Determine that the issuer discloses in the table (12 CFR 1026.6(b)(2)(i)(F)):

   i. Any introductory rate, and

   ii. Any rate that would apply upon expiration of a premium initial rate.

j. ***Fees for issuance or availability***. Determine that the credit disclosed any annual or periodic fee that may be imposed for the issuance or availability of an open-end plan (including any fee based on account activity or inactivity); how frequently the fee will be imposed; and the annualized amount of the fee. (12 CFR 1026.6(b)(2)(ii))

k. ***Fixed finance charge and minimum interest charge***. Determine that the creditor disclosed any fixed finance charge and any minimum interest charge if it exceeds $1.00 that could be imposed during a billing cycle, and a brief description of the charge. (12 CFR 1026.6(b)(2)(iii))

l. Determine that the creditor disclosed any non-periodic fee that relates to opening the plan. A creditor must disclose that the fee is a one-time fee. (12 CFR 1026.6(b)(2)(ii)(B))

m. ***Transaction charges***. Determine that the creditor discloses any transaction charge imposed by the creditor for use of the open-end plan for purchases. (12 CFR 1026.6(b)(2)(iv))

n. ***Grace period***. The date by which or the period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. If no grace period is provided, that fact must be disclosed. If the length of the grace period varies, the creditor may disclose the range of days, the minimum number of days, or the average number of the days in the grace period, if the disclosure is identified as a range, minimum, or average. In disclosing in the tabular format a grace period that applies to all features on the account, the phrase "How to Avoid Paying Interest" shall be used as the heading for the row

describing the grace period. If a grace period is not offered on all features of the account, in disclosing this fact in the tabular format, the phrase "Paying Interest" shall be used as the heading for the row describing this fact. (12 CFR 1026.6(b)(2)(v))

o. ***Balance computation method***. Determine that the creditor disclosed in the account opening disclosures the name of the balance computation method that is used to determine the balance on which the finance charge is computed for each feature, or an explanation of the method used if it is not listed, along with a statement that an explanation of the methods required by 12 CFR 1026.6(b)(4)(i)(D). In determining which balance computation method to disclose, the creditor should have assumed that the credit extended will not be repaid within any grace period. (12 CFR 1026.6(b)(2)(vi))

p. ***Cash advance fee***. Determine that the creditor disclosed any fee imposed for an extension of credit in the form of cash or its equivalent. (12 CFR 1026.6(b)(2)(vii))

q. ***Late payment fee***. Determine that the creditor disclosed any fee imposed for a late payment. (12 CFR 1026.6(b)(2)(viii))

r. ***Over-the-limit fee***. Determine that the creditor disclosed any fee imposed for exceeding the credit limit. (12 CFR 1026.6(b)(2)(ix))

s. ***Balance transfer fee***. Determine that the creditor disclosed any fee imposed to transfer a balance. (12 CFR 1026.6(b)(2)(x))

t. ***Returned payment fee***. Determine that the creditor disclosed any fee imposed for a returned payment. (12 CFR 1026.6(b)(2)(xi))

u. ***Required insurance, debt cancellation, or debt suspension coverage***. Determine that the fee imposed for required insurance, debt cancellation or suspension coverage is disclosed if the insurance, debt cancellation or coverage is required as part of the plan. Creditors must also cross reference additional information about the insurance or coverage as applicable. (12 CFR 1026.6(b)(2)(xii))

v. ***Available credit***. Determine whether total of required fees for the issuance or availability of credit and/or security deposit debited to the account at account opening equal or exceed 15 percent of the credit limit for the account. If so, determine that the creditor disclosed, as applicable, the available credit remaining after the fees and/or security deposit are debited to the account. (12 CFR 1026.6(b)(2)(xiii))

w. ***Website reference***. For issuers of credit cards that are not charge cards, determine that the creditor disclosed a reference to the website established by the CFPB and a statement that the consumers may obtain on the website information about shopping for and using credit cards. (12 CFR 1026.6(b)(2)(xiv))

x. ***Billing error rights reference***. Determine that the creditor disclosed a statement that information about consumers' right to dispute transactions is included in the account-opening disclosures. (12 CFR 1026.6(b)(2)(xv))

y. ***Charges and finance charges***. For charges imposed as part of open-end (not home-secured) plan, the circumstances under which the charge may be imposed, including the amount of the charge or explanation of how the charge is determined. For finance charges, a statement of when finance charges begin to accrue, including an explanation of whether or not any time period exists within which any credit extended may be repaid without incurring a finance charge. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge when payment is received after the time period's expiration. (12 CFR 1026.6(b)(3)(i))

z. ***Disclosure of rates for open-end*** *(not home-secured) plans.* Determine that the creditor disclosed, as applicable, for each periodic rate that may be used to calculate interest (12 CFR 1026.6(b)(4)(i)):

   i. The rate (expressed as a periodic rate and a corresponding APR),

   ii. The range of balances to which the rate is applicable,

   iii. The type of transaction to which the periodic rate applies,

   iv. An explanation of the method used to determine the balance to which the rate is applied.

aa. ***Variable-rate Accounts***. For interest rate changes that are tied to increases in an index or formula (variable-rate accounts) determine that the following are specifically set forth in the account agreement (12 CFR 1026.6(b)(4)(ii)):

   i. The fact that the annual percentage rate may increase.

   ii. How the rate is determined, including the margin.

   iii. The circumstances under which the rate may increase.

   iv. The frequency with which the rate may increase.

v. Any limitation on the amount the rate may change.

vi. The effect(s) of an increase.

vii. Except as specified in paragraph (b)(4)(ii)(H) of this section, a rate is accurate if it is a rate as of a specified date and this rate was in effect within the last 30 days before the disclosures are provided.

bb. Rate changes not due to index or formula. For interest rate changes that are specifically set forth in the account agreement and not tied to increases in an index or formula, determine that the creditor discloses (12 CFR 1026.6(b)(4)(iii)):

i. The initial rate (expressed as a periodic rate and a corresponding APR)

ii. How long the initial rate will remain in effect and the specific events that cause the initial rate to change.

iii. The rate (expressed as a periodic rate and a corresponding APR) that will apply when the initial rate is no longer in effect and any limitation on the time period the new rate will remain in effect.

iv. The balances to which the new rate will apply.

v. The balances to which the current rate at the time of the change will apply.

cc. ***Voluntary credit insurance, debt cancellation, or debt suspension***. Determine that the creditor disclosed the applicable disclosures if the creditor offers optional credit insurance, or debt cancellation or debt suspension coverage. (12 CFR 1026.6(b)(5)(i))

dd. ***Security interests***. Determine that the creditor disclosed the fact that the creditor has or will acquire a security interest in the property purchased under the plan, or in other property identified by item or type. (12 CFR 1026.6(b)(5)(ii))

ee. ***Statement of billing rights***. Determine that the creditor disclosed a statement that outlines the consumer's rights and the creditor's responsibilities. (12 CFR 1026.6(b)(5)(iii))

Periodic Statement Disclosures – 12 CFR 1026.7

1. **Rules affecting home-equity plans**. For home-equity plans subject to the requirements of 12 CFR 1026.40, determine that the creditor disclosed on the periodic statement items 1 through 10 below (12 CFR 1026.7(a)):

NOTE: The requirements of 12 CFR 1026.7(a) apply only to home-equity plans subject to the requirements of 12 CFR 1026.40. Alternatively, a creditor subject to the rules affecting home-equity plans may, at its option, comply with any of the requirements of 12 CFR 1026.7(b); however, any creditor that chooses not to provide a disclosure under 12 CFR 1026.7(a)(7) must comply with 12 CFR 1026.7(b)(6).

a. ***Previous balance***. The account balance outstanding at the beginning of the billing cycle. (12 CFR 1026.7(a)(1))

b. ***Identification of transactions***. An identification of each credit transaction in accordance with 12 CFR 1026.8. (12 CFR 1026.7(a)(2))

c. ***Credits***. Any credit to the account during the billing cycle, including the amount and the date of crediting. The date need not be provided if a delay in accounting does not result in any finance or other charge. (12 CFR 1026.7(a)(3))

d. ***Periodic rates***. Each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable, and the corresponding annual percentage rate. If different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates apply shall also be disclosed. For variable-rate plans, the fact that the periodic rate(s) may vary. (12 CFR 1026.7(a)(4))

NOTE: If no finance charge is imposed when the outstanding balance is less than a certain amount, the creditor is not required to disclose that fact, or the balance below which no finance charge will be imposed

NOTE: Further, an annual percentage rate that differs from the rate that would otherwise apply and is offered only for a promotional period need not be disclosed except in periods in which the offered rate is actually applied.

e. ***Balance on which finance charge computed***. The amount of the balance to which a periodic rate was applied and an explanation of how that balance was determined. When a balance is determined without first deducting all credits and payments made during the billing cycle, the fact and the amount of the credits and payments shall be disclosed. (12 CFR 1026.7(a)(5))

f. ***Amount of finance charge and other charges***. (12 CFR 1026.7(a)(6))

i. ***Finance charges***. The amount of any finance charge debited or added to the account during the billing cycle, using the term finance charge. Determine that the components of the finance charge are individually itemized and identified to

show the amount(s) due to the application of any periodic rates and the amounts(s) of any other type of finance charge.

NOTE: If there is more than one periodic rate, the amount of the finance charge attributable to each rate need not be separately itemized and identified. (12 CFR 1026.7(a)(6)(i))

ii. ***Other charges***. The amounts, itemized and identified by type, of any charges other than finance charges debited to the account during the billing cycle. (12 CFR 1026.7(a)(6)(ii))

NOTE: Creditors may comply with paragraphs (a)(6) of 12 CFR 1026.7, or with paragraph (b)(6) of 12 CFR 1026.7, at their option.

g. ***Annual percentage rate***. At a creditor's option, when a finance charge is imposed during the billing cycle, the annual percentage rate(s) determined under 12 CFR 1026.14(c) using the term annual percentage rate. (12 CFR 1026.7(a)(7))

h. ***Grace period***. The date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges. (12 CFR 1026.7(a)(8))

i. ***Address for notice of billing errors***. The address to be used for notice of billing errors. Alternatively, the address may be provided on the billing rights statement permitted by 12 CFR 1026.9(a)(2). (12 CFR 1026.7(a)(9))

j. ***Closing date of billing cycle; new balance***. The closing date of the billing cycle and the account balance outstanding on that date. (12 CFR 1026.7(a)(10))

2. ***Rules affecting open-end (not home-secured) plans***. The requirements of paragraph (b) of this section (1 through 14 below) apply only to plans other than home-equity plans subject to the requirements of 12 CFR 1026.40. For applicable plans, determine that the creditor discloses on the periodic statement (12 CFR 1026.7(b)):

a. ***Previous balance***. The account balance outstanding at the beginning of the billing cycle. (12 CFR 1026.7(b)(1))

b. ***Identification of transactions***. An identification of each credit transaction in accordance with 12 CFR 1026.8. (12 CFR 1026.7(b)(2))

c. ***Credits***. Any credit to the account during the billing cycle, including the amount and the date of crediting. The date need not be provided if a delay in crediting does not result in any finance or other charge. (12 CFR 1026.7(b)(3))

d. ***Periodic rates***. Each periodic rate that may be used to compute the interest charge expressed as an annual percentage rate and using the term Annual Percentage Rate, along with the range of balances to which it is applicable. (12 CFR 1026.7(b)(4))

NOTE: If no interest charge is imposed when the outstanding balance is less than a certain amount, the creditor is not required to disclose that fact, or the balance below which no interest charge will be imposed. The types of transactions to which the periodic rates apply shall also be disclosed. For variable-rate plans, the fact that the APR may vary; and

A promotional rate, as that term is defined in 12 CFR 1026.16(g)(2)(i), is required to be disclosed only in periods in which the offered rate is actually applied.

e. ***Balance on which finance charge computed***. The amount of the balance to which a periodic rate was applied and an explanation of how that balance was determined, using the term *Balance Subject to Interest Rate*. (12 CFR 1026.7(b)(5))

f. ***Charges imposed***. The amounts of any charges imposed as part of a plan as stated in 12 CFR 1026.6(b)(3), grouped together, in proximity to transactions identified under paragraph (b)(2) of this section, substantially similar to Sample G–18(A) in Appendix G to this part. (12 CFR 1026.7(b)(6))

i. ***Interest***. Finance charges attributable to periodic interest rates, using the term Interest Charge, must be grouped together under the heading *Interest Charged*, itemized and totaled by type of transaction, and a total of finance charges attributable to periodic interest rates, using the term *Total Interest*, must be disclosed for the statement period and calendar year to date, using a format substantially similar to Sample G–18(A).

ii. ***Fees***. Charges imposed as part of the plan other than charges attributable to periodic interest rates must be grouped together under the heading Fees, identified consistent with the feature or type, and itemized, and a total of charges, using the term Fees, must be disclosed for the statement period and calendar year to date, using a format substantially similar to Sample G–18(A).

a. ***Change-in-terms and increased penalty rate summary for open-end (not home-secured) plans***. Creditors that provide a change-in-terms notice required by 12 CFR 1026.9(c), or a rate increase notice required by 12 CFR 1026.9(g), on or with the periodic

statement, must disclose the information in 12 CFR 1026.9(c)(2)(iv)(A) and (c)(2)(iv)(B) (if applicable) or 12 CFR 1026.9(g)(3)(i) on the periodic statement in accordance with the format requirements in 12 CFR 1026.9(c)(2)(iv)(D), and 12 CFR 1026.9(g)(3)(ii). See Forms G–18(F) and G–18(G). (12 CFR 1026.7(b)(7))

b. ***Grace period***. The date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge if payment is received after the time period's expiration. (12 CFR 1026.7(b)(8))

c. ***Address for notice of billing errors***. The address to be used for notice of billing errors. Alternatively, the address may be provided on the billing rights statement permitted by 12 CFR 1026.9(a)(2). (12 CFR 1026.7(b)(9))

d. ***Closing date of billing cycle; new balance***. The closing date of the billing cycle and the account balance outstanding on that date disclosed in accordance with 12 CFR 1026.7(b)(13). (12 CFR 1026.7(b)(10))

e. ***Due date; late payment costs***. With the exception of periodic statements provided solely for charge cards, other than covered separate credit features that are charge card accounts accessible by hybrid prepaid-credit cards as defined in 12 CFR 1026.61, and periodic statements provided for a charged-off account where payment of the entire account balance is due immediately, determine that the creditor disclosed (in accordance with 12 CFR 1026.7(b)(13)) for a credit card account under an open-end (not home-secured) consumer credit plan:

   i. The due date for a payment (the due date must be the same day of the month for each billing cycle). (12 CFR 1026.7(b)(11)(i)(A))

   ii. The amount of any late payment fee and any increased periodic rate(s) (expressed as an annual percentage rate(s)) that may be imposed on the account as a result of a late payment. If a range of late payment fees may be assessed, verify that the card issuer either states a range of fees or the highest fee and an indication that the fee imposed could be lower. (12 CFR 1026.7(b)(11)(i)(B))

   NOTE: If the rate may be increased for more than one feature or balance, the card issuer may state the range of rates or the highest rate that could apply and at the issuer's option an indication that the rate imposed could be lower.

   NOTE: Further, with the exception of the negative or no amortization disclosures required by 12 CFR 1026.7(b)(12)(ii), the repayment disclosures in 12 CFR 1026.7(b)(12) (as listed in step 12 below) are not required for:

   iii. Charge card accounts that require payment of outstanding balances in full at the end of each billing cycle;

   iv. A billing cycle immediately following two consecutive billing cycles in which the consumer paid the entire balance in full, had a zero outstanding balance or had a credit balance; and

   v. A billing cycle where paying the minimum payment due for that billing cycle will pay the entire outstanding balance on the account for that billing cycle.

f. Given those exceptions above, determine that the card issuer disclosed on the periodic statement 12 CFR 1026.7(b)(12):

   i. The following statement with a bold heading: "**Minimum Payment Warning:** If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance" (12 CFR 1026.7(b)(12)(i)(A));

   ii. The minimum payment repayment estimate, as described in Appendix M1 to this part.

   NOTE: If the minimum payment repayment estimate is less than two years, determine that the card issuer disclosed the estimate in months. Otherwise, the estimate must be disclosed in years and rounded to the nearest whole year (12 CFR 1026.7(b)(12)(i)(B));

   iii. The minimum payment total cost estimate, as described in Appendix M1 to this part, rounded to the nearest whole dollar or to the nearest cent, at the card issuer's option (12 CFR 1026.7(b)(12)(i)(C));

   iv. A statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the current outstanding balance shown on the periodic statement. A statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the assumption that only minimum payments are made and no other amounts are added to the balance (12 CFR 1026.7(b)(12)(i)(D));

v. A toll-free telephone number where the consumer may obtain from the card issuer information about credit counseling services (12 CFR 1026.7(b)(12)(i)(E)); and

vi. The disclosures required for 12 CFR 1026.7(b)(12)(i)(F)(1):

A. The estimated monthly payment for repayment in 36 months, as described in Appendix M1 to this part. The estimated monthly payment for repayment in 36 months must be rounded to the nearest whole dollar or to the nearest cent, at the card issuer's option (12 CFR 1026.7(b)(12)(i)(F)(1)(i));

B. A statement that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in three years if the consumer pays the estimated monthly payment for three years (12 CFR 1026.7(b)(12)(i)(F)(1)(ii));

C. The total cost estimate for repayment in 36 months, as described in Appendix M1 to this part. The total cost estimate for repayment in 36 months must be rounded to the nearest whole dollar or to the nearest cent, at the card issuer's option (12 CFR 1026.7(b)(12)(i)(F)(1)(iii)); and

D. The savings estimate for repayment in 36 months, as described in appendix M1 to this part. The savings estimate for repayment in 36 months must be rounded to the nearest whole dollar or to the nearest cent, at the card issuer's option (12 CFR 1026.7(b)(12)(i)(F)(1)(iv)).

NOTE: The disclosures (A through D above) required for 12 CFR 1026.7(b)(12)(i)(F)(1) do not apply to a periodic statement in any of the following circumstances:

1) The minimum payment repayment estimate that is disclosed on the periodic statement pursuant to paragraph (b)(12)(i)(B) of this section after rounding is three years or less;

2) The estimated monthly payment for repayment in 36 months, as described in Appendix M1 to this part, rounded to the nearest whole dollar or nearest cent that is calculated for a particular billing cycle is less than the minimum payment required for the plan for that billing cycle; and

3) A billing cycle where an account has both a balance in a revolving feature where the required minimum payments for this feature will not amortize that balance in a fixed amount of time specified in the account agreement and a balance in a fixed repayment feature where the required minimum payment for this fixed repayment feature will amortize that balance in a fixed amount of time specified in the account agreement which is less than 36 months.

vii. If negative or no amortization occurs when calculating the minimum payment estimate as described in Appendix M1, determine that the card issuer provides the following disclosures on each periodic statement instead of the disclosures set forth in 12 CFR 1026.7(b)(12)(i) (12 CFR 1026.7(b)(12)(ii)):

A. "**Minimum Payment Warning**: Even if you make no more charges using this card, if you make only the minimum payment each month we estimate **you will never pay off the balance shown on this statement** because your payment will be less than the interest charged each month" (12 CFR 1026.7(b)(12)(ii)(A));

B. "If you make more than the minimum payment each period, you will pay less in interest and pay off your balance sooner" (12 CFR 1026.7(b)(12)(ii)(B));

C. The estimated monthly payment for repayment in 36 months rounded to the nearest whole dollar or to the nearest cent, at the creditor's option (12 CFR 1026.7(b)(12)(ii)(C));

D. A statement that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in three years if the consumer pays the estimated monthly payment each month for three years (12 CFR 1026.7(b)(12)(ii)(D)); and

E. A toll-free telephone number where the consumer may obtain from the card issuer information about credit counseling services consistent with 12 CFR 1026.7(b)(12)(iv). (12 CFR 1026.7(b)(12)(ii)(E))

viii. Verify that the items required to be disclosed, as addressed in the procedures in step 12 above (required by 12 CFR 1026.7(b)(12)) are disclosed in accordance with the format requirements of 12 CFR 1026.7(b)(13) and are substantially similar to the samples provided in Appendix G of Regulation Z.

ix. Determine that a card issuer provides (to the extent available from the United States Trustee or a bankruptcy administrator) through the disclosed toll-free telephone number the name, street address, telephone number, and website address for at least three organizations that have been approved by the United States Trustee or a bankruptcy administrator to provide credit counseling services in either the state in which the billing address for the account is located or the state specified by the consumer. (12 CFR 1026.7(b)(12)(iv)(A))

x. Determine that the card issuer at least annually updates the credit counseling information it discloses for consistency with the information available from the United States Trustee or a bankruptcy administrator. (12 CFR 1026.7(b)(12)(iv)(B))

g. Determine that the card issuer provided periodic statement disclosures according to the following format requirements (12 CFR 1026.7(b)(13)):

i. The due date is disclosed on the front of the first page of the periodic statement and that the amount of the late payment fee and the APR(s) are stated in close proximity thereto.

ii. The ending balance and the repayment disclosures (required by paragraph (b)(12) of 12 CFR 1026.7 are disclosed closely proximate to the minimum payment due.

iii. The due date, late payment fee and APR, ending balance, minimum payment due, and repayment disclosures are grouped together.

NOTE: Sample G-18(D) in appendix G of Regulation Z sets forth an example of how these terms may be grouped.

h. For accounts with an outstanding balance subject to a deferred interest or similar program, determine that the creditor disclosed the date by which that outstanding balance must be paid in full in order to avoid the obligation to pay finance charges on such balance on the front of any page of each periodic statement issued during the deferred interest period beginning with the first periodic statement issued during the deferred interest period that reflects the deferred interest or similar transaction. The disclosure provided pursuant to this paragraph must be substantially similar to Sample G–18(H) in Appendix G to this part. (12 CFR 1026.7(b)(14))

Subsequent Disclosure Requirements – 12 CFR 1026.9

1. Determine whether the creditor mailed or delivered the billing rights statement at least once per calendar year, at intervals of not less than 6 months or more than 18 months, customers and whether the institution used the short form notice with each periodic statement. (12 CFR 1026.9(a)(1))

   NOTE: As an alternative to the annual billing rights statement (12 CFR 1026.9(a)(1)), the creditor may mail or deliver, on or with each periodic statement, a statement substantially similar to Model Form G–4 or Model Form G–4(A) in Appendix G to this part, as applicable. Creditors offering home-equity plans subject to the requirements of 12 CFR 1026.40 may use either Model Form, at their option. (12 CFR 1026.9(a)(2))

2. If, 30 days after mailing or delivering the account-opening disclosures under 12 CFR 1026.6(a)(1) or (b)(3)(ii)(A), the creditor adds a credit feature or furnishes a credit access device (other than as a renewal, resupply, or the original issuance of a credit card, or except with regard to checks that access a credit card account) on the same finance charge terms, determine that the creditor discloses, before the consumer uses the feature or device for the first time, that it is for use in obtaining credit under the terms previously disclosed. (12 CFR 1026.9(b)(1))

3. Determine that, except with regard to checks that access a credit card account, whenever a credit feature is added or a credit access device is mailed or delivered to the consumer, and the finance charge terms for the feature or device differ from disclosures previously given, the disclosures required by 12 CFR 1026.6(a)(1) or (b)(3)(ii)(A) that are applicable to the added feature or device are given before the consumer uses the feature or device for the first time. (12 CFR 1026.9(b)(2))

4. ***Checks that access a credit card account***. For open-end plans not subject to the requirements of 12 CFR 1026.40, if checks that can be used to access a credit card account are provided more than 30 days after account-opening disclosures under 12 CFR 1026.6(b) are mailed or delivered, or are provided within 30 days of the account-opening disclosures and the finance charge terms for the checks differ from the finance charge terms previously disclosed, determine that the creditor discloses on the front of the page containing the checks the following terms in the form of a table with the headings, content, and form substantially similar to Sample G–19 in Appendix G to this part (12 CFR 1026.9(b)(3)):

a. If a promotional rate applies to the checks, determine that the creditor discloses:

   i. The promotional rate and the time period during which the promotional rate will remain in effect (12 CFR 1026.9(b)(3)(i)(A)(1));

   ii. The type of rate that will apply (such as whether the purchase or cash advance rate applies) after the promotional rate expires, and the annual percentage rate that will apply after the promotional rate expires. For a variable-rate account, a creditor must disclose an annual percentage rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraph (b)(3)(ii) of this 12 CFR 1026.9(b)(3)(i)(A)(2)); and

   iii. The date, if any, by which the consumer must use the checks in order to qualify for the promotional rate. If the creditor will honor checks used after such date but will apply an annual percentage rate other than the promotional rate, the creditor must disclose this fact and the type of annual percentage rate that will apply if the consumer uses the checks after such date (12 CFR 1026.9(b)(3)(i)(A)(3)).

b. If any APR required to be disclosed pursuant to 12 CFR 1026.9(b)(3)(i) is a variable rate, determine that the creditor also disclosed the fact that the rate may vary and how the rate is determined. Determine that the creditor identified the type of index or formula used in setting the rate. Determine that the creditor does not disclose the value of the index and the amount of the margin that are used to calculate the variable rate in the table and that any applicable limitations on rate increases are not included in the table (12 CFR 1026.9(b)(3)(iii)).

c. If no promotional rate applies to the checks, determine that the creditor discloses:

   i. The type of rate that will apply to the checks and the applicable annual percentage rate. For a variable-rate account, a creditor must disclose an annual percentage rate based on the applicable index or formula in accordance with the accuracy requirements set forth in 12 CFR 1026.9(b)(3)(ii). (12 CFR 1026.9(b)(3)(i)(B)(1))

d. Determine that the creditor discloses:

   i. Any transaction fees applicable to the checks disclosed under 12 CFR 1026.6(b)(2)(iv). (12 CFR 1026.9(b)(3)(i)(C))

   ii. Whether or not a grace period is given within which any credit extended by use of the checks may be repaid without incurring a finance charge due to a periodic interest rate. When disclosing whether there is a grace period, the phrase "How to Avoid Paying Interest on Check Transactions" shall be used as the row heading when a grace period applies to credit extended by the use of the checks. When disclosing the fact that no grace period exists for credit extended by use of the checks, the phrase "Paying Interest" shall be used as the row heading. (12 CFR 1026.9(b)(3)(i)(D))

   NOTE: The disclosures in 12 CFR 1026.9(b)(3)(i) must be accurate as of the time the disclosures are mailed or delivered. A variable APR is accurate if it was in effect within 60 days of when the disclosures are mailed or delivered. (12 CFR 1026.9(b)(3)(ii))

5. Determine, for home-equity plans subject to the requirements of 12 CFR 1026.40:

   a. Whenever any term required to be disclosed under 12 CFR 1026.6(a) is changed or the required minimum periodic payment is increased, the creditor mailed or delivered written notice of the change at least 15 days prior to the effective date of the change. If the consumer agreed to the change, determine that notice was provided before the change went into effect. (12 CFR 1026.9(c)(1)(i))

   b. If the creditor prohibits additional extensions of credit or reduces the credit limit that the creditor mailed or delivered notice of the action not later than three business days after such action is taken. The notice must contain the specific reasons for the action. (12 CFR 1026.9(c)(1)(iii))

   NOTE: Notice is not required when the change involves a reduction of any component of a finance charge or other charge or when the change results from an agreement involving a court proceeding. (12 CFR 1026.9(c)(1)(ii))

6. For plans other than home-equity plans subject to the requirements of 12 CFR 1026.40, except as provided in 12 CFR 1026.9(c)(2)(i)(B), (c)(2)(iii) and (c)(2)(v), when a significant change in account terms as described in 12 CFR 1026.9(c)(2)(ii) is made, determine that the creditor provides a written notice of the change at least 45 days prior to the effective date of the change to each consumer who may be affected. (12 CFR 1026.9(c)(2)(i)(A))

7. The 45-day timing requirement, however, does not apply if the consumer has agreed to a particular change as described in 12 CFR 1026.9(c)(2)(i)(B). For these instances, however, determine that the creditor provided a notice in accordance with the timing requirements of 12 CFR 1026.9(c)(2)(i)(B). (12 CFR 1026.9(c)(2)(i)(A))

8. For open-end (not home-secured) plans, determine that increases in the rate applicable to a consumer's account due to delinquency, default or as a penalty described in 12 CFR 1026.9(g) that are not due to a change in the contractual terms of the consumer's account are disclosed pursuant to 12 CFR 1026.9(g) instead of 12 CFR 1026.9(c)(2). (12 CFR 1026.9(c)(2)(i)(A))

9. When a notice of change in terms is required, determine that it is mailed or delivered no later than the effective date of the change, if the consumer agrees to the particular change. 12 CFR 1026.9(c)(2)(i)(B) applies only when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's providing additional security or paying an increased minimum payment amount. (12 CFR 1026.9(c)(2)(i)(B))

   NOTE: The 45-day timing requirements discussed in step f above does not apply in certain narrow circumstances, as described in 12 CFR 1026.9(c)(2)(i)(B). The following are not considered agreements between the consumer and the creditor for purposes of 12 CFR 1026.9(c)(2)(i)(B):

   a. The consumer's general acceptance of the creditor's contract reservation of the right to change terms;

   b. The consumer's use of the account (which might imply acceptance of its terms under state law);

   c. The consumer's acceptance of a unilateral term change that is not particular to that consumer, but rather is of general applicability to consumers with that type of account; and,

   d. The consumer's request to reopen a closed account or to upgrade an existing account to another account offered by the creditor with different credit or other features. (12 CFR 1026.9(c)(2)(i)(B))

10. The 45-day advance notice requirement applies to changes to the following terms (12 CFR 1026.9(c)(2)(ii)):

    a. APR increases (including each periodic rate that may be used to compute the finance charge on outstanding balances for purchases, a cash advance, or a balance transfer) and other APR changes (including variable rate information, discounted or premium initial rates, or penalty rates that may be applied to the account);

    b. Fees for issuance or availability, including any fee based upon account activity or inactivity;

    c. Fixed finance charge or minimum interest charge, if it exceeds $1.00;

    d. Transaction charge for purchases;

    e. Grace period;

    f. Balance computation method;

    g. Cash advance fee;

    h. Late payment fee;

    i. Over-the-limit fee;

    j. Balance transfer fee;

    k. Returned payment fee;

    l. Required insurance, debt cancellation, or debt suspension coverage; and

    m. Increase in required minimum periodic payment, or the acquisition of a security interest.

11. Except as provided in 12 CFR 1026.9(c)(2)(vi), if a creditor increases any component of a charge, or introduces a new charge, required to be disclosed under 12 CFR 1026.6(b)(3) that is not a significant change in account terms as described in paragraph (c)(2)(ii) of this 12 CFR, determine that the creditor either (12 CFR 1026.9(c)(2)(iii)):

    a. Complies with the requirements of 12 CFR 1026.9(c)(2)(i), or

    b. Provides notice of the amount of the charge before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure of the charge, either in writing or orally.

12. Ensure that the written change-in-terms notice contains the following disclosures (12 CFR 1026.9(c)(2)(iv)(A)):

    a. A summary of the changes made to terms required by 12 CFR 1026.6(b)(1) and (b)(2) or 12 CFR 1026.6(b)(4), a description of any increase in the required minimum payment, and a description of any security interests being acquired by the creditor.

    b. A statement that changes are being made to the account.

    c. For accounts other than credit card accounts under an open-end (not home-secured) consumer credit plan subject to 12 CFR 1026.9(c)(2)(iv)(B), a statement indicating that the consumer has the right to opt out of the changes, if applicable, and a reference to the opt-out right provided in the notice, if applicable.

    d. The date the changes will become effective.

    e. If applicable, a statement that the consumer may find additional information about the summarized changes, and other changes, in the notice.

f. In the case of a rate change, other than a penalty rate, a statement that if a penalty rate currently applies to the consumer's account, the new rate described in the notice will not apply to the consumer's account until the consumer's account balances are no longer subject to the penalty rate.

g. If the change in terms being disclosed is an increase in the APR, the balances to which the increased rate will apply. If applicable, creditors should disclose a statement identifying the balances to which the current rate will apply as of the effective date of the change.

h. If the change in terms being disclosed is an increase in an annual percentage rate for a credit card account under an open-end (not home-secured) consumer credit plan, a statement of no more than four principal reasons for the rate increase, listed in their order of importance.

NOTE: The disclosed reasons must accurately describe the principal factors actually considered by the card issuer in increasing the rate. (Comment 12 CFR 1026.9(c)(2)(iv)-11)

13. In addition to the disclosures in 12 CFR 1026.9(c)(2)(iv)(A), if a card issuer makes a significant change in account terms on a credit card account under an open-end (not home-secured) consumer credit plan, determine that the creditor provides the following information on the notice provided pursuant to 12 CFR 1026.9(c)(2)(i) (12 CFR 1026.9(c)(2)(iv)(B)):

    NOTE: This information is not required to be provided in the case of an increase in the required minimum periodic payment, an increase in a fee as a result of a reevaluation of a determination made under 12 CFR 1026.52(b)(1)(i) or an adjustment to the safe harbors in 12 CFR 1026.52(b)(1)(ii) to reflect changes in the Consumer Price Index, a change in an annual percentage rate applicable to a consumer's account, an increase in a fee previously reduced consistent with 50 U.S.C. app. 527 (Servicemembers Civil Relief Act) or similar federal or state statute or regulation if the amount of the increased fee does not exceed the amount of that fee prior to the reduction, or when the change results from the creditor not receiving the consumer's required minimum periodic payment within 60 days after the due date for that payment.

    a. A statement that the consumer has the right to reject the change or changes prior to the effective date of the changes, unless the consumer fails to make a required minimum periodic payment within 60 days after the due date for that payment;

    b. Instructions for rejecting the change or changes, and a toll-free telephone number that the consumer may use to notify the creditor of the rejection; and

    c. If applicable, a statement that if the consumer rejects the change or changes, the consumer's ability to use the account for further advances will be terminated or suspended.

14. *Changes resulting from failure to make minimum periodic payment within 60 days from due date for credit card accounts under an open-end (not home-secured) consumer credit plan.* For a credit card account under an open-end (not home-secured) consumer credit plan (12 CFR 1026.9(c)(2)(iv)(C)):

    a. If the significant change required to be disclosed pursuant to 12 CFR 1026.9(c)(2)(i) of this section is an increase in an annual percentage rate or a fee or charge required to be disclosed under 12 CFR 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment, determine that the notice provided pursuant to paragraph (c)(2)(i) of this section states that the increase will cease to apply to transactions that occurred prior to or within 14 days of provision of the notice, if the creditor receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase.

    b. If the significant change required to be disclosed pursuant to 12 CFR 1026.9(c)(2)(i) is an increase in a fee or charge required to be disclosed under 12 CFR 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment, determine that the notice provided pursuant to 12 CFR 1026.9(c)(2)(i) also states the reason for the increase.

15. Determine that the summary of changes described in 12 CFR 1026.9(c)(2)(iv)(A)(1) is in a tabular format (except for a summary of any increase in the required minimum periodic payment, a summary of a term required to be disclosed under 12 CFR 1026.6(b)(4) that is not required to be disclosed under 12 CFR 1026.6(b)(1) and (b)(2), or a description of any security interest being acquired by the creditor), with headings and format substantially similar to any of the account-opening tables found in G–17 in Appendix G. Determine that the table discloses the changed term and information relevant to the change, if that relevant information is required by 12 CFR 1026.6(b)(1) and (b)(2). Determine that the new terms are described in the same level of detail as required when disclosing the terms under 12 CFR 1026.6(b)(2). (12 CFR 1026.9(c)(2)(iv)(D)(1))

16. If a notice required by 12 CFR 1026.9(c)(2)(i) (change in terms) is included on or with a periodic statement, determine that the information described in 12 CFR 1026.6(c)(2)(iv)(A)(1) is disclosed on the front of any page

of the statement. Determine that the summary of changes described in 12 CFR 1026.9(c)(2)(iv)(A)(1) immediately follows the information described in 12 CFR 1026.9(c)(2)(iv)(A)(2) through 12 CFR 1026.9(c)(2)(iv)(A)(7) and, if applicable, 12 CFR 1026.9(c)(2)(iv)(A)(8), 12 CFR 1026.9(c)(2)(iv)(B), and 12 CFR 1026.9(c)(2)(iv)(C), and is substantially similar to the format shown in Sample G-20 or G-21 in Appendix G to this part. (12 CFR 1026.9(c)(2)(iv)(D)(2))

17. If a notice required by 12 CFR 1026.9(c)(2)(i) is not included on or with a periodic statement, determine that the information described in 12 CFR 1026.9(c)(2)(iv)(A)(1) is disclosed on the front of the first page of the notice or segregated on a separate page from other information given with the notice. (12 CFR 1026.9(c)(2)(iv)(D)(3))

    NOTE: The summary of changes required to be in a table pursuant to paragraph (c)(2)(iv)(A)(1) of this section may be on more than one page, and may use both the front and reverse sides, so long as the table begins on the front of the first page of the notice and there is a reference on the first page indicating that the table continues on the following page.

18. Determine that the summary of changes described in 12 CFR 1026.9(c)(2)(iv)(A)(1) immediately follows the information described in 12 CFR 1026.9(c)(2)(iv)(A)(2) through 12 CFR 1026.9(c)(2)(iv)(A)(7) and, if applicable, 12 CFR 1026.9(c)(2)(iv)(A)(8), (c)(2)(iv)(B), and (c)(2)(iv)(C), of this section, and is substantially similar to the format shown in Sample G-20 or G-21 in Appendix G to this part. (12 CFR 1026.9(c)(2)(iv)(D)(3))

19. For open-end plans (other than home equity plans subject to the requirements of 12 CFR 1026.40), note that a creditor is not required to provide notice under this section if (12 CFR 1026.9(c)(2)(v)):

    a. The change involves:

        i. Charges for documentary evidence;

        ii. A reduction of any component of a finance or other charge;

        iii. A suspension of future credit privileges (except as provided in 12 CFR 1026.9(c)(2)(vi) of this section) or termination of an account or plan;

        iv. When the change results from an agreement involving a court proceeding;

        v. When the change is an extension of the grace period; or

        vi. The change is applicable only to checks that access a credit card account and the changed terms are disclosed on or with the checks in accordance with 12 CFR 1026.9(b)(3) (12 CFR 1026.9(c)(2)(v)(A));

    b. The change is an increase in an APR upon the expiration of a specified period of time, provided that (12 CFR 1026.9(c)(2)(v)(B)):

        i. Prior to commencement of that period, the creditor disclosed in writing to the consumer, in a clear and conspicuous manner, the length of the period and the APR or fee that would apply after expiration of the period;

        ii. The disclosure of the length of the period and the APR or fee that would apply after expiration of the period are set forth in close proximity and in equal prominence to the first listing of the disclosure of the rate or fee that applies during the specified period of time; and

        iii. The APR or fee that applies after that period does not exceed the rate disclosed pursuant to 12 CFR 1026.9(c)(2)(v)(B)(1) or, if the rate disclosed pursuant to 12 CFR 1026.9(c)(2)(v)(B)(1) was a variable rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that was used to calculate the variable rate disclosed pursuant to 12 CFR 1026.9(c)(2)(v)(B)(1);

    c. The change is an increase in a variable APR in accordance with a credit card or other account agreement that provides for changes in the rate according to operation of an index that is not under the control of the creditor and is available to the general public (12 CFR 1026.9(c)(2)(v)(C)); or

    d. The change is an increase in an APR, a fee or charge required to be disclosed under 12 CFR 1026.6(b)(2)(ii), (b)(2)(iii), (b)(2)(viii), (b)(2)(ix) or (b)(2)(xii), or the required minimum periodic payment due to the completion of a workout or temporary hardship arrangement by the consumer or the consumer's failure to comply with the terms of such an arrangement, provided that (12 CFR 1026.9(c)(2)(v)(D)):

        i. The APR or fee or charge applicable to a category of transactions or the required minimum periodic payment following any such increase does not exceed the rate or fee or charge or required minimum periodic payment that applied to that category of transactions prior to commencement of the arrangement or, if the rate that applied to a category of transactions prior to the commencement of the workout or temporary hardship arrangement was a variable rate, the rate following any such increase is a variable rate

determined by the same formula (index and margin) that applied to the category of transactions prior to commencement of the workout or temporary hardship arrangement; and

ii. The creditor has provided the consumer, prior to the commencement of such arrangement, with a clear and conspicuous disclosure of the terms of the arrangement (including any increases due to such completion or failure). This disclosure must generally be provided in writing. However, a creditor may provide the disclosure of the terms of the arrangement orally by telephone, provided that the creditor mails or delivers a written disclosure of the terms of the arrangement to the consumer as soon as reasonably practicable after the oral disclosure is provided.

20. For open-end plans that are not subject to the requirements of 12 CFR 1026.40, if a creditor decreases the credit limit on the account, determine that advance notice of the decrease is provided before an over-the-limit fee or a penalty rate can be imposed solely as a result of the consumer exceeding the newly decreased credit limit. Determine that notice is provided in writing or orally at least 45 days prior to imposing the over-the-limit fee or penalty rate and that it states that the credit limit on the account has been or will be decreased. (12 CFR 1026.9(c)(2)(vi))

21. Determine that the disclosures contained in 12 CFR 1026.60(b)(1) through (b)(7) are provided if the account is renewed and (1) the card issuer imposes an annual or other periodic fee for the renewal or (2) the card issuer has changed or amended any term of the account required to be disclosed under 12 CFR 1026.6(b)(1) and (b)(2) that has not previously been disclosed to the consumer. Additionally, the disclosure provided upon renewal must disclose how and when the cardholder may terminate the credit to avoid paying the renewal fee, if any. (12 CFR 1026.9(e))

22. For plans other than home-equity plans subject to the requirements of 12 CFR 1026.40 (except as provided in 12 CFR 1026.9(g)(4)), determine that the creditor provides a written notice to each consumer who may be affected when (12 CFR 1026.9(g)(1)):

    a. A rate is increased due to the consumer's delinquency or default; or

    b. A rate is increased as a penalty for one or more events specified in the account agreement, such as making a late payment or obtaining an extension of credit that exceeds the credit limit.

23. Whenever any notice is required to be given pursuant to paragraph (g)(1) of this section, determine that the creditor provided written notice of the increase in rates at least 45 days prior to the effective date of the increase. The notice must be provided after the occurrence of the events described in 12 CFR 1026.9(g)(1)(i) and (g)(1)(ii) that trigger the imposition of the rate increase. (12 CFR 1026.9(g)(2))

24. If a creditor is increasing the rate due to delinquency or default or as a penalty, determine that the creditor provided the following information on the notice sent pursuant to 12 CFR 1026.9(g)(1) (12 CFR 1026.9(g)(3)(i)(A)):

    a. A statement that the delinquency or default rate or penalty rate, as applicable, has been triggered;

    b. The date on which the delinquency or default rate or penalty rate will apply;

    c. The circumstances under which the delinquency or default rate or penalty rate, as applicable, will cease to apply to the consumer's account, or that the delinquency or default rate or penalty rate will remain in effect for a potentially indefinite time period;

    d. A statement indicating to which balances the delinquency or default rate or penalty rate will be applied;

    e. If applicable, a description of any balances to which the current rate will continue to apply as of the effective date of the rate increase, unless a consumer fails to make a minimum periodic payment within 60 days from the due date for that payment; and

    f. For a credit card account under an open-end (not home-secured) consumer credit plan, a statement of no more than four principal reasons for the rate increase, listed in their order of importance.

    NOTE: The disclosed reasons must accurately describe the principal factors actually considered by the card issuer in increasing the rate. (Comment 12 CFR 1026.9(g) - 7)

25. For a credit card account under an open-end (not home-secured) consumer credit plan, if the rate increase required to be disclosed pursuant to paragraph (g)(1) of this section is an increase pursuant to 12 CFR 1026.55(b)(4) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment, determine that the notice provided pursuant to paragraph (g)(1) of this section also states that the increase will cease to apply to transactions that occurred prior to or within 14 days of provision of the notice, if the creditor receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase. (12 CFR 1026.9(g)(3)(i)(B))

26. If a notice required by 12 CFR 1026.9(g)(1) *(Increase in rates due to delinquency or default or as a penalty)* is included on or with a periodic statement, determine that the disclosure described in paragraph (g)(3)(i) is in the form of a table and provided on the front of any page of the periodic statement, above the notice described in paragraph (c)(2)(iv) of this section if that notice is provided on the same statement. (12 CFR 1026.9(g)(3)(ii)(A))

27. If a notice required by 12 CFR 1026.9(g)(1) (increase in rates) is not included on or with a periodic statement, determine that the information described in 12 CFR 1026.9(g)(3)(i) is disclosed on the front of the first page of the notice. Ensure that only information related to the increase in the rate to a penalty rate is included with the notice.

    NOTE: This notice may be combined with a notice described in 12 CFR 1026.9(c)(2)(iv) or (g)(4) (A statement indicating to which balances the delinquency or default rate or penalty rate will be applied) of this section. (12 CFR 1026.9(g)(3)(ii)(B))

28. ***Exception for Decreases in the Credit Limit***. If a creditor does not provide the 45-day notice under 12 CFR 1026.9(g)(1) prior to increasing the rate for obtaining an extension of credit that exceeds the credit limit, determine that the creditor provides at least 45 days in advance of imposing the penalty rate a notice, in writing, that includes (12 CFR 1026.9(g)(4)):

    a. A statement that the credit limit on the account has or will be decreased.

    b. The date on which the penalty rate will apply, if the outstanding balance exceeds the credit limit as of that date;

    c. A statement that the penalty rate will not be imposed on that date, if the outstanding balance does not exceed the credit limit as of that date;

    d. The circumstances under which the penalty rate, if applied, will cease to apply to the account, or that the penalty rate, if applied, will remain in effect for a potentially indefinite period of time;

    e. A statement indicating to which balances the penalty rate may be applied; and

    f. If applicable, a description of any balances to which the current rate will continue to apply as of the effective date of the rate increase, unless the consumer fails to make a minimum periodic payment within 60 days from the due date for that payment.

    In addition to this notice, determine that the creditor does not increase the applicable rate to the penalty rate if the outstanding balance does not exceed the credit limit on the date set forth in the notice. (12 CFR 1026.9(g)(4)(ii))

29. If a notice provided pursuant to 12 CFR 1026.9(g)(4)(i) is included on or with a periodic statement, determine that the information described in 12 CFR 1026.9(g)(4)(i) is in the form of a table and provided on the front of any page of the periodic statement (12 CFR 1026.9(g)(4)(iii)(A)); or,

30. If a notice required by 12 CFR 1026.9(g)(4)(i) is not included on or with a periodic statement, determine that the information described in 12 CFR 1026.9(g)(4)(i) is disclosed on the front of the first page of the notice. Determine that only information related to the reduction in credit limit is included with the notice, except that this notice may be combined with a notice described in 12 CFR 1026.9(c)(2)(iv) or (g)(1). (12 CFR 1026.9(g)(4)(iii)(B))

31. When the consumer is given the right to reject a significant change to an account term prior to the effective date of the change, determine whether the consumer was given the option to reject the change by notifying the creditor of the rejection before the effective date of the change. (12 CFR 1026.9(h)(1))

32. If the creditor was notified of the rejection of a significant change to an account term, determine that the creditor did not:

    a. Apply the charge to the account;

    b. Impose a fee or charge or treat the account as in default solely as a result of the rejection; or

    c. Require repayment of the balance on the account using a method that is LESS beneficial to the consumer than one of the following methods:

        i. The method of repayment for the account on the date on which the creditor was notified of the rejection;

        ii. An amortization period of not less than five years, beginning no earlier than the date on which the creditor was notified of the rejection; or

        iii. A required minimum periodic payment that includes a percentage of the balance that is equal to no more than twice the percentage required on the date on which the creditor was notified of the rejection. (12 CFR 1026.9(h)(2))

    NOTE: These requirements do not apply if the creditor has not received the consumer's required minimum periodic payment within 60 days after the due date for that payment and the creditor has provided timely change in terms disclosures. (12 CFR 1026.9(h)(3))

33. Determine that a statement of the maximum interest rate that may be imposed during the term of the obligation is made for any dwelling-secured loan in which the APR may increase during the plan. (12 CFR 1026.30(b))

34. For any open-end mortgage loan (credit transaction that is secured by the principal dwelling of a consumer) that was sold, assigned, or otherwise transferred to the covered person, determine that the covered person notifies the borrower in writing of such transfer, including (12 CFR 1026.39):

    a. An identification of the loan that was sold, assigned, or otherwise transferred;

    b. The name, address, and telephone number of the covered person who owns the mortgage loan;

    c. The date of transfer (either the date of acquisition recognized in the books and records of the covered person or that of the transferring party) identified by the covered person;

    d. The name, address, and telephone number of an agent or party having authority, on behalf of the covered person, to receive notice of the right to rescind and resolve issues concerning the consumer's payments on the mortgage loan;

    e. Where transfer of ownership of the debt to the covered person is or may be recorded in public records or, alternatively, that the transfer of ownership has not been recorded in public records at the time the disclosure is provided; and

    f. At the option of the covered person, any other relevant information regarding the transaction.

    g. If there are multiple covered persons, contact information for each of them, unless one of them has been authorized to receive the consumer's notice of the right to rescind and resolve issues concerning the consumer's payments on the loan. (12 CFR 1026.39(d)-(e))

    NOTE: This notice of sale or transfer must be provided for any consumer credit transaction that is secured by the principal dwelling of a consumer. This notification is required by the covered person even if the loan servicer remains the same. In addition, if more than one consumer is liable on the obligation, the covered person may mail or deliver the disclosure notice to any consumer who is primarily liable. And, if an acquisition involves multiple covered persons who each acquire a partial interest in the loan pursuant to separate and unrelated agreements, each covered person has a duty to ensure that disclosures related to its acquisition are accurate and provided in a timely manner unless an exception in 12 CFR 1026.39(c) applies. The parties may, but are not required to, provide a single notice that satisfies the timing and content requirements applicable to each covered person. (Comment 12 CFR 1026.39(b)(5) – 2)

Disclosure Requirements for Over-the-Limit Transactions – 12 CFR 1026.56

1. Determine that the oral, written or electronic "opt-in" notice includes all of the following applicable items (and not any information not specified in or otherwise permitted) (12 CFR 1026.56(e)(1)):

    a. ***Fees***. The dollar amount of any fees or charges assessed by the card issuer on a consumer's account for an over-the-limit transaction;

    b. ***APR(s)***. Any increased periodic rate(s) (expressed as an APR(s)) that may be imposed on the account as a result of an over-the-limit transaction; and

    c. ***Disclosure of opt-in right***. An explanation of the consumer's right to affirmatively consent to the card issuer's payment of over-the-limit transactions, including the method(s) by which the consumer may consent.

2. Determine that the written notice informing the consumer of the right to revoke consent following the assessment of an over-the-limit fee or charge describes that right, including the method(s) by which the consumer may revoke consent. (12 CFR 1026.56(e)(2))

Reverse Mortgage Forms Review Procedures (Both Open- and Closed-End)

1. Determine that the disclosures required for reverse mortgage transactions are substantially similar to the model form in Appendix K and include the items below (12 CFR 1026.33):

    a. 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.

    b. 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.

    c. An itemization of loan terms, charges, the age of the youngest borrower, and the appraised property value.

    d. 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 Requirements

1. **Timing Requirements – Open-End Credit.** 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 (12 CFR 1026.60(b))

   b. ***Adding a covered separate credit feature accessible by a hybrid prepaid-credit card to a prepaid account***. Ensure that a card issuer does not do any of the following until 30 days after the prepaid account has been registered: (1) open a covered separate credit feature that could be accessible by the hybrid prepaid-credit card; (2) make a solicitation or provide an application to open a covered separate credit feature that could be accessible by the hybrid prepaid-credit card; or (3) allow an existing credit feature that was opened prior to the consumer obtaining the prepaid account to become a covered separate credit feature accessible by the hybrid prepaid-credit card. (12 CFR 1026.61(c))

   c. ***HELOC disclosures***. At the time the application is provided or within three business days under certain circumstances. (12 CFR 1026.40(b))

   d. ***Open-end credit initial disclosures***. Before the first transaction is made under the plan. (12 CFR 1026.5(b)(1))

   e. ***Card Holder Agreement***. Verify that the card issuer sends to the cardholder or otherwise make available to the cardholder a copy of the cardholder's agreement in electronic or paper form no later than 30 days after the issuer receives the cardholder's request (12 CFR 1026.58(e)(1)(ii)). Determine that the issuer has adequate procedures for ensuring that this requirement is met.

   f. ***Periodic statement disclosures for open-end credit under 12 CFR 1026.7***. Required if at the end of a billing cycle, the account has a debit or credit balance of $1 or more or if a finance charge has been imposed (12 CFR 1026.5(b)(2)(i)). Also, the creditor must adopt reasonable procedures designed to ensure that periodic statements for credit card accounts are mailed or delivered at least 21 days prior to the payment due date and the date on which any grace period expires (for non-credit card open-end credit, there is a 21 day rule if there is a grace period and a 14-day rule if there is no grace period). (12 CFR 1026.5(b)(2)(ii)(B)(2))

   g. ***Statement of billing rights***. At least once per year. (12 CFR 1026.9(a))

   h. ***Supplemental credit devices***. Before the first transaction under the plan. (12 CFR 1026.9(b))

   i. ***Open-end credit change in significant terms as a result of a change in contractual terms***. 45 days prior to the effective change date. (12 CFR 1026.9(c)(2))

   j. ***Open-end change in terms or rates due to delinquency or default or as a penalty***. 45 days prior to the effective change date. (12 CFR 1026.9(g))

   k. ***Finance charge imposed at time of transaction***. Prior to imposing any fee. (12 CFR 1026.9(d))

   l. ***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, or at least 30 days prior to the scheduled renewal date if the creditor has changed or amended any term required to be disclosed under 12 CFR 1026.6(b)(1) and (b)(2) that has not previously been disclosed to the consumer. (12 CFR 1026.9(e))

   m. ***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. (12 CFR 1026.9(f))

2. **Timing Requirements – Closed-End Credit Secured by a Dwelling**

   a. Closed-end credit disclosures for transactions not subject to 12 CFR 1026.19(e) and (f) must be made before consummation. (12 CFR 1026.17(b))

   b. Disclosures for reverse mortgages. Several disclosure timing requirements apply to reverse mortgages subject to 12 CFR 1026.33 and RESPA:

      i. Determine whether the creditor provides early TIL disclosures within three business days after receiving the consumer's written application. The creditor is required to deliver or mail the early disclosures no later than three business days after receiving the consumer's application and at least seven business days before consummation (12 CFR 1026.19(a)(1)(i) and (iii) and 12 CFR

1026.19(a)(2)(i)). No fees may be charged before the consumer receives the early disclosures except for credit report fees (12 CFR 1026.19(a). If the APR stated in the early disclosures is not considered accurate under 12 CFR 1026.22 when compared to the APR at consummation, determine whether the creditor provided corrected disclosures of all changed terms, including the APR, that the consumer received no later than the third business day before consummation and that the creditor delivered or placed in the mail the corrected disclosures not later than the seventh business day before consummation. (12 CFR 1026.19(a)(2)(i)and (ii)

ii. Determine whether the creditor provides the disclosures required pursuant to 12 CFR 1026.33 (and found in paragraph d of the model form in Appendix K) either three days prior to consummation (for a closed-end transaction) or prior to the first transaction (for an open-end credit plan). (12 CFR 1026.31(c)(2))

*NOTE: For closed-end credit transactions secured by a dwelling not subject to the TILA-RESPA rule, the prohibition on charging fees (other than credit report fees) before the consumer receives the early TIL disclosure is more limited than the prohibition for closed-end credit transactions secured by a dwelling that are subject to TILA-RESPA. (12 CFR 1026.19(a)) For TILA-RESPA closed-end transactions, creditors are prohibited from charging fees (other than credit report fees) prior to receipt of disclosures **and** an intent to proceed with the transaction. (12 CFR 1026.19(e)(2))*

c. *Disclosures for high-cost mortgages*. – Three business days prior to consummation or account opening. If such disclosures became inaccurate due to a change by the creditor, ensure that the creditor provided new, accurate disclosures no later than three business days prior to consummation or account opening. (12 CFR 1026.31(c)(1))

d. Disclosures for initial rate change to an adjustable-rate mortgage securing a principal dwelling with terms of more than one year:

i. For adjustable-rate mortgages, creditors, assignees, or servicers are generally required to provide information regarding the first interest rate change to consumers between 210 and 240 days prior to the date the first payment at the new rate is due;

NOTE: If the first payment change occurs within the first 210 days, creditors, assignees, or servicers are required to provide the disclosure at consummation. (12 CFR 1026.20(d))

NOTE: When examining a creditor that continues to own the loan, an assignee, or a servicer, if the entity states that another entity has the obligation to provide the disclosures, examiners should determine whether the entity takes steps to ensure that the other party (the creditor, assignee, or servicer, as applicable) is complying with the obligation to provide the disclosures.

e. Additional disclosures for adjustable-rate mortgages securing a principal dwelling with a term of more than one year, where a rate change affects the amount of payment:

i. For adjustable-rate mortgages where the payment changes with a rate change, disclosures must be provided to consumers between 60 and 120 days before the first payment at the new rate is due;

ii. For adjustable-rate mortgages where the payment change is caused by a rate change that is uniformly scheduled every 60 days (or more frequently), disclosures must be provided to consumers between 25 and 120 days before the first payment at the new rate;

iii. For adjustable-rate mortgages originated prior to January 10, 2015, where the interest rate and payment are calculated based on an index that is available less than 45 days prior to the change, disclosures must be provided between 25 and 120 days before the first payment at the new rate is due; and

iv. For adjustable-rate mortgages where the payment adjustment occurs within 60 days of consummation and the new interest rate after adjustment provided at consummation was an estimate, disclosure are required as soon as practicable, but no later than 25 days prior to the first payment at the new rate is due. (12 CFR 1026.20(c))

NOTE: The requirements of 12 CFR 1026.20(c) do not apply to: ARMS with terms of one year or less; first interest rate adjustments to an ARM if the first adjusted payment is due within 210 days after consummation and the new interest rate disclosed at consummation was not an estimate; or the creditor, assignee or servicer when the servicer is subject to the Fair Debt Collections Practices Act (FDCPA) and the consumer has notified the servicer to cease communication under section 805(c) of the FDCPA. (12 CFR 1026.20(c)(1)(ii))

f. ***Notice of new creditor***. –On or before the 30th calendar day following the acquisition (12 CFR 1026.39).

g. For private education loans subject to Subpart F (12 CFR 1026.46), determine that:

   i. Application or solicitation disclosures were provided on or with any application or solicitation (12 CFR 1026.46(d)(1)(i));

   ii. Approval disclosures were provided before consummation on or with any notice of approval provided to the consumer (12 CFR 1026.46(d)(2)); and

   iii. Final disclosures were provided after the consumer accepts the loan and at least three business days prior to disbursing the private education loan funds. (12 CFR 1026.46(d)(3))

h. Determine that the issuer provides a written over-the-limit notice prior to the assessment of any over-the-limit fee or charge on a consumer's account. (12 CFR 1026.56(d)(1)(i))

i. Determine that, if a consumer consents to the card issuer's payment of any over-the-limit transaction by oral or electronic means, the card issuer provides the required written notice immediately prior to obtaining that consent. (12 CFR 1026.56(d)(1)(ii))

j. Determine that the notice confirming the consumer's consent is provided no later than the first periodic statement sent after the consumer has consented to the card issuer's payment of over-the-limit transactions. The creditor must not assess an over-the-limit fee on the consumer's account without first providing written confirmation. (12 CFR 1026.56(d)(2))

k. Determine that the notice providing the consumer notice in writing of the right to revoke consent following the assessment of an over-the-limit fee or charge is provided on the front of any page of each periodic statement that reflects the assessment of an over-the-limit fee or charge on a consumer's account. (12 CFR 1026.56(d)(3))

l. For home-equity plans subject to the requirements of 12 CFR 1026.40, whenever any term required to be disclosed under 12 CFR 1026.6(a) is changed or the required minimum periodic payment is increased, determine that the creditor mails or delivers written notice of the change to each consumer who may be affected. Determine that the notice is mailed or delivered at least 15 days prior to the effective date of the change. If the change has been agreed to by the consumer, determine that the notice is given before the effective date of the change. (12 CFR 1026.9(c)(1)(i))

m. ***Notice to restrict credit***. For home-equity plans subject to the requirements of 12 CFR 1026.40, if the creditor prohibits additional extensions of credit or reduces the credit limit pursuant to 12 CFR 1026.40(f)(3)(i) or (f)(3)(vi), determine that the creditor mails or delivers written notice of the action to each consumer who will be affected not later than three business days after the action is taken and contains specific reasons for the action. If the creditor requires the consumer to request reinstatement of credit privileges, determine that the notice states that fact. (12 CFR 1026.9(c)(1)(iii))

Mortgage Loans Secured by Real Property—Early Disclosures (Loan Estimates) – 12 CFR 1026.19(e)

Provision of Disclosures

1. For closed-end consumer loans secured by real property, other than a reverse mortgage subject to 12 CFR 1026.33, determine whether the creditor provides the consumer with good faith estimates on the Loan Estimate (12 CFR 1026.37) or if the creditor satisfies its obligation by ensuring that a mortgage broker providing the Loan Estimate complied with all requirements of 12 CFR 1026.19(e).

   NOTE: Partial exemption. The special disclosure requirements of 12 CFR 1026.19(e) do not apply if the loan is (i) a subordinate lien, (ii) a loan for buyer assistance such as down payments or closing costs, rehabilitation loans, energy efficiency assistance, or foreclosure prevention, (iii) a loan that does not require the payment of interest, (iv) a loan for which repayment that is forgiven, deferred for 20 years, or deferred until the property is sold or is no longer the consumer's principal dwelling, or (v) a loan where the total costs of the transaction are less than one percent of the loan and include fees only for recording, application and housing counseling. In addition to these requirements, the creditor must comply with other requirements of Regulation Z, including the disclosures in 12 CFR 1026.18. (12 CFR 1026.3(h))

Timing

1. Determine whether the creditor delivers or places in the mail the Loan Estimate not later than the third business day after receiving the consumer's application. As defined in 12 CFR 1026.2(a)(3), an application consists of the submission for purposes of obtaining an extension of credit of the consumer's name, income, social security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought. (12 CFR 1026.19(e)(1)(iii)(A))

   NOTE: When a consumer uses an online application system that allows the information to be saved, the timing

requirements for the Loan Estimate are not triggered until the application is submitted.

2. Determine whether the creditor delivers or places in the mail the Loan Estimate not later than the seventh business day before consummation (other than for transactions secured by a consumer's interest in a timeshare plan). (12 CFR 1026.19(e)(1)(iii)(B))

   NOTE: Business day is defined differently for purposes of 12 CFR 1026.19(e)(1)(iii)(A) and (B). For 12 CFR 1026.19(e)(1)(iii)(A), business day is defined based on whether the creditor's offices are open to the public for carrying on substantially all of its business functions on that day. For 12 CFR 1026.19(e)(1)(iii)(B), a business day is all days except Sundays and federal holidays. (12 CFR 1026.2(a)(6))

3. Determine whether the consumer waived the waiting period before consummation under 12 CFR 1026.19(e)(1)(iii)(B) by providing a dated written statement describing a bona fide personal financial emergency, specifically modifying or waiving the waiting period, and signed by all the consumers who are primarily liable on the obligation. (12 CFR 1026.19(e)(1)(v))

   NOTE: Preprinted forms for this purpose are prohibited.

Shopping for Settlement Service Providers

1. Determine whether a creditor permits a consumer to shop for a settlement service and, if so, identifies the settlement services the consumer is permitted to shop for. If so, determine whether the creditor provides a written list identifying at least one available provider for each settlement service for which the consumer may shop and stating that the consumer may choose a different provider for that service. Determine that the creditor provides the written list separately from initial Loan Estimate but in accordance with the same timing requirements. (12 CFR 1026.19(e)(1)(vi))

Pre-Disclosure Activity

1. ***Fee restriction***. Determine that the creditor does not charge any fees before the consumer receives the Loan Estimate and before the consumer indicated to the creditor an intent to proceed with the transaction, except for bona fide and reasonable credit report fees. (12 CFR 1026.19(e)(2)(i)(A))

2. ***Disclaimer on early estimates***. Determine whether a creditor that provides a consumer with a written estimate of terms or costs specific to that consumer before the consumer receives the Loan Estimate clearly and conspicuously states on the first page in no smaller than 12-point font "Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing a loan," and that the estimate does not use a format or content substantially similar to the Loan Estimate (form H-24 or H-25 of Appendix H). (12 CFR 1026.19(e)(2)(ii))

3. ***Verification of information***. Determine whether the creditor requires a consumer to submit documents verifying information related to the consumer's application before providing the creditor provides the Loan Estimate. (12 CFR 1026.19(e)(2)(iii))

Permissible variations

1. Determine whether the creditor disclosed estimated closing costs in good faith and consistent with the best information reasonably available to the creditor at the time the disclosures are provided. The estimated closing costs are in good faith if the amount charged to the consumer at closing does not exceed the estimated closing costs disclosed on the Loan Estimate, unless the following exceptions apply: (12 CFR 1026.19(e)(3))

10 Percent Cumulative Increase Permitted

1. Determine whether the creditor has appropriately increased estimated third party costs or recording fees in good faith. Estimates for third party services or a recording fee are in good faith if:

   a. The aggregate charges do not exceed the aggregate estimate for those charges by more than 10 percent (12 CFR 1026.19(e)(3)(ii)(A));

   b. The third party service charge is not paid to the creditor or affiliate of the creditor (12 CFR 1026.19(e)(3)(ii)(B)); and

   c. The creditor permits the consumer to shop for the third party service. (12 CFR 1026.19(e)(3)(ii)(C))

Variations Permitted for Certain Charges

1. An estimate of the following is in good faith if it is consistent with the best information reasonably available to the creditor at the time it is disclosed, regardless of whether the amount paid by the consumer exceeds the amount disclosed in the Loan Estimate (12 CFR 1026.19(e)(3)(iii)):

   a. Prepaid interest (12 CFR 1026.19(e)(3)(iii)(A));

   b. Property insurance premiums (12 CFR 1026.19(e)(3)(iii)(B));

   c. Amounts placed into an escrow, impound, reserve, or similar account (12 CFR 1026.19(e)(3)(iii)(C));

   d. Charges paid to unaffiliated third-party service providers the consumer selected that are not on the list provided by the creditor (12 CFR 1026.19(e)(3)(iii)(D)); and

e. Charges paid for third-party services not required by the creditor. These charges may be paid to affiliates of the creditor (12 CFR 1026.19(e)(3)(iii)(E)).

Revised Loan Estimates

1. Determine whether the creditor provides a revised estimate of a charge for any of the following reasons (12 CFR 1026.19(e)(3)(iv)):

   a. *Changed circumstances.* Changed Circumstances that cause the estimated settlement charges to increase or, in the case of estimated charges identified in 12 CFR 1026.19(e)(3)(ii), cause the aggregate amount of such charges to increase by more than 10 percent. (12 CFR 1026.19(e)(3)(iv)(A)) For purposes of this and the following procedure, *"changed circumstance"* means:

      i. An extraordinary event beyond the control of any interested party or other unexpected event specific to the consumer or transaction (12 CFR 1026.19(e)(3)(iv)(A)(1));

      ii. Information specific to the consumer or transaction that the creditor relied upon when providing the Loan Estimate and that was inaccurate or changed after the disclosures were provided (12 CFR 1026.19(e)(3)(iv)(A)(2)); or

      iii. New information specific to the consumer or transaction that the creditor did not rely on when providing the original Loan Estimate (12 CFR 1026.19(e)(3)(iv)(A)(3)).

   b. *Changed circumstance affecting eligibility.* The consumer is ineligible for an estimated charge previously disclosed because a changed circumstance affected the consumer's creditworthiness or the value of the security for the loan. (12 CFR 1026.19(e)(3)(iv)(B))

   c. *Revisions requested by the consumer.* The consumer requests revisions to the credit terms or the settlement that cause an estimated charge to increase. (12 CFR 1026.19(e)(3)(iv)(C))

   d. *Interest rate dependent charges.* The points or lender credits change because the interest rate was not locked when the Loan Estimate was provided. (12 CFR 1026.19(e)(3)(iv)(D))

2. Determine whether, within three business days after the interest rate is locked, the creditor provides a revised version of the Loan Estimate to the consumer with the revised interest rate, the points disclosed pursuant to 12 CFR 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms.

3. Determine whether the consumer indicated an intent to proceed with the transaction more than 10 business days after the Loan Estimate is provided. (12 CFR 1026.19(e)(3)(iv)(E))

4. Determine whether a creditor issuing a revised Loan Estimate in a new construction loan states clearly and conspicuously that at any time prior to 60 days before consummation, the creditor may issue revised disclosures. (12 CFR 1026.19(e)(3)(iv)(F))

Provision and Receipt of Revised Disclosures

1. Determine whether the creditor provides a revised Loan Estimate within three business days of receiving information sufficient to establish a reason for a revised estimate and not later than four business days prior to consummation. (12 CFR 1026.19(e)(4))

   NOTE: If not provided to the consumer in person, the revised disclosure is considered to have been received three business days after the creditor delivers or places the revised disclosure in the mail. (12 CFR 1026.19(e)(4))

Special Information Booklet at Time of Application

1. For purchase loans using the Loan Estimate and Closing Disclosure, Determine whether the creditor mailed or delivered a copy of the special information booklet, titled "Your Home Loan Toolkit – A Step-by-Step Guide," which was designed by the CFPB to replace the "Shopping for Your Home Loan: Settlement Cost Booklet." The booklet is required by Regulation Z (12 CFR 1026.19(g)) as well as section 5 of RESPA and section 12 CFR 1024.6 of Regulation X. The booklet must be delivered or placed in the mail within three business days after receiving the consumer's application for a purchase transaction, unless the creditor denies the application before the end of the three-business-day period.

   NOTE: If the consumer uses a mortgage broker, the mortgage broker must provide the special information booklet and the creditor need not do so. (12 CFR 1026.19(g))

Mortgage Loans Secured by Real Property—Final Disclosures (Closing Disclosures) – 12 CFR 1026.19(f)

Provision of Closing Disclosures

1. Determine whether, for closed-end consumer loans secured by real property, other than a reverse mortgage subject to 12 CFR 1026.33 or loans otherwise excepted under 12 CFR 1026.3(h), the creditor provides the consumer with the Closing Disclosure (12 CFR 1026.38), reflecting the actual terms of the transaction. (12 CFR 1026.19(f)(1)(i))

   NOTE: There is a partial exemption in 12 CFR 1026.3(h) from the requirement to provide the Loan Estimate and

Closing Disclosure if the loan is (i) a subordinate lien, (ii) a loan for buyer assistance such as down payments or closing costs, rehabilitation loans, energy efficiency assistance, or foreclosure prevention, (iii) a loan that does not require the payment of interest, (iv) a loan for which repayment that is forgiven, deferred for 20 years, or deferred until the property is sold or is no longer the consumer's principal dwelling, and (v) a loan where the total costs of the transaction are less than one percent of the loan and include fees only for recording, application and housing counseling. For those transactions, creditors must comply with all other applicable portions of TILA, including the disclosure requirements required pursuant to 12 CFR 1026.18.

2. Determine whether the creditor ensures that the consumer receives the Closing Disclosure no later than three business days before consummation (except for transactions secured by a timeshare, which the creditor must ensure the consumer receives no later than consummation). (12 CFR 1026.19(f)(1)(ii))

   NOTE: If the creditor mails the disclosure six business days prior to consummation, it can assume that it was received three business days after sending, and therefore three business days prior to consummation. (12 CFR 1026.19(f)(1)(iii); see Comment 19(f)(1)(iii)) "Business day" for purposes of the Closing Disclosure is the rescission-based business day definition, and means all calendar days except Sundays and legal public holidays. (12 CFR 1026.2(a)(6), 12 CFR 1026.19(f)(1)(ii)(A))

3. Determine whether the consumer waived the waiting period before consummation by providing a dated written statement describing a bona fide personal financial emergency, specifically modifying or waiving the waiting period and signed by all the consumers who are primarily liable on the obligation. (12 CFR 1026.19(f)(1)(iv))

   NOTE: Preprinted forms for this purpose are prohibited. (12 CFR 1026.19(f)(1)(iv))

4. If a settlement agent provides the consumer with the Closing Disclosure, determine whether the creditor ensures that the disclosures were provided in accordance with 12 CFR 1026.19(f). (12 CFR 1026.19(f)(1)(v))

Subsequent Changes

1. Determine whether the creditor provides a corrected Closing Disclosure where a disclosure has become inaccurate before consummation, so that the consumer receives a corrected Closing Disclosure at or before consummation. Determine whether the creditor permits the consumer to inspect the corrected disclosure during the business day prior to consummation.

   NOTE: the corrected Closing Disclosure must be completed to set forth items known to the creditor at the time of this inspection but may omit from inspection items related only to the seller's transaction. (12 CFR 1026.19(f)(2)(i))

2. Determine whether the creditor provides a corrected Closing Disclosure and a new three-business-day waiting period before consummation if:

   a. The APR disclosed in the Loan Estimate under 12 CFR 1026.38(o)(4) becomes inaccurate, as defined in 12 CFR 1026.22 (12 CFR 1026.19(f)(2)(ii)(A));

   b. The loan product is changed, causing the information disclosed in the Loan Estimate under 12 CFR 1026.38(a)(5)(iii) to become inaccurate (12 CFR 1026.19(f)(2)(ii)(B)); or

   c. A prepayment penalty is added, causing the statement regarding a prepayment penalty required under 12 CFR 1026.38(b) to become inaccurate. (12 CFR 1026.19(f)(2)(ii)(C))

3. Determine whether, when an event in connection with the settlement causes the Closing Disclosure to become inaccurate during the 30-day period following consummation, and that inaccuracy results in a change to an amount actually paid by the consumer from the amount disclosed, the creditor delivers or places in the mail corrected disclosures not later than 30 days from receiving the information to establish that the event occurred. (12 CFR 1026.19(f)(2)(iii))

   NOTE: A creditor does not violate 12 CFR 1026.19(f)(1)(i) if the disclosures contain non-numeric clerical errors, provided the creditor delivers or places in the mail corrected disclosures no later than 60 days after consummation. (12 CFR 1026.19(f)(2)(iv))

4. Determine whether the creditor charged the consumer for any amounts that exceeded the estimated charges beyond the applicable permissible variations set forth in 12 CFR 1026.19(e)(3)(i) (no variation permitted for the charge) and (ii) (charge subject to a 10 percent aggregate limit). For any such charges, determine if the creditor refunds the excess amounts no later than 60 days after consummation and delivers or places in the mail corrected disclosures reflecting the refund no later than 60 days after consummation. (12 CFR 1026.19(f)(2)(v))

Charges Disclosed

1. Determine whether the creditor or settlement service provider imposes a charge on the consumer for more than the settlement service provider actually received. If the creditor charges the average charge for settlement services, determine whether the creditor meets the following:

a. The average charge is no more than the average amount paid for that service by or on behalf of all consumers and sellers for a class of transactions (12 CFR 1026.19(f)(3)(ii)(A));

b. The class of transactions is defined by appropriate period of time, geographic area, and type of loan (12 CFR 1026.19(f)(3)(ii)(B));

c. The same average charge is used for every transaction within the class (12 CFR 1026.19(f)(3)(ii)(C)); and

d. The average charge is not used for any type of insurance or any charge based on the loan amount or property value, and is not otherwise prohibited by law. (12 CFR 1026.19(f)(3)(ii)(D))

Transactions Involving a Seller

1. Determine whether the settlement agent provides the seller with the Closing Disclosure no later than the day of consummation and, if during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes disclosures to become inaccurate and the inaccuracy results in a change to the amount actually paid by the seller from that disclosed under 12 CFR 1026.19(f)(4)(i), the settlement agent has delivered or placed in the mail corrected disclosures not later than 30 days after receiving information sufficient to establish that such an event has occurred. (12 CFR 1026.19(f)(4))

No Fee

1. Determine whether a creditor or servicer imposes a fee on any person as part of settlement costs or otherwise for preparing or delivering Closing Disclosures. (12 CFR 1026.19(f)(5))

Electronic Disclosures

1. Assess compliance for an institution's electronic disclosure requirements.

E-Sign Act

1. Disclosures may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The E-Sign Act does not mandate that institutions or consumers use or accept electronic records or signatures. It permits institutions to satisfy any statutory or regulatory requirements by providing the information electronically after obtaining the consumer's affirmative consent. Before consent can be given, consumers must be provided with the following information:

   a. Any right or option to have the information provided in paper or non-electronic form;

   b. The right to withdraw the consent to receive information electronically and the consequences, including fees, of doing so;

   c. The scope of the consent (for example, whether the consent applies only to a particular transaction or to identified categories of records that may be provided during the course of the parties' relationship);

   d. The procedures to withdraw consent and to update information needed to contact the consumer electronically; and

   e. The methods by which a consumer may obtain, upon request, a paper copy of an electronic record after consent has been given to receive the information electronically and whether any fee will be charged.

2. The consumer must consent electronically or confirm consent electronically in a manner that "reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent." After the consent, if an institution changes the hardware or software requirements such that a consumer may be prevented from accessing and retaining information electronically, the institution must notify the consumer of the new requirements and must allow the consumer to withdraw consent without charge.

3. If the financial institution makes its disclosures available to consumers in electronic form, determine that the forms comply with the appropriate sections – 12 CFR 1026.5(a)(1); 12 CFR 1026.15(b); 12 CFR 1026.16(c); 12 CFR 1026.17(a)(1); 12 CFR 1026.17(g); 12 CFR 1026.19(c); 12 CFR 1026.23(b)(1); 12 CFR 1026.24(d); 12 CFR 1026.31(b); 12 CFR 1026.40(a)(3); and 12 CFR 1026.60(a)(2)(v).

4. Card issuers may provide credit card agreements in electronic form under 12 CFR 1026.58(d) and (e) without regard to the consumer notice and consent requirements of section 101(c) of the E-Sign Act. (12 CFR 1026.58(f))

Annual Report to the CFPB – 12 CFR 1026.57

1. If the card issuer was a party to one or more college credit card agreements in effect at any time during a calendar year, verify that the card issuer submits to the CFPB an annual report regarding those agreements in the form and manner prescribed by the CFPB. (12 CFR 1026.57(d)(1))

   NOTE: A college credit card agreement is any business, marketing, or promotional agreement between a card issuer and an institution of higher education (or an affiliated alumni organization or foundation) in connection with which credit cards are issued to college students at that institution of higher education. (12 CFR

1026.57(a)(5)). See Comment 57(a)(5)-1 for specifics on where a covered separate credit feature may be added.

2. The annual report to the CFPB must include the following (12 CFR 1026.57(d)(2)):

   a. Identifying information about the card issuer and the agreements submitted, including the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number);

   b. A copy of any college credit card agreement to which the card issuer was a party that was in effect at any time during the period covered by the report;

   c. A copy of any memorandum of understanding in effect at any time during the period covered by the report between the card issuer and an institution of higher education or affiliated organization that directly or indirectly relates to the college credit card agreement or that controls or directs any obligations or distribution of benefits between any such entities;

   d. The total dollar amount of any payments pursuant to a college credit card agreement from the card issuer to an institution of higher education or affiliated organization during the period covered by the report, and the method or formula used to determine such amounts;

   e. The total number of credit card accounts opened pursuant to any college credit card agreement during the period covered by the report; and

   f. The total number of credit card accounts opened pursuant to any such agreement that were open at the end of the period covered by the report.

3. If the card issuer is subject to reporting, determine if the card issuer submits its annual report for each calendar year to the CFPB by the first business day on or after March 31 of the following calendar year. (12 CFR 1026.57(d)(3))

The Submission of Agreements to the CFPB – 12 CFR 1026.58(c)

1. For card issuers that issue credit cards under a credit card account under an open-end (not home-secured) consumer credit plan, determine that the card issuer makes quarterly submissions to the CFPB in the form and manner specified by the CFPB that contain:

   a. Identifying information about the card issuer and the agreements submitted, including the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number) (12 CFR 1026.58(c)(1)(i));

   b. The credit card agreements that the card issuer offered to the public as of the last business day of the preceding calendar quarter that the card issuer has not previously submitted to the CFPB (12 CFR 1026.58(c)(1)(ii));

   c. Any credit card agreement previously submitted to the CFPB that was amended during the preceding calendar quarter and that the card issuer offered to the public as of the last business day of the preceding calendar quarter as described in 12 CFR 1026.58(c)(3) (12 CFR 1026.58(c)(1)(iii)); and

   d. Notification regarding any credit card agreement previously submitted to the CFPB that the issuer is withdrawing, as described in 12 CFR 1026.58(c)(4), (c)(5), (c)(6), and (c)(7) (12 CFR 1026.58(c)(1)(iv)).

2. Verify that quarterly submissions were sent to the CFPB no later than the first business day on or after January 31, April 30, July 31, and October 31, of each year. (12 CFR 1026.58(c)(1))

3. If a credit card agreement that previously has been submitted to the CFPB is amended, verify that the card issuer submits the entire amended agreement to the CFPB, in the form and manner specified by the CFPB, by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective. (12 CFR 1026.58(c)(3))

   NOTE: If a credit card agreement has been submitted to the CFPB, the agreement has not been amended and the card issuer continues to offer the agreement to the public, no additional submission regarding that agreement is required.

4. If a card issuer no longer offers to the public a credit card agreement that previously has been submitted to the CFPB, ensure that the card issuer notifies the CFPB by the first quarterly submission deadline after the last day of the calendar quarter in which the issuer ceased to offer the agreement. (12 CFR 1026.58(c)(4))

   NOTE: A card issuer is not required to submit any credit card agreements to the CFPB if the card issuer had fewer than 10,000 open credit card accounts as of the last business day of the calendar quarter. (12 CFR 1026.58(c)(5)(i))

5. If an issuer that previously qualified for the *de minimis* exception ceases to qualify, determine that the card issuer begins making quarterly submissions to the CFPB no later than the first quarterly submission deadline after the date as of which the issuer ceased to qualify. (12 CFR 1026.58(c)(5)(ii))

6. If a card issuer that did not previously qualify for the *de minimis* exception qualifies for the *de minimis* exception, determine that the card issuer continues to make quarterly submissions to the CFPB until the issuer notifies the CFPB that the card issuer is withdrawing all agreements it previously submitted to the CFPB. (12 CFR 1026.58(c)(5)(iii))

7. A card issuer is not required to submit to the CFPB a credit card agreement if, as of the last business day of the calendar quarter, the agreement is offered for accounts under one or more private label credit card plans each of which has fewer than 10,000 open accounts and is not offered to the public other than for accounts under such a plan. (12 CFR 1026.58(c)(6)(i))

   NOTE: A private label credit card is one that is usable only at a single merchant or affiliated group of merchants. A private label credit card plan is all private label credit card accounts issued by a particular issuer with credit cards usable at the same single merchant or affiliated group of merchants. (12 CFR 1026.58(b)(8))

8. If an agreement that previously qualified for the private label credit card exception ceases to qualify, determine that the card issuer submits the agreement to the CFPB no later than the first quarterly submission deadline after the date as of which the agreement ceased to qualify. (12 CFR 1026.58(c)(6)(ii))

9. If an agreement that did not previously qualify for the private label credit card exception qualifies for the exception, determine that the card issuer continues to make quarterly submissions to the CFPB with respect to that agreement until the issuer notifies the CFPB that the agreement is being withdrawn. (12 CFR 1026.58(c)(6)(iii))

   NOTE: A card issuer is not required to submit to the CFPB a credit card agreement if, as of the last business day of the calendar quarter, the agreement is offered as part of a product test offered to only a limited group of consumers for a limited period of time, is used for fewer than 10,000 open accounts, and is not offered to the public other than in connection with such a product test. (12 CFR 1026.58(c)(7)(i))

10. If an agreement that previously qualified for the product testing exception ceases to qualify, determine that the card issuer submits the agreement to the CFPB no later than the first quarterly submission deadline after the date as of which the agreement ceased to qualify. (12 CFR 1026.58(c)(7)(ii))

11. If an agreement that did not previously qualify for the product testing exception qualifies for the exception, determine that the card issuer continues to make quarterly submissions to the CFPB with respect to that agreement until the issuer notifies the CFPB that the agreement is being withdrawn. (12 CFR 1026.58(c)(7)(iii))

12. Verify that each agreement contains the provisions of the agreement and the pricing information in effect as of the last business day of the preceding calendar quarter. (12 CFR 1026.58(c)(8)(i)(A))

13. Verify that agreements do not include any personally identifiable information relating to any cardholder, such as name, address, telephone number, or account number. (12 CFR 1026.58(c)(8)(i)(B))

14. Verify that agreements are presented in a clear and legible font. (12 CFR 1026.58(c)(8)(i)(D))

15. Verify that pricing information is set forth in a single addendum to the agreement that contains only the pricing information. (12 CFR 1026.58(c)(8)(ii)(A))

    NOTE: With respect to information other than the pricing information that may vary between cardholders depending on creditworthiness, state of residence, or other factors, issuers may, but are not required to, include that information in a single addendum (the optional variable terms addendum) to the agreement separate from the pricing addendum (12 CFR 1026.58(c)(8)(iii)).

16. If pricing information varies from one cardholder to another depending on the cardholder's creditworthiness or state of residence or other factors, verify that the pricing information is disclosed either by setting forth all the possible variations (such as purchase APRs of 13 percent, 15 percent, 17 percent, and 19 percent) or by providing a range of possible variations (such as purchase APRs ranging from 13 percent to 19 percent). (12 CFR 1026.58(c)(8)(ii)(B))

17. If a rate included in the pricing information is a variable rate, verify that the issuer identifies the index or formula used in setting the rate and the margin. (12 CFR 1026.58(c)(8)(ii)(C))

18. If rates vary from one cardholder to another, verify that the issuer discloses such rates by providing the index and the possible margins (such as the prime rate plus 5 percent, 8 percent, 10 percent, or 12 percent) or range of margins (such as the prime rate plus from 5 to 12 percent). (12 CFR 1026.58(c)(8)(ii)(C))

    NOTE: The value of the rate and the value of the index are not required to be disclosed.

19. Determine that issuers do not provide provisions of the agreement or pricing information in the form of change-in-terms notices or riders (other than the pricing information addendum and the optional variable terms addendum). (12 CFR 1026.58(c)(8)(iv))

20. Determine that changes in provisions or pricing information are integrated into the text of the agreement, the pricing information addendum or the optional variable terms addendum, as appropriate. (12 CFR 1026.58(c)(8)(iv))

The Posting of Agreements Offered to the Public – 12 CFR 1026.58(d)

1. Determine that the card issuer posts and maintains on its publicly available website the credit card agreements that the issuer is required to submit to the CFPB under 12 CFR 1026.58(c). (12 CFR 1026.58(d)(1))

2. With respect to an agreement offered solely for accounts under one or more private label credit card plans (and the issuer does not post and maintain the agreements on its publicly available website), determine that the issuer posts and maintains the agreement on the publicly available website of at least one of the merchants where cards issued under each private label credit card plan with 10,000 or more open accounts may be used. (12 CFR 1026.58(d)(1))

3. Verify that agreements posted pursuant to 12 CFR 1026.58(d) conform to the form and content requirements for agreements submitted to the CFPB specified in 12 CFR 1026.58(c)(8). (12 CFR 1026.58(d)(2))

4. Determine that agreements are posted in an electronic format that is readily usable by the general public. (12 CFR 1026.58(d)(3))

5. Verify that agreements are placed in a location on its website that is prominent and readily accessible by the public and accessible without submission of personally identifiable information. (12 CFR 1026.58(d)(3))

6. Determine that the card issuer updates the agreements posted on its website at least as frequently as the quarterly schedule required for submission of agreements to the CFPB under 12 CFR 1026.58(c). (12 CFR 1026.58(d)(4))

   NOTE: If the issuer chooses to update the agreements on its website more frequently, the agreements posted on the issuer's website may contain the provisions of the agreement and the pricing information in effect as of a date other than the last business day of the preceding calendar quarter.

The Posting of Agreements for "Open" Accounts – 12 CFR 1026.58(e)

1. With respect to any open (i.e., the cardholder can obtain extensions or there is an outstanding balance on the account that has not been charged off) credit card account, determine that the card issuer either:

   a. Posts and maintains the cardholder's agreement on its website; or

   b. Promptly provides a copy of the cardholder's agreement to the cardholder upon the cardholder's request. (12 CFR 1026.58(e)(1)(i) and (ii)).

2. If the card issuer makes an agreement available upon request, ensure that the issuer provides the cardholder with the ability to request a copy of the agreement both by:

   a. Using the issuer's website, such as by clicking on a clearly identified box to make the request (12 CFR 1026.58(e)(1)(ii)), and

   b. Calling a readily available telephone line the number for which is displayed on the issuer's website and clearly identified as to purpose. (12 CFR 1026.58(e)(1)(ii) and (e)(2))

3. If an issuer does not maintain a website from which cardholders can access specific information about their individual accounts determine that the issuer makes agreements available upon request by providing the cardholder with the ability to request a copy of the agreement by calling a readily available telephone line the number for which is (12 CFR 1026.58(e)(2)):

   a. Displayed on the issuer's website and clearly identified as to purpose; or

   b. Included on each periodic statement sent to the cardholder and clearly identified as to purpose.

4. Verify that the card issuer sends to the cardholder or otherwise make available to the cardholder a copy of the cardholder's agreement in electronic or paper form no later than 30 days after the issuer receives the cardholder's request. (12 CFR 1026.58(e)(1)(ii))

5. Determine that agreements posted on the card issuer's website or made available upon the cardholder's request conform to the form and content requirements for agreements submitted to the CFPB specified in 12 CFR 1026.58(c)(8). (12 CFR 1026.58(e)(3)(i))

6. If the card issuer posts an agreement on its website or otherwise provides an agreement to a cardholder electronically, verify that the agreement is posted or provided in an electronic format that is readily usable by the general public and is placed in a location that is prominent and readily accessible to the cardholder. (12 CFR 1026.58(e)(3)(ii))

7. If agreements posted or otherwise provided contain personally identifiable information relating to the cardholder, such as name, address, telephone number, or account number, ensure that the issuer takes appropriate measures to make the agreement accessible only to the cardholder or other authorized persons. (12 CFR 1026.58(e)(3)(iii))

8. Determine that agreements posted or otherwise provided set forth the specific provisions and pricing information applicable to the particular cardholder. (12 CFR 1026.58(e)(3)(iv))

9. Determine that provisions and pricing information are complete and accurate as of a date no more than 60 days prior to (12 CFR 1026.58(e)(3)(iv)):

    a. The date on which the agreement is posted on the card issuer's website under 12 CFR 1026.58(e)(1)(i);

    b. The date the cardholder's request is received under 12 CFR 1026.58(e)(1)(ii) or (e)(2).

    NOTE: Card issuers may provide credit card agreements in electronic form under 12 CFR 1026.58(d) and (e) without regard to the consumer notice and consent requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (E Sign Act) (15 U.S.C. 7001 et seq.). (12 CFR 1026.58(f))

Advertising (Open- and Closed-End)

1. For open- and closed-end loans, sample advertising copy, including any electronic advertising, since the previous examination and verify that the terms of credit are accurate, clear, balanced, and conspicuous. If triggering terms are used, determine that the required disclosures are made (12 CFR 1026.16 and 12 CFR 1026.24).

    a. For advertisements for closed-end credit:

        i. If a rate of finance charge was stated, determine that it was stated as an APR.

        ii. If an APR will increase after consummation, verify that a statement to that fact is made.

        iii. Determine whether there are deceptive or misleading statements or practices.

    b. Determine that the creditor does not offer college students any tangible item to induce such students to apply for or open an open-end consumer credit plan offered by such creditor, if such offer is made:

        i. On the campus of an institution of higher education;

        ii. Near the campus of an institution of higher education; or

        iii. At an event sponsored by or related to an institution of higher education. (12 CFR 1026.57(c))

    c. If an open-end credit advertisement refers to an APR as "fixed" (or similar term), determine 1) that the advertisement also specifies a time period that the rate will be fixed and 2) that the rate will not increase during that period. (12 CFR 1026.16(f))

    d. If an open-end credit advertisement used the word "fixed" or a similar word and no time period is specified in which the rate will be fixed, determine that the rate will not increase while the plan is open. (12 CFR 1026.16(f))

    e. For any advertisement of an open-end (not home-secured) plan, if an APR or fee that may be applied to the account is an introductory rate or introductory fee, determine that the term *introductory* or *intro* is in immediate proximity to each listing of the introductory rate or introductory fee in a written or electronic advertisement. (12 CFR 1026.16(g)(3))

    f. For any advertisement of an open-end (not home-secured) plan, if any APR or fee that may be applied to the account is a promotional rate under 12 CFR 1026.16(g)(2)(i) or any fee that may be applied to the account is a promotional fee under 12 CFR 1026.16(g)(2)(iv), determine that the following information is stated in a clear and conspicuous manner in the advertisement (12 CFR 1026.16(g)(4)):

        i. When the promotional rate or promotional fee will end and

        ii. The annual percentage rate that will apply after the end of the promotional period.

    NOTE: If such rate is variable, determine that the annual percentage rate complies with the accuracy standards in 12 CFR 1026.60(c)(2), 12 CFR 1026.60(d)(3), 12 CFR 1026.60(e)(4), or 12 CFR 1026.16(b)(1)(ii), as applicable. If such rate cannot be determined at the time disclosures are given because the rate depends at least in part on a later determination of the consumer's creditworthiness, determine that the advertisement discloses the specific rates or the range of rates that might apply. (12 CFR 1026.16(g)(4)(ii)). Further, if the promotional rate or fee is stated in a written or electronic advertisement, determine that the information in 12 CFR 1026.16 (g)(4)(i), and, as applicable, (g)(4)(ii), or (g)(4)(iii) are also stated in a prominent location closely proximate to the first listing of the promotional rate or promotional fee.

    g. If a deferred interest offer is advertised for an open-end account not subject to 12 CFR 1026.40, determine that the deferred interest period is stated in a clear and conspicuous manner in the advertisement. If the phrase "no interest" or similar term regarding the possible avoidance of interest obligations under the deferred interest program is stated, determine that the term "if paid in full" is also stated in a clear and conspicuous manner preceding the disclosure of the deferred

interest period in the advertisement. If the deferred interest offer is included in a written or electronic advertisement, determine that the deferred interest period and, if applicable, the term "if paid in full" are stated in immediate proximity to each statement of "no interest," "no payments," "deferred interest," "same as cash," or similar term regarding interest or payments during the deferred interest period. (12 CFR 1026.16(h)(3))

h. If any deferred interest offer is advertised for an open-end account not subject to 12 CFR 1026.40, determine that the (h)(4)(i) and (h)(4)(ii) language (of 12 CFR 1026.16(h)(4)) is stated in the advertisement and is similar to Sample G–24 in Appendix G. If the deferred interest offer is included in a written or electronic advertisement, determine that this information is stated in a prominent location closely proximate to the first statement of "no interest," "no payments," "deferred interest," "same as cash," or similar term regarding interest or payments during the deferred interest period. (12 CFR 1026.16(h)(4))

NOTE: The requirements in 12 CFR 1026.16(h)(4) apply to any advertisement of an open-end credit plan not subject to 12 CFR 1026.40 (requirements for home equity plans) 12 CFR 1026.16(h)(1). However, the requirements do not apply to an envelope or other enclosure in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically. (12 CFR 1026.16(h)(5))

Transactional Testing

NOTE: When verifying APR accuracies, use the OCC's APR calculation model or other calculation tool acceptable to your regulatory agency.

1. Review the financial institution's closed-end and open-end transactions to ensure accuracy and completeness.

Closed-End Credit Transactional Testing Procedures

1. 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. (12 CFR 1026.17)

2. Determine whether the required disclosures were made before consummation of the transaction and ensure the presence and accuracy of the items below, as applicable. (12 CFR 1026.18)

   a. Creditor and loan originator name with Nationwide Mortgage Licensing System and Registry (NMLSR) IDs on required documents as required under 12 CFR 1026.36

   b. Amount financed

   c. Itemization of the amount financed (RESPA GFE may substitute)

   d. Finance charge

   e. APR

   f. Variable rate information as follows for loans not secured by a principal dwelling or secured by a principal dwelling with terms of one year or less:

      i. Circumstances which permit rate increase

      ii. Limitations on the increase (periodic or lifetime)

      iii. Effect of the increase

      iv. Hypothetical example of new payment terms that would result from an increase

   g. Payment schedule including the number, amount, and timing of payments.

   h. Total of payments

   i. Demand feature

   j. Total sale price (credit sale)

   k. Prepayment

   l. Late payment

   m. Security interest

   n. Insurance and debt cancellation

   o. Certain security interest charges

   p. Contract reference

   q. Assumption policy

   r. Required deposit

   s. Interest rate and payment summary for mortgage transactions

   t. No-guarantee-to-refinance statement

3. For adjustable-rate mortgages, verify that the creditor, assignee, or servicer provides disclosures in connection with the initial interest rate adjustment pursuant to the contract and for rate changes that result in corresponding changes in payment.

4. For adjustable-rate mortgages, verify that the creditor, assignee, or servicer includes the appropriate content (as

identified in the Closed-End Credit Disclosure Forms Review Procedures section above).

5. For adjustable-rate mortgages, verify that the creditor, assignee, or servicer provides the disclosures consistent with timing requirements (see **Timing Requirements** section of the procedures above).

   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.

6. Determine, for each type of closed-end rescindable loan being tested, the appropriate number of copies of the rescission notice are provided to each person whose ownership interest is or will be subject to the security interest. The creditor must deliver two copies of the notice of right to rescind to each consumer entitled to rescind. The rescission notice must disclose the items below. (12 CFR 1026.23(b)(1))

   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

   e. Date the rescission period expires.

7. Ensure funding was delayed until the rescission period expired. (12 CFR 1026.23(c))

8. Determine if the consumer has waived the three-day right to rescind since the previous examination. If applicable, test rescission waivers. (12 CFR 1026.23(e))

9. Determine whether the maximum interest rate in the contract is disclosed for any consumer credit contract secured by a dwelling if the APR may increase after consummation. (12 CFR 1026.30(a))

10. For private student loans with a right to cancel, review cancellation requests to determine if they were properly handled. (12 CFR 1026.47(c))

Minimum Standards for Transactions Secured by a Dwelling – 12 CFR 1026.43

1. Determine whether the financial institution is a creditor that originates covered transactions. Covered transactions are transactions secured by a dwelling, including any real property attached to a dwelling. They do not do not include: home equity lines of credit; timeshare loans (except for the prepayment penalty provisions in 12 CFR 1026.43(g)); reverse mortgages; temporary, "bridge," or construction loans of 12 months or less; renewable or non-renewable construction loans of 12 months or less that are a part of a construction-to-permanent transaction; or an extension of credit under a program administered by a Housing Finance Agency (defined in 24 CFR 266.5), by community development or non-profit lenders specified in 12 CFR 1026.43(a)(3)(v), or in connection with certain federal emergency economic stabilization programs. (12 CFR 1026.43(a))

2. Determine if a loan is a streamline refinance under 12 CFR 1026.20(a) and Commentary 12 CFR 1026.20(a) and whether it qualifies under 12 CFR 1026.43(d), below.

Refinancing Non-Standard Mortgages – 12 CFR 1026.43(d)

1. Determine whether a creditor that has refinanced a non-standard mortgage defined in 12 CFR 1026.43(d)(i) (an ARM with an introductory rate fixed for a year or more, an interest-only loan, or a negative amortization loan) into a standard mortgage as defined in 12 CFR 1026.43(d)(ii) has considered whether the standard mortgage likely will prevent a default by the consumer once the loan is recast. In addition, determine that the following conditions are met (12 CFR 1026.43(d)(3)):

   a. At the time of the refinance, the creditor for the standard mortgage is the current holder of the existing non-standard mortgage or the servicer acting on behalf of the current holder (12 CFR 1026.43(d)(2)(i));

   b. The monthly payment for the standard mortgage is materially lower (a payment reduction of 10 percent or more is sufficient) than the monthly payment for the non-standard mortgage using the payment calculation rules in 12 CFR 1026.43(d)(5) (12 CFR 1026.43(d)(2)(ii));

   c. The creditor received the consumer's written application for the standard mortgage no later than two months after the non-standard mortgage had recast (12 CFR 1026.43(d)(2)(iii));

   d. The consumer had made no more than one payment more than 30 days late on the non-standard mortgage during the 12 months immediately before the creditor receives the consumer's written application for the standard mortgage (12 CFR 1026.43(d)(2)(iv));

   e. The consumer had made no payments more than 30 days late during the six months immediately before the creditor received the consumer's written application for the standard mortgage (12 CFR 1026.43(d)(2)(v)); and

f. If the non-standard mortgage was consummated on or after January 10, 2014, the non-standard mortgage was made in accordance with the ability to repay or the qualified mortgage requirements (12 CFR 1026.43(c) or (e)). (12 CFR 1026.43(d)(vi))

Ability to Repay – 12 CFR 1026.43(c)

NOTE: For all covered transactions, except streamline refinances, creditors must make a good faith determination that the consumer will have a reasonable ability to repay the loan, and must verify the information upon which it relied. A creditor can meet this obligation by complying with the ability-to-repay requirement in 12 CFR 1026.43(c) or by making qualified mortgages under 12 CFR 1026.43(e) and (f) (which limit certain risky loan features and practices), which are presumed to satisfy the ability-to-repay requirements. (12 CFR 1026.43(c)(1) and (2))

1. Determine whether the creditor makes a reasonable and good faith determination at or before consummation that the consumer will have a reasonable ability to repay the loan according to its terms, based (except as otherwise provided for loans under 12 CFR 1026.43(d), (e), and (f) for refinancing non-standard to standard mortgages, qualified mortgages, and certain balloon qualified mortgages respectively), at a minimum, on the criteria set forth below. (12 CFR 1026.43(c)(1))

2. Determine whether the creditor considered the following, at a minimum, in determining the consumer's ability to repay: (12 CFR 1026.43(c)(2))

   a. The consumer's current or reasonably expected income or assets (other than the value of the dwelling, including any real property attached to the dwelling, that secures the loan); (12 CFR 1026.43(c)(2)(i))

   b. If the creditor relies on employment income, the consumer's current employment status; (12 CFR 1026.43(c)(2)(ii))

   c. The consumer's monthly payment on the covered transaction, calculated in accordance with 12 CFR 1026.43(c)(5); (12 CFR 1026.43(c)(2)(iii)) (see g. below)

   d. The consumer's monthly payment on any simultaneous loan that the creditor knows or has reason to know will be made, calculated in accordance with 12 CFR 1026.43(c)(6); (12 CFR 1026.43(c)(2)(iv))

   e. The consumer's monthly payment for mortgage-related obligations; (12 CFR 1026.43(c)(2)(v))

   f. The consumer's current debt obligations, alimony, and child support; (12 CFR 1026.43(c)(2)(vi))

   g. The consumer's monthly debt-to-income ratio or residual income in accordance with 12 CFR 1026.43(c)(7) and 12 CFR 1026.43(c)(2)(vii) and (viii)); and

   h. The consumer's credit history (12 CFR 1026.43(c)(2)(viii)).

3. Determine whether the creditor verified the information it relied upon when considering the eight factors listed above using reasonably reliable third-party records, except that special rules apply for verification of income or assets, employment, and current debt obligations that are not shown on the consumer's credit report.

Income and Assets, Employment and Debt Obligations

1. Determine that the creditor verified the information that it relied on using reliable third-party records except that:

   a. A creditor may verify a consumer's employment status orally if the creditor prepares a written record of the information obtained orally; and (12 CFR 1026.43(c)(3)(ii))

   b. A creditor that relies on a credit report to verify a consumer's current obligations need not independently verify obligations that the consumer lists on the application that are not in the consumer's credit report. (12 CFR 1026.43(c)(3)(iii))

2. Determine whether the creditor verified the income or assets it relied upon, by using third-party records that provide reasonably reliable evidence, (12 CFR 1026.43(c)(4)) such as:

   a. A tax-return transcript issued by the Internal Revenue Service (IRS); (12 CFR 1026.43(c)(4))

   b. Copies of tax returns the consumer filed with the IRS or a state taxing authority; (12 CFR 1026.43(c)(4)(i))

   c. IRS Form W-2s or similar IRS forms used for reporting wages or tax withholding; (12 CFR 1026.43(c)(4)(ii))

   d. Payroll statements, including military Leave and Earnings Statements; (12 CFR 1026.43(c)(4)(iii))

   e. Financial institution records; (12 CFR 1026.43(c)(4)(iv))

   f. Records from the consumer's employer or a third party that obtained information from the employer; (12 CFR 1026.43(c)(4)(v))

   g. Records from a federal, state, or local government agency stating the consumer's income from benefits or entitlements; (12 CFR 1026.43(c)(4)(vi))

h. Receipts from the consumer's use of check cashing services; and (12 CFR 1026.43(c)(4)(vii))

i. Receipts from the consumer's use of a funds transfer service. (12 CFR 1026.43(c)(4)(viii))

3. For employment status, if the creditor orally verified employment status, determine whether the creditor prepared a written record of the information obtained orally. (12 CFR 1026.43(c)(3)(ii))

Monthly Payment Calculation

1. Determine whether the creditor calculated the monthly payment (except for balloon payment, interest-only and negative amortization loans) by using:

   a. The fully indexed rate or any introductory interest rate, whichever is greater; and monthly, fully amortizing payments that are substantially equal. (12 CFR 1026.43(c)(5))

   b. For a loan with a balloon payment:

      i. The maximum payment scheduled during the first five years after the date on which the first regular periodic payment will be due for a loan that is not a higher-priced covered transaction as defined under 12 CFR 1026.43(b)(4); (12 CFR 1026.43(c)(5)(ii)(A)(1)) or

      ii. The maximum payment in the payment schedule, including any balloon payment, for a higher-priced covered transaction. (12 CFR 1026.43(c)(5)(ii)(A)(2))

   c. For an interest-only loan:

      i. The fully indexed rate or any introductory interest rate, whichever is greater; and

      ii. Substantially equal, monthly payments of principal and interest that will repay the loan amount over the term of the loan remaining as of the date the loan is recast. (12 CFR 1026.43(c)(5)(ii)(B))

   d. For a negative amortization loan:

      i. The fully indexed rate or any introductory interest rate, whichever is greater; and

      ii. Substantially equal, monthly payments of principal and interest that will repay the maximum loan amount as defined in 12 CFR 1026.43(b)(7) over the term of the loan remaining as of the date the loan is recast. (12 CFR 1026.43(c)(5)(ii)(C))

Monthly Payment Calculation for Simultaneous Loans

1. Determine whether the creditor calculated the monthly payment on any simultaneous loan that was used to determine the consumer's repayment ability, including any mortgage-related obligations, as follows:

   a. For a simultaneous loan that is a covered transaction, using the payment calculation rules for covered transactions, described above (12 CFR 1026.43(c)(6)(i)); or

   b. For a home equity line of credit, by using the periodic payment required under the terms of the plan and the amount of credit drawn at or before consummation of the covered transaction. (12 CFR 1026.43(c)(6)(ii)).

Monthly Debt-to-Income Ratio or Residual Income

1. When a creditor considers the consumer's monthly debt-to-income ratio, determine whether the creditor considered the ratio of the consumer's total monthly debt obligations to the consumer's total monthly income. (12 CFR 1026.43(c)(7)(ii)(A))

   a. Total monthly debt obligations means the total of: the monthly payment on the covered transaction (as required by 12 CFR 1026.43(c)(2)(iii) and (c)(5)), simultaneous loans (as required by 12 CFR 1026.43(c)(2)(iv) and (c)(6)), mortgage-related obligations (as required by 12 CFR 1026.43(c)(2)(v)), and current debt obligations, alimony, and child support (as required by 12 CFR 1026.43(c)(2)(vi)).

   b. Total monthly income means the total of the consumer's current or reasonably expected income, including any income from assets (as required by 12 CFR 1026.43(c)(2)(i) and (4)).

2. If a creditor considers the consumer's monthly residual income, determine whether the creditor considered the consumer's remaining income after subtracting the consumer's total monthly debt obligations from the consumer's total monthly income. (12 CFR 1026.43(c)(7)(ii)(B)) Total monthly debt obligations and total monthly income are defined in 12 CFR 1026.43(c)(7)(i)(A) and (B).

Qualified Mortgages – 12 CFR 1026.43(e)

1. Determine whether the creditor has complied with the ability-to-repay requirements of 12 CFR 1026.43(c) by making a loan that is a qualified mortgage, including a higher-priced qualified mortgage, under the general qualified mortgage definition in 12 CFR 1026.43(e) or by making loans that are qualified mortgages because they are made pursuant to rules promulgated by HUD or VA

pursuant to 15 U.S.C. §1639c(b) for loans insured or guaranteed loans by those agencies.[52] (12 CFR 1026.43(e))

2. Except as provided in 12 CFR 1026.43(e)(4), (5), (6), or (f) (all discussed below), a qualified mortgage is a covered transaction:

   a. That provides for regular, substantially equal, periodic payments, except for the effect any interest rate change after consummation has on adjustable-rate mortgages or step-rate mortgages (12 CFR 1026.43(e)(2)(i)) that do not:

      i. Result in an increase of the principal balance (12 CFR 1026.43(e)(2)(i)(A)), or

      ii. Allow balloon payments or deferment of principal payments (except for balloon-payment qualified mortgages described in 12 CFR 1026.43(f) and (e)(6)); (12 CFR 1026.43(e)(2)(i)(B) and (C)).

   b. For which the loan term does not exceed 30 years (12 CFR 1026.43(e)(2)(ii));

   c. For which the total points and fees (as defined in 12 CFR 1026.32(b)(1)(i));

      i. do not exceed the applicable thresholds of: (12 CFR 1026.43(e)(2)(iii) and (3))

         A. $109,898 or over: 3 percent of the total loan amount (see 12 CFR 1026.32(b)(4)(i));

         B. $65,939 or over but less than $109,898: $3,297;

         C. $21,980 or over but less than $65,939: 5 percent of the total loan amount;

         D. $13,737 or over but less than $21,980: $1,099; or

         E. Less than $13,737: 8 percent of the total loan amount.

         NOTE: These numbers are annually adjusted for inflation on January 1.

      ii. For transactions consummated on or before January 10, 2021, if the creditor or assignee determined after consummation that the points and fees exceeded the applicable threshold, the loan is not precluded from being a qualified mortgage if:

         A. The loan otherwise meets the requirements of 12 CFR 1026.43(e)(2), (e)(4), (e)(5), (e)(6), or (f), as applicable;

         B. The creditor or assignee paid to the consumer certain amounts, described below, within 210 days after consummation and prior to any of the following events:

            1) The consumer institutes an action in connection with the loan;

            2) The consumer provides a written notice to the creditor, assignee, or servicer that the transaction's total points and fees exceed the applicable threshold; or

            3) The consumer becomes 60 days past due on the legal obligation; and

         C. The amount paid to the consumer is not less than the sum of the following:

            1) The dollar amount by which the transaction's total points and fees exceeds the applicable limit, and

            2) Interest on the amount of excess points and fees, calculated using the contract interest rate applicable during the period from consummation until the payment is made to the consumer; and

         D. The creditor or assignee, as applicable, maintains and follows policies and procedures for post-consummation review of points and fees for making the above-described payments to consumers. (12 CFR 1026.43(e)(3)(iii) and (iv))

NOTE: The points and fees cure provision applies to the points and fees limits for all of the qualified mortgage types defined in Regulation Z.

   d. For which the creditor underwrites the loan, taking into account the monthly payment for mortgage-related obligations, using: (12 CFR 1026.43(e)(2)(iv))

      i. The maximum interest rate that may apply during the first 5 years after the date on which the first regular periodic payment will be due; and

      ii. Periodic payments of principal and interest that will repay either:

[52] HUD issued its final QM rule, effective January 10, 2014 (78 Fed. Reg. 75215, December 11, 2013), and VA issued its interim final QM rule, effective May 9, 2014 (79 Fed. Reg. 26620, May 9, 2014).

A. The outstanding principal balance over the remaining term of the loan. This should be calculated as of the date the interest rate adjusts to the maximum interest rate that may apply during the first 5 years after the date on which the first regular periodic payment will be due, assuming the consumer will have made all required payments as due prior to that date; or

B. The loan amount over the loan term;

e. For which the creditor considers and verifies at or before consummation the following: (12 CFR 1026.43(e)(2)(v))

i. The consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan, in accordance with Appendix Q and 12 CFR 1026.43(c)(2)(i) and (c)(4); and

ii. The consumer's current debt obligations, alimony, and child support in accordance with Appendix Q and 12 CFR 1026.43(c)(2)(vi) and (c)(3); and

f. For which the ratio of the consumer's total monthly debt to total monthly income at the time of consummation does not exceed 43 percent. For purposes of 12 CFR 1026.43(e)(2)(vi), the ratio of the consumer's total monthly debt to total monthly income is determined: (12 CFR 1026.43(e)(2)(vi))

i. In accordance with the standards in Appendix Q; (12 CFR 1026.43(e)(2)(vi)(A)), except

ii. The creditor calculates the consumer's monthly payment on: (12 CFR 1026.43(e)(2)(vi)(B))

A. The covered transaction, including the monthly payment for mortgage-related obligations, in accordance with 12 CFR 1026.43(e)(2)(iv) (see also a.4 above) and

B. Any simultaneous loan that the creditor knows or has reason to know will be made, in accordance with 12 CFR 1026.43 (c)(2)(iv) and (c)(6) (see also h. in "Ability to Repay" above).

Temporary Category of Qualified Mortgages[53] – 12 CFR 1026.43(e)(4)

1. Determine whether the creditor has complied with the ability-to-repay requirements of 12 CFR 1026.43(c) by making loans that

a. Meet the requirements of 12 CFR 1026.43(e)(2)(i) through (iii) (i.e., have substantially equal, periodic payments; restrictions on loan features; a maximum 30-year term; and points and fees— generally limited to a 3 percent threshold); and are

b. Eligible (except with regard to matters wholly unrelated to ability to repay) to be purchased, guaranteed, or insured by the listed federal government sponsored entities or agencies.[54]

Small Creditor Portfolio Loan Qualified Mortgages – 12 CFR 1026.43(e)(5)

1. Determine whether a creditor has complied with the ability-to-repay requirements of 12 CFR 1026.43(c) by making a qualified mortgage as follows:

a. The creditor satisfies the creditor requirements of 12 CFR 1026.35(b)(2)(iii)(B), and (C), which require that: (12 CFR 1026.43(e)(5)(D))

i. During the preceding calendar year (or, if the application was received before April 1 of the current calendar year, during either of the two preceding calendar years), the creditor and its affiliates together extended no more than 2,000

[53] The temporary QM rule is available for transactions consummated on or before January 10, 2021. The rule does not apply to HUD loans or to VA loans because they are qualified mortgages pursuant to 12 U.S.C. section 1639c(b)(3)(B)(ii)(I)-(II), which authorizes HUD and VA to promulgate QM rules. HUD issued its final QM rule, effective January 10, 2014 (78 Fed. Reg. 75215, December 11, 2013), and VA issued its interim final QM rule, effective May 9, 2014 (79 Fed. Reg. 26620, May 9, 2014).

[54] Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac), operating under the conservatorship or receivership of the Federal Housing Finance Agency pursuant to section 1367(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(a)); or any limited-life regulatory entity succeeding the charter of either the Fannie Mae or Freddie Mac pursuant to section1367(i) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(i)); the U.S. Department of Agriculture pursuant to 42 U.S.C. 1472(h); or the Rural Housing Service. These special rules in 12 CFR 1026.43(e)(4) are available only for covered transactions consummated on or before January 10, 2021. This provision expires on the effective date of a rule issued by each respective agency pursuant to its authority under TILA §129C(b)(3)(ii) to define a qualified mortgage. The U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs have issued final rules governing qualified mortgages under their programs and therefore the temporary provisions of 12 CFR 1026.43(e)(4) do not apply to FHA and VA loans.

first-lien covered transactions that were sold, assigned or otherwise transferred to another person or subject at the time of consummation to a commitment to be acquired by another person; and

ii. As of the end of the preceding calendar year (or if the application was received before April 1 of the current calendar year, as of either of the two preceding December 31sts), the creditor and its affiliates that regularly extended first-lien covered transactions, together had total assets of less than $2 billion (this threshold will adjust annually).

NOTE: This category of qualified mortgages does not require a small creditor to operate in a rural or underserved area.

b. The creditor makes a loan that meets the requirements for a qualified mortgage in 12 CFR 1026.43(e)(2), other than 12 CFR 1026.43(e)(2)(vi), and without regard to the standards in Appendix Q: (12 CFR 1026.43(e)(5)(A)), and

NOTE: This means, among other things, that the loan does not have negative amortization, interest-only, or balloon payment features (12 CFR 1026.43(e)(2)(i)); has a loan term of 30 years or less (((12 CFR 1026.43(e)(2)(ii)); points and fees are under certain thresholds (generally 3 percent) (12 CFR 1026.43(e)(2)(iii)); and the creditor underwrites the loan, taking into account the monthly payment for mortgage related obligations (12 CFR 1026.43(e)(2)(iv)). Further, the creditor considers and verifies at or before consummation: the consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan, in accordance with the general repayment ability standards; and the consumer's current debt obligations, alimony, and child support in accordance with the general repayment ability standards (12 CFR 1026.43(e)(5)(B))

c. Considers at or before consummation, the consumer's monthly debt-to-income ratio or residual income and verifies the debt obligations and income used to determine that ratio in accordance with the repayment ability requirements of 12 CFR 1026.43(c)(7), except that the calculation of the payment for determining the consumer's total monthly debt obligations in 12 CFR 1026.43(c)(7)(i)(A) is determined in accordance with 12 CFR 1026.43(e)(2)(iv) (based on the maximum interest rate in the first five years after the date the first periodic payment is due) instead of 12 CFR 1026.43(c)(5) (fully indexed rate); (12 CFR 1026.43(e)(5)(B))

d. The loan was not subject to a forward commitment at consummation, except to a person that satisfies the requirements of 12 CFR 1026.35(b)(2)(iii) (B) and (C) (i.e., small creditors) (12 CFR 1026.43(e)(5)(C)).

2. Determine whether the small creditor portfolio mortgage does not have a qualified mortgage status because it was subject to a forward commitment at consummation, or the creditor has transferred it in any circumstances other than where the transfer was:

a. Three years or more after consummation;

b. To a creditor that satisfies the requirements of 12 CFR 1026.43(e)(5)(i)(D) of this section (i.e., small creditors under 12 CFR 1026.35(b)(2)(iii)(B) and (C));

c. Made pursuant to a capital restoration plan or other action under 12 U.S.C. 1831o, or to actions or instructions of a conservator, receiver, or bankruptcy trustee, or to orders by or agreements with a state or federal governmental agency with jurisdiction to examine the creditor; or

d. Made pursuant to a merger of the creditor and another person or the acquisition of the creditor by another person, or the creditor's acquisition of another person. (12 CFR 1026.43(e)(5)(ii).

NOTE: If a small creditor portfolio qualified mortgage has lost its qualified mortgage status, the creditor must have complied with the general ability-to-repay requirements under 12 CFR 1026.43(c).

Balloon-Payment Qualified Mortgages Made by Certain Small Creditors – 12 CFR 1026.43(f)

1. Determine whether a creditor has complied with the ability-to-repay requirements of 12 CFR 1026.43(c) by making a qualified mortgage that provides for a balloon payment as follows:

a. The creditor satisfies the creditor requirements of 12 CFR 1026.35(b)(2)(iii)(A),(B), and (C), which require that: (12 CFR 1026.43(f)(1)(vi))

i. During the preceding calendar year (or if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years), the creditor extended a first-lien covered transaction on a property that is located in a "rural" or "underserved" area;

ii. During the preceding calendar year (or if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years), the creditor, together with its affiliates, extended no more than 2,000 first-lien covered transactions (that were sold, assigned, or otherwise transferred to another

person or subject at the time of consummation to a commitment to be acquired by another person); and

iii. As of the preceding December 31st (or if an application was received before April 1 of the current calendar year, as of either of the two preceding December 31sts), the creditor and its affiliates that regularly extended first-lien covered transactions, together had total assets of less than $2 billion (this threshold will adjust annually).

b. The creditor makes a loan that meets the requirements for a qualified mortgage in 12 CFR 1026.43(e)(2)(i)(A) (substantially equal payments or ARMs or step-rate mortgages that do not increase the principal balance), (e)(2)(ii) (loan term 30 years or less), (e)(2)(iii) (points and fees under certain thresholds), and (e)(2)(v) (income, assets, and obligations are considered and verified), but without regard to the standards in Appendix Q: (12 CFR 1026.43(f)(1)(iv)(A));

c. The creditor determines that the consumer can make all of the scheduled payments under the loan and the monthly payments for all mortgage-related obligations (excluding the balloon payment) from the consumer's current or reasonably expected income or assets (other than the dwelling that secures the loan); (12 CFR 1026.43(f)(1)(ii))

d. The creditor considers at or before consummation, the consumer's monthly debt-to-income ratio or residual income and verifies the debt obligations and income used to determine that ratio in accordance with the repayment ability requirements of 12 CFR 1026.43(c)(7), except that the calculation of the payment for determining the consumer's total monthly debt obligations in 12 CFR 1026.43(c)(7)(i)(A) is based on the scheduled payments for the balloon-payment qualified mortgage in accordance with 12 CFR 1026.43(f)(1)(iv)(A), together with the consumer's monthly payments for all mortgage-related obligations other than the balloon payment; (12 CFR 1026.43(f)(1)(iii))

e. The legal obligation provides for:

i. Scheduled payments that are substantially equal, calculated using an amortization period that does not exceed 30 years, with

ii. An interest rate that does not increase over the term of the loan, and

iii. A loan term of five years or longer; (12 CFR 1026.43(f)(1)(iv)(A)-(C))

f. The loan was not subject to a forward commitment at consummation, except to a person that satisfies the requirements of 12 CFR 1026.35(b)(2)(iii)(A), (B), and (C) (i.e., small creditors operating in rural or underserved counties).

2. Determine whether the balloon-payment qualified mortgage does not have qualified mortgage status because it was subject to a forward commitment at consummation, or the creditor has transferred it in any circumstances other than where the transfer was:

a. Three years or more after consummation;

b. To a creditor that satisfies the requirements of 12 CFR 1026.43(f)(1)(vi) of this section (i.e., meets the definition of 12 CFR 1026.35(b)(2)(iii)(A)-(C), establishing criteria for small creditors operating in rural or underserved counties);

c. Made pursuant to a capital restoration plan or other action under 12 U.S.C. 1831o, or to actions or instructions of a conservator, receiver or bankruptcy trustee, or to orders by or agreements with a state or federal governmental agency with jurisdiction to examine the creditor; or

d. Due to a merger of the creditor with another person or the acquisition of the creditor by another person or another person by the creditor. (12 CFR 1026.43(f)(2)(i) and (iv))

NOTE: If a balloon-payment qualified mortgage has lost its qualified mortgage status, the creditor must have complied with the general ability-to-repay requirements under 12 CFR 1026.43(c).

Temporary Balloon-Payment Qualified Mortgages Made by Small Creditors – 12 CFR 1026.43(e)(6)

1. Determine whether a creditor has complied with the ability-to-repay requirements of 12 CFR 1026.43(c) by making a qualified mortgage that meets the requirements of the small creditor balloon-payment qualified mortgage definition in 12 CFR 1026.43(f) (above), except that the creditor requirement in 12 CFR 1026.35(b)(2)(iii)(A) (operate in a rural or underserved area) does not apply.

NOTE: This temporary qualified mortgage category applies only to loans for which the application was received before April 1, 2016.

Prepayment Penalties – 12 CFR 1026.43(g)

1. Determine whether a mortgage is a covered transaction (which excludes HELOCs and timeshares but, for purposes of the prepayment penalty provisions, includes reverse mortgages, temporary loans, and loans made by certain community development, non-profit, and other lenders

otherwise excluded from ability-to-repay provisions under 12 CFR 1026.43(a)). If yes, then the loan may not have a prepayment penalty unless:

a. It is a qualified mortgage under 12 CFR 1026.43(e)(2), (e)(4), (e)(5), (e)(6), or (f);

b. The prepayment penalty is otherwise allowed by law;

c. The mortgage has an APR that cannot increase after consummation; and

d. The loan is not a higher-priced mortgage loan, as defined in 12 CFR 1026.35(a). (12 CFR 1026.43(g)(1)).

NOTE: Covered transactions are generally prohibited from having prepayment penalties unless certain conditions are met.

2. Determine if the prepayment penalty improperly exceeds the following percentages of the outstanding balance prepaid:

   a. 2 percent during the first two years following consummation;

   b. 1 percent during the third year following consummation; and

   c. 0 percent thereafter. (12 CFR 1026.43(g)(2))

3. Determine whether a creditor offering a consumer a mortgage with a prepayment penalty has also offered the consumer an alternative without a prepayment penalty and the alternative: (12 CFR 1026.43(g)(3))

   a. Has an APR that cannot increase after consummation and has the same type of interest rate (fixed or step rate) as the loan with a prepayment penalty;

   b. Has the same loan term as the loan with a prepayment penalty;

   c. Satisfies the periodic payment conditions under 12 CFR 1026.43(e)(2)(i);

   d. Satisfies the points and fees conditions under 12 CFR 1026.43(e)(2)(iii), based on the information known to the creditor at the time of the offer; and

   e. Is a loan for which the creditor has a good faith belief that the consumer likely qualifies, based on the information known to the creditor at the time the creditor offers the loan without a prepayment penalty. (12 CFR 1026.43(g)(3))

4. Determine whether a creditor offering a loan with a prepayment penalty through a mortgage broker:

   a. Presents the mortgage broker an alternative covered transaction without a prepayment penalty that satisfies the requirements of 12 CFR 1026.43(g)(3) (see c. above); and

   b. Establishes by agreement that the mortgage broker must present to the consumer an alternative covered transaction without a prepayment penalty offered by the creditor that satisfies the requirements of 12 CFR 1026.43(g) (see c. above); or another creditor, if the other creditor offers a lower interest rate or a lower total dollar amount of discount points and origination points or fees. (12 CFR 1026.43(g)(4))

5. Determine whether a creditor that is a loan originator, as defined in 12 CFR 1026.36(a)(1), who presents a covered transaction with a prepayment penalty offered by another person to whom the loan would be assigned after consummation also presents the consumer an alternative covered transaction without a prepayment penalty that satisfies the requirements of 12 CFR 1026.43(g), offered by the assignee; or another person offering a lower interest rate or a lower total dollar amount of origination discount points and points or fees. (12 CFR 1026.43(g)(5))

Evasion of Minimum Standards for Loans Secured By a Dwelling – 12 CFR 1026.43(h)

1. Determine whether the creditor has structured credit secured by a dwelling that does not meet the definition of open-end credit in 12 CFR 1026.2(a)(20) as an open-end plan to evade the requirements for minimum standards for loans secured by a dwelling.

High-Cost Mortgages, Reverse Mortgages, and Higher-Priced Mortgages Loans – 12 CFR 1026.32, 12 CFR 1026.33, and 12 CFR 1026.35

1. Determine whether the financial institution originates consumer credit transactions subject to Subpart E of Regulation Z; specifically, high-cost mortgages (12 CFR 1026.32), reverse mortgages (12 CFR 1026.33), and "higher-priced mortgage loans" (12 CFR 1026.35).

2. In addition to reviewing high-cost mortgages, reverse mortgages, and higher-priced mortgage loans for compliance with requirements in other subparts of Regulation Z (for example, disclosure timing requirements under 12 CFR 1026.19(a)), review such 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. (12 CFR 1026.31(a))

   b. Disclosures are clear and conspicuous, in writing, and in a form that the consumer may keep. (12 CFR 1026.31(b))

c. Disclosures are furnished at least three business days prior to consummation or account opening of a high-cost mortgage or a closed-end reverse mortgage transaction (or at least three business days prior to the first transaction under an open-end reverse mortgage). (12 CFR 1026.31(c))

d. Disclosures reflect the terms of the legal obligation between the parties. (12 CFR 1026.31(d))

e. If the transaction involves more than one creditor, that only one creditor provided the disclosures. Where the obligation involves multiple consumers, ensure that the disclosures were provided to any consumer who is primarily liable on the obligation. Further, for rescindable transactions, verify that the disclosures were provided to each consumer who has the right to rescind. (12 CFR 1026.31(e))

f. The APR is accurately calculated and disclosed in accordance with the requirements and within the tolerances allowed in 12 CFR 1026.22 for closed-end credit transactions and 12 CFR 1026.6(a) for open-end credit plans. (12 CFR 1026.31(g))

3. For high-cost mortgages (12 CFR 1026.32), ensure that, in addition to other required disclosures, the creditor discloses the following at least three business days prior to consummation or account opening (See model disclosure at App. H-16):

a. Notice containing the prescribed language. (12 CFR 1026.32(c)(1))

b. The APR. (12 CFR 1026.32(c)(2))

c. Regular payment and balloon payment. (12 CFR 1026.32(c)(3)).

d. For a closed-end credit transaction, the amount of regular loan payment and the amount of any balloon payment. The disclosed regular payment should be treated as accurate if it is based on an amount borrowed that is deemed accurate under 12 CFR 1026.32(c)(5). (12 CFR 1026.32(c)(3))

e. For an open-end credit plan:

i. An example showing the first minimum periodic payment for the draw period, the first minimum periodic payment for any repayment period, and the balance outstanding at the beginning of any repayment period. (12 CFR 1026.32(c)(3)(ii)(A))

NOTE: The example must be based on the assumption that the consumer borrows the full credit line at account opening and does not obtain any additional extensions of credit, that the consumer makes only the minimum periodic payments during the draw period and any repayment period, and that the APR used to calculate the example payments remains the same during the draw period and any repayment period. Creditors must provide the minimum period payment example based on the APR, except that if an introductory APR applies, the creditor must use the rate that will apply to the plan after the introductory rate expires. (12 CFR 1026.32(c)(3)(ii)(A)-(C))

ii. If the credit contract provides for a balloon payment, a disclosure of that fact and an example showing the amount of the balloon payment based on the assumptions described in the note above. (12 CFR 1026.32(c)(3)(ii)(B))

iii. A statement that the example payments show the first minimum periodic payments at the current annual percentage rate if the consumer borrows the maximum credit available when the account is opened and does not obtain any additional extensions of credit, or substantially similar statement. (12 CFR 1026.32(c)(3)(ii)(C))

iv. A statement that the example payments are not the consumer's actual payments and that the actual minimum periodic payments will depend on the amount the consumer borrows, the interest rate applicable to that period, and whether the consumer pays more than the required minimum periodic payment, or a substantially similar statement. (12 CFR 1026.32(c)(3)(ii)(D))

f. For variable rate transactions, a statement that the interest rate and monthly payment may increase, and the amount of the single maximum monthly payment allowed under the contract based on the maximum rate required to be disclosed under 12 CFR 1026.30. (12 CFR 1026.32(c)(4))

g. For a closed-end credit transaction, the total amount the consumer will borrow (the face amount of the note) and if this amount includes financed charges that are not prohibited under 12 CFR 1026.34(a)(10), that fact. This disclosure should be treated as accurate if within $100 of the actual amount borrowed. For an open-end credit plan, the credit limit for the plan when the account is opened. (12 CFR 1026.32(c)(5))

4. For high-cost mortgages (12 CFR 1026.32), ensure that the creditor follows these additional rules concerning the disclosures required by 12 CFR 1026.32(c):

a. Determine if a new disclosure is required if, subsequent to providing the additional disclosure but prior to consummation or account opening, the creditor changes any terms that make the disclosures inaccurate. For example, if a consumer finances the payment of premiums or other charges as permitted

under 12 CFR 1026.34(a)(10) and, as a result, the monthly payment differs from the payment previously disclosed, re-disclosure is required and a new three-day waiting period applies. (12 CFR 1026.31(c)(1)(i))

b. Determine if a creditor provides new disclosures by telephone when the consumer initiates a change in terms, then prior to or at consummation or account opening 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 or account opening. (12 CFR 1026.31(c)(1)(ii))

c. 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 the consumers entitled to the waiting period (a consumer can waive only after receiving the required disclosures and prior to consummation or account opening). (12 CFR 1026.31(c)(1)(iii))

5. For high-cost mortgages (12 CFR 1026.32) determine that the creditor has not included any of the following loan terms:

   a. A payment schedule that provides for a balloon payment (with exceptions). (12 CFR 1026.32(d)(1)(i)-(iii))

   b. Negative amortization. (12 CFR 1026.32(d)(2))

   c. Advance payments from the proceeds of more than 2 periodic payments. (12 CFR 1026.32(d)(3))

   d. Increased interest rate after default. (12 CFR 1026.32(d)(4))

   e. A rebate of interest, arising from a loan acceleration due to default, calculated by a method less favorable than the actuarial method. (12 CFR 1026.32(d)(5))

   f. Prepayment penalty as defined in 12 CFR 1026.32(b)(6).

   g. A due-on-demand clause that permits the creditor to terminate the loan in advance of maturity and accelerate the balance, except in cases of fraud or material misrepresentation by the consumer, failure by the consumer to meet the repayment terms of the agreement for any outstanding balance, or action or inaction by the consumer that adversely affects the creditor's security interest in the loan. (12 CFR 1026.32(d)(8))

6. For high-cost mortgages under 12 CFR 1026.32, determine that the creditor is not engaged in the following acts and practices:

   a. Home improvement contracts – Paying a contractor under a home improvement contract from the proceeds of a mortgage unless certain conditions are met. (12 CFR 1026.34(a)(1))

   b. Notice to assignee – Selling or otherwise assigning a high-cost mortgage without furnishing the required statement to the purchaser or assignee. (12 CFR 1026.34(a)(2))

   c. Refinancing within one year of extending credit – Within one year of making a high-cost mortgage, a creditor may not refinance any high-cost mortgage to the same consumer into another high-cost mortgage that is not in the consumer's interest. This also applies to assignees that hold or service the high-cost mortgage. Commentary to 12 CFR 1026.34(a)(3) has examples applying the refinancing prohibition and addressing "consumer's interest." (12 CFR 1026.34(a)(3))

   d. Extending high-cost mortgage credit without regard to the consumer's repayment ability. (Temporary or bridge loans with a term of 12 months or less are exempt from this requirement.) (12 CFR 1026.34(a)(4)):

      i. For closed-end credit transactions that are high-cost mortgages, ensure the creditor is complying with the repayment ability requirements set forth in 12 CFR 1026.43

      ii. For open-end credit plans that are high-cost mortgages, ensure the creditor is not extending credit without regard to the consumer's repayment ability as of account opening, including the consumer's current and reasonably expected income, current obligations, assets other than collateral, and employment. A creditor must determine repayment ability for open-end high-cost mortgages by:

         A. Verifying amounts of income or assets that it relies on to determine repayment ability, including expected income or assets, by the consumer's Internal Revenue Service Form W-2, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer's income or assets.

         B. Verifying the consumer's current obligations, including any mortgage-related obligations that are required by another credit obligation

undertaken prior to or at account opening and secured by the same dwelling that secures the high-cost mortgage.

iii. Alternatively determines whether the creditor complies with the repayment ability requirement by:

A. Verifying repayment ability as described above;

B. Determining the consumer's repayment ability by using the largest required minimum periodic payment based on the assumptions that:

1) The consumer borrows the full credit line at account opening with no additional extensions of credit;

2) The consumer makes only required minimum periodic payments during the draw period and any repayment period

3) If the annual percentage rate can increase during the plan, the maximum percentage rate that is included in the contract; and

C. Assessing the consumer's repayment ability, taking into account at least one of the following: the ratio of total debt obligations to income (including any mortgage-related obligations that are required by another credit obligation undertaken prior to or at account opening, and are secured by the same dwelling that secures the high-cost mortgage transaction, or the income the consumer will have after paying debt obligations. (12 CFR 1026.34(a)(4)).

e. ***Pre-loan counseling*** – Determine whether the creditor extending a high-cost mortgage received written certification confirming that the consumer received approved home ownership counseling after receiving the initial GFE or, for open-end credit plans, the initial TILA disclosure required by 12 CFR 1026.40, or if neither of those disclosures are provided, after receiving the disclosures required by 12 CFR 1026.32(c). (12 CFR 1026.34(a)(5)). Requirements include:

i. Verify that home ownership counseling was not provided by an employee or affiliate of the creditor

ii. If the creditor paid fees associated with homeownership counseling, confirm that the payment was not contingent upon the consumer obtaining the high-cost mortgage or receipt of a counseling certification

iii. Verify that the counseling certificate contains the name of the consumer, date of counseling, name and address of the counselor, and statements required by 12 CFR 1026.34(a)(5)(iv).

7. *Late Fees* – For high-cost mortgages, confirm that late payment charges are disclosed in the terms of the loan contract or open-end credit agreement and that such fees do not exceed four percent of the amount past due. No such charge may be imposed more than once for a single late payment. (12 CFR 1026.34(a)(8))

Higher-Priced Mortgage Loans: Appraisals[55]

1. For higher-priced mortgage loans secured by principal dwelling that are not exempt under 12 CFR 1026.35(c)(2), determine whether, before consummation, the creditor obtained a written appraisal from a state-licensed or certified appraiser that included a physical visit to the interior of the dwelling. (12 CFR 1026.35(c)(3))

NOTE: 12 CFR 1026.35(c)(2) exempts several types of loans from the appraisal requirements, including qualified mortgages under 12 CFR 1026.43.

8. Determine whether the creditor is deemed to comply with the requirement by:

a. Ordering that the appraiser perform the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and title XI of FIRREA and any implementing regulations. (12 CFR 1026.35(c)(3)(ii)(A))

b. Verifying through the National Registry that the appraiser who signed the appraiser's certification was a certified or licensed appraiser in the state in which the appraised property is located as of the date the appraiser signed the appraiser's certification. (12 CFR 1026.35(c) (3)(ii)(B))

[55] The higher-priced mortgage loans appraisal requirement was adopted pursuant to an interagency rulemaking conducted by the Board, the CFPB, the FDIC, FHFA, NCUA and OCC. The Board codified the rule at 12 CFR 226.43, and the OCC codified the rule at 12 CFR Part 34 and 12 CFR Part 164. There is no substantive difference among these three sets of rules.

c. Confirming that the appraisal includes elements set forth in Appendix N. (12 CFR 1026.35(c)(ii)(3)(C))

d. Having no actual knowledge contrary to the facts or certifications contained in the written appraisal.

9. Assess whether the creditor exercised reasonable diligence in determining if a second interior appraisal was necessary. A creditor can exercise reasonable diligence by basing its determination on written source documents such as:

a. A copy of the recorded deed from the seller.

b. A copy of a property tax bill.

c. A copy of any owner's title insurance policy obtained by the seller.

d. A copy of the RESPA settlement statement from the seller's acquisition.

e. A property sales history report or title report from a third-party reporting service.

f. Sales price data recorded in multiple listing services.

g. Tax assessment records or transfer tax records obtained from local governments.

h. A written appraisal performed in compliance with 12 CFR 1026.35(c)(3)(i) for the same transaction.

i. A copy of a title commitment report detailing the seller's ownership of the property.

j. A property abstract (12 CFR 1026.35(c)(4)(i) and (vi); see Appendix O).

10. For higher-priced mortgage loans that are not exempt under 12 CFR 1026.35(c)(2) or 12 CFR 1026.35(c)(4)(vii), determine whether an additional written interior appraisal from a state certified or licensed appraiser was both required and performed because the seller acquired the property 180 days or less before the consumer's purchase agreement, and the sales price increased:

a. Greater than 10 percent over the previous purchase price, if acquired 90 or fewer days prior to the consumer's purchase agreement; or (12 CFR 1026.35(c)(4)(i)(A)) or

b. Greater than 20 percent over the previous purchase price, if acquired 91 to 180 days prior to the consumer's purchase agreement. (12 CFR 1026.35(C)(4)(i)(B))

NOTE: 12 CFR 1026.35(c)(4)(vii) provides for eight exemptions from the second appraisal requirement, such as for extensions of credit to finance the acquisition of property from a local, state, or federal government agency.

11. For higher-priced mortgage loans (that are not exempt under 12 CFR 1026.35(c)(2) or 12 CFR 1026.35(c)(4)(vii)) where the creditor is required to obtain a second interior appraisal:

a. Confirm that the creditor obtained an appraisal from a different state certified or licensed appraiser than the one who conducted the first appraisal. (12 CFR 1026.35(c)(4)(ii))

b. Confirm that the creditor charged the consumer for only one of the appraisals. (12 CFR 1026.35(c)(4)(v))

NOTE: Reviewing the Closing Disclosure or HUD-1 may assist in identifying whether a second appraisal fee was charged to the consumer.

c. For higher-priced mortgage loans that are not exempt under 12 CFR 1026.35(c)(2), determine that the creditor provided a written disclosure in a timely manner informing consumers that an appraisal may be necessary and that there is a cost associated with the appraisal, as specified in 12 CFR 1026.35(c)(5).

i. Disclosures must be provided to consumers within three business days after receipt of an application for a higher-priced mortgage loan. A creditor can meet this requirement by placing the disclosure in the mail within three business days after receipt of the application for a higher-priced mortgage loan. (12 CFR 1026.35(c)(5)(ii))

ii. If the loan becomes a higher-priced mortgage loan during the application process, but after initial receipt of the application, a creditor has three business days from the time the loan became a higher priced mortgage loan to provide the necessary disclosure. (12 CFR 1026.35(c)(5)(ii))

d. Confirm that the creditor provided consumers with a free copy of any written appraisal performed in connection with a higher-priced mortgage loan that is not exempt under 12 CFR 1026.35(c)(2). (12 CFR 1026.35(c)(6))

i. Determine whether the creditor is providing consumers with a copy of their appraisal(s) no later than three business days prior to consummation of the loan; (12 CFR 1026.35(c)(6)(ii)(A)) or

ii. If the loan is not consummated, determine whether the creditor is providing consumers with a copy of the appraisal(s) within 30 days after

determining that the loan will not be consummated. (12 CFR 1026.35(c)(6)(ii)(B))

NOTE: The creditor can satisfy this disclosure requirement by providing the disclosure required in Regulation B, 12 CFR 1002.14(a)(2), related to a free copy of the appraisal. (12 CFR 1026.35(c)(5)). However, unlike the waiver provision in Regulation B, a consumer may not waive the timing requirement to receive a copy of the appraisal under 12 CFR 1026.35(c)(6)(i). In addition, the creditor must use the earliest applicable timing requirement to comply with each regulation's appraisal/valuation disclosure requirements.

Higher-Priced Mortgage Loans: Escrow Accounts

1. For most higher-priced mortgage loans secured by a first lien on a principal dwelling escrow accounts must be established before consummation for property taxes and premiums for mortgage-related insurance required by the creditor. (12 CFR 1026.35(b)(1))

2. For higher-priced mortgage loans where the creditor did not establish an escrow account, determine whether the transaction or the creditor would fall into an exemption. (12 CFR 1026.35(b)(2))

   a. Is the transaction secured by shares in a cooperative (12 CFR 1026.35(b)(2)(i)(A));

   b. Is the transaction to finance the initial construction of the dwelling (12 CFR 1026.35(b)(2)(i)(B));

   c. Is the transaction a temporary or "bridge" loan with a term less than 12 months (12 CFR 1026.35(b)(2)(i)(C));

   d. Is the transaction a reverse mortgage transaction under 12 CFR 1026.33 (12 CFR 1026.35(b)(2)(i)(D));

      NOTE: There is a limited exemption for transactions secured by a dwelling in a condominium, planned unit development, or other "common interest community" where a dwelling ownership requires participation in a governing association that is obligated to maintain a master insurance policy insuring all dwellings. In these common interest communities, creditors must maintain an escrow account for the payment of taxes only. (12 CFR 1026.35(b)(2)(ii))

   e. Does the creditor, or loan originator, qualify for an exemption under 12 CFR 1026.35(b)(2)(iii)(A)-(D):

      i. During the preceding calendar year (or if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years), it extended a covered transaction (defined in section 1026.43(b)(1)) secured by a first lien on a property located in an area that meets the definition of "rural" or "underserved" as laid out in 12 CFR 1026.35(b)(2)(iv);

      ii. Together with any affiliates, it did not extend more than 2,000 covered transactions (secured by first liens, that were sold, assigned, or otherwise transferred to another person or subject at the time of consummation to a commitment to be acquired by another person) in the preceding calendar year (or if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years);

      iii. It and its affiliates that regularly extended covered transactions together had less than the annually adjusted $2 billion threshold in total assets as of the preceding December 31st, or if the application for the transaction was received before April 1 of the current calendar year, of either of the two proceeding December 31sts ; and

      iv. Neither the creditor nor its affiliate maintains an escrow account of the type described in 12 CFR 1026.35(b)(1) for any extension of consumer credit secured by real property or a dwelling that the creditor or its affiliate currently services, other than:

         A. Escrow accounts established for first-lien higher-priced mortgage loans on or after April 1, 2010, and before May 1, 2016; or

         B. Escrow accounts established after consummation as an accommodation to distressed consumers to assist such consumers in avoiding default or foreclosure.

      NOTE: The asset threshold will adjust automatically each year, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million dollars (see comment 35(b)(2)(iii)-1.iii for the current threshold).

3. Evasion of requirements: Ensure that the creditor does not structure a higher-priced mortgage loan as an open-end plan ("spurious open-end credit") to evade the requirements of Regulation Z. (12 CFR 1026.35(d))

Prohibited Payments to Loan Originators – 12 CFR 1026.36(d) and (e)

1. Determine that, in connection with a closed-end consumer credit transaction secured by a dwelling,[56] no loan originator receives and no person pays to a loan originator, directly or indirectly, compensation[57] that is based on:

   NOTE: The term "loan originator" means, a person who, in expectation of direct or indirect compensation or other monetary gain or for direct or indirect compensation or other monetary gain: takes an application, offers, arranges, assists a consumer in obtaining or applying to obtain, negotiates, or otherwise obtains or makes an extension of consumer credit for another person; or through advertising or other means of communication represents to the public that such person can or will perform any of these activities. The term "loan originator" includes an employee, agent, or contractor of the creditor or loan originator organization if the employee, agent, or contractor meets this definition. The term "loan originator" also includes a creditor that engages in loan origination activities if the creditor does not finance the transaction at consummation out of the creditor's own resources, including by drawing on a bona fide warehouse line of credit or out of deposits held by the creditor.

   NOTE: A person is not a loan originator who does not take a consumer credit application or offer or negotiate credit terms available from a creditor to that consumer based on the consumer's financial characteristics, but who performs purely administrative or clerical tasks on behalf of a person who does engage in such activities. An employee of a manufactured home retailer who does not take a consumer credit application, offer or negotiate credit terms, or advise a consumer on credit terms is not a loan originator. For purposes of 12 CFR 1026.36(a), "credit terms" include rates, fees or other costs, and a consumer's financial characteristics include any factors that may influence a credit decision, such as debts, income, assets or credit history.

   a. A term of a transaction, the terms of multiple transactions by an individual loan originator, or the terms of multiple transactions by multiple individual loan originators (12 CFR 1026.36(d)(1)(i)), or

   NOTE: For purposes of 12 CFR 1026.36(d)(1) only, a "term of a transaction" is any right or obligation of the parties to a credit transaction. The amount of credit extended is not a term of a transaction or a proxy for a term of a transaction, provided that compensation received by or paid to a loan originator, directly or indirectly, is based on a fixed percentage of the amount of credit extended; however, such compensation may be subject to a minimum or maximum dollar amount. (12 CFR 1026.36(d)(1)(ii))

   b. A proxy[58] for a term of a transaction. (12 CFR 1026.36(d)(1)(i))

2. Determine that a loan originator that receives a contribution to a defined contribution, tax-advantaged plan that meets the applicable requirements of the Internal Revenue Code does not receive a contribution that is directly or indirectly based on the terms of the individual loan originator's transactions. (12 CFR 1026.36(d)(1)(iii))

3. Determine whether an individual loan originator receives compensation pursuant to a non-deferred, profits-based compensation plan only if:

   a. The compensation paid to an individual loan originator is not directly or indirectly based on the terms of that individual loan originator's transactions that are subject to 12 CFR 1026.36(d); and

   b. At least one of the following conditions is satisfied:

      i. The compensation paid to an individual loan originator does not, in the aggregate, exceed 10 percent of the individual loan originator's total compensation corresponding to the time period for which the compensation under the non-deferred profits-based compensation plan is paid; or

      ii. The individual loan originator was a loan originator for ten or fewer transactions consummated during the 12-month period preceding the date of the compensation determination. (12 CFR 1026.36(d)(1)(iv))

Prohibition on Dual Compensation

1. If any loan originator receives compensation directly from a consumer in a closed-end consumer credit transaction secured by a dwelling, determine that (12 CFR 1026.36(d)(2)):

[56] 12 CFR 1026.36(d) and (e) do not apply to a home-equity line of credit subject to 12 CFR 1026.40 or to a loan that is secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D). (12 CFR 1026.36(b))

[57] Compensation includes salaries, commissions, and any financial or similar incentive, such as an annual or periodic bonus or awards of merchandise, services, trips, or similar prizes. See 12 CFR §1026.36(a)(3) and comment 1026.36(a)-5.

[58] A factor that is not itself a term of a transaction is a proxy for a term of the transaction if the factor consistently varies with that term over a significant number of transactions, and the loan originator has the ability, directly or indirectly, to add, drop, or change the factor in originating the transaction. (12 CFR 1026.36(d)(1)(i))

a. No loan originator receives compensation, directly or indirectly, from any person other than the consumer in connection with the transaction (12 CFR 1026.36(d)(2)(i)(A)(1)) except that a loan originator organization may receive compensation from a consumer and pay compensation to its individual loan originator ; and

b. No person who knows or has reason to know of the consumer-paid compensation to the loan originator (other than the consumer) pays any compensation to a loan originator, directly or indirectly, in connection with the transaction. (12 CFR 1026.36(d)(2)(i)(A)(2))

NOTE: Loan originator organizations are permitted to compensate their employees if the organization receives compensation directly from a consumer, subject to the prohibition on payments to loan originators in 12 CFR 1026.36(d)(1).

Prohibition on Steering

1. Determine that, in connection with a consumer credit transaction secured by a dwelling, a loan originator does not direct or "steer" a consumer to consummate a transaction based on the fact that the originator will receive greater compensation from the creditor in that transaction than in other transactions the originator offered or could have offered to the consumer, unless the consummated transaction is in the consumer's interest. (12 CFR 1026.36(e)(1))

   NOTE: The rule provides a safe harbor to facilitate compliance with the prohibition on steering in 12 CFR 1026.36(e)(1). The loan originator is deemed to comply with the anti-steering prohibition if the consumer is presented with loan options that meet all of the following conditions for each type of transaction in which the consumer expressed an interest:[59]

   a. The loan originator obtains loan options from a significant number of the creditors with which the originator regularly does business and, for each type of transaction in which the consumer expressed an interest, presents the consumer with loan options that include (12 CFR 1026.36(e)(3)(i)):

      i. The loan with the lowest interest rate; (12 CFR 1026.36(e)(3)(i)(A))

      ii. The loan with the lowest interest rate without negative amortization, a prepayment penalty, interest-only payments, a balloon payment in the first seven years of the life of the loan, a demand feature, shared equity, or shared appreciation; or, in the case of a reverse mortgage, a loan without a prepayment penalty, or shared equity or shared appreciation; and (12 CFR 1026.36(e)(3)(i)(B))

      iii. The loan with the lowest total dollar amount of discount points, origination points or origination fees (or, if two or more loans have the same total dollar amount of discount points, origination points or origination fees, the loan with the lowest interest rate that has the lowest total dollar amount of discount points, origination points or origination fees). (12 CFR 1026.36(e)(3)(i)(C))

   b. The loan originator has a good faith belief that the options (presented to the consumer that are set forth, above) are loans for which the consumer likely qualifies. (12 CFR 1026.36(e)(3)(ii))

   c. For each type of transaction, if the originator presents to the consumer more than three loans, the originator highlights the loans that satisfy options 1.i, 1.ii, and 1.iii above. (12 CFR 1026.36(e)(3)(iii))

      NOTE: If the requirements set forth in 12 CFR 1026.36(e) are met, the loan originator can, without steering, present fewer than three loans. (12 CFR 1026.36(e)(4))

Loan Originator Qualifications[60] and Documentation – 12 CFR 1026.36(f) and (g)

1. Determine whether the loan originator organization complies with all applicable state law requirements for legal existence and foreign qualification. (12 CFR 1026.36(f)(1))

2. Determine whether the loan originator organization ensures that individual loan originators who work for it (e.g., employees, under a brokerage agreement) are licensed or registered as required by the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act), its implementing regulations (12 CFR §1007 and §1008), and any state SAFE Act law. (12 CFR 1026.36(f)(2))

3. For individual loan originators who are its employees and who are not required to be licensed and are not licensed as a loan originator under section 1008.103 or state SAFE Act implementing law, determine whether the loan originator organization, prior to allowing the individual to act as a loan originator:

[59] The term ''type of transaction'' refers to whether: (i) A loan has an APR that cannot increase after consummation; (ii) A loan has an APR that may increase after consummation; or (iii) A loan is a reverse mortgage. (12 CFR 1026.36(e)(2))

[60] For the purposes of 12 CFR 1026.36(f) and (g), all creditors are loan originators.

a. Obtained a copy of the individual's background check through the Nationwide Mortgage Licensing System and Registry (NMLSR) or a criminal background check from a law enforcement agency or commercial service; (12 CFR 1026.36(f)(3)(i)(A))

b. Obtained a credit report from a consumer reporting agency in compliance with FCRA section 604(b); (12 CFR 1026.36(f)(3)(i)(B))

c. Obtained information from the NMLSR, or from the individual as applicable, about administrative, civil, or criminal findings against the individual; (12 CFR 1026.36(f)(3)(i)(C))

d. Determined on the basis of obtained information or any other information reasonably available that the individual has not been convicted of, plead guilty or *nolo contendere* to a felony in a domestic or military court during the preceding seven year period; (12 CFR 1026.36(f)(3)(ii)(A)(*1*))

e. Determined on the basis of obtained information or any other information reasonably available that the individual has not been convicted of, plead guilty or *nolo contendere* to a felony involving an act of fraud, dishonesty, breach of trust, or money laundering, at any time; (12 CFR 1026.36(f)(3)(ii)(A)(*1*))

f. Confirmed that if the individual has a felony conviction and is employed as an individual loan originator, that the FDIC (or FRB, as applicable), NCUA, or Farm Credit Administration has provided consent to employ the individual under their own statutory authorities; (12 CFR 1026.36(f)(ii)(A)(2) *(iii))*

g. Confirmed that the individual demonstrated financial responsibility, character, and general fitness such as to warrant a determination that the individual loan originator will operate honestly, fairly, and efficiently; (12 CFR 1026(f)(3)(ii)(B))

h. Provides periodic training covering federal and state law requirements that apply to the individual loan originator's loan origination activities. (12 CFR 1026.36(f)(3)(iii))

NOTE: Paragraph (c) only applies to an individual loan originator hired on after January 1, 2014 (or an individual loan originator the loan originator organization hired before this date but for whom there were no applicable statutory or regulatory background standards in effect at the time of hire or used to screen the individual) or an individual loan originator regardless of when hired who, based on reliable information known to the loan originator organization, likely does not meet the qualification standards.

4. Verify that the loan originator organization and individual loan originator include their names and NMLSR IDs on all required loan documentation, including: (12 CFR 1026.36(g))

   a. The credit application;

   b. The disclosures required by 12 CFR 1026.19(e) and (f);

   c. The note or loan contract; and

   d. The security instrument.

Policies and Procedures for Depository Institutions to Ensure and Monitor Compliance – 12 CFR 1026.36(j)

1. Verify that loan originator organizations that are depositories (including credit unions) have established and maintain written policies and procedures reasonably designed (i.e., appropriate to the nature, size, complexity and scope of the mortgage lending activities of the depository and its subsidiaries) to ensure that the depository, its subsidiaries and their collective employees comply with the loan originator requirements of 12 CFR 1026.36(d)–(g). (12 CFR 1026.36(j))

Prohibition on Mandatory Arbitration Clauses and Waiver of Certain Consumer Rights – 12 CFR 1026.36(h)

1. Verify that the contract or other agreement for a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling) does not include terms that require arbitration or any other non-judicial procedure to resolve any controversy or settle any claims arising out of the transaction. (12 CFR 1026.36(h)(1))

2. Verify that the contract or other agreement relating to a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling) has not been applied or interpreted to bar a consumer from bringing a claim in court pursuant to any provision of law for damages or other relief in connection with any alleged violation of any federal law. (12 CFR 1026.36(h)(2))

Prohibition on Financing Credit Insurance – 12 CFR 1026.36(i)

1. Determine that the creditor does not finance, directly or indirectly, premiums or fees for credit insurance (including credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life, or health insurance or direct or indirect payment for debt cancellation/suspension) on the transaction secured by a dwelling (including a home equity line of credit secured by a principal dwelling). (12 CFR 1026.36(i))

NOTE: Credit unemployment insurance is not subject to this prohibition where the premiums are reasonable, the creditor receives no direct or indirect compensation in connection with the premiums, and the premiums are paid under a separate insurance contract and are not paid to an affiliate of the creditor. Additionally, this prohibition does not apply to credit insurance that is paid in full monthly.

Negative Amortization Counseling – 12 CFR 1026.36(k)

1. Verify that the creditor received documentation that first-time borrowers received pre-loan counseling from a HUD certified or approved counselor on each negative amortizing mortgage loan to prior to originating the loan. (12 CFR 1026.36(k))

   NOTE: This restriction does not apply to reverse mortgages covered under 12 CFR 1026.33 or transactions secured by a timeshare plan. For more information, please see the commentary to 12 CFR 1026.36(k).

Servicing Requirements for Certain Home Mortgages Subject to Subpart E

1. Determine if the servicer is a small servicer under 12 CFR 1026.41(e)(4)(ii). The following steps 2-5 regarding periodic statements for closed-end loans secured by a dwelling are not applicable if the servicer is a small servicer.

NOTE: A small servicer is defined as (1) a servicer that, together with any affiliates, services 5,000 or fewer loans, for all of which the servicer or any affiliate is the creditor or assignee; (2) a servicer that is a housing finance agency under 24 CFR 226.5; or (3) a nonprofit entity (defined in 12 CFR 1026.41(e)(4)(ii)(C)(1)) that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities (defined in 12 CFR 1026.41(e)(4)(ii)(C)(2)), for all of which the servicer or an associated nonprofit is the creditor. Small servicer status is generally based on the loans serviced by the servicer and any affiliates as of January 1 for the remainder of the year. However, to determine small servicer status under the nonprofit small servicer definition, a nonprofit servicer should be evaluated based on the mortgage loans serviced by the servicer (and not those serviced by associated nonprofit entities) as of January 1 for the remainder of the calendar year. Servicers that cease to qualify as a small servicer will have the later of six months after the date they ceased to qualify, or until the next January 1 to come into compliance. Under 12 CFR 1026.41(e)(4)(iii), the following mortgage loans are not considered in determining whether a servicer qualifies as a small servicer: (a) mortgage loans voluntarily serviced by the servicer for a non-affiliate of the servicer and for which the servicer does not receive any compensation or fees; (b) reverse mortgage transactions; (c) mortgage loans secured by consumers' interests in timeshare plans; and (d) certain seller-financed transactions that meet the criteria identified in 12 CFR 1026.36(a)(5).

2. Determine whether the creditor, assignee, or servicer provides consumers with reasonably prompt periodic statements for closed-end loans secured by a dwelling. (12 CFR 1026.41).

NOTE: "Consumer" includes a confirmed successor in interest as defined in 12 CFR 1026.2(a)(27). (12 CFR 1026.2(a)(11)). If there is a confirmed successor in interest, determine whether the exemption from the requirement to provide a periodic statement to the confirmed successor in interest applies as specified in 12 CFR 1026.41(g). (Effective April 19, 2018).

This requirement does not apply to reverse mortgages under 12 CFR 1026.33; timeshare plans; fixed-rate loans where the servicer currently provides consumers with coupon books that contain account payment, fees, and contact information specified under 12 CFR 1026.41(e)(3); small servicers under 12 CFR 1026.41(e)(4); or, as specified in 12 CFR 1026.41(e)(5), for mortgages while the consumer is a debtor in bankruptcy under Title 11 of the US Code. Servicers, however, must provide modified periodic statements and coupon books to certain consumers in bankruptcy as specified in 12 CFR 1026.41(f) (see questions below). Servicers are exempt from providing periodic statements for charged-off mortgage loans if the requirements of 12 CFR 1026.41(e)(6) are met (see questions below).

NOTE ALSO: When examining a creditor or assignee that continues to own the loan, or a servicer, if the entity states that another entity has the obligation to provide the disclosures, examiners should determine whether the examined entity takes steps to ensure that the other party (a creditor, assignee, or servicer) is complying with the obligation to provide the disclosures.

2. Verify that the periodic statements contain:

   a. The payment due date; the amount of any late payment fee, and the date on which that fee will be imposed; and the amount due (the latter shown more prominently than other disclosures on the page and, if the transaction has multiple payment options, the amount due under each of the payment options), grouped together in close proximity to each other and located at the top of the first page; (12 CFR 1026.41(d)(1))

      - If the balance of a mortgage loan was accelerated but the servicer was willing to accept a lesser amount to reinstate the loan, verify that the amount due on the periodic statement identified only the lesser amount that the servicer would have accepted to reinstate the loan. (Comment 1026.41(d)(1)-1);

      - If the consumer had agreed to a temporary loss mitigation program, verify that the amount due

identified either the payment due under the temporary loss mitigation program or the amount due according to the loan contract. (Comment 1026.41(d)(1)-2).

- If the loan contract had been permanently modified, verify that the amount due identified only the amount due under the modified loan contract. (Comment 1026.41(d)(1)-3).

NOTE: Servicers may modify the sample forms for periodic statements provided in Appendix H–30 to remove language that could suggest liability under the mortgage loan agreement if such language is not applicable. For example, in the case of a confirmed successor in interest who has not assumed the mortgage loan obligation under State law and is not otherwise liable on the mortgage loan obligation, a servicer may modify the forms to:

- *Use "this mortgage" or "the mortgage" instead of "your mortgage."*
- *Use "The payments on this mortgage are late" instead of "You are late on your mortgage payments."*
- *Use "This is the amount needed to bring the loan current" instead of "You must pay this amount to bring your loan current."*

(Comment 1026.41(c)-5) (*Effective April 19, 2018*).

b. The monthly payment amount, including a breakdown of how it will be applied to principal, interest, and escrow, and if a mortgage loan has multiple payment options along with information regarding how each payment will affect the principal, a breakdown of each of the payment options; the total sum of any fees or charges imposed since the last statement; and any payment amount past due, grouped together in close proximity to each other and located at the top of the first page. (12 CFR 1026.41(d)(2))

- If the balance of a mortgage loan was accelerated but the servicer was willing to accept a lesser amount to reinstate the loan, verify that the explanation of amount due on the periodic statement listed both the reinstatement amount and the accelerated amount. Verify that the periodic statement also included an explanation that the reinstatement amount would be accepted through the "as of [date]," as applicable along with any special instructions for submitting the payment. The explanation should be on the front page of the statement or, alternatively, may be included on a separate page enclosed with the periodic statement.(Comment 1026.41(d)(2)-1).

NOTE: The servicer is not required to list the monthly payment amount that would otherwise be required under 12 CFR 1026.41(d)(2)(i). (Comment 1026.41(d)(2)-1).

- If the consumer had agreed to a temporary loss mitigation program and the amount due identified the payment due under the temporary loss mitigation program, verify that the explanation of amount due included both the amount due according to the loan contract and the payment due under the temporary loss mitigation program. Also verify that the statement included an explanation that the amount due was being disclosed as a different amount because of the temporary loss mitigation program. The explanation should be on the front page of the statement or, alternatively, may be included on a separate page enclosed with the periodic statement or in a separate letter. (Comment 1026.41(d)(2)-2).

c. The total of all payments received since the last statement, including a breakdown showing how the payment was applied to principal, interests, escrow, fees, and charges, and any amount sent to a suspense or unapplied funds account grouped together in close proximity to each other and located at the top of the first page; (12 CFR 1026.41(d)(3)(i))

d. The total of all payments received for the calendar year, including a breakdown of how those payments were applied to principal, interest, escrow, fees. and charges and any amount currently held in a suspense or unapplied funds account, grouped together in close proximity to each other and located at the top of the first page; (12 CFR 1026.41(d)(3)(ii))

e. A list of transaction activity that occurred since the last statement, including the date, amount, and brief description of the transaction. Transaction activity includes any activity that caused a credit or debit to the amount currently due; (12 CFR 1026.41(d)(4))

f. For statements where a partial payment was received and the creditor or servicer held the partial payment in a suspense or unapplied funds account, information explaining what must be done for the funds to be applied to the balance, located on the front page or a separate page of the statement or in a separate letter; (12 CFR 1026.41(d)(5))

g. A toll-free number, and if applicable, an email address, that consumers may use to obtain account information located on the front page; (12 CFR 1026.41(d)(6))

h. The amount of the outstanding principal balance; (12 CFR 1026.41(d)(7)(i))

i. The current interest rate for the mortgage; (12 CFR 1026.41(d)(7)(ii))

j. The date that the interest may change (if applicable); (12 CFR 1026.41(d)(7)(iii))

k. Information regarding whether the loan contains a prepayment penalty; (12 CFR 1026.41(d)(7)(iv))

l. The web address to the CFPB or HUD's list of homeownership counselors or counseling organizations and HUD's toll-free telephone number to obtain contact information for counselors or counseling organizations; (12 CFR 1026.41(d)(7)(v))

m. For consumers more than 45 days delinquent, determine that the creditor, assignee, or servicer provides on the first page, on a separate page of the statement, or in a separate letter:

i. The length of the consumer's delinquency (12 CFR 1026.41(d)(8)(i))

ii. A notification of the possible risks, such as foreclosure, and expenses that may occur if the consumer does not become current; (12 CFR 1026.41(d)(8)(ii))

iii. An account history showing the shorter of the previous six months or from the time the account was last current, the amount of payment that is past due from each billing cycle; (12 CFR 1026.41(d)(8)(iii))

NOTE: If any payment was accepted as a full payment, the creditor or servicer must show that the payment was credited to the consumer's account and the date that the payment was credited.

iv. A notice indicating any loss mitigation program that the consumer has agreed to; (12 CFR 1026.41(d)(8)(iv))

v. A notice of whether the servicer has initiated foreclosure proceedings; (12 CFR 1026.41(d)(8)(v))

vi. The total payment amount needed to bring the account current; and (12 CFR 1026.41(d)(8)(vi))

vii. A reference to homeownership counseling information required under 12 CFR 1026.41(d)(7)(v). (12 CFR 1026.41(d)(8)(vii))

3. Effective April 19, 2018, unless the servicer is otherwise exempt as noted below, while any consumer on a mortgage loan is a debtor in bankruptcy under title 11 of the United States Code, or if such consumer had discharged personal liability for the mortgage loan pursuant Chapter 7, 11, 12, or 13, determine whether the servicer provided a modified periodic statement or coupon book in compliance with 12 CFR 1026.41(f). Specifically, the periodic statement:

a. May omit the information set forth in 12 CFR 1026.41(d)(1)(ii) and (d)(8)(i), (ii), and (v). The requirement in 12 CFR 1026.41(d)(1)(iii) of this section that the amount due must be shown more prominently than other disclosures on the page shall not apply. (12 CFR 1026.41(f)(1));

b. Must include the following bankruptcy notices:

i. A statement identifying the consumer's status as a debtor in bankruptcy or the discharged status of the mortgage loan; and

ii. A statement that the periodic statement is for informational purposes only. (12 CFR 1026.41(f)(2));

c. For chapter 12 and chapter 13 consumers:

i. May omit (in addition to information listed in 12 CFR 1026.41(f)(1)) the information in 12 CFR 1026.41(d)(8)(iii), (iv), (vi), and (vii). (12 CFR 1026.41(f)(3)(i));

ii. May limit the amount due information set forth in 12 CFR 1026.41(d)(1) to the date and amount of the post-petition payments due and any post-petition fees and charges imposed by the servicer. (12 CFR 1026.41(f)(3)(ii));

iii. May limit the explanation of amount due information set forth in 12 CFR 1026.41(d)(2) to:

1. The monthly post-petition payment amount, including a breakdown showing how much, if any, would be applied to principal, interest, and escrow;

2. The total sum of any post-petition fees or charges imposed since the last statement; and

3. Any post-petition payment amount past due. (12 CFR 1026.41(f)(3)(iii);

iv. Must include all payments that the servicer received since the last statement, including all post-petition and pre-petition payments, payments of post-petition fees and charges, and all post-petition fees and charges that the servicer imposed since the last statement. The brief description of the activity need not identify the source of any payments. (12 CFR 1026.41(f)(3)(iv));

v. Must disclose the following pre-petition arrearage information, if applicable, grouped in close proximity to each other and located on the first page of the statement or on a separate page enclosed with the periodic statement or in a separate letter:

1. The total of all pre-petition payments received since the last statement;

2. The total of all pre-petition payments received since the beginning of the consumer's pre-petition arrearage; and

3. The current balance of the consumer's pre-petition arrearage. (12 CFR 1026.41(f)(3)(v)).

vi. Must include, as applicable:

1. A statement that the amount due includes only post-petition payments and does not include other payments that may be due under the terms of the consumer's bankruptcy plan;

2. If the consumer's bankruptcy plan requires the consumer to make the post-petition mortgage payments directly to a bankruptcy trustee, a statement that the consumer should send the payment to the trustee and not to the servicer;

3. A statement that the information disclosed on the periodic statement may not include payments the consumer has made to the trustee and may not be consistent with the trustee's records;

4. A statement that encourages the consumer to contact the consumer's attorney or the trustee with questions regarding the application of payments; and

5. If the consumer is more than 45 days delinquent on post-petition payments, a statement that the servicer has not received all the payments that became due since the consumer filed for bankruptcy. (12 CFR 1026.41(f)(3)(vi)).

NOTE:

- *Multiple obligors. The servicer may provide the modified statement to any or all of the primary obligors, even if a primary obligor to whom the servicer provides the modified statement is not a debtor in bankruptcy. (12 CFR 1026.41(f)(4)). (Effective April 19, 2018)*

- *Coupon books. A servicer that provides a coupon book instead of a periodic statement must include in the coupon book (or on a separate page enclosed with the coupon book) the disclosures set forth in 12 CFR 1026.41(f)(2) and (f)(3)(vi), as applicable. (12 CFR 1026.41(f)(5)). (Effective April 19, 2018)*

- *Under 12 CFR 1026.41(e)(5)(i), a servicer is exempt from providing a periodic statement to certain consumers in bankruptcy if:*

  - *Any consumer on the mortgage loan is a debtor in bankruptcy under title 11 of the United States Code or has discharged personal liability for the mortgage loan pursuant to Chapter 7 (11 U.S.C. 727), Chapter 11 (11 U.S.C. 1141), Chapter 12 (11 U.S.C.1228), or Chapter 12 (11 U.S.C. 1328); and*

  - *With regard to any consumer on the mortgage loan:*

    - *The consumer requests in writing that the servicer cease providing a periodic statement or coupon book;*

    - *The consumer's bankruptcy plan provides that the consumer will surrender the dwelling securing the mortgage loan, provides for the avoidance of the lien securing the mortgage loan, or otherwise does not provide for, as applicable, the payment of pre-bankruptcy arrearage or the maintenance of payments due under the mortgage loan;*

    - *A court enters an order in the bankruptcy case providing for the avoidance of the lien securing the mortgage loan, lifting the automatic stay pursuant to 11 U.S.C. 362 with regard to the dwelling securing the mortgage loan, or requiring the servicer to cease providing a periodic statement or coupon book; or*

    - *The consumer files with the court overseeing the bankruptcy case a statement of intention pursuant to 11 U.S.C. 521(a) identifying an intent to surrender the dwelling securing the mortgage loan and a consumer has not made any partial or periodic payment on the mortgage loan after the commencement of the consumer's bankruptcy case. (Effective April 19, 2018)*

A servicer ceases to qualify for the exemption pursuant to 12 CFR 1026.41(e)(5)(i) with respect to a mortgage loan if the consumer reaffirms personal liability for the loan or any consumer on the loan requests in writing that the servicer provide a periodic statement or coupon book, unless a court enters an order in the bankruptcy case requiring the servicer to

cease providing a periodic statement or coupon book. (12 CFR 1026.41(e)(5)(ii)) (*Effective April 19, 2018*).

4. If the servicer has ceased providing periodic statements for charged-off mortgage loans, determine whether the following exemption requirements of 12 CFR 1026.41(e)(6)(i) are met:

    a. The servicer charged off the loan in accordance with loan-loss provisions and has not charged any additional fees or interest on the account; and

    b. The servicer provided, within 30 days of charge-off or the most recent periodic statement, a periodic statement, clearly and conspicuously labeled "Suspension of Statements & Notice of Charge Off—Retain This Copy for Your Records." The periodic statement clearly and conspicuously explained the following (as applicable):

        i. The mortgage loan was charged off and the servicer will not charge any additional fees or interest on the account;

        ii. The servicer will no longer provide the consumer a periodic statement for each billing cycle;

        iii. The lien on the property remains in place and the consumer remains liable for the mortgage loan obligation and any obligations arising from or related to the property, which may include property taxes;

        iv. The consumer may be required to pay the balance on the account in the future, for example, upon sale of the property;

        v. The balance on the account is not being canceled or forgiven; and

        vi. The loan may be purchased, assigned, or transferred.

NOTE: If a servicer fails at any time to treat a mortgage loan that is exempt under 12 CFR 1026.41(e)(6)(i) as charged off or charges any additional fees or interest on the account, the servicer must resume providing a periodic statement. (12 CFR 1026.41(e)(6)(ii)(A)). A servicer may not retroactively assess fees or interest on the account for the period of time during which the exemption in paragraph 12 CFR 1026.41(e)(6)(i) applied. (12 CFR 1026.41(e)(6)(ii)(B)).

5. For high-cost mortgages, ensure the creditor or servicer does not charge any fee to modify, renew, extend, or amend a high-cost mortgage, or to defer any payment due under the terms of the mortgage. (12 CFR 1026.34(a)(7))

6. For high-cost mortgages, determine whether the creditor or servicer charged a late payment greater than 4 percent of the payment past due. (12 CFR 1026.34(a)(8)(i))

7. For high-cost mortgages, determine that the creditor or servicer did not impose any late fee or delinquency charge in connection with a payment, when the only delinquency was attributable to late fees or delinquency charges assessed on an earlier payment, and the payment is otherwise a full payment for the applicable period and is paid on its due date or within any applicable grace period (12 CFR 1026.34(a)(8)(iii)).

8. For high-cost mortgages, determine whether the creditor or servicer assessed any fees for providing consumers with a payoff statement related to the high-cost mortgage. (12 CFR 1026.34(a)(9))

    NOTE: Creditors or servicers are permitted to assess a processing fee if the payoff statement is provided by courier or by fax, the fee is comparable to fees for similar services provided for non-high-cost mortgages, and the creditor or servicer discloses that payoff statements are available by an alternative method free of charge. Additionally, within a calendar year, if the creditor or servicer has already provided four payoff statements in compliance with 12 CFR 1026.34(a)(9), it may assess fees for additional statements.

9. For high-cost mortgages, determine that the creditor or servicer is providing payoff statements within five business days after receiving a request from the consumer (or consumer's authorized representative). (12 CFR 1026.34(a)(9)(v))

10. For higher-priced mortgage loans that are subject to the escrow account requirements, ensure the creditor or servicer maintains the consumer's escrow account for a minimum of five years after consummation of the loan, unless: (12 CFR 1026.35(b)(3))

    a. The creditor or servicer terminated the escrow account upon termination of the underlying debt obligation (12 CFR 1026.35(b)(3)(i)(A)); or

    b. The creditor or servicer terminated the escrow account upon request from the consumer, no earlier than five years after consummation of the loan. (12 CFR 1026.35(b)(3)(i)(B))

        NOTE: Upon request from the consumer, the creditor or servicer must verify that the unpaid principal balance of the higher-priced mortgage loan is less than 80 percent of the original value of the property securing the loan and that the consumer is not delinquent or in default on the loan, prior to cancelling the escrow account. (12 CFR 1026.35(b)(3)(ii))

11. For consumer credit transactions secured by a consumer's principal dwelling, determine that the creditor or servicer credited consumer's periodic payments as of the date the payment was received or ensured that any delay in crediting did not result in any charge to the consumer or in the reporting of any negative information to a consumer reporting agency. (12 CFR 1026.34(a)(8)-(9) and 12 CFR 1026.36(c)(1)(i))

12. For consumers performing under a permanent loan modification of a consumer credit transaction secured by a consumer's principal dwelling, determine whether the creditor or servicer credited the payments according to the terms of the modified loan contract. (Comment 1026.36(c)(1)(i)-5).

    NOTE: For consumers performing under temporary loss mitigation programs, a creditor must continue to credit payments according to the loan contract and could, if appropriate, credit the payments as partial payments. (Comment 1026.36(c)(1)(i)-4).

13. For consumer credit transactions secured by a consumer's principal dwelling, determine whether the creditor or servicer uses a suspense or unapplied payment account for partial payments.

    c. For creditors or servicers that use suspense or unapplied payment accounts for consumers' partial payments, verify that the creditor or servicer discloses to consumers that amount held in the suspense account on the periodic statement required by 12 CFR 1026.41(d)(3) if one is required (12 CFR 1026.36(c)(1)(ii)(A)); and

    d. Verify that creditors or servicers credit a periodic payment to the consumer's account once the amount in the suspense account equals a periodic payment. (12 CFR 1026.36(c)(1)(ii)(B))

14. For consumer credit transactions secured by a consumer's principal dwelling, and for creditors or servicers that accept non-conforming payments from consumers, verify that the creditor or servicer credited the non-conforming payment to the consumer's account as of five days after receipt of the payment. (12 CFR 1026.36(c)(1)(iii))

15. Determine whether there were any of the following prohibited acts or practices in connection with credit secured by a consumer's principal dwelling (12 CFR 1026.36(c)):

    e. Imposing on the consumer any late fee or delinquency charge in connection with a payment, when the only delinquency was attributable to late fees or delinquency charges assessed on an earlier payment, and the payment is otherwise a periodic payment for the applicable period and is received on its due date or within any applicable courtesy period (12 CFR 1026.36(c)(2)); or

16. For consumer credit transactions secured by a dwelling (including a home equity line of credit secured by a dwelling), verify that the creditor, assignee, or servicer provided, within a reasonable time, but no later than seven business days after receiving a written request from the consumer or person acting on behalf of the consumer, an accurate statement of the total outstanding balance that would be required to pay the consumer's obligation in full as of a specific date except when a delay is because a loan is in bankruptcy or foreclosure, the loan is a reverse or shared appreciation mortgage, or because of a natural disaster, in which case the payoff statement must be provided within a reasonable period of time. (12 CFR 1026.36(b) and (c)(3))

Valuation Independence

1. Determine that the covered person did not attempt to directly or indirectly cause the value assigned to the consumer's principal dwelling to be based on any factor other than the independent judgment of a person that prepares valuations. Examples of such attempts include (12 CFR 1026.42(c)):

    a. Seeking to influence a person that prepares a valuation to report a minimum or maximum value for the consumer's principal dwelling;

    b. Withholding or threatening to withhold timely payment to a person that prepares a valuation or performs valuation management functions because the person does not value the consumer's principal dwelling at or above a certain amount;

    c. Implying to a person that prepares valuations that current or future retention of the person depends on the amount at which the person estimates the value of the consumer's principal dwelling;

    d. Excluding a person that prepares a valuation from consideration for future engagement because the person reports a value for the consumer's principal dwelling that does not meet or exceed a predetermined threshold; and

    e. Conditioning the compensation paid to a person that prepares a valuation on consummation of the covered transaction.

2. Determine that the valuation does not materially misrepresent the value of the consumer's principal dwelling. (12 CFR 1026.42(c)(2)(i))

    NOTE: A misrepresentation is material if it is likely to significantly affect the value assigned to the consumer's

principal dwelling. A bona fide error shall not be a misrepresentation.

3. Determine that a valuation was not falsified or materially altered. (12 CFR 1026.42(c)(2)(ii))

   NOTE: An alteration is material if it is likely to significantly affect the value assigned to the consumer's principal dwelling.

4. Determine that the covered person does not induce a person to materially misrepresent or falsify the value of a consumer's principal dwelling (in violation of 12 CFR 1026.42(c)(2)(i) or (ii)). (12 CFR 1026.42(c)(2)(iii))

5. Prohibition on conflicts of interest. To the extent applicable, determine that the person who prepared the valuations or performed the valuation management functions for a covered transaction did not have a direct or indirect interest, financial or otherwise, in the property or transaction for which the valuation is or will be performed. (12 CFR 1026.42(d)(1)(i))

   NOTE: No person violates this section solely because that the person is an employee or affiliate of the creditor, or provides a settlement service in addition to preparing valuations or performing valuation management functions, or based solely on the fact that the person's affiliate performs another settlement service, as long as the conditions discussed below ((f), (g), and (h)) are met. If they are not met, whether the conflicts of interest provisions are violated by the above persons or entities depends on all of the facts and circumstances. In other words, the conditions in (f), (g), and (h) are a safe harbor, but not required.

6. For any consumer credit transaction secured by the consumer's principal dwelling in which the creditor had assets of more than $250 million as of December 31st for both of the past two calendar years, determine that a person subject to 12 CFR 1026.42(d)(1)(i) who is employed by or affiliated with the creditor does not have a conflict of interest in violation of 12 CFR 1026.42(d)(1)(i) based solely on the person's employment or affiliate relationship with the creditor if (12 CFR 1026.42(d)(2)):

   a. The compensation of the person preparing a valuation or performing valuation management functions is not based on the value arrived at in any valuation;

   b. The person preparing a valuation or performing valuation management functions reports to a person who is not part of the creditor's loan production function, as defined in 12 CFR 1026.42(d)(5)(i), and whose compensation is not based on the closing of the transaction to which the valuation relates; and

   c. No employee, officer or director in the creditor's loan production function, as defined in 12 CFR 1026.42(d)(5)(i), is directly or indirectly involved in selecting, retaining, recommending or influencing the selection of the person to prepare a valuation or perform valuation management functions, or to be included in or excluded from a list of approved persons who prepare valuations or perform valuation management functions.

7. For any covered transaction in which the creditor had assets of $250 million or less as of December 31st for either of the past two calendar years, determine that a person subject to 12 CFR 1026.42(d)(1)(i) who is employed by or affiliated with the creditor does not have a conflict of interest in violation of 12 CFR 1026.42(d)(1)(i) based solely on the person's employment or affiliate relationship with the creditor if (12 CFR 1026.42(d)(3)):

   a. The compensation of the person preparing a valuation or performing valuation management functions is not based the value arrived at in any valuation; and

   b. The creditor requires that any employee, officer or director of the creditor who orders, performs, or reviews a valuation for a covered transaction abstain from participating in any decision to approve, not approve, or set the terms of that transaction.

8. For any covered transaction, determine that a person who prepares a valuation or performs valuation management functions in addition to performing another settlement service for the transaction, or whose affiliate performs another settlement service for the transaction, does not have a conflict of interest in violation of 12 CFR 1026.42(d)(1)(i) as a result of the person or the person's affiliate performing another settlement service for the transaction if (12 CFR 1026.42(d)(4)):

   a. The creditor had assets of more than $250 million as of December 31st for both of the past two calendar years and the conditions in paragraph (d)(2)(i)-(iii) are met; or

   b. The creditor had assets of $250 million or less as of December 31st for either of the past two calendar years and the conditions in paragraph (d)(3)(i)-(ii) are met.

9. If the creditor did know at or before consummation of a violation of 12 CFR 1026.42(c) or (d) in connection with a valuation, determine that the creditor did not extend credit based on the valuation, unless the creditor documented that it acted with reasonable diligence to determine that the valuation did not materially misstate or misrepresent the value of the consumer's principal dwelling. (12 CFR 1026.42(e))

NOTE: For purposes of 12 CFR 1026.42(e), a valuation materially misstates or misrepresents the value of the consumer's principal dwelling if the valuation contains a misstatement or misrepresentation that affects the credit decision or the terms on which credit is extended.

10. Customary and reasonable compensation. For any covered transaction, determine that the creditor and its agents compensated a fee appraiser for performing appraisal services at a rate that is customary and reasonable for comparable appraisal services performed in the geographic market of the property being appraised. (12 CFR 1026.42(f)(1))

    NOTE: For purposes of 12 CFR 1026.42(f), "agents" of the creditor do not include any fee appraiser as defined in 12 CFR 1026.42(f)(4)(i). An "agent" could be an appraisal management company to which the creditor has outsourced the valuation function.

11. If the creditor reasonably believes an appraiser has not complied with the Uniform Standards of Professional Appraisal Practice or ethical or professional requirements for appraisers under applicable state or federal statutes or regulations, determine that the creditor referred the matter within a reasonable period of time to the appropriate state agency if the failure to comply is material. (12 CFR 1026.42(g)(1))

    NOTE: For purposes of 12 CFR 1026.42(g), a failure to comply is material if it is likely to significantly affect the value assigned to the consumer's principal dwelling.

Open-End Credit Transactional Testing Procedures

1. 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. (12 CFR 1026.5(c))

2. 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. (12 CFR 1026.60(b), (c), and (d))

3. 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. (12 CFR 1026.40(f))

4. 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. (12 CFR 1026.40(g) and (h))

5. 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).

6. Determine whether the consumer was given notice of the right to reject the significant change, with the exception of:

    a. An increase in the required minimum periodic payment (12 CFR 1026.9(c)(2)(iv)(B)),

    b. A change in the APR (12 CFR 1026.9(c)(2)(iv)(B)),

    c. A change in the balance computation method necessary to comply with 12 CFR 1026.54, which sets forth certain limitations on the imposition of finance charges as a result of a loss of a grace period, or

    d. Increase in fee pursuant to evaluation under 12 CFR 1026.52 or adjustment to safe harbors

    e. Increase in fees previously reduced under SCRA

    f. When the change results from the creditor not receiving the required minimum periodic payment within 60 days after the due date for that payment. (12 CFR 1026.9(c)(2)(iv)(B))

7. Determine that the creditor did not increase the rate applicable to the consumer's account to the penalty rate if the outstanding balance did not exceed the credit limit on the date set forth in the notice. (12 CFR 1026.9(g)(4))

8. Determine, for each type of open-end rescindable loan being tested, the appropriate number of copies of the rescission notice are provided to each person whose ownership interest is or will be subject to the security interest and perform the procedures 12, 13, and 14 under Closed-End Credit section. (12 CFR 1026.15(b), (c) and (e))

9. Additional variable rate testing: 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).

10. 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). (12 CFR 1026.7(a) and 12 CFR 1026.20(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. (12 CFR 1026.7(g) and 12 CFR 1026.20 (c)(1))

    d. Determine that the new payment disclosed (12 CFR 1026.20(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). (12 CFR 1026.20(c))

Crediting a Consumer's Account – 12 CFR 1026.10

1. Ensure that the creditor credits payment to a consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance charge or other charge. (12 CFR 1026.10(a))

2. If a creditor specifies requirements for payments, determine that they are reasonable and enable most consumers to make conforming payments. (12 CFR 1026.10(b))

3. Except as provided by 12 CFR 1026.10(b)(4)(ii), if a creditor specifies, on or with the periodic statement, requirements for the consumer to follow in making payments as permitted under 12 CFR 1026.10, but accepts a payment that does not conform to the requirements, determine that the payment is credited within five days of receipt. (12 CFR 1026.10(b)(4)(i))

4. If the creditor promotes a method for making payments, determine that the creditor considers such payments conforming payments in accordance with 12 CFR 1026.10(b) and that they are credited to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance charge or other charge. (12 CFR 1026.10(b)(4)(ii))

5. If the creditor sets a cut-off time for payments to be received by mail, by electronic means, by telephone, or in person, verify that the cut-off time is 5 p.m. or later on the payment due date at the location specified by the creditor for the receipt of such payments. (12 CFR 1026.10(b)(2)(ii))

6. For in-person payments on a credit card account under an open-end (not home-secured) consumer credit plan at a financial institution branch or office that accepts such payments, a card issuer shall not impose a cut-off time earlier than the close of business for any such payments made in person at any branch or office of the card issuer at which such payments are accepted. However, a card issuer may impose a cut-off time earlier than 5 p.m. for such payments, if the close of business of the branch or office is earlier than 5 p.m. (12 CFR 1026.10(b)(3)(i))

7. If a creditor fails to credit a payment as required and imposes a finance or other charge, ensure that the creditor credits the charge(s) to the consumer's account during the next billing cycle. (12 CFR 1026.10(c))

8. If (due to a weekend or holiday, for example) a creditor does not receive or accept payments by mail on the due date for payments, determine that the creditor treats as timely a payment received on the next business day. (12 CFR 1026.10(d)(1))

   NOTE: If a creditor accepts or receives payments made on the due date by a method other than mail, such as electronic or telephone payments, the creditor is not required to treat a payment made by that method on the next business day as timely.

9. For credit card accounts under an open-end (not home-secured) consumer credit plan, determine that the creditor does not impose a separate fee to allow consumers to make a payment by any method, such as mail, electronic, or telephone payments, unless such payment method involves an expedited service by a customer service representative of the creditor. (12 CFR 1026.10(e))

   NOTE: For purposes of 12 CFR 1026.10(e), the term "creditor" includes a third party that collects, receives, or processes payments on behalf of a creditor.

10. If a card issuer makes a material change in the address for receiving payments or procedures for handling payments, and such change causes a material delay in the crediting of a payment to a consumer's account during the 60-day period following the date on which such change took effect, ensure that the card issuer does not impose any late fee or finance charge for a late payment on the credit card account during the 60-day period following the date on which the change took effect. (12 CFR 1026.10(f))

Treatment of Credit Balances, Account Termination – 12 CFR 1026.11

1. Determine institution's treatment of credit balances. Specifically, if the account's credit balance is in excess of $1, the institution must take the actions listed below. (12 CFR 1026.11)

   a. Credit the amount to the consumer's account; and

   b. Either:

      i. Refund any part of the remaining credit balance within seven business days from receiving a written request from the consumer; or

      ii. If no written request is received and the credit remains for more than six months, make a good faith effort to refund the amount of the credit to the consumer by cash, check, money order, or credit to a deposit account of the consumer. No further action is required if the consumer's current location is not known to the creditor and cannot be traced through the consumer's last known address or telephone number.

2. Determine that institution has not terminated an account prior to its expiration date solely because the consumer did not incur a finance charge. However, a creditor is not prohibited from closing an account that, for three consecutive months, no credit has been extended (such as by purchase, cash advance, or balance transfer) and the account has had no outstanding balance. (12 CFR 1026.11(b))

3. Determine that, for credit card accounts under an open-end (not home-secured) consumer credit plan, the card issuer has adopted reasonable written policies and procedures designed to ensure that an administrator of an estate of a deceased account holder can determine the amount of and pay any balance on the account in a timely manner. (12 CFR 1026.11(c)(1)(i))

   NOTE: This does not apply to the account of a deceased consumer if a joint account holder remains on the account.

4. Ensure that, upon request by the administrator of an estate, the card issuer provides the administrator with the amount of the balance on a deceased consumer's account in a timely manner. (12 CFR 1026.11(c)(2)(i))

   NOTE: Providing the amount of the balance on the account within 30 days of receiving the request is deemed to be timely.

5. Verify that, after receiving a request from the administrator of an estate for the amount of the balance on a deceased consumer's account, the card issuer does not impose any fees on the account (such as a late fee, annual fee, or over the-limit fee) or increase any annual percentage rate, except as provided by 12 CFR 1026.55(b)(2) (i.e., due to the operation of an index). (12 CFR 1026.11(c)(3)(i))

6. Determine that, if payment in full of the disclosed balance, pursuant to 12 CFR 1026.11(c)(2), is received within 30 days after disclosure, the card issuer waives or rebates any additional finance charge due to a periodic interest rate. (12 CFR 1026.11(c)(3)(ii))

Billing Error Resolution – 12 CFR 1026.13 (Open-End Credit)

1. Determine whether the creditor mailed or delivered a written acknowledgment to the consumer within 30 days of receiving a billing error notice in accordance with 12 CFR 1026.13(c)(1) if it has not complied with the appropriate resolution procedures provided in 12 CFR 1026.13(e) and (f), as applicable.

2. Determine whether the creditor complied with the appropriate resolution procedures provided in 12 CFR 1026.13(e) and (f), as applicable, within 2 complete billing cycles (but in no event later than 90 days) after receiving a billing error notice.

3. Determine if the institution engaged in any of the prohibited conduct provided in 12 CFR 1026.13(d) while a billing error resolution was pending.

4. If the creditor determined that a consumer owed all or part of the disputed amount and related finance or other charges, determine whether the creditor complied with the requirements provided in 12 CFR 1026.13(g).

Special Credit Card Provisions and Billing Error Resolution – 12 CFR 1026.12 and 13

1. 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 (12 CFR 1026.12 and 12 CFR 1026.13):

   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.

Ability to Make the Required Minimum Payments – 12 CFR 1026.51

1. Determine that the card issuer does not open a credit card account for a consumer under an open-end (not home-secured) consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the ability of the consumer to make the required minimum periodic payments under the terms of the account based on the consumer's income or assets and current obligations. (12 CFR 1026.51(a)(1)(i))

2. Verify that the card issuer establishes and maintains reasonable written policies and procedures to consider a consumer's income or assets and current obligations. Reasonable policies and procedures to consider a consumer's ability to make the required payments include a consideration of at least one of the following: (12 CFR 1026.51(a)(1)(ii))

   a. The ratio of debt obligations to income;

   b. The ratio of debt obligations to assets; or

   c. The income the consumer will have after paying debt obligations.

   NOTE: Reasonable written policies and procedures may include treating any income and assets to which the consumer has a reasonable expectation of access as the consumer's income or assets, or may be limited to consideration to the consumer's independent income and assets.

3. Confirm that the card issuer does not issue a credit card to a consumer who does not have any income or assets, and that the credit does not issue a credit card without reviewing any information about a consumer's income, assets, or current obligations. (12 CFR 1026.51(a)(1)(ii))

   NOTE: A card issuer may consider the consumer's income or assets based on information provided by the consumer, in connection with the credit card account or any other financial relationship the card issuer or its affiliates has with the consumer, subject to any applicable information-sharing rules, and information obtained through third parties, subject to any applicable information-sharing rules. A card issuer may also consider information obtained through any empirically derived, demonstrably and statistically sound model that reasonably estimates a consumer's income or assets. (Comment 12 CFR 1026.51(a)-5)

4. Determine that the card issuer uses a reasonable method for estimating the minimum periodic payments the consumer would be required to pay under the terms of the account. (12 CFR 1026.51(a)(2)(i))

5. A card issuer's estimate of the minimum periodic payment is compliant (i.e., receives the benefit of a safe harbor) if it uses the following method (12 CFR 1026.51(a)(2)(ii)):

   a. The card issuer assumes utilization, from the first day of the billing cycle, of the full credit line that the issuer is considering offering to the consumer; and

   b. The card issuer uses a minimum payment formula employed by the issuer for the product the issuer is considering offering to the consumer or, in the case of an existing account, the minimum payment formula that currently applies to that account, provided that:

      i. If the applicable minimum payment formula includes interest charges, the card issuer estimates those charges using an interest rate that the issuer is considering offering to the consumer for purchases or, in the case of an existing account, the interest rate that currently applies to purchases; and

      ii. If the applicable minimum payment formula includes mandatory fees, the card issuer must assume that such fees have been charged to the account.

6. Rules affecting young consumers: If the card issuer opens a credit card account under an open-end (not home-secured) consumer credit plan for a consumer less than 21 years old, verify that the issuer requires that such consumers:

   a. Submit a written application; and

   b. Either possess an independent ability to make the required minimum periodic payments on the proposed extension of credit in connection with the account under 12 CFR 1026.51(b)(1)(i)) or provide a signed agreement of a cosigner, guarantor, or joint applicant who is at least 21 years old who has the ability to make the required minimum periodic payments on such debts, and be either jointly liable with the consumer for any debt on the account, or secondarily liable for any debt on the account incurred by the consumer before the consumer has attained the age of 21 pursuant to 12 CFR 1026.51(b)(1)(ii)(A) and (B).

7. If a credit card account was opened for such consumer without a cosigner, guarantor, or joint applicant pursuant to 12 CFR 1026.51(b)(1), determine that the issuer does not increase the credit limit on the account before the consumer turns 21 unless:

   a. At the time of the contemplated increase, the consumer has an independent ability to make the required minimum periodic payments; or

b. A cosigner, guarantor, or joint accountholder who is at least 21 years old and has the ability to make the required minimum periodic payments agrees in writing to assume liability for any debt incurred on the account. (12 CFR 1026.51(b)(2)(i))

8. If a credit card account was opened for such a consumer with a cosigner, guarantor, or joint applicant pursuant to 12 CFR 1026.51(b)(1)(ii), determine that the issuer does not increase the credit limit on such account before the consumer attains the age of 21 unless the cosigner, guarantor, or joint accountholder who assumed liability at account opening agrees in writing to assume liability on the increase. (12 CFR 1026.51(b)(2))

Limitations on Fees – 12 CFR 1026.52

1. During the first year after the opening of a credit card account under an open-end (not home-secured) consumer credit plan, determine whether the card issuer required the consumer to pay covered fees in excess of the 25 percent of the credit limit in effect when the account is opened. (12 CFR 1026.52(a)(1))

   NOTE: The 25 percent limitation on fees does not apply to fees assessed prior to opening the account.

   NOTE ALSO: An account is considered opened no earlier than the date on which the account may first be used by the consumer to engage in transactions.

Covered fees include fees (Comment 12 CFR 1026.52(a)(2)-1):

a. For the issuance or availability of credit, including any fees based on account activity or inactivity;

b. For insurance, debt cancellation or debt suspension coverage, if the insurance or debt cancellation or suspension coverage is required by the terms of the account;

c. The consumer is required to pay to engage in transactions using the account, such as:

   i. Cash advance fees;

   ii. Balance transfer fees;

   iii. Foreign transaction fees; and

   iv. Fees for using the account for purchases.

d. Fees the consumer is required to pay for violating the terms of the account, except to the extent they are specifically excluded (see below);

e. Fixed finance charges; and

f. Minimum charges imposed if a charge would otherwise have been determined by applying a periodic interest rate to a balance except for the fact that such charge is smaller than the minimum.

g. *Prepaid Cards:* For fees in connection with a covered separate credit feature and an asset feature of the prepaid card account that are both accessible by a hybrid prepaid-credit card, except as provided in 12 CFR 1026.52(a)(2):

   i. Any fee or charge imposed on the covered separate credit feature, other than a charge attributable to a periodic interest rate, during the first year after account opening that the card issuer will or may require the consumer to pay in connection with the credit feature; and

   ii. Any fee or charge imposed on the asset feature of the prepaid account, other than a charge attributable to a periodic interest rate, during the first year after account opening that the card issuer will or may require the consumer to pay where that fee or charge is imposed as part of the plan under 12 CFR 1026.6(b)(3).

NOTE: 12 CFR 1026.52(a) does not authorize the imposition or payment of fees or charges otherwise prohibited by law. (12 CFR 1026.52(a)(3)

2. Fees not covered by this limitation include: (12 CFR 1026.52(a)(2)(i)

   a. Late payment fees, over-the-limit fees, and returned-payment fees; or

   b. Fees that the consumer is not required to pay with respect to the account, such as:

      i. An expedited payment fee;

      ii. Fees for optional services like travel insurance;

      iii. Fees for reissuing a lost or stolen card; or

      iv. Statement reproduction fees.

3. Review penetration rates of various optional services to determine if they are truly optional and therefore not covered by the 25 percent limitation.

4. Ensure that the card issuer does not impose a fee for violating the terms or other requirements of a credit card account, regardless of where the fee is imposed, under an open-end (not home-secured) consumer credit plan unless the dollar amount of the fee is consistent with 12 CFR 1026.52(b)(1) and (b)(2). (12 CFR 1026.52(b))

5. Determine that a card issuer imposes a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan only if the dollar amount of the fee is consistent with either 12 CFR 1026.52(b)(1)(i) or 12 CFR 1026.52(b)(1)(ii). (12 CFR 1026.52(b)(1))

6. ***Cost determination***. A card issuer may impose a fee for a particular violation (e.g., late payment) if the card issuer has determined that the fee represents a reasonable proportion of the total costs incurred by the issuer as a result of that type of violation. If a card issuer is relying on a cost determination instead of the safe harbors (see below), review (12 CFR 1026.52(b)(1)(i)):

   a. The number of violations of a particular type experienced by the card issuer during a prior period of reasonable length (e.g., a 12-month period).

   b. The costs incurred by the card issuer during that period as a result of those violations. Losses and associated costs (including the cost of holding reserves against potential losses and the cost of funding delinquent accounts) must be excluded from this analysis.

   c. If used by the card issuer when making its determination:

      i. The number of fees imposed by the card issuer *as a result* of the type of violation during the period that the issuer reasonably estimates it will be unable to collect.

      ii. Reasonable estimates for an upcoming period of changes in the number of violations of the relevant type, the resulting costs, and the number of fees that the card issuer will be unable to collect.

   d. If applicable, whether the items in paragraph 1-3 have been reevaluated by the card issuer at least once during the prior 12 months. If as a result of the reevaluation the card issuer determines that a lower fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation, determine that the card issuer begins imposing the lower fee within 45 days after completing the reevaluation.

   NOTE: If as a result of the reevaluation the card issuer determines that a higher fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation, the card issuer may begin imposing the higher fee after complying with the notice requirements in 12 CFR 1026.9. (12 CFR 1026.52(b)(1)(i))

7. ***Safe harbors***. A card issuer may impose a fee for violating the terms or other requirements of the account if the dollar amount of the fee does not exceed, as applicable (12 CFR 1026.52(b)(1)(ii)(A)-(C)):

   a. $25.00,

   b. $35.00 if the card issuer previously imposed a fee pursuant to 12 CFR 1026.52(b)(1)(ii)(A) for a violation of the same type that occurred during the same billing cycle or one of the next six billing cycles or

   c. Three percent of the delinquent balance on a charge card account that requires payment of outstanding balances in full at the end of each billing cycle if the card issuer has not received the required payment for two or more consecutive billing cycles.

   NOTE: The dollar amounts in paragraphs 1 and 2 above will be adjusted annually by the CFPB to the extent that changes in the Consumer Price Index warrant an increase or decrease of a whole dollar.

8. Determine that the card issuer does not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan that exceeds the dollar amount associated with the violation. (12 CFR 1026.52(b)(2)(i)(A))

9. Determine that a card issuer does not impose a fee for violating the terms or other requirements of a credit card account under an open end (not home-secured) consumer credit plan when there is no dollar amount associated with the violation. For purposes of 12 CFR 1026.52(b)(2)(i), there is no dollar amount associated with the following violations (12 CFR 1026.52(b)(2)(i)(B)):

   a. Transactions that the card issuer declines to authorize;

   b. Account inactivity; and

   c. The closure or termination of an account.

10. Determine that the card issuer does not impose more than one fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan based on a single event or transaction. (12 CFR 1026.52(b)(2)(ii))

Allocation of Payments – 12 CFR 1026.53

1. Determine whether, when a consumer makes a payment in excess of the required minimum periodic payment, the card issuer allocates the excess amount:

   a. First to the balance with the highest APR, and

b. Any remaining portion to the other balances in descending order based on the applicable APR. (12 CFR 1026.53(a))

2. For balances on a credit card account subject to a deferred interest or similar program, determine whether the card issuer allocated any amount paid by the consumer in excess of the required minimum periodic payment:

   a. Consistent with the general requirement discussed in (a) above, except that, during the two billing cycles immediately preceding expiration of the deferred interest period, the excess amount must have been allocated first to the balance subject to the deferred interest or similar program and any remaining portion allocated to any other balances consistent with 12 CFR 1026.53(a) (12 CFR 1026.53(b)(1)(i)), or

   b. In the manner requested by the consumer (12 CFR 1026.53(b)(1)(ii)).

3. When a balance on a credit card account is secured, the card issuer may at its option allocate any amount paid by the consumer in excess of the required minimum periodic payment to that balance if requested by the consumer. (12 CFR 1026.53(b)(2))

Loss of a Grace Period – 12 CFR 1026.54

1. Determine whether the card issuer imposed finance charges as a result of the loss of a grace period on a credit card account under an open-end (not home-secured) consumer credit plan based on:

   a. Balances for days in billing cycles that precede the most recent billing cycle, a prohibited practice; or

   b. Any portion of a balance subject to a grace period that was repaid prior to the expiration of the grace period. (12 CFR 1026.54).

2. With respect to the prohibition above, issuers are not required to follow any specific methodology, but an issuer is in compliance if it applies the consumer's payment to the balance subject to the grace period and calculates interest charges on the amount of the balance that remains unpaid. (Comment 12 CFR 1026.54(a)(1)-5)

   Exceptions: This rule does not apply to adjustments to the finance charge as a result of:

   a. The resolution of a dispute under 12 CFR 1026.12, unauthorized use, or 12 CFR 1026.13, billing error; or

   b. The return of a payment.

Limitations on Increasing Annual Percentage Rates, Fees, and Charges – 12 CFR 1026.55

1. With respect to a credit card account under an open-end (not home-secured) consumer credit plan, determine that the card issuer did not increase an APR or fee or charge required to be disclosed under 12 CFR 1026.6(b)(2)(ii) (fee for issuance or availability (e.g., an annual fee)), (b)(2)(iii) (fixed finance charge or minimum interest charge), or (b)(2)(xii) (fee for required insurance, debt cancellation, or debt suspension coverage), unless as permitted by one of the six exceptions:

   a. Temporary rate, fee, or charge exception;

   b. Variable rate exception;

   c. Advance notice exception;

   d. Delinquency exception;

   e. Workout and temporary hardship arrangement; and

   f. Servicemembers Civil Relief Act exception (12 CFR 1026.55(a)-(b)).

2. To assess whether the temporary rate, fee, or charge exception applies (12 CFR 1026.55(b)(1)), determine whether:

   a. The card issuer increased the APR, fee, or charge upon the expiration of a specified period of six months or longer and

   b. Prior to the commencement of that period, the card issuer disclosed in writing to the consumer, in a clear and conspicuous manner, the length of the period and the APR, fee, or charge that would apply after expiration of the period.

3. If the temporary rate exception applies, determine that the card issuer:

   a. Did not apply an APR, fee, or charge to transactions that occurred prior to the period that exceeds the APR, fee, or charge that applied to those transactions prior to the period;

   b. Provided the required notice, but did not apply an APR, fee, or charge (to transactions that occurred within 14 days after provision of the notice) that exceeds the APR, fee, or charge that applied to that category of transactions prior to provision of the notice; and

   c. Did not apply an annual percentage rate to transactions that occurred during the period that exceeds the increased APR, fee, or charge.

4. If the variable rate exception applies (12 CFR 1026.55(b)(2)), determine that the card issuer did not increase an APR unless:

    a. The increase in the APR is due to an increase in the index; and

    b. The annual percentage rate varies according to an index that is not under the card issuer's control and is available to the general public.

    NOTE: For purposes of qualifying under this exception, an index is considered under the card issuer's control if the card issuer applies a minimum rate or floor below which the rate cannot decrease. However, because there is no disadvantage to consumers, issuers are not prevented from setting a maximum rate or ceiling. (Comment 12 CFR 1026.55(b)(2) – 2(ii))

5. If the advance notice exception applies (12 CFR 1026.55(b)(3)), determine that the card issuer:

    a. Did not apply that increased APR, fee, or charge to transactions that occurred prior to provision of the notice;

    b. Did not apply the increased APR, fee, or charge to transactions that occurred prior to or within 14 days after provision of the notice; and

    c. Did not increase the APR, fee, or charge during the first year after the account is opened.

6. If the delinquency exception applies (12 CFR 1026.55(b)(4)), determine that the card issuer:

    a. Disclosed in a clear and conspicuous manner in the required notice a statement of the reason for the increase, and

    b. Will cease the increase if the card issuer receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase.

7. If the delinquency exception applies and the card issuer received six consecutive required minimum periodic payments on or before the payment due date beginning with the first payment due following the effective date of the increase, determine that the card issuer reduces any APR, fee, or charge (increased pursuant to the delinquency exception) to the original APR, fee, or charge that applied prior to the increase with respect to transactions that occurred prior to or within 14 days after provision of the required notice. (12 CFR 1026.55(b)(4)(ii))

8. If the workout and temporary hardship arrangement exception applies (12 CFR 1026.55(b)(5)), determine that:

    a. Prior to commencement of the arrangement (except as provided in 12 CFR 1026.9(c)(2)(v)(D)) the card issuer provided the consumer with a clear and conspicuous written disclosure of the terms of the arrangement (including any increases due to the completion or failure of the arrangement); and

    b. Upon the completion or failure of the arrangement, the card issuer did not apply to any transactions that occurred prior to commencement of the arrangement an APR, fee, or charge that exceeds the APR, fee, or charge that applied to those transactions prior to commencement of the arrangement.

9. If the Servicemembers Civil Relief Act exception applies (12 CFR 1026.55(b)(6)), determine that the card issuer increased the APR, fee, or charge only after 50 U.S.C. 3937 or a similar federal or state statute or regulation no longer applied. Further, determine that the issuer did not apply to any transactions that occurred prior to the decrease an APR, fee, or charge that exceeded the APR, fee, or charge that applied to those transactions prior to the decrease.

10. For protected balances (12 CFR 1026.55(c)), determine that the card issuer did not require repayment using a method that is less beneficial to the consumer than one of the following methods:

    a. The method of repayment for the account before the effective date of the increase;

    b. An amortization period of not less than five years, beginning no earlier than the effective date of the increase; or

    c. A required minimum periodic payment that includes a percentage of the balance that is equal to no more than twice the percentage required before the effective date of the increase.

11. If a card issuer promotes the waiver or rebate of finance charges due to a periodic interest rate or fees or charges (12 CFR 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii)) and applies the waiver or rebate to a credit card account under an open-end (not home-secured) consumer credit plan, any cessation of the waiver or rebate on that account constitutes an increase in an annual percentage rate, fee, or charge for purposes of 12 CFR 1026.55.

Requirements for Over-the-Limit Transactions – 12 CFR 1026.56

1. Joint Relationships. Determine that, if two or more consumers are jointly liable on a credit card account under an open-end (not home-secured) consumer credit plan, the card issuer treats the affirmative consent of any of the joint consumers as affirmative consent for that account. Similarly, determine that the card issuer treats a revocation

of consent by any of the joint consumers as revocation of consent for that account. (12 CFR 1026.56(f))

2. Notwithstanding a consumer's affirmative consent to a card issuer's payment of over-the-limit transactions, determine that the card issuer does not (12 CFR 1026.56(j)):

   a. Impose more than one over-the-limit fee or charge on a consumer's credit card account per billing cycle, and, in any event, only if the credit limit was exceeded during the billing cycle. In addition, the card issuer may not impose an over-the-limit fee or charge on the consumer's credit card account for more than three billing cycles for the same over-the-limit transaction where the consumer has not reduced the account balance below the credit limit by the payment due date for either of the last two billing cycles.

   NOTE: There is an exception to the latter prohibition if another over-the-limit transaction occurred in the last two billing cycles.

   b. Impose an over-the-limit fee or charge solely because of the card issuer's failure to promptly replenish the consumer's available credit following the crediting of the consumer's payment following the crediting of the consumer's payment under 12 CFR 1026.10.

   c. Condition the amount of a consumer's credit limit on the consumer affirmatively consenting to the card issuer's payment of over-the-limit transactions if the card issuer assesses a fee or charge for such service.

   d. Impose an over-the-limit fee or charge for a billing cycle if a consumer exceeds a credit limit solely because of fees or interest charged by the card issuer (defined as charges imposed as part of the plan under 12 CFR 1026.6(b)(3)) to the consumer's account during that billing cycle.

Reevaluation of Rate Increases – 12 CFR 1026.59

1. If a card issuer increases an APR that applies to a credit card account under an open-end (not home-secured) consumer credit plan, based on the credit risk of the consumer, market conditions, or other factors, or increased such a rate on or after January 1, 2009, and 45 days' advance notice of the rate increase is required pursuant to 12 CFR 1026.9(c)(2) or (g), determine that the card issuer (12 CFR 1026.59(a)(1)):

   a. Evaluates the factors described in 12 CFR 1026.59(d); and

   b. Based on its review of such factors, reduces the APR applicable to the consumer's account, as appropriate.

2. If a card issuer is required to reduce the rate applicable to an account pursuant to 12 CFR 1026.59(a)(1), determine that the card issuer reduces the rate not later than 45 days after completion of the evaluation described in 12 CFR 1026.59(a)(1). (12 CFR 1026.59(a)(2)(i))

   NOTE: Any reduction in an APR required pursuant to 12 CFR 1026.59(a)(1) of this 12 CFR shall apply to (12 CFR 1026.59(a)(2)(ii)):

   a. Any outstanding balances to which the increased rate described in 12 CFR 1026.59(a)(1) has been applied; and

   b. New transactions that occur after the effective date of the rate reduction that would otherwise have been subject to the increased rate.

3. Determine that the card issuer has reasonable written policies and procedures in place to conduct the review described in 12 CFR 1026.59(a). (12 CFR 1026.59(b))

4. Determine that a card issuer that is subject to 12 CFR 1026.59(a) conducts the review described in 12 CFR 1026.59(a)(1) not less frequently than once every six months after the rate increase. (12 CFR 1026.59(c))

5. Except as provided in 12 CFR 1026.59(d)(2), determine that the card issuer reviews either (12 CFR 1026.59(d)(1)):

   a. The factors on which the increase in an APR was originally based; or

   b. The factors that the card issuer currently considers when determining the APRs applicable to similar new credit card accounts under an open-end (not home-secured) consumer credit plan.

6. For rate increases imposed between January 1, 2009 and February 21, 2010, determine that an issuer considered the factors described in 12 CFR 1026.59(d)(1)(ii) when conducting the first two reviews required under 12 CFR 1026.59(a), unless the rate increase subject to 12 CFR 1026.59(a) was based solely upon factors specific to the consumer, such as a decline in the consumer's credit risk, the consumer's delinquency or default, or a violation of the terms of the account. (12 CFR 1026.59(d)(2))

7. If an issuer increases a rate applicable to a consumer's account pursuant to 12 CFR 1026.55(b)(4) based on the card issuer not receiving the consumer's required minimum periodic payment within 60 days after the due date, note that the issuer is not required to perform the review described in 12 CFR 1026.59(a) prior to the sixth payment due date after the effective date of the increase. However, if the APR applicable to the consumer's account is not reduced pursuant to 12 CFR 1026.55(b)(4)(ii), determine that the card issuer performs the review described in 12 CFR 1026.59(a). Determine that the first such review occurs no later than six months after the sixth payment due

following the effective date of the rate increase. (12 CFR 1026.59(e))

8. The obligation to review factors described in 12 CFR 1026.59(a) and (d) ceases to apply (12 CFR 1026.59(f)):

    a. If the issuer reduces the APR applicable to a credit card account under an open-end (not home-secured) consumer credit plan to the rate applicable immediately prior to the increase, or, if the rate applicable immediately prior to the increase was a variable rate, to a variable rate determined by the same formula (index and margin) that was used to calculate the rate applicable immediately prior to the increase; or

    b. If the issuer reduces the APR to a rate that is lower than the rate described in 12 CFR 1026.59(f)(1) of this section.

9. Except as provided in 12 CFR 1026.59(g)(2), 12 CFR 1026.59 applies to credit card accounts that have been acquired by the card issuer from another card issuer. (12 CFR 1026.59(g))

10. Determine that a card issuer that complies with this section by reviewing the factors described in 12 CFR 1026.59(d)(1)(i) reviews the factors considered by the card issuer from which it acquired the accounts in connection with the rate increase. (12 CFR 1026.59(g)(1))

11. If, not later than six months after the acquisition of such accounts, a card issuer reviews all of the credit card accounts it acquires in accordance with the factors that it currently considers in determining the rates applicable to its similar new credit card accounts (12 CFR 1026.59(g)(2)):

    a. Except as provided in 12 CFR 1026.59(g)(2)(iii), determine that the card issuer conducts reviews described in 12 CFR 1026.59(a) for rate increases that are imposed as a result of its review under this paragraph.

    b. Except as provided in 12 CFR 1026.59(g)(2)(iii), note that the card issuer is not required to conduct reviews in accordance with 12 CFR 1026.59(a) for any rate increases made prior to the card issuer's acquisition of such accounts.

    c. Note that if as a result of the card issuer's review, an account is subject to, or continues to be subject to, an increased rate as a penalty, or due to the consumer's delinquency or default, the requirements of 12 CFR 1026.59(a) apply.

    Servicemembers Civil Relief Act exception: Note that the requirements of 12 CFR 1026.59 do not apply to increases in an APR that was previously decreased pursuant to the Servicemembers Civil Relief Act (50 U.S.C. app. 527), provided that such a rate increase is made in accordance with 12 CFR 1026.55(b)(6). (12 CFR 1026.59(h)(1))

    Charged off accounts exception: Note that the requirements of 12 CFR 1026.59 do not apply to accounts that the card issuer has charged off in accordance with loan-loss provisions. (12 CFR 1026.59(h)(2))

    NOTE: Appendix G to part 12 CFR 1026 is amended by revising Forms G-10(B), G-10(C), G-10(E), G-17(B), G-17(C), G-18(B), G-18(D), G-18(F), G-18(G), G-20, G-21, G-22, G- 25(A), and G-25(B).

Administrative Enforcement

1. If there is non-compliance involving understated finance charges or understated APRs subject to reimbursement under the FFIEC Policy Guide on Reimbursement (policy guide):

    a. 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.

    b. If the non-compliance involves indirect (third-party paper) disclosure errors and affected consumers have not been reimbursed.

    c. Prepare comments, discussing the need for improved internal controls to be included in the report of examination.

    d. Notify your supervisory office for follow up with the regulator that has primary responsibility for the original creditor.

    e. If the non-compliance involves direct credit:

        i. Make an initial determination whether the violation is a pattern or practice.

        ii. Calculate the reimbursement for the loans or accounts in an expanded sample of the identified population.

        iii. Estimate the total impact on the population based on the expanded sample.

        iv. 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.

        v. Inform management of the financial institution's options under section 130 of the TILA for avoiding civil liability and of its option under the policy guide and section 108 (e)(6) of the TILA

for avoiding a regulatory agency's order to reimburse affected borrowers.

References

Laws

15 U.S.C. § 1601 et seq., Truth in Lending Act

15 U.S.C. § 1666 et seq., Fair Credit Billing Act

15 U.S.C. § 7001 et seq., Electronic Signatures in Global and National Commerce Act

Regulations

Consumer Financial Protection Bureau Regulation (12 CFR)

Part 12 CFR 1026 Truth in Lending (Regulation Z)

Tools

FFIEC Rate Spread Calculator

Guides

CFPB compliance guides

TRID Guide to Forms

HIGH-COST MORTGAGE (12 CFR 1026.32) WORKSHEET		
Borrower's Name	Loan Number:	
COVERAGE		
	Yes	**No**
Is the transaction secured by the consumer's principal dwelling? [12 CFR 1026.2(a)(19), 12 CFR 1026.32(a)(1)]		
If the answer is No, STOP HERE. The transaction is not a high-cost mortgage.		
Is the transaction:		
1. A reverse mortgage transaction [12 CFR 1026.32(a)(2)(i)] 2. A transaction to finance the initial construction of a dwelling [12 CFR 1026.32(a)(2)(ii)] 3. A transaction originated and financed by a Housing Finance Agency [12 CFR 1026.32(a)(2)(iii)] 4. A transaction originated under the USDA's rural development section 502 direct loan program [12 CFR 1026.32(a)(2)(iv)]		
If the answer is Yes to Box 1, 2, 3 or 4, STOP HERE. If No, continue to Test 1, APR.		

TEST 1 – APR		
A. Determine the APR for testing high-cost mortgage coverage: 1. For fixed-rate transactions, calculate the APR using the interest rate in effect on the date the interest rate for the transaction was set. 2. For transactions where the interest rate varies with an index, use the greater of the introductory interest rate (if any) or the fully-indexed rate (*i.e.*, the interest rate that results from adding the maximum margin permitted at any time during the term of the transaction to the value of the index rate in effect on the date the interest rate for the transaction was set). 3. For transactions where the interest rate may or will vary other than in accordance with an index, such as in a step-rate loan, use the maximum rate that the applicant may pay during the term of the transaction. [12 CFR 1026.32(a)(3)]		
B. Determine the Average Prime Offer Rate (APOR): Determine the APOR for a comparable transaction as of the last rate lock on the transaction. Determine the APOR for a HELOC by identifying the most closely comparable closed-end transaction. APOR tables are published at http://www.ffiec.gov/ratespread/aportables.htm. [12 CFR 1026.32(a)(1)(i) and comments 32(a)(1)(i)-1 through -3]		
C. Add one of the following amounts to APOR (Box B), as applicable: 1. 1. 6.5 percentage points for most first-lien transactions; 2. 2. 8.5 percentage points for first-lien transactions secured by personal property (*e.g.*, manufactured housing titled as personal property, RVs, houseboats) where the loan amount is less than $50,000; or 3. 3. 8.5 percentage points for subordinate-lien transactions [12 CFR 1026.32(a)(1)(i)(A)-(C)]		
	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 – POINTS AND FEES[38]	
STEP 1: Identify all charges payable in connection with the transaction and known at or before consummation or account opening.	
A. Items included in the finance charge (12 CFR 1026.4(a) and (b)), except for the following: • Interest, including per-diem interest, and time-price differential; • All federal or state government-sponsored MIPs, *e.g.*, up-front and annual FHA premiums, VA funding fees, and USDA guarantee fees; • All monthly or annual PMI premiums; • Up-front PMI premiums *if* the premiums are refundable on a prorated basis and the refund is automatically issued upon loan satisfaction. *However*, include any portion of the PMI premium that exceeds the up-front MIP for FHA loans; • Bona fide third-party charges not retained by the creditor, loan originator, or an affiliate of either, unless specifically required to be included under Boxes A-H;[39] and • Up to 1 or 2 bona fide discount points, if eligible.[40] [12 CFR 1026.32(b)(1)(i) (closed-end); 12 CFR 1026.32(b)(2)(i) (open-end)]	
Finance Charge Items	***Amount***
Origination Charge/Points (unless excluded as bona fide)	
Mortgage Broker Fee	
Application Fee (if not charged to all applicants)	
Loan Administration Fee	
Rate-Lock Fee	
Commitment Fee	
Underwriting Fee	
Loan-Level Price Adjustments (LLPAs) (if paid upfront)	
Non-Refundable Up-front PMI Premiums in Excess of Up-front MIP for FHA loans	
Other Fees Included in the Finance Charge	
Subtotal	
B. Loan originator compensation – Include all compensation paid directly or indirectly by a consumer or creditor to a loan originator (12 CFR 1026.36(a)(1)) that can be attributed to the transaction at the time the rate is set, but exclude: • payments by consumers to mortgage brokers that were counted under Box A; • compensation paid by a creditor or mortgage broker to a loan originator employee; and • compensation paid by a manufactured home retailer to its employee. [12 CFR 1026.32(b)(1)(ii) (closed-end); 12 CFR 1026.32(b)(2)(ii) (open-end)]	
Subtotal	

[38] Test 2, Step 1, Boxes A-F and I (*i.e.*, calculating points and fees for closed-end transactions) and Test 2, Step 2, Box A (*i.e.*, calculating total loan amount for closed-end transactions) are the same tests used for the points and fees calculation for qualified mortgages.

[39] Bona fide third-party charges not retained by creditor or loan originator, or an affiliate of either are excluded, unless these charges are included as PMI premiums, real estate-related fees, or credit-related insurance premiums. [12 CFR 1026.32(b)(1)(i)(D)]

[40] Discount points are bona fide if two conditions are met: 1) They must buy down the interest rate from the pre-discount rate, and 2) they must do so by an amount consistent with industry norms. The number of bona fide discount points that may be excluded depends on the pre-discount rate on the loan. Up to two bona fide discount points may be excluded if the interest rate before payment of those discount points did not exceed APOR by more than one percentage point. Up to one bona fide discount point may be excluded if the interest rate before payment of the discount point did not exceed APOR by more than two percentage points. [12 CFR 1026.32(b)(1)(i)(E)-(F); 12 CFR 1026.32(b)(3).]

C. Certain non-finance charges under 12 CFR 1026.4(c)(7) – Include fees only if the amount of the fee is unreasonable, or the creditor receives direct or indirect compensation from the charge, or the charge is paid to an affiliate of the creditor. [12 CFR 1026.32(b)(1)(iii) (closed-end); 12 CFR 1026.32(b)(2)(iii) (open-end)]	
Title Examination	
Title Insurance	
Property Survey	
Document Preparation Charge	
Notary and Credit Report	
Appraisal	
Fee for "Initial" Flood Hazard Determination	
Pest Inspection	
Any Other Fees Under 12 CFR 1026.4(c)(7)	
Subtotal	
D. Premiums or other charges for optional or required insurance payable at or before consummation or account opening [12 CFR 1026.32(b)(1)(iv) (closed-end); 12 CFR 1026.32(b)(2)(iv) (open-end)]	
Credit life	
Credit disability	
Credit unemployment	
Credit property	
Any other life, accident, health, loss-of-income insurance (if creditor is a beneficiary)	
Debt cancellation or suspension	
Subtotal	
E. Maximum prepayment penalty [12 CFR 1026.32(b)(1)(v) (closed-end); 12 CFR 1026.32(b)(2)(v) (open-end)]	
Subtotal	
F. For a refinance transaction with the current holder, its servicer, or an affiliate of either, prepayment penalty paid in connection with terminating prior transaction [12 CFR 1026.32(b)(1)(vi) (closed-end); 12 CFR 1026.32(b)(2)(vi) (open-end)]	
Subtotal	
G. For open-end transactions, participation fees payable at or before account opening [12 CFR 1026.32(b)(2)(vii)]	
Subtotal	
H. For open-end transactions, per-transaction fee charged for drawing on credit line (assume at least one) [12 CFR 1026.32(b)(2)(viii)]	
Subtotal	
Total Points & Fees: Add Subtotals for A-F (Closed-End) or A-H (Open-End)	

TEST 2 – POINTS AND FEES (continued)		
STEP 2: Determine the Total Loan Amount (12 CFR 1026.32(b)(4))		
A. Closed-End Transaction 1. Determine the Amount Financed (12 CFR 1026.18(b)) o The full amount of principal repayable under the terms of the note or other loan contract o Minus: Prepaid finance charges (12 CFR 1026.2(a)(23)) o Equals: Amount Financed 2. Deduct from the Amount Financed costs that are included in points and fees under Step 1, Boxes C, D, or F 3. Total Loan Amount (1 minus 2)		
B. Open-End Transaction 1. Credit limit for the plan when the account is opened		
STEP 3: Perform High-Cost Fee Calculation		
Determine which points and fees threshold applies according to the note amount (threshold cut-offs are adjusted annually for inflation) (12 CFR 1026.32(a)(1)(ii)(A)-(B)) *(use the dollar amount corresponding to the year of origination or account opening)*		
Transactions for $21,980 or more (2020)		
A. Calculate 5 percent of the total loan amount (Step 2, Box A (closed-end) or Box B (open-end))		
B. Total Points & Fees (Step 1, Box I)		
	Yes	**No**
C. Does Box B exceed Box A?		
Transactions for less than $21,980 (2020)		
A. Calculate 8 percent of the total loan amount (Step 2, Box A (closed-end) or Box B (open-end))		
B. Annually adjusted dollar amount (12 CFR 1026.32(a)(1)(ii)(B)) *2020: $1,099 (use the dollar amount corresponding to the year of origination or account opening)*		
C. Total Points & Fees (Step 1, Box I)		
	Yes	**No**
D. Does Box C exceed the lesser of Box A or Box B?		
If Yes, the transaction is a high-cost mortgage. If No, continue to Test 3, Prepayment Penalty.		

TEST 3 – Prepayment Penalty		
STEP 1: Determine whether the transaction has a prepayment penalty (12 CFR 1026.32(b)(6)(i)- (ii))	**Yes**	**No**
If No, STOP HERE, the transaction is not a high-cost mortgage. If Yes, continue to Step 2.		
STEP 2: Determine the amount and duration of any prepayment penalty[41]		
A. Can prepayment penalties be imposed for longer than 36 months after consummation or account opening?		
B. Can prepayment penalties exceed two percent of the amount prepaid?		
If Yes, the transaction is a high-cost mortgage and is in violation of the prohibition against prepayment penalties for high-cost mortgages (12 CFR 1026.32(d)(6)). If No, the transaction is not a high-cost mortgage.		

[41] If the creditor used an accounting method whereby it kept unearned interest charged for any period between payoff and the end of the month, this would be a prepayment penalty under the rule. In this case, the maximum prepayment penalty would be the maximum amount of interest that could be charged for the "phantom" (post-payoff) accrual period. For this purpose, the examiner would need to assume that the consumer makes the final payoff on the day of the month that yields the longest period of post-payoff interest that could be charged under the terms of the credit contract and is charged interest for the entire month, and that amount would be the maximum unearned interest prepayment penalty.

Determining Whether TIL Restitution is Required

Overview

This section provides information that relates to the identification of Truth in Lending violations subject to restitution, restitution 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" (restitution) to consumers for understated annual percentage rates (APR) or finance charges (FC).[1] Unless other statutory or regulatory exemptions are met, the FDIC is required to seek restitution and may not waive or grant relief from restitution. If an institution does not voluntarily comply with the law and make restitution, §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 restitution requirements of §108(e)(2) of the Act. In such instances, a file search may be requested to detect loans containing specific problems requiring restitution.

Historically, the FDIC has treated a request made by nonmember banks seeking relief from making restitution 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 Depositor 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 restitution totals less than $25,000.

The TILA grants the enforcement agencies very little discretion to grant relief from restitution for violations. Because of this limited discretion, the FDIC has not been able to grant relief in many instances. Should a nonmember bank wish to pursue a request for relief or reconsideration, the request will be processed within the following time frames:

Regulation Z Request for Relief from Reimbursement		Regional Office	Washington Office
Initial Request	Deny Up to $25,000 aggregate	60 days	NA
	Deny $25,000 and above aggregate	30 days	30 days
	Approve	30 days	30 days
Reconsideration		30 days	30 days

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 restitution. 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 nonsubstantive;

[1] For the purposes of this Manual, when referring to adjustments under Section 108(e)(2) of the Act, the term "restitution" will be used consistently to refer to all reimbursements, adjustments, or credits paid to consumers in connection with violations of the Act.

- 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*
- Provide restitution to 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 re-disclosing the required information accurately, without providing restitution to the consumer, correction has not been effected. Consumer restitution is an inseparable part of the correction action.

Procedures for Making a Request

If an institution requests relief from restitution, 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 shall contain a complete and concise statement of the action requested, all relevant facts, the reasons and analysis relied upon as the basis for such requested action, and all supporting documentation. 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.

If the initial request for relief is denied, the institution may petition the FDIC for reconsideration within 15 days of written receipt of the denial by filing a request for reconsideration with the appropriate Regional Director. The FDIC will acknowledge receipt of reconsideration within 15 days and will provide the applicant with written notification of its determination within 60 days of receipt of the request for reconsideration.

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 restitution is delinquent, in default, or has been charged off, the institution may apply all or part of the restitution to the amount past due, if permissible under law.

There have been instances where institution personnel have inappropriately asked consumers to return restitution checks to the institution. This is not permissible. The FDIC views any such attempt to prevent unrestricted access by the consumer to restitution 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 restitution 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 restitution 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 separate 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.

Documenting Reimbursable Truth in Lending Violations

Truth in Lending reimbursable violations will be included under a separate heading, "Truth in Lending Violations Subject to Restitution," in the applicable Level 3 and Level 2 Violations pages. The SOURCE System will code these violations as reimbursable.

In the text of the violation write-up, the following information will be provided 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, the larger of the reimbursable amounts will be identified.

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

- APR calculation printouts;
- TRID disclosures;
- Contract note;
- Commitment letter;
- 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, payment or rate change notices, etc.)

References

Joint Statement of Policy: Administrative Enforcement of the Truth in Lending Act—Restitution (FFIEC Policy Guide on TILA Restitution)

Real Estate Settlement Procedures Act (RESPA)

Introduction

The Real Estate Settlement Procedures Act of 1974 (RESPA) (12 U.S.C. 2601 *et seq*.) (the Act) 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 prohibits specific practices, such as kickbacks, and places limitations upon the use of escrow accounts. The Department of Housing and Urban Development (HUD) originally promulgated Regulation X, which implements RESPA.

Congress has amended RESPA significantly since its enactment. 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.

Congress, when it enacted the Economic Growth and Regulatory Paperwork Reduction Act of 1996, [1] further amended RESPA to clarify certain definitions, including "controlled business arrangement," which was changed to "affiliated business arrangement." The changes also reduced the disclosures under the mortgage servicing provisions of RESPA.

In 2008, HUD issued a RESPA Reform Rule (73 Fed. Reg. 68204, November 17, 2008) that included substantive and technical changes to the existing RESPA regulations and different implementation dates for various provisions. Substantive changes included a standard Good Faith Estimate (GFE) form and a revised HUD-1 Settlement Statement that were required as of January 1, 2010. Technical changes, including streamlined mortgage servicing disclosure language, elimination of outdated escrow account provisions, and a provision permitting an "average charge" to be listed on the GFE and HUD-1 Settlement Statement, took effect on January 16, 2009. In addition, HUD clarified that all disclosures required by RESPA are permitted to be provided electronically, in accordance with the Electronic Signatures in Global and National Commerce Act (E-Sign).[2]

The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203 (July 10, 2010) (Dodd-Frank Act) granted rule-making authority under RESPA to the Consumer Financial Protection Bureau (CFPB) and, with respect to entities under its jurisdiction, generally granted authority to the CFPB to supervise for and enforce compliance with RESPA and its implementing regulations.[3] In December 2011, the CFPB restated HUD's implementing regulation at 12 CFR Part 1024 (76 Fed. Reg. 78978) (December 20, 2011).

Since December 2011, the CFPB has issued a series of final rules amending Regulation X. On January 17, 2013, the CFPB issued a final rule that implemented certain provisions of Title XIV of the Dodd-Frank Act and included substantive and technical changes to the existing regulations. (78 Fed. Reg. 10695) (February 14, 2013). Substantive changes included modifying the servicing transfer notice requirements and implementing new procedures and notice requirements related to borrowers' error resolution requests and information requests. The amendments also included new provisions related to escrow payments, force-placed insurance, general servicing policies, procedures, and requirements, early intervention, continuity of contact, and loss mitigation. The amendments were effective as of January 10, 2014.

Subsequently, on July 10, 2013, September 13, 2013, and October 22, 2014, the CFPB issued final rules to further amend Regulation X ((78 Fed. Reg. 44685) (July 24, 2013), (78 Fed. Reg. 60381) (October 1, 2013), and (79 Fed. Reg. 65299) (November 3, 2014)). The final rules included substantive and technical changes to the existing regulations, including revisions to provisions on the relation to state law of Regulation X's servicing provisions, to the loss mitigation procedure requirements, and to the requirements relating to notices of error and information requests. On October 15, 2013, the CFPB issued an interim final rule to further amend Regulation X (78 Fed. Reg. 62993) (October 23, 2013) to exempt servicers from the early intervention requirements in certain circumstances. The Regulation X amendments were effective as of January 10, 2014.

On December 31, 2013, the CFPB published final rules implementing Sections 1098(2) and 1100A(5) of the Dodd-Frank Act, which direct the CFPB to publish a single, integrated disclosure for mortgage transactions, which includes mortgage disclosure requirements under the Truth in Lending Act (TILA) and Sections 4 and 5 of RESPA. These amendments are referred to in this document as the "TILA-RESPA Integrated Disclosure Rule" or "TRID," and are applicable to covered closed-end mortgage loans for which a creditor or mortgage broker receives an application on or after October 3, 2015. As a result, Regulation Z now houses the integrated forms, timing, and related disclosure requirements for most closed-end consumer mortgage loans.

[1] Pub. L. 104-208, Div. A., Title II § 2103 (c), September 30, 1996.

[2] 15 U.S.C. 7001 *et seq.*

[3] Dodd-Frank Act Secs. 1002(12)(M), 1024(b)-(c), and 1025(b)-(c); 1053; 12 U.S.C. 5481(12)(M), 5514(b)-(c), and 5515 (b)-(c).

The new integrated disclosures are not used to disclose information about reverse mortgages, home equity lines of credit (HELOCs), chattel-dwelling loans such as loans secured by a mobile home or by a dwelling that is not attached to real property (i.e., land), or other transactions not covered by the TILA-RESPA Integrated Disclosure Rule. The final rule also does not apply to loans made by a creditor who makes five or fewer mortgages in a year. Creditors originating these types of mortgages must continue to use, as applicable, the GFE, HUD-1 Settlement Statement, and Truth in Lending (TIL) disclosures.

On August 4, 2016, the CFPB issued a final rule to further clarify, revise, and amend provisions of Regulation X as well as Regulation Z, the regulation implementing TILA. (81 Fed. Reg. 72160) (October 19, 2016). The amendments in the final rule are referenced in this document as the "2016 Servicing Rule." The 2016 Servicing Rule establishes a definition of successor in interest and provides that confirmed successors in interest are considered "borrowers" for the purposes of Regulation X's mortgage servicing provisions. Confirmed successor in interest means a successor in interest once a servicer has confirmed the successor in interest's identity and ownership interest in a property that secures a mortgage loan subject to Subpart C of Regulation X. The 2016 Servicing Rule also addresses compliance with certain servicing requirements when a person is a debtor in bankruptcy or sends a cease communication request under the Fair Debt Collection Practices Act (FDCPA).

Additionally, the 2016 Servicing Rule clarifies, revises, or amends provisions regarding force-placed insurance notices, policy and procedure requirements, early intervention, and loss mitigation requirements under Regulation X's mortgage servicing provisions; and which loans are considered in determining whether a servicer qualifies as a small servicer, certain periodic statement requirements relating to bankruptcy and charge-off, and prompt crediting requirements under Regulation Z's mortgage servicing provisions. The 2016 Servicing Rule was effective October 19, 2017, except for the provisions related to successors in interest and periodic statements for borrowers in bankruptcy, which take effect on April 19, 2018.

The CFPB concurrently issued an interpretive rule under the FDCPA to clarify the interaction of the FDCPA and specified mortgage servicing rules in Regulations X and Z. (81 Fed. Reg. 71977) (October 19, 2016). [4] This interpretive rule constitutes an advisory opinion for purposes of the FDCPA and provides safe harbors from liability for servicers acting in compliance with it.

On October 4, 2017, the CFPB issued an interim final rule amending a provision of the 2016 Servicing Rule relating to the timing for servicers to provide modified written early intervention notices under Regulation X to borrowers who have invoked their cease communication rights under the FDCPA. (82 FR 47953) (October 16, 2017). The interim final rule was effective October 19, 2017.

Subpart A – General Provisions

Coverage – 12 CFR 1024.5(a)

RESPA is applicable to all "federally related mortgage loans," except as provided under 12 CFR 1024.5(b) and 1024.5(d), discussed below. "Federally related mortgage loans" are defined as:

Loans (other than temporary loans), including refinancings that satisfy the following two criteria:

- *First*, the loan is secured by a first or subordinate lien on residential real property, located within a state, upon which either:
  - A one-to-four 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.
- *Second*, the loan falls within one of the following categories:
  - Loans made by a lender,[5] creditor,[6] dealer;[7]
  - 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;

[4] *See* Safe Harbors from Liability under the Fair Debt Collection Practices Act for Certain Actions Taken in Compliance with Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) (81 Fed. Reg. 71977) (Oct. 19, 2016) (hereinafter 2016 FDCPA Interpretive Rule). The interpretations contained in this interpretive rule are included in Regulation X comments 30(d)-1 and 39(d)-2; Regulation Z comment 2(a)(11)-4.ii.

[5] A lender includes financial institutions either regulated by, or whose deposits or accounts are insured by, any agency of the federal government.

[6] A creditor is defined in Section 103(g) of the Consumer Credit Protection Act (15 U.S.C. 1602(g)). RESPA covers any creditor that makes or invests in residential real estate loans aggregating more than $1,000,000 per year.

[7] "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.

- Loans made and intended to be sold by the originating lender or creditor to FNMA, GNMA, or FHLMC (or its successor);[8] or
- Loans that are the subject of a home equity conversion mortgage or reverse mortgage issued by a lender or creditor subject to the regulation.

"Federally related mortgage loans" are also defined to include installment sales contracts, land contracts, or contracts for deeds on otherwise qualifying residential property if the contract is funded in whole or in part by proceeds of a loan made by a lender, specified federal agency, dealer or creditor subject to the regulation.

Exemptions – 12 CFR 1024.5(b)

The following transactions are exempt from coverage:

- A loan primarily for business, commercial or agricultural purposes (definition identical to Regulation Z, 12 CFR 1026.3(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 or is used to finance transfer of title to the first user of the property.) 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 bona fide 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 one-to-four 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 approves the assumption.
- A conversion of a loan to different terms which are consistent with provisions of the original mortgage instrument, as long as a new note is not required, even if the lender charges an additional fee for the conversion.[9]
- A bona fide transfer of a loan obligation in the secondary market. (However, the mortgage servicing requirements of Subpart C, 12 CFR 1024.30-41, still apply.) Mortgage broker transactions that 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 are covered by RESPA. Similarly, neither the creation of a dealer loan or consumer credit contract, nor the first assignment of such loan or contract to a lender, is a secondary market transaction.

Partial Exemptions for Certain Mortgage Loans – 12 CFR 1024.5(d)

Most closed-end mortgage loans are exempt from the requirement to provide the GFE, HUD-1 settlement statement, and application servicing disclosure requirements of 12 CFR 1024.6, 1024.7, 1024.8, 1024.10, and 1024.33(a). Instead, these loans are subject to disclosure, timing, and other requirements under TILA and Regulation Z. Specifically, the aforementioned provisions do not apply to a federally related mortgage loan that:

- Is subject to the special disclosure (TILA-RESPA Integrated Disclosure) requirements for certain consumer credit transactions secured by real property set forth in Regulation Z, 12 CFR 1026.19(e), (f), and (g); or
- Is subject to the partial exemption under 12 CFR 1026.3(h) (i.e., certain no-interest loans secured by subordinate liens made for the purpose of down payment or similar home buyer assistance, property rehabilitation, energy efficiency, or foreclosure avoidance or prevention. (12 CFR 1026.3(h)).

  NOTE: A creditor may not use the TILA-RESPA Integrated Disclosure forms instead of the GFE, HUD-1, and TIL forms for transactions that continue to be covered by TILA or RESPA that require those disclosures (e.g., reverse mortgages).[10]

[8] FNMA – Federal National Mortgage Association; GNMA - Government National Mortgage Association; FHLMC – Federal Home Loan Mortgage Corporation.

[9] 12 CFR 1024.5(b)(6).

[10] Open-end reverse mortgages receive open-end disclosures, rather than GFEs or HUD-1s.

Summary of Applicable Disclosure Requirements:

Use TILA-RESPA Integrated Disclosures (See Regulation Z):	*Continue to use existing TIL, RESPA Disclosures (as applicable):*
• Most closed-end mortgage loans, including: o Construction-only loans o Loans secured by vacant land or by 25 or more acres	• HELOCs (subject to disclosure requirements under Regulation Z, 12 CFR 1026.40) • Reverse mortgages (subject to existing TIL and GFE disclosures) • Chattel-secured mortgages (i.e., mortgages secured by a mobile home or by a dwelling that is not attached to real property, such as land) (subject to existing TIL disclosures, and not RESPA)
But note: In both cases, there is a partial exemption from these disclosures under 12 CFR 1026.3(h) for loans secured by subordinate liens and associated with certain housing assistance loan programs for low- and moderate-income persons.	

Subpart B – Mortgage Settlement and Escrow Accounts

Examiners should note that certain provisions in Subpart B (12 CFR 1024.6, 1024.7, 1024.8, and 1024.10) are applicable only to limited categories of mortgage loans. *See* the discussion of 12 CFR 1024.5(d) above.

Special Information Booklet – 12 CFR 1024.6

For mortgage loans that are not subject to the TILA-RESPA Integrated Disclosure Rule (*see* 12 CFR 1026.19(e), (f) and (g)),* a loan originator[11] 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 loan originator is not required to provide the booklet. If the borrower uses a mortgage broker, the broker rather than the lender, must provide the booklet.

The booklet does not need to be provided 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. (12 CFR 1024.19(g)(1)(iii)).

A loan originator that complies with Regulation Z (12 CFR 1026.40) for open-end home equity plans (including providing the brochure entitled "What You Should Know About Home Equity Lines of Credit" or a suitable substitute) is deemed to have complied with this section.

NOTE: The Special Information Booklet may also be required under 12 CFR 1026.19(g) for those closed-end mortgage loans subject to the TILA-RESPA Integrated Disclosure Rule. A discussion of those requirements is located in the Regulation Z examination procedures.

Good Faith Estimate (GFE) of Settlement Costs – 12 CFR 1024.7 Standard GFE Required

For closed-end reverse mortgages, a loan originator is required to provide a consumer with the standard GFE form that is designed to allow borrowers to shop for a mortgage loan by comparing settlement costs and loan terms. (*See* GFE form at Appendix C to 12 CFR Part 1024.)

Overview of the Standard GFE

The first page of the GFE includes a summary of loan terms and a summary of estimated settlement charges. It also includes information about key dates such as when the interest rate for the loan quoted in the GFE expires and when the estimate for the settlement charges expires. The second page discloses settlement charges as subtotals for 11 categories of costs. The third page provides a table explaining which charges can change at settlement, a trade-off table showing the relationship between the interest rate and settlement charges, and a shopping chart to compare the costs and terms of loans offered by different originators.

[11] A "loan originator" is defined as a lender or mortgage broker. 12 CFR 1024.2(b).

GFE Application Requirements

- The loan originator must provide the standard GFE to the borrower within three business days of receipt of an application for a mortgage loan. A loan originator is not required to provide a GFE if before the end of the three-business-day period, the application is denied or the borrower withdraws the application.

- An application can be in writing or electronically submitted, including a written record of an oral application.

- A loan originator determines what information it needs to collect from a borrower and which of the collected information it will use in order to issue a GFE. Under the regulations, an "application" includes at least the following six pieces of information:

  1) The borrower's name;

  2) The borrower's gross monthly income;

  3) The borrower's Social Security number (e.g., to enable the loan originator to obtain a credit report);

  4) The property address;

  5) An estimate of the value of the property; and

  6) The mortgage loan amount sought. In addition, a loan originator may require the submission of any other information it deems necessary.

  A loan originator will be presumed to have relied on such information prior to issuing a GFE and cannot base a revision of a GFE on that information unless it changes or is later found to be inaccurate.

- While the loan originator may require the borrower to submit additional information beyond the six pieces of information listed above in order to issue a GFE, it cannot require, as a condition of providing the GFE, the submission of supplemental documentation to verify the information provided by the borrower on the application. However, a loan originator is not prohibited from using its own sources to verify the information provided by the borrower prior to issuing the GFE. The loan originator can require borrowers to provide verification information after the GFE has been issued in order to complete final underwriting.

- For dealer loans, the loan originator is responsible for providing the GFE directly or ensuring that the dealer provides the GFE.

- For mortgage brokered loans, either the lender or the mortgage broker must provide a GFE within three business days after a mortgage broker receives either an application or information sufficient to complete an application. The lender is responsible for ascertaining whether the GFE has been provided. If the mortgage broker has provided the GFE to the applicant, the lender is not required to provide an additional GFE.

- A loan originator is prohibited from charging a borrower any fee in order to obtain a GFE unless the fee is limited to the cost of a credit report.

GFE Not Required for Open End Lines of Credit – 12 CFR 1024.7(h)

A loan originator that complies with Regulation Z (12 CFR 1026.40) for open-end home equity plans is deemed to have complied with 12 CFR 1024.7.

Availability of GFE Terms – 12 CFR 1024.7(c)

Regulation X does not establish a minimum period of availability for which the interest rate must be honored. The loan originator must determine the expiration date for the interest rate of the loan stated on the GFE. In contrast, Regulation X requires that the estimated settlement charges and loan terms listed on the GFE be honored by the loan originator for at least 10 business days from the date the GFE is provided. The period of availability for the estimated settlement charges and loan terms as well as the period of availability for the interest rate of the loan stated on the GFE must be listed on the GFE in the "important dates" section of the form.

After the expiration date for the interest rate of the loan stated on the GFE, the interest rate and the other rate related charges, including the charge or credit for the interest rate chosen, the adjusted origination charges and the per diem interest can change until the interest rate is locked.

Key GFE Form Contents – 12 CFR 1024.7(d)

The loan originator must ensure that the required GFE form is completed in accordance with the Instructions set forth in Appendix C of 12 CFR Part 1024.

First Page of GFE

- The first page of the GFE discloses identifying information such as the name and address of the "loan originator," which includes the lender or the mortgage broker originating the loan. The "purpose" section indicates what the GFE is about and directs the borrower to the TIL disclosures and HUD's website for more information. The borrower is informed that only the borrower can shop for the best loan and that the borrower should compare loan offers using the shopping chart on the third page of the GFE.

- The "important dates" section requires the loan originator to state the expiration date for the interest rate for the loan provided in the GFE as well as the expiration date for the estimate of other settlement charges and the loan terms not dependent upon the interest rate.

- While the interest rate stated on the GFE is not required to be honored for any specific period of time, the estimate for the other settlement charges and other loan terms must be honored for at least 10 business days from when the GFE is provided.

- In addition, the form must state how many calendar days within which the borrower must go to settlement once the interest rate is locked (rate lock period). The form also requires disclosure of how many days prior to settlement the interest rate would have to be locked, if applicable.

- The "summary of your loan" section requires disclosure of the initial loan amount; loan term; initial interest rate; initial monthly payment for principal, interest and any mortgage insurance; whether the interest rate can rise, and if so, the maximum rate to which it can rise over the life of the loan, and the period of time after which the interest rate can first change; whether the loan balance can rise if the payments are made on time and if so, the maximum amount to which it can rise over the life of the loan; whether the monthly amount owed for principal, interest and any mortgage insurance can rise even if payments are made on time, and if so, the maximum amount to which the monthly amount owed can ever rise over the life of the loan; whether the loan has a prepayment penalty, and if so, the maximum amount it could be; and whether the loan has a balloon payment, and if so, the amount of such payment and in how many years it will be due. Specific instructions are provided with respect to closed-end reverse mortgages.

- The "escrow account information" section requires the loan originator to indicate whether the loan does or does not have an escrow account to pay property taxes or other property related charges. In addition, this section also requires the disclosure of the monthly amount owed for principal, interest and any mortgage insurance. Specific instructions are provided with respect to closed-end reverse mortgages.

- The bottom of the first page includes subtotals for the adjusted origination charges and charges for all other settlement charges listed on page two, along with the total estimated settlement charges.

Second Page of GFE

The second page of the GFE requires disclosure of all settlement charges. It provides for the estimate of total settlement costs in eleven categories discussed below. The adjusted origination charges are disclosed in "Block A" and all other settlement charges are disclosed in "Block B." The amounts in the blocks are to be added to arrive at the "total estimated settlement charges" which is required to be listed at the bottom of the page.

Disclosure of Adjusted Origination Charge (Block A)

Block A addresses disclosure of origination charges, which include all lender and mortgage broker charges. The "adjusted origination charge" results from the subtraction of a "credit" from the "origination charge" or the addition of a "charge" to the origination charge.

- Block 1 – the origination charges, which include lender processing and underwriting fees and any fees paid to a mortgage broker.

  Origination Charge Note: This block requires the disclosure of all charges that all loan originators involved in the transaction will receive for originating the loan (excluding any charges for points). A loan originator may not separately charge any additional fees for getting the loan such as application, processing or underwriting fees. The amount in Block 1 is subject to zero tolerance, i.e., the amount cannot change at settlement.

- Block 2 – a "credit" or "charge" for the interest rate chosen.

Credit or Charge for the Interest Rate Chosen Note:

Transaction Involving a Mortgage Broker. For a transaction involving a mortgage broker,[12] Block 2 requires disclosure of a "credit" or charge (points) for the specific interest rate chosen. The credit or charge for the specific interest rate chosen is the net payment to the mortgage broker (i.e., the sum of all payments to the mortgage broker from the lender, including payments based on the loan amount, a flat rate or any other compensation, and in a table funded transaction, the loan amount less the price paid for the loan by the lender.)

[12] The 2008 RESPA Reform Rule changed the definition of "mortgage broker" to mean a person or entity (not an employee of a lender) that renders origination services and serves as an intermediary between a lender and a borrower in a transaction involving a federally related mortgage loan, including such person or entity that closes the loan in its own name and table funds the transaction. The definition will also apply to a loan correspondent approved under 24 CFR 202.8 for Federal Housing Administration (FHA programs). The definition would also include an "exclusive agent" who is not an employee of the lender.

When the net payment to the mortgage broker from the lender is positive, there is a "credit" to the borrower and it is entered as a negative amount. For example, if the lender pays a yield spread premium to a mortgage broker for the loan set forth in the GFE, the payment must be disclosed as a "credit" to the borrower for the particular interest rate listed on the GFE (reflected on the GFE at Block 2, checkbox 2). The term "yield spread premium" is not featured on the GFE or the HUD-1 Settlement Statement.

Points paid by the borrower for the interest rate chosen must be disclosed as a "charge" (reflected on the GFE at Block 2, third checkbox). A loan cannot include both a charge (points) and a credit (yield spread premium).

Transaction Not Involving a Mortgage Broker. For a transaction without a mortgage broker, a lender may choose not to separately disclose any credit or charge for the interest rate chosen for the loan in the GFE. If the lender does not include any credit or charge in Block 2, it must check the first checkbox in Block 2 indicating that "The credit or charge for the interest rate you have chosen is included in 'our origination charge' above." Only one of the boxes in Block 2 may be checked, as a credit and charge cannot occur together in the same transaction.

Disclosure of Charges for All Other Settlement Services (Block B)

Block B is the sum of charges for all settlement services other than the origination charges.

- Block 3 – required services by providers selected by the lender such as appraisal and flood certification fees.
- Block 4 – title service fees and the cost of lender's title insurance.
- Block 5 – owner's title insurance.
- Block 6 – other required services for which the consumer may shop.
- Block 7 – government recording charges.
- Block 8 – transfer tax charges.
- Block 9 – initial deposit for escrow account.
- Block 10 – daily interest charges.
- Block 11 – homeowner's insurance charges.

Third Page of GFE

The third page of the GFE includes the following information:

- A tolerance chart identifying the charges that can change at settlement (*see* discussion on tolerances below);
- A trade-off table that requires the loan originator to provide information on the loan described in the GFE and at the loan originator's option, information about alternative loans (one with lower settlement charges but a higher interest rate and one with a lower interest rate but higher settlement charges);
- A shopping chart that allows the consumer to fill in loan terms and settlement charges from other lenders or brokers to use to compare loans; and
- Language indicating that some lenders may sell the loan after settlement, but that any fees the lender receives in the future cannot change the borrower's loan or the settlement charges.

Tolerances on Settlement Costs – 12 CFR 1024.7(e) and (i)

The 2008 RESPA Reform Rule established "tolerances" or limits on the amount actual settlement charges can vary at closing from the amounts stated on the GFE. The rule established three categories of settlement charges and each category has different tolerances. If, at settlement, the charges exceed the charges listed on the GFE by more than the permitted tolerances, the loan originator may cure the tolerance violation by reimbursing to the borrower the amount by which the tolerance was exceeded, at settlement or within 30 calendar days after settlement.

Tolerance Categories

- ***Zero tolerance category.*** This category of fees is subject to a zero tolerance standard. The fees estimated on the GFE may not be exceeded at closing. These fees include:
  - The loan originator's own origination charge, including processing and underwriting fees;
  - The credit or charge for the interest rate chosen (i.e., yield spread premium or discount points) while the interest rate is locked;
  - The adjusted origination charge while the interest rate is locked; and
  - State/local property transfer taxes.
- ***Ten percent tolerance category.*** For this category of fees, while each individual fee may increase or decrease, the sum of the charges at settlement may not be greater than10

percent above the sum of the amounts included on the GFE. This category includes fees for:

- Loan originator required settlement services, where the loan originator selects the third-party settlement service provider;
- Loan originator required services, title services, required title insurance and owner's title insurance when the borrower selects a third-party provider identified by the loan originator; and
- Government recording charges.

- ***No tolerance category***. The final category of fees is not subject to any tolerance restriction. The amounts charged for the following settlement services included on the GFE can change at settlement and the amount of the change is not limited:
  - Loan originator required services where the borrower selects his or her own third-party provider;
  - Title services, lender's title insurance, and owner's title insurance when the borrower selects his or her own provider;
  - Initial escrow deposit;
  - Daily interest charges; and
  - Homeowner's insurance.

Identification of Third-Party Settlement Service Providers

When the loan originator permits a borrower to shop for one or more required third-party settlement services and select the settlement service provider for such required services, the loan originator must list in the relevant block on page two of the GFE the settlement service and the estimated charge to be paid to the provider of each required service. In addition, the loan originator must provide the borrower with a written list of settlement service providers for those required services on a separate sheet of paper at the time the GFE is provided.

Binding GFE – 12 CFR 1024.7(f)

The loan originator is bound, within the tolerances provided, to the settlement charges and terms listed on the GFE provided to the borrower, unless a new GFE is provided prior to settlement (see discussion below on changed circumstances). This also means that if a lender accepts a GFE issued by a mortgage broker, the lender is subject to the loan terms and settlement charges listed in the GFE, unless a new GFE is issued prior to settlement.

Changed Circumstances – 12 CFR 1024.2(b), 1024.7(f)(1) and (f)(2)

Changed circumstances are defined as:

- Acts of God, war, disaster, or other emergency;
- Information particular to the borrower or transaction that was relied on in providing the GFE that changes or is found to be inaccurate after the GFE has been provided;
- New information particular to the borrower or transaction that was not relied on in providing the GFE; or
- Other circumstances that are particular to the borrower or transaction, including boundary disputes, the need for flood insurance, or environmental problems.

Changed circumstances do not include the borrower's name, the borrower's monthly income, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any information contained in any credit report obtained by the loan originator prior to providing the GFE, unless the information changes or is found to be inaccurate after the GFE has been provided. In addition, market price fluctuations by themselves do not constitute changed circumstances.

Changed circumstances affecting ***settlement costs*** are those circumstances that result in increased costs for settlement services such that the charges at settlement would exceed the tolerances or limits on those charges established by the regulations.

Changed circumstances affecting the ***loan*** are those circumstances that affect the borrower's eligibility for the loan. For example, if underwriting and verification indicate that the borrower is ineligible for the loan provided in the GFE, the loan originator would no longer be bound by the original GFE. In such cases, if a new GFE is to be provided, the loan originator must do so within three business days of receiving information sufficient to establish changed circumstances. The loan originator must document the reason that a new GFE was provided and must retain documentation of any reasons for providing a new GFE for no less than three years after settlement.

None of the information collected by the loan originator prior to issuing the GFE may later become the basis for a "changed circumstance" upon which it may offer a revised GFE, unless: it can demonstrate 1) that there was a change in the particular information; 2) that the information was inaccurate; or 3) that it did not rely on that particular

information in issuing the GFE. A loan originator has the burden of demonstrating nonreliance on the collected information, but may do so through various means including through a documented record in the underwriting file or an established policy of relying on a more limited set of information in providing GFEs.

If a loan originator issues a revised GFE based on information previously collected in issuing the original GFE and "changed circumstances," it must document the reasons for issuing the revised GFE, such as its nonreliance on such information or the inaccuracy of such information.

Borrower Requested Changes – 12 CFR 1024.7(f)(3)

If a borrower requests changes to the mortgage loan identified in the GFE that change the settlement charges or the terms of the loan, the loan originator may provide a revised GFE to the borrower. If a revised GFE is provided, the loan originator must do so within three business days of the borrower's request.

Expiration of Original GFE – 12 CFR 1024.7(f)(4)

If a borrower does not express an intent to continue with an application within 10 business days after the GFE is provided, or such longer time provided by the loan originator, the loan originator is no longer bound by the GFE.

Interest Rate Dependent Charges and Terms – 12 CFR 1024.7(f)(5)

If the interest rate has not been locked by the borrower, or a locked interest rate has expired, all interest rate-dependent charges on the GFE are subject to change. The charges that may change include the charge or credit for the interest rate chosen, the adjusted origination charges, per diem interest, and loan terms related to the interest rate. However, the loan originator's origination charge (listed in Block 1 of page 2 of the GFE) is not subject to change, even if the interest rate floats, unless there is another changed circumstance or borrower-requested change.

If the borrower later locks the interest rate, a new GFE must be provided showing the revised interest rate dependent charges and terms. All other charges and terms must remain the same as on the original GFE, unless changed circumstances or borrower-requested changes result in increased costs for settlement services or affect the borrower's eligibility for the specific loan terms identified in the original GFE.

New Home Purchases – 12 CFR 1024.7(f)(6)

In transactions involving new home purchases, where settlement is expected to occur more than 60 calendar days from the time a GFE is provided, the loan originator may provide the GFE to the borrower with a clear and conspicuous disclosure stating that at any time up until 60 calendar days prior to closing, the loan originator may issue a revised GFE. If the loan originator does not provide such a disclosure, it cannot issue a revised GFE except as otherwise provided in Regulation X.

Volume-Based Discounts

The 2008 RESPA Reform Rule did not formally address the legality of volume-based discounts. However, HUD indicated in the preamble to the rule that discounts negotiated between loan originators and other settlement service providers, where the discount is ultimately passed on to the borrower in full, is not, depending on the circumstances of a particular transaction, a violation of Section 8 of RESPA.[13]

Uniform Settlement Statement (HUD-1 OR HUD-1A) – 12 CFR 1024.8

For closed-end reverse mortgages, the person conducting the settlement (settlement agent) must provide the borrower with a HUD-1 Settlement Statement at or before settlement that clearly itemizes all charges imposed on the buyer and the seller in connection with the settlement. The 2008 RESPA Reform rule included a revised HUD-1/1A Settlement Statement form that is required as of January 1, 2010. 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 TILA and Regulation Z, Appendix A to 12 CFR 1024 contains the instructions for completing the forms.

[13] 73 Fed. Reg. 68204, 68232 (November 17, 2008).

Key 2008 RESPA Reform Enhancements to the HUD-1/1A Settlement Statement

While the 2008 RESPA Reform Rule did not include any substantive changes to the first page of the HUD-1/1A form, there were changes to the second page of the form to facilitate comparison between the HUD-1/1A and the GFE. Each designated line on the second page of the revised HUD-1/1A includes a reference to the relevant line from the GFE.

With respect to disclosure of "no cost" loans where "no cost" refers only to the loan originator's fees (*see* Section L, subsection 800 of the HUD-1 form), the amounts shown for the "origination charge" and the "credit or charge for the interest rate chosen" should offset, so that the "adjusted origination charge" is zero.

In the case of a "no cost" loan where "no cost" encompasses loan originator and third-party fees, all third-party fees must be itemized and listed in the borrower's column on the HUD-1/1A. These itemized charges must be offset with a negative adjusted origination charge (Line 803) and recorded in the columns.

To further facilitate comparability between the forms, the revised HUD-1 includes a third page (second page of the HUD-1A) that allows borrowers to compare the loan terms and settlement charges listed on the GFE with the terms and charges listed on the closing statement. The first half of the third page includes a comparison chart that sets forth the settlement charges from the GFE and the settlement charges from the HUD-1 to allow the borrower to easily determine whether the settlement charges exceed the charges stated on the GFE. If any charges at settlement exceed the charges listed on the GFE by more than the permitted tolerances, the loan originator may cure the tolerance violation by reimbursing to the borrower the amount by which the tolerance was exceeded. A borrower will be deemed to have received timely reimbursement if the financial institution delivers or places the payment in the mail within 30 calendar days after settlement.

Inadvertent or technical errors on the settlement statement are not deemed to be a violation of Section 4 of RESPA if a revised HUD-1/1A is provided to the borrower within 30 calendar days after settlement.

The second half of the third page sets forth the loan terms for the loan received at settlement in a format that reflects the summary of loan terms on the first page of the GFE, but with additional loan related information that would be available at closing. The note at the bottom of the page indicates that the borrower should contact the lender if the borrower has questions about the settlement charges or loan terms listed on the form.

12 CFR 1024.8(b) and the instructions for completing the HUD-1/1A Settlement Statement provide that the loan originator shall transmit sufficient information to the settlement agent to allow the settlement agent to complete the "loan terms" section. The loan originator must provide the information in a format that permits the settlement agent to enter the information in the appropriate spaces on the HUD-1/1A, without having to refer to the loan documents.

Average Charge Permitted

As of January 16, 2009, an average charge may be stated on the HUD-1/1A if such average charge is computed in accordance with 12 CFR 1024.8(b)(2). All settlement service providers, including loan originators, are permitted to list the average charge for a settlement service on the HUD-1/1A Settlement Statement (and on the GFE) rather than the exact cost for that service.

The method of determining the average charge is left up to the settlement service provider. The average charge may be used as the charge for any third-party vendor charge, not for the provider's own internal charges. The average charge also cannot be used where the charge is based on the loan amount or the value of the property.

The average charge may be used for any third-party settlement service, provided that the total amounts received from borrowers for that service for a particular class of transactions do not exceed the total amounts paid to providers of that service for that class of transactions. A class of transactions may be defined based on the period of time, type of loan and geographic area. If an average charge is used in any class of transactions defined by the loan originator, then the loan originator must use the same average charge for every transaction within that class. The average charge must be recalculated at least every six months.

A settlement service provider that uses an average charge for a particular service must maintain all documents that were used to calculate the average charge for at least three years after any settlement in which the average charge was used.

Printing and Duplication of the Settlement Statement – 12 CFR 1024.9

Financial institutions have numerous options for layout and format in reproducing the HUD-1 and HUD-1A that do not require prior CFPB 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 CFPB.

One-Day Advance Inspection of the Settlement Statement – 12 CFR 1024.10

For closed-end reverse mortgages, and upon request by the borrower, the HUD-1 or HUD-1A must be completed and made available for inspection during the business day immediately proceeding the day of settlement, setting forth those items known at that time by the person conducting the closing.

Delivery – 12 CFR 1024.10(a) and (b)

The completed HUD-1 or HUD-1A must be mailed or delivered to the borrower, the seller (if there is one), 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 – 12 CFR 1024.10(e)

A lender must retain each completed HUD-1 or HUD-1A and related documents for five years after settlement, unless the lender disposes of its interest in the mortgage and does not service the mortgage. If the loan is transferred, the lender 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 – 12 CFR 1024.12

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 TILA.

Prohibition Against Kickbacks and Unearned Fees – 12 CFR 1024.14

Any person who gives or accepts a fee, kickback, or thing of value (payments, commissions, gifts, tangible item or special privileges) for the referral of settlement business is in violation of Section 8(a) of RESPA. Any person who gives or accepts any portion, split, or percentage of a charge for real estate settlement services, other than for services actually performed, is in violation of Section 8(b) of RESPA. Appendix B of Regulation X provides guidance on the meaning and coverage of the prohibition against kickbacks and unearned fees.

RESPA Section 8(b) is not violated when a single party charges and retains a settlement service fee, and that fee is unearned or excessive.

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 one year or both.

Affiliated Business Arrangements – 12 CFR 1024.15

If a loan originator (or an associate)[14] has either an affiliate relationship or a direct or beneficial ownership interest of more than one percent in a provider of settlement services and the loan originator 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 12 CFR 1024.14 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 of Regulation X). This disclosure shall specify the following:

- The nature of the relationship (explaining the ownership and financial interest) between the provider and the loan originator; and

[14] An associate includes a corporation or business entity that controls, is controlled by, or is under common control with the institution; an employer, officer, director, partner, franchisor, or franchisee of the institution; or anyone with an arrangement with the institution that enables the person to refer settlement business and benefit financially from the referrals. 12 U.S.C. 2602(8).

- The estimated charge or range of charges generally made by such provider.

This disclosure must be provided on a separate piece of paper either at the time of loan application, or with the GFE, or at the time of the referral.

The loan originator 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 loan originator may only receive a return on ownership or franchise interest or payment otherwise permitted by RESPA.

Title Insurance Companies – 12 CFR 1024.16

Sellers that hold legal title to the property being sold are prohibited from requiring borrowers, either directly or indirectly, as a condition to selling the property, to use a particular title insurance company.

Escrow Accounts – 12 CFR 1024.17

On October 26, 1994, HUD issued its final rule changing the accounting method for escrow accounts, which was originally effective April 24, 1995. The final rule established a national standard accounting method, known as aggregate accounting. 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.

Starting April 19, 2018, a servicer must treat a confirmed successor in interest as a borrower for purposes of 12 CFR 1024.17 and for Subpart C's provisions.

Escrow Account Analysis – 12 CFR 1024.17(c)(2) and (3) and 12 CFR 1024.17(k)

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 deadline to avoid a penalty and may make annual lump sum payments to take advantage of a discount.

Transfer of Servicing – 12 CFR 1024.17(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 – 12 CFR 1024.17(f)

The servicer shall conduct an annual escrow account analysis to determine whether a surplus, shortage, or deficiency exists as defined under 12 CFR 1024.17(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 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, 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 – 12 CFR 1024.17(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 – 12 CFR 1024.17(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 – 12 CFR 1024.17(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 – 12 CFR 1024.17(k)

The servicer must pay escrow disbursements by the disbursement date. In calculating the disbursement date, the servicer must use a date on or before the deadline to avoid a penalty and may make annual lump sum payments to take advantage of a discount. A servicer may not purchase force-placed insurance unless it is unable to disburse funds from the borrower's escrow account to maintain the borrower's hazard insurance. A servicer is unable to disburse funds only if the servicer has a reasonable basis to believe that either the borrower's property is vacant or the borrower's hazard insurance has terminated for reasons other than non-payment. A servicer is not unable to disburse funds from the borrower's escrow account solely because the account is deficient. If a servicer advances funds to an escrow account to ensure that the borrower's hazard insurance premium charges are paid in a timely manner, a servicer may seek repayment from the borrower for the funds the servicer advanced, unless otherwise prohibited by applicable law.

Regulation X includes a limited exemption from the restriction on force-placed insurance purchases for small servicers. Subject to the requirements of 12 CFR 1024.37, small servicers may purchase force-placed insurance and charge the borrower for the cost of that insurance if the cost to the borrower is less than the amount the small servicer would need to disburse from the borrower's escrow account to ensure timely payment of the borrower's hazard insurance

premium charges.

An institution qualifies as a small servicer under 12 CFR 1026.41(e)(4)(ii) if:

- The institution services, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the institution (or an affiliate) is the creditor or assignee;
- The institution is a Housing Finance Agency, as defined in 24 CFR 266.5 (12 CFR 1026.41(e)(4)(ii)); or
- The institution is a nonprofit entity (defined in 12 CFR 1026.41(e)(4)(ii)(C)(*1*)) that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities (defined in 12 CFR 1026.41(e)(4)(ii)(C)(*2*)), for all of which the servicer or an associated nonprofit entity is the creditor.

The determination as to whether a servicer qualifies as a small servicer is generally made based on the mortgage loans, as that term is used in 12 CFR 1026.41(a)(1), serviced by the servicer and any affiliates as of January 1 for the remainder of that calendar year. However, to determine small servicer status under the nonprofit small servicer definition, a nonprofit servicer should be evaluated based on the mortgage loans serviced by the servicer (and not those serviced by associated nonprofit entities) as of January 1 for the remainder of the calendar year. A servicer that ceases to qualify as a small servicer will have six months from the time it ceases to qualify or until the next January 1, whichever is later, to comply with any requirements from which the servicer is no longer exempt as a small servicer.

Under 12 CFR 1026.41(e)(4)(iii), the following mortgage loans are not considered in determining whether a servicer qualifies as a small servicer: (a) mortgage loans voluntarily serviced by the servicer for a non-affiliate of the servicer and for which the servicer does not receive any compensation or fees; (b) reverse mortgage transactions; and (c) mortgage loans secured by consumers' interests in timeshare plans; and (d) certain seller-financed transactions that meet the criteria identified in 12 CFR 1026.36(a)(5).

List of Homeownership Counseling Organizations – 12 CFR 1024.20

For any application for a federally related mortgage loan, as that term is defined in 12 CFR 1024.2 subject to the exemptions in 12 CFR 1024.5(b) (except for applications for reverse mortgages or timeshare loans), the lender must provide a loan applicant with a clear and conspicuous written list of homeownership counseling services in the loan applicant's location, no later than three business days after a lender, mortgage broker, or dealer receives an application or information sufficient to complete an application. The list is available on a website maintained by the CFPB, or from data made available by the CFPB or HUD. Lenders must make sure that the list of homeownership counseling services was obtained no earlier than 30 days before they provide it to the applicant. This list may be combined with other disclosures (unless otherwise prohibited by Regulation X or Regulation Z). A mortgage broker or dealer that receives a loan application, or for whom it prepares an application, may provide the list, in which case the lender is not required to provide an additional list, though in all cases the lender remains responsible for ensuring that the list is provided to the applicant. The list may be provided in person, by mail or other means. The list may be provided in electronic form, subject to compliance with the consumer consent and other applicable provisions of E-Sign.

If, before the three-day period ends, the lender denies the application or the applicant withdraws it, the lender does not have to provide the list. If the transaction involves more than one lender, the lenders should agree on which of them will provide the list. If there is more than one applicant, the list can go to any one of them that has primary liability on the loan.

Subpart C – Mortgage Servicing

Scope – 12 CFR 1024.30

Except as otherwise noted below, the provisions of Subpart C – Mortgage Servicing, 12 CFR 1024.30-41, apply to any mortgage loan, as that term is defined in 12 CFR 1024.31. The procedures set forth in 12 CFR 1024.39 through 1024.41 regarding early intervention, continuity of contact, and loss mitigation only apply to a mortgage loan secured by a property that is the borrower's principal residence. If a property ceases to be a borrower's principal residence, the procedures set forth in the early intervention provisions (12 CFR 1024.39), the continuity of contact provisions (12 CFR 1024.40), and the loss mitigation provisions (12 CFR 1024.41) do not apply to the mortgage loan secured by the property. (Comment 30(c)(2)-1). The determination of principal residence status will depend on the specific facts and circumstances regarding the property and applicable state law. For example, a vacant property may still be a borrower's principal residence. (Comment 30(c)(2)-1).

Starting April 19, 2018, a servicer must treat a confirmed successor in interest as a borrower under Subpart C's provisions and under the escrow account requirements in 12 CFR 1024.17. Further, a servicer that is a debt collector

under the FDCPA with respect to a mortgage loan does not violate the FDCPA Section 805(b)'s prohibition on communicating with third parties by communicating with a confirmed successor in interest in compliance with the mortgage servicing rules because "consumer" for purposes of FDCPA Section 805 includes any person who meets the definition in this part of confirmed successor in interest. (Comment 30(d)-1).[15]

Definitions – 12 CFR 1024.31

Regulation X, 12 CFR 1024.31 contains definitions that are applicable to Subpart C – Mortgage Servicing, 12 CFR 1024.30-41. Among other definitions, Regulation X provides that "mortgage loan" means "any federally related mortgage loan, as that term is defined in 12 CFR 1024.2 subject to the exemptions in 12 CFR 1024.5(b), but does not include open-end lines of credit (home equity plans)." Thus, the term "mortgage loan" includes (but is not limited to) refinancing transactions, whether secured by a senior or subordinate lien.

The 2016 Servicing Rule establishes definitions of "successor in interest" and "confirmed successors in interest," and provides that the latter are considered "borrowers" for the purposes of Regulation X's mortgage servicing provisions. The 2016 Servicing Rule also adds a new definition of "delinquency."

Successors in Interest (Effective April 19, 2018)

"Successor in interest" means a person to whom an ownership interest in a property securing a mortgage loan if the transfer is:

(1) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(2) A transfer to a relative resulting from the death of a borrower;

(3) A transfer where the spouse or children of the borrower become an owner of the property;

(4) A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property; or

(5) A transfer into an *inter vivos* trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.

"Confirmed successor in interest" means a successor in interest once a servicer has confirmed the successor in interest's identity and ownership interest in a property that secures a mortgage loan subject to Subpart C of Regulation X.

Delinquency

The definition of "delinquency" applies to the servicing provisions in Subpart C of Regulation X and the provisions regarding periodic statements for mortgage loans in Regulation Z.[16] Under the definition, a borrower and a borrower's mortgage loan obligation are delinquent beginning on the date a payment sufficient to cover principal, interest, and, if applicable, escrow, becomes due and unpaid, and the borrower remains delinquent until such time as no periodic payment is due and unpaid (even if the borrower is afforded a period after the due date to pay before the servicer assesses a late fee).

If a servicer applies payments to the oldest outstanding payment, a payment by a delinquent borrower advances the date the borrower's delinquency began. For example, assume a borrower's mortgage loan requires borrower to make periodic payments of principal, interest, and escrow by the first of each month. The borrower fails to make a payment on January 1 or on any day in January, and on January 31 the borrower is 30 days delinquent. On February 3, the borrower makes a periodic payment. The servicer applies the payment it received on February 3 to the outstanding January payment. On February 4, the borrower is three days delinquent. (Comment 31-2).

Further, if a servicer chooses to accept a payment that is less than the periodic payment due without considering the borrower delinquent for purposes of any provisions in Subpart C, the borrower is not delinquent for any other provisions in the Subpart. (Comment 31-3).[17]

[15] *See also* the 2016 FDCPA Interpretive Rule (81 Fed. Reg. 71977, 71979).

[16] For purposes of periodic statements for residential mortgage loans under Regulation Z, 12 CFR 1026.41(d)(8), the length of a consumer's delinquency is measured as of the date of the periodic statement or the date of the written notice provided under 12 CFR 1026.41(e)(3)(iv). A consumer's delinquency begins on the date an amount sufficient to cover a periodic payment of principal, interest, and escrow, if applicable, becomes due and unpaid, even if the consumer is afforded a period after the due date to pay before the servicer assesses a late fee. A consumer is delinquent if one or more periodic payments of principal, interest, and escrow, if applicable, are due and unpaid. (Comment 1026.41(d)(8)-1).

[17] A creditor is not prevented from exercising a right provided by a mortgage

General Disclosure Requirements – 12 CFR 1024.32

Disclosure Requirements – 12 CFR 1024.32(a)

Disclosures required under 12 CFR 1024.30-.41 must be clear and conspicuous, in writing, and in a form that a recipient may keep. The disclosures may be provided in electronic form, subject to consumer consent and the provisions of E-Sign,[18] and a servicer may use commonly accepted or readily understandable abbreviations. Disclosures may be made in a language other than English, provided that they are made in English upon a recipient's request.

Additional Information, Disclosures Required by Other Laws – 12 CFR 1024.32(b)

Servicers may include additional information in disclosures required under 12 CFR 1024.30-41 or combine these disclosures with any disclosure required by other law unless doing so is expressly prohibited by 12 CFR 1024.30-41, by other applicable law (such as TILA or the Truth in Savings Act), or by the terms of an agreement with a federal or state regulatory agency.

Successors in Interest – 12 CFR 1024.32(c) (*Effective April 19, 2018*)

Under 12 CFR 1024.32(c), servicers have the option to provide a written notice and acknowledgment form to confirmed successors in interest who have not assumed the mortgage loan and are not otherwise liable on it. Among other things, the written notice must explain that the confirmed successor in interest may be entitled to receive certain notices and communications about the mortgage loan if the servicer is not providing them to another confirmed successor in interest or borrower on the account. The notice also must explain that in order to receive such notices and communications, the successor in interest must execute and provide to the servicer the acknowledgment form.

Servicers that send this type of notice and acknowledgement form are not required to provide to the confirmed successor in interest any written disclosure required by 12 CFR 1024.17, 1024.33, 1024.34, 1024.37, or 1024.39, or to comply with the live contact requirements in 12 CFR 1024.39(a) with respect to the confirmed successor in interest until the confirmed successor in interest either assumes the mortgage loan or executes the acknowledgment form.

Regardless of whether the confirmed successor in interest executes the acknowledgment form, the written notice must state the successor in interest is entitled to submit notices of error under 12 CFR 1024.35, requests for information under 12 CFR 1024.36, and requests for a payoff statement under 12 CFR 1026.36 with respect to the mortgage loan account, and the notice must include a brief explanation of those rights and how to exercise them, including appropriate address information.

Furthermore, except as required by 12 CFR 1024.36, a servicer is not required to provide to a confirmed successor in interest any written disclosure required by 12 CFR 1024.17, 1024.33, 1024.34, 1024.37, or 1024.39(b) if the servicer is providing the same specific disclosure to another borrower on the account. A servicer is also not required to comply with the live contact requirements in 12 CFR 1024.39(a) with respect to a confirmed successor in interest if the servicer is complying with those requirements with respect to another borrower on the account. A confirmed successor in interest who does not receive servicing communications because the servicer is providing them to another borrower on the account can request additional information as needed through the request for information process under Regulation X.

Mortgage Servicing Transfer Disclosures – 12 CFR 1024.33

The disclosures related to the transfer of mortgage servicing generally are required for any mortgage loan, as that term is defined in 12 CFR 1024.31, except that the servicing disclosure statement required under 12 CFR 1024.33(a) is required only for reverse mortgage transactions.

Servicing Disclosure Statement – 12 CFR 1024.33(a)

A lender, mortgage broker who anticipates using table funding, or dealer in a first-lien dealer loan that receives an application for a reverse mortgage transaction is required to provide the servicing disclosure statement to the borrower within three days (excluding legal public holidays, Saturdays, and Sundays) after receipt of the application. The disclosure statement must advise whether the servicing of the mortgage loan may be assigned, sold, or transferred to any other person at any time. A model disclosure statement is set forth in Appendix MS-1.

If the institution denies the borrower's application within the

loan contract to accelerate payment for a breach of that contract. Failure to pay the amount due after the creditor accelerates the mortgage loan obligation in accordance with the mortgage loan contract would begin or continue delinquency. (Comment 31-4).

[18] 15 U.S.C. 7001 *et seq.*

three-day period, it is not required to provide the disclosure statement.

Notices of Transfer of Loan Servicing – 12 CFR 1024.33(b)

When any mortgage loan, as that term is defined in 12 CFR 1024.31, is assigned, sold or transferred, the transferor (former servicer) generally must provide a disclosure at least 15 days before the effective date of the transfer. Generally, a transfer of servicing notice from the transferee (new servicer) must be provided not more than 15 days after the effective date of the transfer. Generally, both notices may be combined into one notice if delivered to the borrower at least 15 days before the effective date of the transfer. Notices provided at the time of settlement satisfy the timing requirements.

The disclosure must include:

- The effective date of the transfer;
- The name, address, and toll-free or collect-call telephone number for an employee or department of the transferee servicer that can be contacted by the borrower to obtain answers to servicing transfer inquiries;
- The name, address, and toll-free or collect-call telephone number for an employee or department of the transferor servicer that can be contacted by the borrower to obtain answers to servicing transfer inquiries;
- 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 be either the same or consecutive dates;
- Whether the transfer will affect the terms or the availability of optional insurance and any action the borrower must take to maintain such coverage; and
- A statement that the transfer does not affect the terms or conditions of the mortgage (except as directly related to servicing).

Servicers may use the disclosure in Appendix MS-2 to comply with the mortgage servicing transfer disclosure.

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; and
- Transfers between master servicers, when the subservicer remains the same.

Additionally, the Federal Housing Administration (FHA) is not required to provide a notice of transfer to the borrower where a mortgage insured under the National Housing Act is assigned to FHA.

Borrower Payments During Transfer of Servicing – 12 CFR 1024.33(c)

During the 60-day period beginning on the date of transfer, no late fee or other penalty can be imposed on a borrower who has made a timely payment to the transferor servicer (former servicer). Additionally, if the transferor servicer (former servicer) receives any incorrect payments on or after the effective date of the transfer, the transferor servicer must either transfer the payment to the transferee servicer (new servicer) or return the payment and inform the payor of the proper recipient of the payment.

Timely Escrow Payments and Treatment of Escrow Account Balances – 12 CFR 1024.34

Servicers must comply with requirements concerning the treatment of escrow funds, which apply to any mortgage loan, as that term is defined in 12 CFR 1024.31.

If the terms of a mortgage loan require the borrower to make payments to the servicer for deposit into an escrow account to pay taxes, insurance premiums, and other charges, the servicer shall make payments from the escrow account in a timely manner. A payment is made in a timely manner if it is made on or before the deadline to avoid a penalty.

Generally, the servicer must return any amounts remaining in escrow within the servicer's control within 20 days (excluding legal public holidays, Saturdays, and Sundays) after the borrower pays the mortgage loan in full, unless the borrower and servicer agree to credit the remaining funds towards an escrow account for certain new mortgage loans. The rule does not prohibit servicers from netting any funds remaining in an escrow account against the outstanding balance of the borrower's mortgage loan.

Error Resolution Procedures – 12 CFR 1024.35

Servicers must comply with error resolution procedures that are triggered when a borrower submits an error notice to the servicer. The requirements set forth in 12 CFR 1024.35 apply to any mortgage loan, as that term is defined in 12 CFR 1024.31.

The CFPB has issued an advisory opinion clarifying that, because borrowers initiate the error resolution process, a servicer's communications with a borrower regarding an error notice are not subject to the "cease communication" provision of the Fair Debt Collection Practices Act (FDCPA) unless the borrower specifically withdraws the request for action regarding the error.[19]

Notice of Error – 12 CFR 1024.35(a)

An error notice must be in writing and identify the borrower's name, information that allows the servicer to identify the borrower's account, and the alleged error. A qualified written request that asserts an error relating to the servicing of a mortgage loan is an error notice, and the servicer must comply with all of the error notice requirements with respect to such qualified written request.

The commentary clarifies that a servicer should not rely solely on the borrower's description of a submission to determine whether it is an error notice, an information request, or both. For example, a borrower may submit a letter titled "Notice of Error" that indicates that the borrower wants to receive the information set forth in an annual escrow account statement and asserts an error for the servicer's failure to provide that statement. Such a letter could be both an error notice and an information request, and the servicer must evaluate whether the letter fulfills the substantive requirements of an error notice, information request, or both.

Scope of Error Resolution – 12 CFR 1024.35(b)

The error resolution procedures apply to the following alleged errors:

- Failure to accept a payment that complies with the servicer's written requirements;
- Failure to apply an accepted payment to principal, interest, escrow, or other charges as required by the mortgage loan and applicable law;
- Failure to credit a payment to the borrower's account as of the date the servicer received it, as required by 12 CFR 1026.36(c)(1);
- Failure to pay taxes, insurance premiums, or other charges by the due date, as required by 12 CFR 1024.34(a);
- Failure to refund an escrow account balance within 20 days (excluding legal public holidays, Saturdays, and Sundays) after the borrower pays the mortgage loan in full, as required by 12 CFR 1024.34(b);
- Imposition of a fee or charge without a reasonable basis to do so;
- Failure to provide an accurate payoff balance amount upon the borrower's request, as required by 12 CFR 1026.36(c)(3);
- Failure to provide accurate information to a borrower regarding loss mitigation options and foreclosure, as required by 12 CFR 1024.39;
- Failure to transfer accurate and timely information relating to servicing to a transferee servicer;
- Making the first notice or filing for a judicial or non-judicial foreclosure process before the time periods allowed by 12 CFR 1024.41(f) and (j);
- Moving for foreclosure judgment or order of sale or conducting a foreclosure sale in violation of 12 CFR 1024.41(g) or (j); and
- Any other error relating to the servicing of a borrower's mortgage loan.

The commentary gives examples of errors not covered by 12 CFR 1024.35(b), such as errors relating to: (i) the origination of a mortgage loan; (ii) the underwriting of a mortgage loan; (iii) a subsequent sale or securitization of a mortgage loan; and (iv) a determination to sell, assign, or transfer the servicing of a mortgage loan (unless it concerns the failure to transfer accurate and timely information relating to the servicing of the borrower's mortgage loan account to a transferee servicer).

Contact Information – 12 CFR 1024.35(c)

If the servicer establishes an address to which borrowers must send error notices, the servicer must provide written notice of the address to the borrower with specified content. The commentary states that the servicer must also include this address on the following communications: (i) any periodic statement or coupon book required under 12 CFR 1026.41; (ii) any website the servicer maintains in connection with the servicing of the loan; and (iii) any notice required pursuant to 12 CFR 1024.39 (early intervention) or 12 CFR 1024.41 (loss mitigation) that includes contact information for assistance. The servicer must use the same address for receiving information requests under 12 CFR 1024.36(b), and provide written notice to the borrower before changing the address to which the borrower must send error notices.

[19] CFPB Bulletin 2013-12.

Acknowledgement of Receipt – 12 CFR 1024.35(d)

The servicer generally must provide a written acknowledgment to the borrower within five days (excluding legal public holidays, Saturdays, and Sundays) after receiving the error notice.

Response to an Error Notice – 12 CFR 1024.35(e)

A servicer generally has 30 days (excluding legal public holidays, Saturdays, and Sundays) from receipt of the error notice to investigate and respond to the notice, except that a servicer may extend this period by an additional 15 days (excluding legal public holidays, Saturdays, and Sundays) if, prior to the expiration of the original 30-day period, it notifies the borrower in writing of the extension and the reasons for it.

A servicer must respond within seven days (excluding legal public holidays, Saturdays, and Sundays) if the alleged error is a failure to provide an accurate payoff balance amount, and a servicer must respond by the earlier of 30 days (excluding legal public holidays, Saturdays, and Sundays) or the date of a foreclosure sale if the error involves either (i) making the first notice or filing for a judicial or non-judicial foreclosure process before the time periods allowed by 12 CFR 1024.41(f) or (j), or (ii) moving for foreclosure judgment or order of sale or conducting a foreclosure sale in violation of 12 CFR 1024.41(g) or (j).

In response to the notice of error, the servicer must either correct the error or conduct a reasonable investigation and determine that no error occurred. The servicer must also send a written response to the borrower that accomplishes one of the following:

- *If the servicer corrects the alleged error*. The servicer must advise the borrower of the correction and when the correction took effect, and provide contact information, including phone number, for further assistance;
- *If the servicer determines that it committed an error or errors different than or in addition to those identified by the borrower*. The servicer must correct the error and advise the borrower of the correction and when the correction took effect, and provide contact information, including phone number, for further assistance; or
- *If the servicer determines after a reasonable investigation that no error occurred*. The servicer must state that it determined that no error occurred, the reasons for its determination, and the borrower's right to request documents relied upon by the servicer in reaching its determination and how the borrower can make such a request, and provide contact information, including phone number, for further assistance. If the borrower requests those documents, the servicer generally must provide them within 15 days (excluding legal public holidays, Saturdays, and Sundays) at no cost to the borrower. The servicer need not provide documents that constitute confidential, proprietary, or privileged information.

Furthermore, servicers responding to a notice of error request for documentation may omit location, contact, and personal financial information (other than information about the terms, status, and payment history of the mortgage loan) if: (i) the information pertains to a potential or confirmed successor in interest who is not the requester; or (ii) the requester is a confirmed successor in interest and the information pertains to any borrower who is not the requester. (*Effective April 19, 2018*).

As a part of its investigation of the asserted error, the servicer may request supporting documentation from the borrower, but the servicer must conduct a reasonable investigation even if the borrower does not provide supporting documentation.

Early Correction or Error Asserted Before Foreclosure Sale – 12 CFR 1024.35(f)

A servicer is not required to provide the five-day acknowledgement notice (12 CFR 1024.35(d)) or the response notice (12 CFR 1024.35(e)) if either:

- The servicer corrects the asserted errors and notifies the borrower of the correction within five days (excluding legal public holidays, Saturdays, and Sundays) after receiving the error notice; or
- The servicer receives the error notice seven or fewer days before a foreclosure sale and the asserted error concerns the timing of the foreclosure process under 12 CFR 1024.35(b)(9) or (10). In this instance, the servicer must make a good faith attempt to respond to the borrower, either orally or in writing, and either correct the error or state the reason the servicer has determined that no error occurred.

Requirements Not Applicable – 12 CFR 1024.35(g)

A servicer does not need to provide the five-day acknowledgement notice (12 CFR 1024.35(d)), provide the response notice (12 CFR 1024.35(e)), or refrain from providing adverse information to credit reporting agencies for 60 days (12 CFR 1024.35(i)), if the servicer reasonably determines any of the following apply:

- *Duplicative notice of error*. The asserted error is substantially the same as a previously-asserted error for which the servicer complied with the obligation to

respond, unless the borrower provides new and material information to support the asserted error. New and material information is information that is reasonably likely to change the servicer's prior determination about the error;

- *Overbroad notice of error*. The error notice is overbroad if the servicer cannot reasonably determine the specific alleged error. The commentary provides examples of overbroad notices, including those that assert errors regarding substantially all aspects of the mortgage loan (including origination, servicing, and foreclosure), notices that resemble legal pleadings and demand a response to each numbered paragraph, or notices that are not reasonably understandable or contain voluminous tangential information such that a servicer cannot reasonably identify from the notice any error that requires a response. Note that if a servicer concludes an error notice as submitted is overbroad, the servicer must still provide a five-day acknowledgment notice and a subsequent response to the extent the servicer can identify an appropriate error notice within the submission; or

- *Untimely notice of error*. The error notice is sent more than one year after either the mortgage loan was discharged or the servicer receiving the notice of error transferred the mortgage loan to another servicer. For purposes of this provision, a mortgage loan is discharged when both the debt and all corresponding liens have been extinguished or released, as applicable.

If a servicer determines that any of these three exceptions apply, it must provide written notice to the borrower within five days (excluding legal public holidays, Saturdays, and Sundays) after making that determination, including the basis relied upon.

Payment Requirements Prohibited – 12 CFR 1024.35(h)

A servicer may not charge a fee or require a borrower to make any payments as a condition to responding to an error notice.

Effect on Servicer Remedies – 12 CFR 1024.35(i)

In the 60-day period after receiving an error notice, a servicer may not furnish adverse information to any consumer reporting agency regarding any payment that is the subject of the error notice.

Requests for Information – 12 CFR 1024.36

Servicers must follow certain procedures in response to a borrower's written request for information with respect to the borrower's mortgage loan. The request must include the borrower's name, information that allows the servicer to identify the borrower's account, and the requested information related to the borrower's mortgage loan. The request can be from the borrower or the borrower's agent; a servicer may undertake reasonable procedures to determine if an alleged agent has authority from the borrower to act as the borrower's agent. A qualified written request that requests information relating to the servicing of a mortgage loan is an information request, and the servicer must comply with all of the information request requirements with respect to such a qualified written request.

The requirements set forth in 12 CFR 1024.36 apply to any mortgage loan, as that term is defined in 12 CFR 1024.31.

The CFPB has issued an advisory opinion clarifying that, because borrowers initiate requests for information, a servicer's communications with a borrower regarding such a request for information are not subject to the FDCPA's "cease communication" provision, unless the borrower specifically withdraws the information request.[20]

Contact Information – 12 CFR 1024.36(b)

If the servicer establishes an address to which borrowers must send information requests, the servicer must provide written notice of the address to the borrower with specified information. The commentary states that the servicer must also include this address on the following communications: (i) any periodic statement or coupon book required under 12 CFR 1026.41; (ii) any website the servicer maintains in connection with the servicing of the loan; and (iii) any notice required pursuant to 12 CFR 1024.39 (early intervention) or 12 CFR 1024.41 (loss mitigation) that includes contact information for assistance. The servicer must use the same address for receiving error notices under 12 CFR 1024.35(b), and provide written notice to the borrower before changing the address to which the borrower must send information requests.

Acknowledgement of Receipt – 12 CFR 1024.36(c)

The servicer generally must provide a written acknowledgment to the borrower within five days (excluding legal public holidays, Saturdays, and Sundays) after receiving the information request.

Response to Information Request – 12 CFR 1024.36(d)

A servicer generally must respond in writing to an

[20] CFPB Bulletin 2013-12.

information request within 30 days (excluding legal public holidays, Saturdays, and Sundays) of receipt, except that a servicer may extend this period by an additional 15 days (excluding legal public holidays, Saturdays, and Sundays) if, prior to the expiration of the original 30-day period, it notifies the borrower in writing of the extension and the reasons for it. A servicer must respond within 10 days (excluding legal public holidays, Saturdays, and Sundays) after receiving the request, if the borrower requested the identity or contact information for the owner or assignee of a mortgage loan.

The servicer must respond in writing by either:

- Providing the requested information and contact information, including phone number, for further assistance; or
- Conducting a reasonable search for the information and advising the borrower that the servicer has determined that the requested information is not available to it, the basis for the servicer's determination, and contact information, including phone number, for further assistance.

Information is not available if it is not in the servicer's control or possession, or the servicer cannot retrieve it in the ordinary course of business through reasonable efforts. The commentary gives examples of when information is or is not available.

In its response to a request for information, a servicer may omit location, contact, and personal financial information (other than information about the terms, status, and payment history of the mortgage loan) if: (i) the information pertains to a potential or confirmed successor in interest who is not the requester; or (ii) the requester is a confirmed successor in interest and the information pertains to any borrower who is not the requester. (12 CFR 1024.36(d)(3)). (*Effective April 19, 2018*).

Early Response – 12 CFR 1024.36(e)

The five-day receipt acknowledgement (12 CFR 1024.36(c)) and the response (12 CFR 1024.36(d)) requirements do not apply if the servicer provides the requested information and contact information, including phone number, for further assistance within five days (excluding legal public holidays, Saturdays, and Sundays) after receiving the information request.

Requirement Not Applicable – 12 CFR 1024.36(f)

The five-day receipt acknowledgement (12 CFR 1024.36(c)) and the response notice (12 CFR 1024.36(d)) requirements also do not apply if the servicer reasonably determines any of the following exceptions apply:

- The information requested is substantially the same information that the borrower previously requested.
- The information requested is confidential, proprietary, or privileged.
- The information requested is not directly related to the borrower's mortgage loan account. The commentary provides examples of irrelevant information, including information related to the servicing of mortgage loans other than the borrower's loan and investor instructions or requirements for servicers regarding the negotiation or approval of loss mitigation options.
- The information request is overbroad or unduly burdensome. A request is overbroad if the borrower requests that the servicer provide an unreasonable volume of documents or information. A request is unduly burdensome if a diligent servicer could not respond within the time periods set forth in 12 CFR 1024.36(d)(2) or would incur costs (or have to dedicate resources) that would be unreasonable in light of the circumstances. The commentary provides examples of overbroad or unduly burdensome requests, such as requests that seek documents relating to substantially all aspects of mortgage origination, mortgage servicing, mortgage sale or securitization, and foreclosure, as well as requests that require servicers to provide information in a specific format or seek information that is not reasonably likely to assist the borrower. If an information request as submitted is overbroad or unduly burdensome, the servicer must still provide the five-day acknowledgment of receipt and subsequent response if the servicer can reasonably identify an appropriate information request within the submission.
- The information request is sent more than one year after either the mortgage loan was discharged or the servicer receiving the information request transferred the mortgage loan to another servicer. For purposes of this provision, a mortgage loan is discharged when both the debt and all corresponding liens have been extinguished or released, as applicable.

If a servicer determines that any of these five exceptions apply, it must provide written notice to the borrower within five days (excluding legal public holidays, Saturdays, and Sundays) after making that determination, including the basis relied on.

Payment Requirement Limitations – 12 CFR 1024.36(g)

A servicer generally may not charge a fee, or require a borrower to make any payment that may be owed on a borrower's account, as a condition of responding to an information request. A servicer may charge for providing a beneficiary notice under applicable state law, if such a fee is not otherwise prohibited by applicable law.

Potential Successors in Interest – 12 CFR 1024.36(i) (*Effective April 19, 2018*)

A servicer must respond to a written request from a person indicating that the person may be a successor in interest if the request includes the name of the transferor borrower from whom the person received an ownership interest and information that enables the servicer to identify the mortgage loan. The response must generally provide a written description of the documents the servicer reasonably requires to confirm the person's identity and ownership interest in the property as well as contact information, including a telephone number, for further assistance. With respect to the written request, a servicer must treat the potential successor in interest as a borrower for the purposes of 12 CFR1024.36(c) through 1024.36(g).

A servicer must respond to such a request not later than the time limits set forth in 12 CFR 1024.36(d)(2) for information requests. Depending on the facts and circumstances of the request, responding promptly may require a servicer to respond more quickly than the time limits established in 12 CFR 1024.36(d)(2). (Comment 36(i)-2).

Under 12 CFR 1024.38(b)(1)(vi)(B), a servicer, other than a small servicer, must maintain policies and procedures that are reasonably designed to promptly facilitate communication with potential successors in interest and promptly confirm a potential successor in interest's identity and ownership interest in the property securing the mortgage loan.

Force-Placed Insurance – 12 CFR 1024.37

Servicers must comply with restrictions on obtaining and assessing charges and fees for force-placed insurance, defined as hazard insurance that a servicer obtains on behalf of the owner or assignee to insure the property securing the mortgage loan (but does not include (i) flood insurance required by the Flood Disaster Protection Act of 1973, (ii) hazard insurance obtained by a borrower but renewed by the borrower's servicer in accordance with 12 CFR 1024.17(k)(1), (2), or (5), or (iii) hazard insurance obtained by a borrower but renewed by the borrower's servicer with the borrower's agreement). The requirements set forth in 12 CFR 1024.37 apply to any mortgage loan, as that term is defined in 12 CFR 1024.31.

The CFPB has issued an advisory opinion clarifying that, because the Dodd-Frank Act specifically mandates certain disclosures regarding force-placed insurance without any mention of the FDCPA's "cease communication" provisions, a servicer acting as a debt collector does not violate the FDCPA's "cease communication" provision by providing the notices required under 12 CFR 1024.37.[21]

Requirements Before Charging For Force-placed Insurance – 12 CFR 1024.37(b), (c), (d)

Servicers may not assess charges or fees for force-placed insurance unless the servicer satisfies four requirements.

First, the servicer must have a reasonable basis to believe that the borrower has failed to maintain required hazard insurance. The commentary states that information about a borrower's hazard insurance received by the servicer from the borrower, the borrower's insurance provider, or the borrower's insurance agent, may provide a servicer with a reasonable basis. If a servicer receives no such information, the servicer may satisfy the reasonable basis standard if the servicer acts with reasonable diligence to ascertain the borrower's hazard insurance status and does not receive evidence of hazard insurance.

Second, the servicer must mail or deliver an initial written notice to the borrower at least 45 days before assessing a charge or fee related to force-placed insurance. The servicer's notice must identify the following:

- The date of the notice;
- The servicer's name and mailing address;

[21] CFPB Bulletin 2013-12.

- The borrower's name and mailing address;
- A statement requesting that the borrower provide hazard insurance information for the borrower's property and identifying the property by its physical address;
- A statement that the borrower's hazard insurance has expired, is expiring, or provides insufficient coverage, as applicable; that the servicer lacks evidence that the borrower has hazard insurance coverage past the expiration date or lacks evidence of sufficient coverage, as applicable; and if applicable, identifies the type of hazard insurance lacking;
- A statement that hazard insurance is required on the borrower's property and that the servicer has purchased or will purchase insurance at the borrower's expense;
- A request that the borrower promptly provide the servicer with insurance information;
- A description of the requested insurance information and how the borrower may provide such information, and if applicable, that the requested information must be in writing;
- A statement that the insurance coverage the servicer has purchased or will purchase may cost significantly more than, and provide less coverage than, hazard insurance purchased by the borrower;
- The servicer's phone number for borrower inquiries; and
- A statement advising that the borrower review additional information provided in the same transmittal (if applicable).

The servicer cannot provide any information on the initial notice other than the specific statements listed above and, at the servicer's option, the loan account number. The servicer, however, can provide additional information on separate pages of paper contained in the same mailing. Certain information must be provided in bold text. Appendix MS-3(A) contains a form notice that servicers may use.

Third, the servicer must send a reminder notice at least 30 days after the initial notice is mailed or delivered and at least 15 days before the servicer assesses charges or fees. If the servicer has received no hazard insurance information in response to the initial notice described above, the reminder notice must contain the date of the reminder notice and all of the other information provided in the initial notice, as well as (i) advise that it is a second and final notice, and (ii) identify the annual cost of force-placed insurance, or if unknown, a reasonable estimate of that cost.

If the servicer has received hazard insurance information but not evidence that sufficient coverage has been in place continuously, the reminder notice must identify the following:

- The date of the notice;
- The servicer's name and mailing address;
- The borrower's name and mailing address;
- A statement requesting that the borrower provide hazard insurance information for the borrower's property and that identifies the property by its physical address;
- A statement that the insurance coverage the servicer has purchased or will purchase may cost significantly more than, and provide less coverage than, hazard insurance purchased by the borrower;
- The servicer's phone number for borrower inquiries;
- A statement advising that the borrower review additional information provided in the same transmittal (if applicable);
- A statement that it is the second and final notice;
- The annual cost of force-placed insurance, or if unknown, a reasonable estimate of that cost;
- A statement that the servicer has received the hazard insurance information that the borrower provided;
- A request that the borrower provide the missing information; and
- A statement that the borrower will be charged for insurance the servicer purchases during the time period in which the servicer cannot verify coverage.

The servicer cannot provide any additional information on the reminder notice other than specific statements listed above and, at the servicer's option, the loan account number. The servicer, however, can provide additional information on separate pages of paper contained in the same transmittal. Certain information must be provided in bold text. Appendix MS-3 contains sample reminder notices at forms MS-3(B) and MS-3(C). If a servicer receives new information about a borrower's hazard insurance after the required written notice has been put into production, the servicer is not required to update the notice if the written notice was put into production a reasonable time prior to the servicer delivering the notice to the borrower or placing the notice in the mail. For purposes of 12 CFR 1024.37(d)(5), five days (excluding legal holidays, Saturdays, and Sundays) is a reasonable time.

(Comment 37(d)(5)-1).

Fourth, by the end of the 15-day period beginning on the date the servicer delivers the reminder notice or places it in the mail, the servicer must not have received evidence that the borrower has had required hazard insurance continuously in place. As evidence, the servicer may require a copy of the borrower's hazard insurance policy declaration page, the borrower's insurance certificate, the borrower's insurance policy, or other similar forms of written confirmation.

Renewing Force-Placed Insurance – 12 CFR 1024.37(e)

A servicer must comply with two requirements before assessing charges or fees on a borrower to renew or replace existing force-placed insurance.

First, the servicer must provide written notice at least 45 days before assessing a premium charge or fee. This renewal notice must provide the following information:

- The date of the renewal notice;
- The servicer's name and mailing address;
- The borrower's name and mailing address;
- A request that the borrower update the hazard insurance information and that identifies the property by its physical address;
- A statement that the servicer previously purchased force-placed insurance at the borrower's expense because the servicer did not have evidence that the borrower had hazard insurance coverage;
- A statement that the force-placed insurance is expiring or has expired and that the servicer intends to renew or replace it because hazard insurance is required on the property;
- A statement that the insurance coverage the servicer has purchased or will purchase may cost significantly more than, and provide less coverage than, hazard insurance purchased by the borrower, and identifying the annual cost (or if unknown, a reasonable estimate) of force-placed insurance;
- A statement that if the borrower purchases hazard insurance, the borrower should promptly advise the servicer;
- A description of the requested insurance information and how the borrower may provide such information, and if applicable, that the requested information must be in writing;
- The servicer's telephone number for borrower inquiries; and
- A statement advising the borrower to review additional information provided in the same transmittal (if applicable).

The servicer cannot provide any additional information on the renewal notice other than the specific statements listed above, and, at the servicer's option, the loan account number. The servicer, however, can provide additional information on separate pages of paper contained in the same transmittal. Certain information must be provided in bold text. Appendix MS-3(D) contains a form notice that servicers may use.

Second, by the end of the 45-day period beginning on the date the written notice was delivered or placed in the mail, the servicer must not have received evidence demonstrating that the borrower has purchased required hazard insurance coverage.

Notwithstanding these two requirements, if not prohibited by state or other applicable law, if the servicer receives evidence that the borrower lacked insurance for some period of time after the existing force-placed insurance expired, the servicer may promptly assess a premium charge or fee related to renewing or replacing the existing force-placed insurance for that period of time.

The servicer must mail or deliver the renewal notice before each anniversary of purchasing force-placed insurance, though the servicer need not send the renewal notice more than once per year.

Mailing the Notices – 12 CFR 1024.37(f)

If the servicer mails the initial notice, the reminder notice, or the renewal notice, the servicer must use at least first-class mail.

Canceling Force-Placed Insurance – 12 CFR 1024.37(g)

If the servicer receives evidence that the borrower has had required hazard insurance coverage in place, then the servicer has 15 days to cancel the force-placed insurance, refund force-placed insurance premium charges and fees for the period of overlapping insurance coverage, and remove all force-placed charges and fees from the borrower's account for that period.

Limitations on Force-Placed Insurance – 12 CFR 1024.37(h)

All charges that a servicer assesses on a borrower related to force-placed insurance must be bona fide and reasonable,

except for charges subject to state regulation and charges authorized by the Flood Disaster Protection Act of 1973. A bona fide and reasonable charge is one that is reasonably related to the servicer's cost of providing the service and is not otherwise prohibited by law.

General Servicing Policies, Procedures, and Requirements – 12 CFR 1024.38

Servicers must maintain policies and procedures reasonably designed to achieve certain servicing-related objectives, and are subject to requirements regarding record retention and the ability to create servicing files.

These requirements apply to any mortgage loan, as that term is defined in 12 CFR 1024.31, except that they do not apply to (i) small servicers, (ii) reverse mortgage transactions, as that term is defined in 12 CFR 1024.31, or (iii) mortgage loans for which the servicer is a qualified lender.

As noted above, an institution qualifies as a small servicer under 12 CFR 1026.41(e)(4)(ii) if it (a) services, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the institution (or an affiliate) is the creditor or assignee, (b) is a Housing Finance Agency, as defined in 24 CFR 266.5, or (c) is a nonprofit entity (defined in 12 CFR 1026.41(e)(4)(ii)(C)(*1*)) that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities (defined in 12 CFR 1026.41(e)(4)(ii)(C)(*2*)), for all of which the servicer or an associated nonprofit entity is the creditor.[22]

The determination as to whether a servicer qualifies as a small servicer is generally made based on the mortgage loans, as that term is used in 12 CFR 1026.41(a)(1), serviced by the servicer and any affiliates as of January 1 for the remainder of that calendar year. However, to determine small servicer status under the nonprofit small servicer definition, a nonprofit servicer should be evaluated based on the mortgage loans serviced by the servicer (and not those serviced by associated nonprofit entities) as of January 1 for the remainder of the calendar year. A servicer that ceases to qualify as a small servicer will have six months from the time it ceases to qualify or until the next January 1, whichever is later, to comply with any requirements from which the servicer is no longer exempt as a small servicer.

As specified in 12 CFR 1026.41(e)(4)(iii), the following mortgage loans are not considered in determining whether a servicer qualifies as a small servicer: (a) mortgage loans voluntarily serviced by the servicer for a non-affiliate of the servicer and for which the servicer does not receive any compensation or fees; (b) reverse mortgage transactions; and (c) mortgage loans secured by consumers' interests in timeshare plans; and (d) certain seller-financed transactions that meet the criteria identified in 12 CFR 1026.36(a)(5).

Qualified lenders are those defined to be qualified lenders under the Farm Credit Act of 1971 and the Farm Credit Administration's accompanying regulations set forth at 12 CFR 617.7000 *et seq.*[23]

Reasonable Policies and Procedures – 12 CFR 1024.38(a)

Servicers must maintain policies and procedures reasonably designed to meet the objectives identified in 12 CFR 1024.38(b). Servicers may determine the specific policies and procedures they will adopt and the methods for implementing them in light of the size, nature, and scope of the servicers' operations, including, for example, the volume and aggregate unpaid principal balance of mortgage loans serviced, the credit quality (including the default risk) of the mortgage loans serviced, and the servicer's history of consumer complaints. "Procedures" refer to the servicer's actual practices for achieving the objective.

Objectives – 12 CFR 1024.38(b)

Servicers are required to maintain policies and procedures that are reasonably designed to achieve the following objectives.

I. *Accessing and providing timely and accurate information*. The servicer's policies and procedures must be reasonably designed to ensure that the servicer can:

   a. Provide accurate and timely disclosures to the borrower.

   b. Investigate, respond to, and make corrections in response to borrowers' complaints. These policies and procedures must be reasonably designed to ensure that the servicer can promptly obtain information from service providers to facilitate investigation and correction of errors resulting from actions of service providers.

[22] The definition of small servicer is set forth at 12 CFR 1026.41(e)(4)(ii).

[23] 12 CFR 617.7000 defines a qualified lender as (i) a system institution (except a bank for cooperatives) that extends credit to a farmer, rancher, or producer or harvester of aquatic products for any agricultural or aquatic purpose and other credit needs of the borrower, and (ii) other financing institutions with respect to loans discounted or pledged under section 1.7(b)(1)(B) of the Farm Credit Act.

c. Provide a borrower with accurate and timely information and documents in response to the borrower's request for information with respect to the borrower's mortgage loan.

d. Provide owners and assignees of mortgage loans with accurate information and documents about all the mortgage loans that they own. This includes information about a servicer's evaluations of borrowers for loss mitigation options and a servicer's loss mitigation agreements with borrowers, including loan modifications. Such information includes, for example: (a) a loan modification's date, terms, and features; (b) the components of any capitalized arrears; (c) the amount of any servicer advances; and (d) any assumptions regarding the value of property used in evaluating any loss mitigation options.

e. Submit documents or filings required for a foreclosure process, including documents or filings required by a court, that reflect accurate and current information and that comply with applicable law.

f. 1. Upon notification of a borrower's death, promptly identify and facilitate communication with the borrower's successor in interest concerning the secured property. (*Effective until April 19, 2018*).

2. Upon receiving notice of a borrower's death or of any transfer of the secured property, promptly facilitate communication with any potential or confirmed successors in interest regarding the property. (*Effective April 19, 2018*).

g. Upon receiving notice of the existence of a potential successor in interest, promptly determine the documents the servicer reasonably requires to confirm the person's identity and ownership interest in the property (see commentary to 12 CFR 1024.38(b)(1)(vi) for illustrative examples) and promptly provide to the potential successor in interest a description of those documents and how the person may submit a written request under 12 CFR 1024.36(i). (*Effective April 19, 2018*).

h. Upon the receipt of such documents, promptly make a confirmation determination and promptly notify the person, as applicable, that the servicer has confirmed the person's status, has determined that additional documents are required (and what those documents are), or has determined that the person is not a successor in interest. (*Effective April 19, 2018*).

II. *Properly evaluating loss mitigation applications*. The servicer's policies and procedures must be reasonably designed to ensure that the servicer can:

a. Provide accurate information regarding loss mitigation options available to the borrower from the owner or assignee of the borrower's loan.

b. Identify specifically all loss mitigation options available to a borrower from the owner or assignee of the borrower's mortgage loan. This includes identifying, with respect to each owner or assignee all of the loss mitigation options the servicer may consider when evaluating a borrower, as well as the criteria the servicer should apply for each option. The policies and procedures should be reasonably designed to address how the servicer will apply any specific thresholds for eligibility for particular loss mitigation options established by an owner or assignee of a mortgage loan (e.g., if the owner requires that a particular option be limited to a certain percentage of loans, then the policies and procedures must be reasonably designed to determine in advance how the servicer will apply that threshold). The policies and procedures must be reasonably designed to ensure that such information is readily accessible to the servicer's loss mitigation personnel.

c. Provide the loss mitigation personnel assigned to the borrower's mortgage loan with prompt access to all of the documents and information that the borrower submitted in connection with a loss mitigation option.

d. Identify the documents and information a borrower must submit to complete a loss mitigation application, and facilitate compliance with the notice required pursuant to 12 CFR 1024.41(b)(2)(i)(B).

e. In response to a complete loss mitigation application, properly evaluate the borrower for all eligible loss mitigation options pursuant to any requirements established by the owner or assignee of the mortgage loan, even if those requirements are otherwise beyond the requirements of 12 CFR 1024.41. For example, an owner or assignee may require that the servicer review a loss mitigation application submitted less than 37 days before a foreclosure sale or re-evaluate a borrower who has demonstrated a material change in financial circumstances.

f. Promptly identify and obtain documents or information not in the borrower's control that the servicer requires to determine which loss mitigation options, if any, to offer the borrower in accordance with the requirements of 12 CFR 1024.41(c)(4).

III. *Facilitating oversight of, and compliance by, service providers*. The servicer's policies and procedures must be reasonably designed to ensure that the servicer can:

a. Provide appropriate personnel with access to accurate and current documents and information concerning service providers' actions.

b. Facilitate periodic reviews of service providers.

c. Facilitate the sharing of accurate and current information regarding the status of any evaluation of a borrower's loss mitigation application and any foreclosure proceeding among appropriate servicer personnel, including the loss mitigation personnel assigned the borrower's mortgage loan, and appropriate service provider personnel, including service provider personnel responsible for handling foreclosure proceedings.

- Further a servicer's policies and procedures must be reasonably designed to ensure that servicer personnel promptly inform service provider personnel handling foreclosure proceedings that the servicer has received a complete loss mitigation application and promptly instruct foreclosure counsel to take any step required by 12 CFR 1024.41(g)—which generally sets forth limitations on moving for judgment or order of sale, or conducting a foreclosure sale—sufficiently timely to avoid violating the prohibition against moving for judgment or order of sale, or conducting a foreclosure sale.(Comment 38(b)(3)(iii)-1).

IV. *Facilitating transfer of information during servicing transfers*.

a. *Transferor Servicer*. The servicer's policies and procedures must be reasonably designed to ensure that when it transfers a mortgage loan to another servicer, it (i) timely and accurately transfers all information and documents in its possession and control related to a transferred mortgage loan to the transferee servicer, and (ii) transfers the information and documents in a form and manner that ensures their accuracy and that allows the transferee to comply with the terms of the mortgage loan and applicable law. For example, where data is transferred electronically, a transferor servicer must have policies and procedures reasonably designed to ensure that data can be properly and promptly boarded by a transferee servicer's electronic systems. The information that must be transferred includes information reflecting the current status of discussions with the borrower concerning loss mitigation options, any loss mitigation agreements entered into with the borrower, and analysis the servicer performed with respect to potential recovery from a non-performing mortgage loan.

b. *Transferee Servicer*. The servicer's policies and procedures must be reasonably designed to ensure that when it receives a mortgage loan from another servicer, it can (i) identify necessary documents or information that may not have been transferred, and (ii) obtain such documentation or information from the transferor servicer. The servicer's policies and procedures must also be reasonably designed to address obtaining missing information regarding loss mitigation from the transferor servicer before attempting to obtain it from the borrower. For example, if a servicer receives information indicating that a borrower has made payments consistent with a trial or permanent loan modification but the servicer has not received information about the actual modification, the servicer must have policies and procedures reasonably designed to identify whether any such modification agreement exists and to obtain any such agreement from the transferor servicer.

V. *Informing borrowers of the written error resolution and information request procedures*.

a. The servicer must have policies and procedures reasonably designed to inform borrowers of the procedures for submitting written error notices under 12 CFR 1024.35 and written information requests under 12 CFR 1024.36. A servicer may comply with these requirements by informing borrowers of these procedures by notice (mailed or delivered electronically) or a website. For example, a servicer may comply with this provision by including a statement in the 12 CFR 1026.41 periodic statement advising borrowers that they have certain rights under federal law related to resolving errors and requesting information, that they may learn more about their rights by contacting the servicer, and directing borrowers to a website.

b. A servicer's policies and procedures also must be reasonably designed to ensure that the servicer provides borrowers who are dissatisfied with the servicer's response to oral complaints or information requests with information about submitting a written error notice or written information request.

c. The commentary addresses the circumstance in which a borrower incorrectly submits an error notice to any address given to the borrower in connection with the submission of a loss mitigation application or continuity of contact. A servicer's policies and procedures must be reasonably designed to ensure that the servicer informs a borrower of the correct procedures for submitting written error notices under such circumstances, including the correct address. Alternatively, the servicer could redirect the error notice to the correct address.

Standard Requirements – 12 CFR 1024.38(c)

Servicers must also retain certain records and maintain particular documents in a manner that facilitates compiling such documents and data into a servicing file.

Record Retention – 12 CFR 1024.38(c)(1)

Servicers must retain records that document any actions the servicer took with respect to a borrower's mortgage loan account until one year after the loan is discharged or the servicer transfers servicing for the mortgage loan. Servicers may use any retention method that reproduces records accurately (such as computer programs) and that ensures that a servicer can access the records easily (such as a contractual right to access records another entity holds).

Servicing File – 12 CFR 1024.38(c)(2)

Servicers must maintain the following documents and data in a manner that facilitates compiling such documents and data into a servicing file within five days: a schedule of all credits and debits to the account (including escrow accounts and suspense accounts), a copy of the security instrument establishing the lien securing the mortgage, any notes created by servicer personnel concerning communications with the borrower, a report of the data fields created by the servicer's electronic systems relating to the borrower's account (if applicable), and copies of any information or documents provided by the borrower in connection with error notices or loss mitigation.

For purposes of this section, a report of data fields relating to a borrower's account means a report listing the relevant data fields by name, populated with any specific data relating to the borrower's account. Examples of such data fields include fields used to identify the terms of the borrower's mortgage loan, the occurrence of automated or manual collection calls, the evaluation of borrower for a loss mitigation option, the owner or assignee of a mortgage loan, and any credit reporting history.

These requirements apply only to information created on or after January 10, 2014.

Early Intervention Requirements for Certain Borrowers – 12 CFR 1024.39

Servicers must engage in certain efforts to contact delinquent borrowers. These requirements apply to only those mortgage loans, as that term is defined in 12 CFR 1024.31, that are secured by the borrower's principal residence. The requirements do not apply to (i) small servicers, (ii) reverse mortgage transactions, as that term is defined in 12 CFR 1024.31, or (iii) mortgage loans for which the servicer is a qualified lender.

As noted above, an institution qualifies as a small servicer under 12 CFR 1026.41(e)(4)(iii) if it (a) services, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the institution (or an affiliate) is the creditor or assignee, (b) is a Housing Finance Agency, as defined in 24 CFR 266.5, or (c) is a nonprofit entity (defined in 12 CFR 1026.41(e)(4)(ii)(C)(*1*)) that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities (defined in 12 CFR 1026.41(e)(4)(ii)(C)(*2*)), for all of which the servicer or an associated nonprofit entity is the creditor.

The determination as to whether a servicer qualifies as a small servicer is generally made based on the mortgage loans, as that term is used in 12 CFR 1026.41(a)(1), serviced by the servicer and any affiliates as of January 1 for the remainder of that calendar year. However, to determine small servicer status under the nonprofit small servicer definition, a nonprofit servicer should be evaluated based on the mortgage loans serviced by the servicer (and not those serviced by associated nonprofit entities) as of January 1 for the remainder of the calendar year. A servicer that ceases to qualify as a small servicer will have six months from the time it ceases to qualify or until the next January 1, whichever is later, to comply with any requirements from which the servicer is no longer exempt as a small servicer.

As specified in 12 CFR 1026.41(e)(4)(iii), the following mortgage loans are not considered in determining whether a servicer qualifies as a small servicer: (a) mortgage loans voluntarily serviced by the servicer for a non-affiliate of the servicer and for which the servicer does not receive any compensation or fees; (b) reverse mortgage transactions; and (c) mortgage loans secured by consumers' interests in timeshare plans; and (d) certain seller-financed transactions that meet the criteria identified in 12 CFR 1026.36(a)(5).

Qualified lenders are those defined to be qualified lenders under the Farm Credit Act of 1971 and the Farm Credit Administration's accompanying regulations set forth at 12 CFR 617.7000 *et seq*.

For purposes of this section, a borrower who is performing under a loss mitigation agreement is not considered delinquent and is not covered by this section.

Live Contact – 12 CFR 1024.39(a)

Servicers must make good faith efforts to establish live contact with a borrower no later than the 36th day of delinquency. The servicer's live contact requirement is continuous so long as the borrower remains delinquent.

Under 12 CFR 1024.31, "delinquency" for Subpart C's

provisions means a period of time during which a borrower and a borrower's mortgage loan obligation are delinquent. A borrower and a borrower's mortgage loan obligation are delinquent beginning on the date a periodic payment sufficient to cover principal, interest, and, if applicable, escrow becomes due and unpaid, until such time as no periodic payment is due and unpaid. *See also* the related commentary to 1024.31 for more on the delinquency definition. Borrowers are not delinquent for purposes of early intervention requirements under 12 CFR 1024.39 if they are performing as agreed according to the terms of a loss mitigation plan designed to bring the borrower current on a previously missed payment, but they may be considered delinquent for other purposes under the servicing rules and may also become delinquent for purposes of early intervention requirements if and when they fail to make a payment required under such a plan.

The commentary also states that good faith efforts to establish live contact consist of "reasonable steps, under the circumstances," and these efforts "may include telephoning the borrower on more than one occasion or sending written or electronic communication encouraging the borrower to establish live contact with the servicer."

Promptly after establishing live contact, the servicer must inform the borrower of any loss mitigation options, if appropriate. It is within the servicer's reasonable discretion to determine whether it is appropriate under the circumstances to inform a borrower of the availability of loss mitigation options. Examples of a servicer making a reasonable determination include a servicer informing a borrower about loss mitigation options after the borrower notifies the servicer during live contact of a material adverse change in financial circumstances that is likely to cause a long-term delinquency for which loss mitigation options may be available, or a servicer not providing information about loss mitigation options to a borrower who has missed a January 1 payment and notified the servicer that the full late payment will be transmitted to the servicer by February 15.

If the servicer has established and is maintaining ongoing contact with the borrower under the loss mitigation procedures in 12 CFR 1024.41, including during the borrower's completion of a loss mitigation application or the servicer's evaluation of the borrower's complete loss mitigation application, or if the servicer has sent the borrower a notice pursuant to 12 CFR 1024.41(c)(1)(ii) that the borrower is not eligible for any loss mitigation options, the servicer complies with its live contact requirements under 12 CFR 1024.39(a) and need not otherwise establish or make good faith efforts to establish live contact. A servicer must resume compliance with the live contact requirements for a borrower who becomes delinquent again after curing a prior delinquency. (Comment 39(a)-6).

Written Notice – 12 CFR 1024.39(b)

Servicers must send a borrower a written notice within 45 days after the borrower becomes delinquent and again no later than 45 days after each payment due date so long as the borrower remains delinquent. The written notice must encourage the borrower to contact the servicer, provide the servicer's telephone number and address to access assigned loss mitigation personnel, describe examples of loss mitigation options that may be available (if applicable), provide loss mitigation application instructions or advise how to obtain more information about loss mitigation options such as contacting the servicer (if applicable), and list either the CFPB's or HUD's website to access a list of homeownership counselors or counseling organization and HUD's toll-free number to access homeownership counselors or counseling organizations.

Appendix MS-4 contains model clauses at MS-4(A), MS-4(B), MS-4(C), and MS-4(D) that servicers subject to the FDCPA can use to comply with a new disclosure requirement for the written notice, as discussed more below.

A servicer is not required to provide the written notice under this section to a borrower more than once in any 180-day period. For example, a servicer who provided the written notice to the borrower within 45 days after the borrower became delinquent on January 1 would not be required to send another written notice if the borrower failed to make the February 1 payment. If a borrower is 45 days or more delinquent at the end of any 180–day period after the servicer has provided the written notice, a servicer must provide the written notice again no later than 180 days after the provision of the prior written notice. If the borrower is less than 45 days delinquent at the end of that period, a servicer must provide the notice again no later than 45 days after the payment due date for which the borrower remains delinquent.

A transferee servicer is required to provide the written notice to the borrower regardless of whether the transferor servicer provided a written notice in the preceding 180-day period. However, a transferee servicer is not required to provide a written notice if the transferor servicer provided one within 45 days of the transfer date. For example, assume a borrower has monthly payments, with a payment due on March 1. The transferor servicer provides the notice required by 12 CFR 1024.39(b) on April 10. The loan is transferred on April 12. Assuming the borrower remains delinquent, the transferee

servicer is not required to provide another written notice until 45 days after May 1, the first post-transfer payment due date—i.e., by June 15. (Comment 39(b)(1)-5).

Borrowers in bankruptcy – 12 CFR 1024.39(c))

Partial Exemption

Servicers are exempt from complying with the live contact obligations under 12 CFR 1024.39(a) while any borrower on a mortgage loan is a debtor in bankruptcy under title 11 of the United States Code, with regard to that mortgage loan. Servicers are also exempt from providing the written notice under 12 CFR 1024.39(b) while any borrower on a mortgage loan is a debtor in bankruptcy under Title 11 of the United States Code, with regard to that mortgage loan, if no loss mitigation option is available or if any borrower on the mortgage loan has provided a cease communication notice under the FDCPA with respect to that mortgage loan (and the servicer is subject to the FDCPA for that loan).

If the above conditions relating to the written notice exemption are not met, and any borrower on the mortgage loan is a debtor in bankruptcy, then the servicer must comply with modified written notice requirements under 12 CFR 1024.39(b):

- Content: the notice may not contain a request for payment.
- Timing:
  - If a borrower is delinquent when the borrower becomes a debtor in bankruptcy, the servicer must provide the written notice not later than the 45th day after the borrower files a bankruptcy petition under Title 11 of the United States Code.
  - However, if the borrower is not delinquent at the time of the bankruptcy petition filing, but subsequently becomes delinquent while a debtor in bankruptcy, the servicer must provide the written notice not later than the 45th day of the borrower's delinquency.
  - A servicer must comply with these timing requirements regardless of whether the servicer provided the written notice in the preceding 180-day period.
  - A servicer is not required to provide the written notice more than once during a single bankruptcy case.

Resuming Compliance

A servicer that was exempt from the live contact and written early intervention notice requirements must resume compliance with such requirements after the next payment due date that follows the earliest of the following events:

- The bankruptcy case is dismissed,
- The bankruptcy case is closed, and
- The borrower reaffirms personal liability for the mortgage loan.

A servicer is not required to resume compliance with the live contact requirements with respect to a mortgage loan for which the borrower has discharged personal liability pursuant to sections 727, 1141, 1228, or 1328 of Title 11 of the United States Code, but must resume compliance with the written notice requirement if the borrower has made any partial or periodic payment on the mortgage loan after the commencement of the borrower's bankruptcy case.

Fair Debt Collections Practices Act Partial Exemption – 12 CFR 1024.39(d)

If a mortgage servicer is a debt collector under the FDCPA with regard to a borrower's mortgage loan, 12 CFR 1024.39(d) clarifies the servicer's early intervention obligations when that borrower has invoked cease communication protections by providing a notification pursuant to Section 805(c) of the FDCPA.

For such borrowers invoking their FDCPA cease communication protections, servicers are exempt from the live contact requirements under 12 CFR 1024.39(a).

Servicers are also exempt from the written notice requirements under 12 CFR 1024.39(b) when such a borrower on the loan has invoked the FDCPA cease communication protections and either of the following applies: (1) no loss mitigation option is available or (2) any borrower on the mortgage loan is a debtor in bankruptcy under Title 11 of the United States Code. However, servicers are required to comply with modified written notice requirements if the borrower has invoked FDCPA cease communication protections and these conditions are not met (e.g., a loss mitigation option *is* available or no borrower on that loan is a debtor in bankruptcy):

- Content:
  - The modified written notice must include a statement that the servicer may or intends to invoke its remedy of foreclosure.
  - The written notice, however, may not contain a request for payment.

Servicers subject to the FDCPA can use MS-4(D) to comply with a new disclosure requirement for the written notice.

- Timing:
  - A servicer is prohibited from providing the written notice more than once during any 180-day period. If a

> borrower is 45 days or more delinquent at the end of any 180-day period after the servicer has provided the written notice, a servicer must provide the written notice again no later than 190 days after the provision of the prior written notice. If a borrower is less than 45 days delinquent at the end of any 180-day period after the servicer has provided the written notice, a servicer must provide the written notice again no later than 45 days after the payment due date for which the borrower remains delinquent or 190 days after the provision of the prior written notice, whichever is later.[24]

Further, such servicers do not violate FDCPA Section 805(c) with respect to the mortgage loan when providing the written early intervention notice required by 12 CFR 1024.39(b)(3), as modified by 12 CFR 1024.39(d)(3), to a borrower who has invoked the cease communication rights.[25] Nor does a servicer violate FDCPA Section 805(c) by providing loss mitigation information or assistance in response to a borrower-initiated communication after the borrower has invoked the cease communication rights.[26] A servicer subject to the FDCPA, however, must continue to comply with all other applicable provisions of the FDCPA, including restrictions on communications and prohibitions on harassment or abuse, false or misleading representations, and unfair practices.[27]

Continuity of Contact – 12 CFR 1024.40

Servicers must maintain policies and procedures to facilitate continuity of contact between the borrower and the servicer.

These requirements apply to only those mortgage loans, as that term is defined in 12 CFR 1024.31, that are secured by the borrower's principal residence. The requirements do not apply to (i) small servicers, (ii) reverse mortgage transactions, as that term is defined in 12 CFR 1024.31, or (iii) mortgage loans for which the servicer is a qualified lender.

As noted above, an institution qualifies as a small servicer if it (a) services, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the institution (or an affiliate) is the creditor or assignee, (b) is a Housing Finance Agency, as defined in 24 CFR 266.5, or (c) is a nonprofit entity (defined in 12 CFR 1026.41(e)(4)(ii)(C)(*1*)) that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities (defined in 12 CFR 1026.41(e)(4)(ii)(C)(*2*)), for all of which the servicer or an associated nonprofit entity is the creditor. The determination as to whether a servicer qualifies as a small servicer is generally made based on the mortgage loans, as that term is used in 12 CFR 1026.41(a)(1), serviced by the servicer and any affiliates as of January 1 for the remainder of that calendar year. However, to determine small servicer status under the nonprofit small servicer definition, a nonprofit servicer should be evaluated based on the mortgage loans serviced by the servicer (and not those serviced by associated nonprofit entities) as of January 1 for the remainder of the calendar year. A servicer that ceases to qualify as a small servicer will have six months from the time it ceases to qualify or until the next January 1, whichever is later, to comply with any requirements from which the servicer is no longer exempt as a small servicer.

As specified in12 CFR 1026.41(e)(4)(iii), the following mortgage loans are not considered in determining whether a servicer qualifies as a small servicer: (a) mortgage loans voluntarily serviced by the servicer for a non-affiliate of the servicer and for which the servicer does not receive any compensation or fees; (b) reverse mortgage transactions; and (c) mortgage loans secured by consumers' interests in timeshare plans; and (d) certain seller-financed transactions that meet the criteria identified in 12 CFR 1026.36(a)(5).

Qualified lenders are those defined to be qualified lenders under the Farm Credit Act of 1971 and the Farm Credit Administration's accompanying regulations set forth at 12 CFR 617.7000 *et seq*.

General Continuity of Contact Policies and Procedures – 12 CFR 1024.40(a)

Servicers must have policies and procedures that are reasonably designed to assign personnel (one or more persons) to a delinquent borrower at the time the servicer provides the borrower with the written notice required under 12 CFR 1024.39(b), and in any event, not later than the 45th day of the borrower's delinquency. The assigned personnel should be available by telephone to answer the borrower's questions and assist the borrower with available loss mitigation options until the borrower makes two consecutive timely payments under a permanent loss mitigation agreement. If the borrower contacts the assigned personnel and does not receive an immediate live response, the servicer must have policies and procedures reasonably designed to ensure the servicer can provide a live response in a timely

[24] *See* Interim Final Rule, 82 Fed. Reg. 47953, 47957-58 (October 16, 2017).

[25] Comment 39(d)-2. *See also* 2016 FDCPA Interpretive Rule (81 Fed. Reg. 71977, 71979-80).

[26] Comment 39(d)-2. *See also* 2016 FDCPA Interpretive Rule (81 Fed. Reg. 71977, 71980-81).

[27] *See* 15 U.S.C. §§ 1692c through 1692f.

manner.

Functions of Servicer Personnel – 12 CFR 1024.40(b)

The servicer must also maintain policies and procedures reasonably designed to ensure that the assigned personnel can perform certain functions, including: providing the borrower with accurate information about (1) loss mitigation options available to the borrower from the owner or assignee of the borrower's loan, (2) actions the borrower must take to be evaluated for such options, including the steps the borrower needs to take to submit a complete loss mitigation application and appeal a denial of a loan modification option (if applicable), (3) the status of any loss mitigation application the borrower has submitted, (4) the circumstances under which the servicer may refer the borrower's account to foreclosure, and (5) any loss mitigation deadlines.

The servicer must also have policies and procedures reasonably designed to ensure that assigned personnel are able to (1) timely retrieve a complete record of the borrower's payment history and all written information the borrower has provided to the servicer (or prior servicers) in connection with a loss mitigation application, (2) provide these documents to other people required to evaluate the borrower for loss mitigation options, if applicable, and (3) provide the borrower with information about submitting an error notice or information request under 12 CFR 1024.35 or 12 CFR 1024.36.

Loss Mitigation Procedures – 12 CFR 1024.41

Servicers must comply with certain loss mitigation procedures. The procedures differ depending on how far in advance of foreclosure a borrower submits a loss mitigation application. Regulation X does not impose a duty on a servicer to provide any borrower with any specific loss mitigation option.

The requirements set forth in 12 CFR 1024.41 apply to only those mortgage loans, as that term is defined in 12 CFR 1024.31, that are secured by the borrower's principal residence. Except as noted below in 12 CFR 1024.41(j), the requirements do not apply to (i) small servicers, (ii) reverse mortgage transactions, as that term is defined in 12 CFR 1024.31, or (iii) mortgage loans for which the servicer is a qualified lender.

As noted above, an institution qualifies as a small servicer if it (a) services, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the institution (or an affiliate) is the creditor or assignee, (b) is a Housing Finance Agency, as defined in 24 CFR 266.5 or (c) is a nonprofit entity (defined in 12 CFR 1026.41(e)(4)(ii)(C)(*1*)) that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities (defined in 12 CFR 1026.41(e)(4)(ii)(C)(*2*)), for all of which the servicer or an associated nonprofit entity is the creditor. The determination as to whether a servicer qualifies as a small servicer is generally made based on the mortgage loans, as that term is used in 12 CFR 1026.41(a)(1), serviced by the servicer and any affiliates as of January 1 for the remainder of that calendar year. However, to determine small servicer status under the nonprofit small servicer definition, a nonprofit servicer should be evaluated based on the mortgage loans serviced by the servicer (and not those serviced by associated nonprofit entities) as of January 1 for the remainder of the calendar year. A servicer that ceases to qualify as a small servicer will have six months from the time it ceases to qualify or until the next January 1, whichever is later, to comply with any requirements from which the servicer is no longer exempt as a small servicer.

As specified in12 CFR 1026.41(e)(4)(iii), the following mortgage loans are not considered in determining whether a servicer qualifies as a small servicer: (a) mortgage loans voluntarily serviced by the servicer for a non-affiliate of the servicer and for which the servicer does not receive any compensation or fees; (b) reverse mortgage transactions; and (c) mortgage loans secured by consumers' interests in timeshare plans; and (d) certain seller-financed transactions that meet the criteria identified in 12 CFR 1026.36(a)(5).

Qualified lenders are those defined to be qualified lenders under the Farm Credit Act of 1971 and the Farm Credit Administration's accompanying regulations set forth at 12 CFR 617.7000 *et seq*.

The CFPB issued an interpretive rule clarifying, among other things, that when a servicer that is a debt collector under the FDCPA with respect to a borrower's mortgage loan responds to a borrower-initiated communication concerning loss mitigation after the borrower's invocation of FDCPA Section 805(c)'s cease communication protections with regard to that loan, the servicer does not violate FDCPA Section 805(c) with respect to such communications as long as the servicer's response is limited to a discussion of any potentially available loss mitigation option.[28] Only if the borrower provides a communication to the servicer specifically withdrawing the request for loss mitigation does the cease communication prohibition apply to communicating about

[28] *See* 2016 FDCPA Interpretive Rule (81 Fed. Reg. 71977, 71980-81). *See also* Comment 39(d)-2.

the specific loss mitigation action.

Receipt of a Loss Mitigation Application – 12 CFR 1024.41(b)

A servicer that receives a loss mitigation application at least 45 days before a foreclosure sale must take two steps. First, the servicer must promptly review the application to determine if it is complete. Second, the servicer must notify the borrower in writing within five days (excluding legal public holidays, Saturdays, and Sundays) that, among other things, it has received the application and state whether it is complete or incomplete.

A loss mitigation application includes an oral or written request by the borrower where the borrower expresses an interest in applying for a loss mitigation option and provides information a servicer would evaluate in connection with a loss mitigation application. A loss mitigation application is considered expansively and includes any "prequalification" for a loss mitigation option. For example, if a borrower requests that a servicer determine whether the borrower is "prequalified" for a loss mitigation program by evaluating the borrower against preliminary criteria to determine eligibility for a loss mitigation option, the request constitutes a loss mitigation application. A loss mitigation application does not include oral inquiries about loss mitigation options where the borrower does not provide any information that the servicer would use to evaluate an application, including where the borrower requests information only about the application process but does not provide any information to the servicer.

Complete Loss Mitigation Application – 12 CFR 1024.41(b)(1)

An application is complete when it contains all the information the servicer requires from the borrower to evaluate an application for loss mitigation options. (12 CFR 1024.41(b)(1)). Upon receiving an application that is not complete, a servicer is generally required to exercise reasonable diligence[29] in obtaining documents and information to complete the application. A servicer has flexibility to establish its own application requirements, but, with certain exceptions, a servicer is generally prohibited from offering a loss mitigation based on an evaluation of any information provided by a borrower in connection with an incomplete loss mitigation application.

[29] *See* Comment 41(b)(1)-4 for examples of what constitutes reasonable diligence.

Review of Loss Mitigation Application Submission – 12 CFR 1024.41(b)(2)

As stated above, if the servicer receives a loss mitigation application 45 days or more before a foreclosure sale, the servicer must notify the borrower in writing within five days (excluding legal public holidays, Saturdays, and Sundays) that it has received the application and state whether it is complete or incomplete. If the application is incomplete, the notice must advise (i) what additional documents or information are needed, and (ii) a reasonable date by which the borrower must submit them.

Generally, 30 days from the date the servicer provides the written notice is a "reasonable date." (Comment 41(b)(2)(ii)-1). Furthermore, the reasonable date must be no later than the earliest of:

- The date by which any document or information submitted by a borrower will be considered stale or invalid pursuant to any requirements applicable to any loss mitigation option available to the borrower,
- The date that is the 120th day of the borrower's delinquency,
- The date that is 90 days before a foreclosure sale,
- The date that is 38 days before a foreclosure sale.

(Comment 41(b)(2)(ii)-2).

A reasonable date, however, must never be less than seven days from the date on which the servicer provides the written notice. (Comment 41(b)(2)(ii)-3).

As explained above, servicers must exercise reasonable diligence in obtaining documents and information to complete an incomplete loss mitigation application (e.g., promptly contacting the borrower to obtain missing information or determining whether information exists in the servicer's files already that may provide the information missing from the borrower's application). (12 CFR 1024.41(b)(1)).

In the course of gathering documents and information from a borrower to complete a loss mitigation application, a servicer may stop collecting documents and information for a particular loss mitigation option after receiving information confirming that, pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan, the borrower is ineligible for that option. A servicer may not stop collecting documents and information for any loss mitigation option based solely upon the borrower's stated preference. The servicer, however, may stop collecting documents and

information for any loss mitigation option based on the borrower's stated preference *in conjunction with* other information, as prescribed by any requirements established by the owner or assignee. A servicer must continue to exercise reasonable diligence to obtain documents and information from the borrower that the servicer requires to evaluate the borrower as to all other loss mitigation options available to the borrower. (Comment 41(b)(1)-1).

For example, assume applicable requirements established by the owner or assignee provide that a borrower is not eligible for home retention options if the borrower states a preference for a short sale and provides evidence of another applicable hardship, such as military Permanent Change of Station orders or a specified employment transfer more than 50 miles away. If the borrower indicates a preference for a short sale, the servicer may not stop collecting documents and information pertaining to available home retention options solely because the borrower has indicated the preference. The servicer, however, may stop collecting such documents and information once it receives information confirming that the borrower meets the applicable hardship standards.

If a servicer has informed a borrower that the application was complete (or identified particular information needed to complete the application), and the servicer subsequently determines that additional information or corrected documents are required, the servicer must promptly request such information or documents from the borrower and treat the application as complete under 12 CFR 1024.41(f)(2) and (g) until the borrower is given a reasonable opportunity to complete the application

Calculating Time Periods and Determining Protections – 12 CFR 1024.41(b)(3)

12 CFR 1024.41 provides borrowers certain protections depending on whether the servicer received a complete loss mitigation application at least a specified number of days before a foreclosure sale. *See*, e.g., 12 CFR 1024.41(c)(1) (37 days); 12 CFR 1024.41(e) and (h) (90 days). These time periods are calculated as of the date the servicer receives a complete loss mitigation application. Thus, scheduling or rescheduling a foreclosure sale after the servicer receives the complete loss mitigation application will not affect the borrower's protections.

If no foreclosure sale is scheduled as of the date the servicer receives a complete loss mitigation application, the application is considered received more than 90 days before a foreclosure sale.

Evaluation of a Loss Mitigation Application – 12 CFR 1024.41(c)

Evaluation of a Timely Complete Loss Mitigation Application – 12 CFR 1024.41(c)(1)

A servicer that receives a complete loss mitigation application more than 37 days before a foreclosure sale must take two steps within 30 days:

- *First*, the servicer must evaluate the borrower for all loss mitigation options available to the borrower from the owner or investor of the borrower's mortgage loan. The criteria on which a servicer offers or does not offer a loss mitigation option need not meet any particular standard. Nonetheless, a servicer's failure to follow requirements imposed by an owner or investor may demonstrate the servicer's failure to comply with the 12 CFR 1024.38(b)(2)(v) requirement that the servicer must maintain policies and procedures that are reasonably designed to ensure that the servicer can properly evaluate a borrower for all loss mitigation options for which the borrower may be eligible pursuant to any requirements established by the mortgage loan's owner or assignee; and

- *Second*, the servicer must provide the borrower with a written notice stating which loss mitigation options, if any, the servicer will offer to the borrower. The notice must state the amount of time the borrower has to accept or reject an offered loss mitigation option pursuant to 12 CFR 1024.41(e), and, if applicable, that the borrower has the right to appeal a denial of a loan modification option as well as the time period and any requirements for making an appeal pursuant to 12 CFR 1024.41(h).

Evaluation of Incomplete Loss Mitigation Application – 12 CFR 1024.41(c)(2)(i)-(iii)

With limited exceptions, a servicer may not offer a loss mitigation option based on an evaluation of an incomplete application.

I. *Offers permitted if not based on an evaluation of an incomplete application*. Regulation X does not prohibit a servicer from offering loss mitigation options to a borrower who has not submitted a loss mitigation application. Further, nothing prohibits a servicer from offering a loss mitigation option to a borrower who has submitted an incomplete loss mitigation application where the offer of the loss mitigation option is not based on any evaluation of information submitted by the borrower in connection with such application.

II. *Reasonable Time Exception*. If the servicer has exercised reasonable diligence in obtaining documents and information to complete the application but the application still remains incomplete for a significant

period of time without further progress by the borrower, the servicer may evaluate an incomplete application and offer the borrower a loss mitigation option. What qualifies as a significant period of time may depend on the timing of the foreclosure process. For example, 15 days may be a more significant period of time if the borrower is less than 50 days before a foreclosure sale than if the borrower is less than 120 days delinquent. The requirements in 12 CFR 1024.41 do not apply to this evaluation, and it is not considered an evaluation of a complete loss mitigation application for purposes of determining whether a request for a loss mitigation evaluation is duplicative under 12 CFR 1024.41(i).

III. *Short-Term Loss Mitigation Options Exception.* A servicer may offer a short-term payment forbearance program or a short-term repayment plan to a borrower based upon an evaluation of an incomplete loss mitigation application. Promptly after offering a payment forbearance program or a repayment plan, unless the borrower has rejected the offer, the servicer must provide the borrower a written notice stating:

- The specific payment terms and duration of the program or plan,
- That the servicer offered the program or plan based on an evaluation of an incomplete application,
- That other loss mitigation options may be available, and
- That the borrower has the option to submit a complete loss mitigation application to receive an evaluation for all loss mitigation options available to the borrower regardless of whether the borrower accepts the program or plan.

If the borrower is performing pursuant to the terms of a forbearance program or repayment plan offered under this provision, a servicer may not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, and it may not move for foreclosure judgment or an order of sale or conduct a foreclosure sale. A servicer may also offer a short-term payment forbearance program in conjunction with a short-term repayment plan.

A servicer must comply with the remaining loss mitigation requirements in 12 CFR 1024.41 with respect to the incomplete application, such as the requirement in 12 CFR 1024.41(b)(2) to review the application to determine if it is complete, the requirement in 12 CFR 1024.41(b)(1) to exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application, and the requirement in 12 CFR 1024.41(b)(2)(i)(B) to provide the borrower with written notice that the servicer acknowledges the receipt of the application and has determined that the application is incomplete. (Comment 41(c)(2)(iii)-2).

For instance, a servicer must exercise reasonable diligence as clarified in part in Comment 41(b)(1)-4.iii. The comment states that, if a borrower is complying with a short-term payment forbearance program or short-term repayment plan and the borrower does not request further assistance, the servicer may suspend reasonable diligence efforts until near the end of the program or plan. However, if the borrower fails to comply with the short-term loss mitigation option or requests further assistance, the servicer must immediately resume reasonable diligence efforts. Additionally, near the end of a short-term payment forbearance program, and prior to the end of the forbearance period, if the borrower remains delinquent, a servicer must contact the borrower to determine if the borrower wishes to complete the loss mitigation application and proceed with a full loss mitigation evaluation. (Comment 41(b)(1)-4.iii).

If the borrower completes the loss mitigation application, the servicer must comply with all of the loss mitigation procedure requirements in 12 CFR 1024.41 even if the servicer has offered a short-term payment forbearance program or short-term repayment plan based on an evaluation of an incomplete application. (Comment 41(c)(2)(iii)-3).

Facially Complete Applications – 12 CFR 1024.41(c)(2)(iv)

A loss mitigation application is facially complete when (i) the servicer's initial notice under 12 CFR 1024.41(b) advised the borrower that the application was complete, (ii) the servicer's initial notice under 12 CFR 1024.41(b) requested additional information from the borrower to complete the application and the borrower submits such additional information, or (iii) the servicer is required to provide the borrower a written notice of a complete application under 12 CFR 1024.41(c)(3)(i).

If the servicer later discovers that additional information or corrections to a previously submitted document are required to complete the facially complete application, the servicer must promptly request the missing information or corrected documents and treat the application as complete for purposes of 12 CFR 1024.41(f)(2) and (g) until the borrower is given a reasonable opportunity to complete the application. A reasonable opportunity depends on the particular facts and circumstances, but must provide the borrower sufficient time to gather the necessary information and documents.

If the borrower completes the application within this period, the application is considered complete as of the date it was actually complete for purposes of 12 CFR 1024.41(c), and the application is considered complete as of the date it was facially complete for purposes of 12 CFR 1024.41(d), (e), (f)(2), (g), and (h).

If the borrower does not complete the application within this period, the application is considered incomplete.

Notice of Complete Application – 12 CFR 1024.41(c)(3)

Within five days (excluding legal public holidays, Saturdays, and Sundays) after receiving the borrower's complete loss mitigation application, the servicer shall provide the borrower a written notice setting forth the following information:

- That the loss mitigation application is complete;
- The date the servicer received the complete application;
- That the servicer expects to complete its evaluation within 30 days of the date it received the complete application;
- That the borrower is entitled to certain foreclosure protections because the servicer has received the complete application, and, as applicable, either:
    - If the servicer has not made the first foreclosure notice or filing required by applicable law, that the servicer cannot make the first notice or filing to commence a foreclosure before evaluating the borrower's complete application; or
    - If the servicer has made the first foreclosure notice or filing, that the servicer has begun the foreclosure process and that the servicer cannot conduct a foreclosure sale before evaluating the borrower's complete application.
- That the servicer may need additional information at a later date; and
- That the borrower may be entitled to additional protections under state or federal law.

A servicer is not required, however, to provide a notice of complete application if:

- The servicer has already provided the borrower a notice under 12 CFR 1024.41(b)(2)(i)(B) informing the borrower the application is complete and the servicer has not requested any additional information;
- The application was not complete more than 37 days before a foreclosure sale; or
- The servicer has already provided the borrower a notice regarding its determination of the borrower's application under 12 CFR 1024.41(c)(1)(ii).

Information not in* the *Borrower's Control – 12 CFR 1024.41(c)(4)

If a servicer requires documents or information not in the borrower's control to determine which loss mitigation options, if any, it will offer to the borrower, the servicer must exercise reasonable diligence in obtaining such documents or information. A servicer must not deny a complete loss mitigation application solely because the servicer lacks required documents or information not in the borrower's control, unless the servicer has been unable to obtain the documents and information for a significant period of time following the 30-day evaluation period provided under Section 1024.41(c)(1) and is unable to make a determination on the complete application. However, a servicer is permitted to *offer* a borrower a loss mitigation option, even if the servicer does not obtain the requested documents or information.

The servicer lacking third-party information must provide the borrower a written notice under 12 CFR 1024.41(c)(4)(ii)(B) informing the borrower:

- That the servicer has not received the third-party documents or information that the servicer requires to determine which loss mitigation options, if any, it will offer to the borrower;
- Of the specific documents or information that the servicer lacks;
- That the servicer has requested such documents or information; and
- That the servicer will complete its evaluation of the borrower for all available loss mitigation options promptly upon receiving the documents or information.

If a servicer has exercised reasonable diligence to obtain the third-party information, but the servicer has been unable to do so for a significant period of time and cannot complete its determination without the required documents or information, the servicer may deny the application and provide the borrower with a written notice in accordance with 12 CFR 1024.41(c)(1)(ii). In conjunction with such notice, the servicer must provide a copy of the written notice provided under 12 CFR 1024.41(c)(4)(ii)(B).

Denial of any Loss Mitigation Option – 12 CFR 1024.41(d)

If the servicer denies a loss mitigation application for any trial or permanent loan modification option, the notice provided to the borrower must also state the servicer's specific reason or reasons for denying each trial or permanent loan modification option, and, if applicable, that the borrower was not evaluated on other criteria. Certain disclosures are required when a servicer denies an application for the following reasons or using the following procedures:

- *Investor criteria and use of a waterfall*.
  - If the servicer denies a loan modification option based upon investor criteria, the servicer must identify the owner or assignee of the mortgage loan and the specific criteria that the borrower failed to satisfy.
  - When an owner or assignee has established an evaluation criteria that sets an order ranking for evaluation of loan modification options (commonly known as a "waterfall") and a borrower has qualified for a particular loan modification option in the waterfall, it is sufficient for the servicer to inform the borrower, with respect to other loan modification options ranked below any such option offered to a borrower, that the investor's requirements include the use of such a waterfall and that an offer of a loan modification option necessarily results in a denial for any other loan modification options below the option for which the borrower is eligible in the ranking.
- *Net present value calculation*. If the denial was based upon a net present value calculation, the servicer must disclose the inputs used in the calculation.
- *Reasons listed*. The following applies if the servicer uses a hierarchy of eligibility criteria and, after reaching the first criterion that causes a denial, does not evaluate whether the borrower would have satisfied the remaining criteria. In this instance, the servicer need only (i) provide the specific reason or reasons why the borrower was actually rejected, and (ii) notify the borrower that the borrower was not evaluated on other criteria. A servicer is not required to determine or disclose whether a borrower would have been denied based on other criteria if the servicer did not actually evaluate these additional criteria.

Borrower Response – 12 CFR 1024.41(e)

A servicer offering a loss mitigation option must provide the borrower with a minimum period of time to accept or reject the option, depending on when the servicer receives a complete application. If the application was complete 90 days or more before a foreclosure sale, the servicer must give the borrower at least 14 days to decide. If it was complete fewer than 90 but more than 37 days before a foreclosure sale, the servicer must give the borrower at least seven days to decide.

A borrower's failure to respond on time can be treated as a rejection of the loss mitigation options, with two exceptions. First, a borrower who is offered a trial loan modification plan and submits payments that would have been owed under that plan before the deadline for accepting must be given a reasonable time to fulfill any remaining requirements of the servicer for acceptance of the trial loan modification plan. Second, a servicer must give a borrower who has a pending appeal until 14 days after the servicer provides notice of its determination regarding resolution of that appeal to decide whether to accept any offered loss mitigation option.

Prohibition on Foreclosure Referral – 12 CFR 1024.41(f)

A servicer cannot make the first foreclosure notice or filing for any judicial or non-judicial process until (i) the borrower is more than 120 days delinquent, (ii) the foreclosure is based on a borrower's violation of a due-on-sale clause, or (iii) the servicer is joining a superior or subordinate lienholder's foreclosure action. The commentary states that whether a document qualifies as the first notice or filing depends on the foreclosure process at issue:

- *Judicial foreclosure*. Where foreclosure procedure requires a court action or proceeding, the first notice or filing is the earliest document required to be filed with a court or other judicial body to commence the action or proceeding. Depending on the particular foreclosure process, examples of these documents could be a complaint, petition, order to docket, or notice of hearing;
- *Non-judicial foreclosure – recording or publication requirement*. Where foreclosure procedure does not require an action or court proceeding (such as under a power of sale), the first notice or filing is the earliest document required to be recorded or published to initiate the foreclosure process; or
- *Non-judicial foreclosure – no recording or publication requirement*. Where foreclosure procedure does not require an action or court proceeding, and also does not require any document to be recorded or published, the first notice or filing is the earliest document that establishes, sets, or schedules a date for the foreclosure sale.

The commentary further states that a document provided to the borrower but not initially required to be filed, recorded, or published is not considered the first notice or filing on the sole basis that the documents must later be included as an attachment accompanying another document that is required to be filed, recorded, or published to carry out a foreclosure.

If a borrower submits a complete loss mitigation application before the 120th day of delinquency or before the servicer makes the first foreclosure notice or filing, then the servicer cannot make the first foreclosure notice or filing unless one of the following occurs: (i) the servicer sends a notice to the borrower stating that the borrower is ineligible for any loss mitigation option and if an appeal is available, either the borrower did not timely appeal, or the appeal has been denied; (ii) the borrower rejects all the offered loss mitigation

options; or (iii) the borrower fails to perform under a loss mitigation agreement.

Prohibition on Foreclosure Sale – 12 CFR 1024.41(g)

If a borrower submits a complete loss mitigation application after the servicer has made the first foreclosure notice or filing but more than 37 days before a foreclosure sale, the servicer cannot conduct a foreclosure sale or move for foreclosure judgment or order of sale. The servicer must instruct foreclosure counsel promptly not to make a dispositive motion for foreclosure judgment or order of sale; to avoid a ruling on the motion or issuance of an order of sale where such a dispositive motion is pending; and, where a sale is scheduled, to prevent conduct of a foreclosure sale, except as provided below. The servicer may move forward with those specific foreclosure proceedings (or need not instruct foreclosure counsel as provided above) if one of the following occurs: (i) the servicer sends a notice to the borrower stating that the borrower is ineligible for any loss mitigation option and the appeal process is inapplicable, the borrower did not timely appeal, or the appeal has been denied; (ii) the borrower rejects all the offered loss mitigation options; or (iii) the borrower fails to perform under a loss mitigation agreement. A servicer is not relieved of its obligations because foreclosure counsel's actions or inaction caused a violation. Absent one of the specified circumstances, conduct of the sale violates the regulation, even if a person other than the servicer administers or conducts the foreclosure sale proceedings.

Appeal Process – 12 CFR 1024.41(h)

A borrower has the right to appeal a servicer's denial of a loss mitigation application for any trial or permanent loan modification available to the borrower if the borrower submitted a complete application 90 days or more before a foreclosure sale (or during the pre-foreclosure period set forth in 12 CFR 1024.41(f)). The borrower must commence the appeal within 14 days after the servicer provides the notice stating the servicer's determination of which loss mitigation options, if any, it will offer to the borrower.

Within 30 days of the borrower making the appeal, the servicer must provide a notice to the borrower stating: (i) whether it will offer the borrower a loss mitigation option based on the appeal, and (ii) if applicable, how long the borrower has to accept or reject this loss mitigation option or a previously offered loss mitigation option. If the servicer offers a loss mitigation option after an appeal, the servicer must provide the borrower at least 14 days to decide whether to accept the offered loss mitigation option.

The servicer's personnel who evaluated the borrower's application cannot also evaluate the appeal, although personnel who supervised the initial evaluation may evaluate the appeal so long as they were not directly involved in the initial evaluation.

Duplicative Requests – 12 CFR 1024.41(i)

A servicer must comply with these loss mitigation procedures for a borrower's loss mitigation application, unless the servicer has previously complied with the loss mitigation requirements for a complete loss mitigation application submitted by the borrower and the borrower has been delinquent at all times since submitting the prior complete application.

Thus, for example, if the borrower has previously submitted a complete loss mitigation application and the servicer complied fully with 12 CFR 1024.41 for that application, but the borrower then ceased to be delinquent and later became delinquent again, the servicer is required to again comply with 12 CFR 1024.41 for any subsequent loss mitigation application submitted by the borrower.

Small Servicer Requirements – 12 CFR 1024.41(j)

Although small servicers are exempt from most of the policy-and-procedure requirements (12 CFR 1024.38), continuity of contact requirements (12 CFR 1024.40), and loss mitigation requirements (12 CFR 1024.41) of Regulation X, certain provisions still apply to them. Small servicers cannot make the first foreclosure notice or filing required by any judicial or non-judicial foreclosure process until (i) the borrower is more than 120 days delinquent, (ii) the foreclosure is based on a borrower's violation of a due-on-sale clause, or (iii) the servicer is joining a superior or subordinate lienholder's foreclosure action. If the borrower is performing according to the terms of a loss mitigation agreement, a small servicer also cannot make the first foreclosure notice or filing, move for a foreclosure judgment or order of sale, or conduct a foreclosure sale.

Servicing Transfers – 12 CFR 1024.41(k)

When a transferee servicer acquires the servicing of a mortgage loan for which there is a loss mitigation application pending as of the transfer date, it must comply with 12 CFR 1024.41(k), which addresses and clarifies how loss mitigation procedures and timelines apply to these pending loss mitigation applications. A loss mitigation application is considered pending if the application is subject to the loss mitigation rules but was not fully resolved prior to the transfer date. (Comment 41(k)-1). The transfer date is

defined for these provisions as the date on which the transferee servicer will begin accepting payments relating to the mortgage loan, as disclosed on the notice of transfer of loan servicing pursuant to 12 CFR 1024.33(b)(4)(iv).

Specifically:

- Subject to the exceptions below, for loss mitigation applications pending as of the transfer date, a transferee servicer must comply with the loss mitigation requirements within the same timeframes that applied to the transferor servicer based on the date the transferor servicer received the loss mitigation application;
    - A transferor servicer must timely transfer, and a transferee servicer must obtain from the transferor servicer, documents and information submitted by a borrower in connection with a loss mitigation application.
    - Subject to the modifications of timing requirements below, a borrower's rights and protections under the loss mitigation procedures to which the borrower was entitled to before a transfer continue to apply post-transfer.
    - In the transfer context, reasonable diligence under 12 CFR 1024.41(b)(1) includes ensuring that a borrower is informed of any changes to the application process, such as a change in address to which the borrower should submit documents and information to complete the application, as well as ensuring that the borrower is informed about which documents and information are necessary to complete the application.
- Within 10 days (excluding legal public holidays, Saturdays, and Sundays) of the transfer date, a transferee servicer must provide the borrower an acknowledgement notice under 12 CFR 1024.41(b)(2)(i)(B) if the prior transferor had not provided such notice and the applicable period to provide the notice has not expired as of the transfer date;
    - If a transferee servicer is required to provide the acknowledgment notice as described above, the transferee servicer is prohibited from making the first foreclosure notice or filing required by applicable law for any judicial or non-judicial foreclosure process until a date that is after the reasonable date disclosed in the acknowledgment notice.
    - If a borrower submits a complete loss mitigation application to the transferee or transferor servicer 37 or fewer days before the foreclosure sale but on or before the reasonable date disclosed in the acknowledgement notice, the servicer must evaluate the application in accordance with 12 CFR 1024.41(c) and provide a denial notice in accordance with 12 CFR 1024.41(d) (if applicable), and is prohibited from moving for foreclosure judgment or sale in accordance with 12 CFR 1024.41(g).
- For a complete application pending as of the transfer date, the transferee servicer must evaluate the application within 30 days of the transfer date;
- A transferee servicer must make a determination on appeals pending as of the transfer date if it is able to do so or, if unable to do so, must treat the appeal as a pending complete loss mitigation application;
    - If the transferee servicer is required to make a determination on an appeal, the servicer must complete the determination and provide the notice required under 12 CFR 1024.41(h)(4) within the later of 30 days of the transfer date or 30 days of the date the borrower made the appeal.
- A transfer does not affect a borrower's ability to accept or reject a pending loss mitigation offer if the time period to accept or reject has not expired as of the transfer date. In this instance, the transferee servicer must allow the borrower to accept or reject the offer during the unexpired balance of the applicable time period.

Loss Mitigation Applications from Potential Successors in Interest *(Effective April 19, 2018)*

If a servicer receives a loss mitigation application from a potential successor in interest before confirming that person's identity and ownership interest in the property, the servicer may, but need not, review and evaluate the loss mitigation application in accordance with the procedures set forth in 12 CFR 1024.41. (Comment 41(b)-1.i).

If a servicer receives a loss mitigation application from a potential successor in interest and elects not to review and evaluate the loss mitigation application before confirming that person's identity and ownership interest in the property, the servicer must preserve the loss mitigation application and all documents submitted in connection with the application. Upon confirmation of the successor in interest's status, the servicer must review and evaluate the loss mitigation application in accordance with the procedures set forth in 12 CFR 1024.41 if the property is the confirmed successor in interest's principal residence and the loss mitigation procedures are otherwise applicable. For purposes of 12 CFR 1024.41, the servicer must treat the loss mitigation application as if it had been received on the date that the servicer confirmed the successor in interest's status. If the

loss mitigation application is incomplete at the time of confirmation because documents submitted by the successor in interest became stale or invalid after they were submitted and confirmation is 45 days or more before a foreclosure sale, the servicer must identify the stale or invalid documents that need to be updated in a notice pursuant to 12 CFR 1024.41(b)(2). Comment 41(b)-1.ii.

Examination Objectives

- To determine the financial institution's compliance with the Real Estate Settlement Procedures Act (RESPA) and Regulation X.
- To initiate corrective action when policies or internal controls are deficient, or when violations of law or regulation are identified.

Examination Procedures[30]

Each examination should be risk-based and may not require an examiner to address all of the procedures below. In addition, each supervising agency may have its own supervisory strategy that will dictate which examination procedures are required to be completed.

If the financial institution has loans covered by RESPA, determine whether the institution's policies, practices, and procedures ensure compliance with RESPA and Regulation X.

General Procedures

1. Review the types of loans covered by RESPA, applicable exemptions, loan policies, and operating procedures in connection with federally related mortgage loans. 12 CFR 1024.5 provides RESPA's general coverage and applicable exemptions, though other RESPA and Regulation X provisions include additional exemptions.
2. Assess whether mortgage personnel are knowledgeable about the requirements of RESPA and Regulation X.
3. Determine whether the loan disclosure and timing requirements of Regulation X (rather than Regulation Z, 12 CFR 1026.19(e) and (f)) apply to the loans being reviewed (generally for closed-end reverse mortgages).
4. Review the Special Information Booklet, good faith estimate (GFE) form, Uniform Settlement Statement form (HUD-1 or HUD-1A), and mortgage servicing transfer disclosure forms for compliance with the requirements of Regulation X. Review standardized and model forms and clauses in the appendices to the regulation.
5. Review the affiliated business arrangement disclosure form for compliance with the requirements of Regulation X. Review standardized and model forms and clauses in the appendices to the regulation.
6. If electronic disclosures are provided, determine whether the institution has policies and procedures to provide electronic delivery in accordance with the Electronic Signatures in Global and National Commerce Act (E-Sign).
7. Through reviewing written loan policies and operating procedures in connection with federally related mortgage loans that are not partially exempt under 12 CFR 1024.5(d) (i.e., reverse mortgages) and by discussing them with institution personnel, or through other appropriate methods, determine whether the financial institution has policies and procedures that address the following:
    - The information that will be collected from applicants in connection with issuing a GFE, and what information will be relied on to issue a GFE.
    - Provision of a revised GFE in the event of changed circumstances, both in the course of a new home purchase and in other kinds of transactions.
    - To cure a tolerance violation by reimbursing the borrower the amount by which the tolerance was exceeded within 30 calendar days from date of settlement.
    - To cure a technical or inadvertent error on the HUD-1/1A by providing a revised settlement statement to the borrower within 30 calendar days of settlement.
8. Through interviews with mortgage lending personnel or other appropriate methods, determine:
    - The identity of persons or entities referring federally related mortgage loan business;
    - The nature of services provided by referral sources, if any;
    - Settlement service providers used by the institution; and
    - Any providers whose services are required by the institution.
9. Through interviews with mortgage lending personnel or other appropriate methods, assess how the institution

[30] These reflect the interagency examination procedures in their entirety.

complies with the general servicing policies and procedures required by Regulation X, as applicable, including:

- How and for how long the institution maintains documentation and information related to a mortgage loan account and the institution's process for aggregating such information into a servicing file within five days;
- How the institution determines whether to engage third-party service providers, including the criteria the institution considers to evaluate potential service providers;
- How the institution monitors the performance of third-party service providers;
- How the institution ensures that it receives all necessary documentation and information concerning mortgage loan files that are transferred to it by another institution; and
- How the institution ensures that it sends all necessary documentation and information concerning mortgage loan files to another institution when it transfers files to that institution.

10. Determine if the institution is a small servicer. (12 CFR 1026.41(e)(4)(ii) and (iii)). Small servicers are exempt from a number of Regulation X requirements.

NOTE: A small servicer is defined as (1) a servicer that, together with any affiliates, services 5,000 or fewer loans, for all of which the servicer or any affiliate is the creditor or assignee; (2) a servicer that is a housing finance agency under 24 CFR 226.5; or (3) a nonprofit entity (defined in 12 CFR 1026.41(e)(4)(ii)(C)(1)) that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities (defined in 12 CFR 1026.41(e)(4)(ii)(C)(2)), for all of which the servicer or an associated nonprofit is the creditor. Small servicer status is generally based on the loans serviced by the servicer and any affiliates as of January 1 for the remainder of the year. However, to determine small servicer status under the nonprofit small servicer definition, a nonprofit servicer should be evaluated based on the mortgage loans serviced by the servicer (and not those serviced by associated nonprofit entities) as of January 1 for the remainder of the calendar year. Servicers that cease to qualify as a small servicer will have the later of six months after the date they ceased to qualify, or until the next January 1 to come into compliance. Under 12 CFR 1026.41(e)(4)(iii), the following mortgage loans are not considered in determining whether a servicer qualifies as a small servicer: (a) mortgage loans voluntarily serviced by the servicer for a non-affiliate of the servicer and for which the servicer does not receive any compensation or fees; (b) reverse mortgage transactions; and (c) mortgage loans secured by consumers' interests in timeshare plans; and (d) certain seller-financed transactions that meet the criteria identified in 12 CFR 1026.36(a)(5).

Subpart B – Mortgage Settlement and Escrow Accounts

Special Information Booklet – 12 CFR 1024.6

11. For mortgages that are not subject to the TILA-RESPA Integrated Disclosure Rule under 12 CFR 1026.19(e) and (f), other than reverse mortgages, determine through appropriate methods such as discussions with management and reviewing credit files whether the Special Information Booklet, if required, is provided within three business days after the financial institution or broker receives a written application for a loan (12 CFR 1024.6(a)(1)).

    NOTE: The Special Information Booklet may be required under 12 CFR 1026.19(g) for closed-end mortgage loans subject to the TILA-RESPA Integrated Disclosure Rule.

Good Faith Estimate – 12 CFR 1024.7

12. For closed-end reverse mortgages (*see* 12 CFR 1024.5(d)), determine whether the financial institution provides a GFE of charges for settlement services, if required, within three business days after receipt of a written application (12 CFR 1024.7(a)).
13. Review the GFE to determine if it appears exactly as set forth in Appendix C to Part 1024.
14. Review a sample of loan files that include GFEs to determine the following:
    - Whether the financial institution followed GFE application requirements.
    - Whether the institution provided revised GFEs to applicants when warranted due to changed circumstances.
    - If the institution provided a revised GFE to the applicant due to changed circumstances, determine whether the institution followed regulatory requirements for issuing a revised GFE due to changed circumstances.
    - Whether the GFE was completed as required in the regulations and instructions (12 CFR 1024.7 and

Appendix C to 12 CFR Part 1024) and whether it included the following information:

- Interest rate expiration date;
- Settlement charges expiration date;
- Rate lock period;
- Number of days before settlement the interest rate must be locked, if applicable;
- Summary of loan information;
- Escrow account information;
- Estimates for settlement charges; and
- Left hand column on trade-off table completed for loan in the GFE.

- Whether, for no cost loans, all third-party fees paid by the financial institution are itemized and listed in the appropriate blocks on the second page of the GFE.
- Whether a separate sheet was provided with the GFE that identifies the settlement service providers for the services listed on the GFE.

Uniform Settlement Statement Form (HUD-1 and HUD-1A) – 12 CFR 1024.8

15. Using the same sample of loan files as used for the review of the GFE (i.e., for reverse mortgages), review the Uniform Settlement Statement (HUD-1 or HUD-1A, as appropriate) (12 CFR 1024.8 and Appendix A to 12 CFR Part 1024) to determine whether:
    - Charges are properly itemized in accordance with the instructions for completion of the HUD-1 or HUD-1A (Appendix A to 12 CFR Part 1024);
    - All charges paid by the borrower and the seller are itemized and include the name of the recipient (12 CFR 1024.8(b), Appendix A);
    - Average charges for settlement services are calculated in accordance with 12 CFR 1024.8(b)(2); and
    - 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 cost totals (12 CFR 1024.8(b); Appendix A).
16. If the financial institution conducts the settlement, determine whether:
    - The borrower, upon request, is allowed to inspect the HUD-1 or HUD-1A at least one business day prior to settlement (12 CFR 1024.10(a));
    - The HUD-1 or HUD-1A is provided to the borrower and seller at or before settlement (except where the borrower has waived the right to delivery and in the case of exempt transactions) (12 CFR 1024.10(b)); or
    - In cases where the right to delivery is waived or the transaction is exempt, the HUD-1/1A is mailed as soon as practicable after settlement (12 CFR 1024.10(b), (c), and (d)).
17. Determine whether, in the case of an inadvertent or technical error on the HUD-1/1A, the financial institution provides a revised HUD-1/1A to the borrower within 30 calendar days after settlement (12 CFR 1024.8(c)).
18. Review the HUD-1 or HUD-1A form prepared in connection with each GFE reviewed to determine if the amount stated for any itemized service exceeds the amount shown on the GFE for that service. If the amount stated on the HUD-1 exceeds the amount shown on the GFE and such overcharge violates the tolerance for that category of settlement services, determine whether the financial institution cured the tolerance violation by reimbursing to the borrower the amount by which the tolerance was exceeded, at settlement or within 30 calendar days from date of settlement (12 CFR 1024.7(i)).
19. Determine whether HUD-1 and HUD-1A forms are retained for five years after settlement if the institution retains its interest in the mortgage and/or services. If the financial institution disposes of its interest in the mortgage and does not service the loan, determine whether the HUD-1 or HUD-1A form is transferred to the new asset owner with the loan file (12 CFR 1024.10(e)).

Homeownership Counseling Organization List – 12 CFR 1024.20

20. Determine whether the lender (or a mortgage broker or dealer) provided a clear and conspicuous written list of homeownership counseling services in the applicant's location no later than three business days after the lender, mortgage broker or dealer received the application or information sufficient to complete an application (for RESPA-covered loans except for reverse mortgages or timeshare loans) (12 CFR 1024.20(a) and (c)). The written list does not need to be provided if, within the three-business-day period, the lender denies the application or the applicant withdraws it (12 CFR 1024.20(a)(5)).
21. Determine whether the lender obtained the list from either the website maintained by the CFPB or data made

available by the CFPB or HUD for lenders complying with this requirement, no earlier than 30 days prior to the time it was provided to the applicant (12 CFR 1024.20(a)).

No Fees for RESPA Disclosures – 12 CFR 1024.12

22. 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 (12 CFR 1024.12).

23. If any fee is charged before providing a GFE in a reverse mortgage transaction, determine whether such fee is limited to the cost of a credit report (12 CFR 1024.7(a)(4)).

Purchase of Title Insurance – 12 CFR 1024.16

24. When the financial institution owns the property being sold, determine whether it requires that title insurance be purchased from a particular company (12 CFR 1024.16).

Payment or Receipt of Referral or Unearned Fees – 12 CFR 1024.14

25. Through interviews with institution management and reviews of audits, policies, and procedures or other appropriate methods, determine if management is aware of the prohibition against payment and receipt of any fee, kickback, or thing of value in return for the referral of settlement services business. (12 CFR 1024.14).

26. Through interviews with institution management and reviews of audits, policies, and procedures or other appropriate methods, determine if management is aware of the prohibition against unearned fees where a charge for settlement services is divided between two or more parties.

27. Through interviews with institution management and personnel, file reviews, review of: good faith estimates and HUD-1 or HUD-1A (for closed-end reverse mortgages), the TILA-RESPA Integrated Disclosures (for other closed-end mortgages secured by a dwelling), or other appropriate methods, determine if federally related mortgage loan transactions are referred to the institution by brokers, affiliates, or other parties. Also, identify persons or entities to which the institution refers settlement services business in connection with a federally related mortgage transaction.

    - Identify the types of services rendered by the broker, affiliate, or service provider.

    - By a review of the institution's general ledger or otherwise determine if fees were paid to the institution or any parties identified.

    - Determine whether any fees paid or received by the institution are for goods or facilities actually furnished or services actually performed and are not kickbacks or referral fees (12 CFR 1024.14(b)). This includes payments by the institution to an affiliate or the affiliate's employees in connection with real estate settlements.

    - In cases where a fee is split between the institution and one or more other parties, determine whether each party actually performed services for that fee (12 CFR 1024.14(c)). This includes payments by the institution to an affiliate or the affiliate's employees in connection with real estate settlements.

Affiliated Business Arrangements – 12 CFR 1024.15

28. Determine from the TILA-RESPA Integrated Disclosures (or the HUD-1 or HUD-1A for reverse mortgages) and from interviews with institution management, or through other appropriate methods, if the institution referred a borrower to a settlement service provider with which the institution was affiliated or in which the institution had a direct or beneficial ownership interest of more than one percent (hereinafter, an "affiliated business arrangement").

29. If the financial institution had an affiliated business arrangement, determine whether the affiliated business arrangement disclosure statement (Appendix D to Part 1024) was provided as required by 12 CFR 1024.15(b)(1).

30. Other than an attorney, credit reporting agency, or appraiser representing the lender, if the financial institution referred a borrower to a settlement service provider, determine whether the institution required the use of the provider (12 CFR 1024.15(b)(2)).

31. Determine if compensation received by the lender in connection with an affiliated business arrangement is limited to a return on an ownership interest or other amounts permissible under RESPA (12 CFR 1024.15(b)(3)).

Escrow Accounts – 12 CFR 1024.17

If the institution maintains escrow accounts in connection with a federally related mortgage loan, complete the following procedures. (NOTE: Effective April 19, 2018, a servicer must treat a confirmed successor in interest, as defined in 12 CFR 1024.31, as a borrower for purposes of 12 CFR 1024.17).

32. Determine whether the institution performed an initial escrow analysis (12 CFR 1024.17(c)(2)) and provided the initial escrow statement required by 12 CFR 1024.17(g). The statement must contain the following:

- Amount of monthly payment;
- Portion of the monthly payment being placed in escrow;
- Charges to be paid from the escrow account during the first 12 months;
- Disbursement dates; and
- Amount of cushion.

33. If the institution is a transferee (new) servicer and changed either the monthly payment amount or the accounting method used by the transferor (old) servicer, determine whether the institution provided a borrower with an initial escrow account statement within 60 days of the date of the servicing transfer. (12 CFR 1024.17(e)(1)). A transferee servicer providing an initial escrow statement must use the effective date of transfer of servicing to establish the new escrow account computation year. (12 CFR 1024.17(e)(1)(i)).

34. If the institution is a transferee servicer and retains the monthly payments and accounting method used by the prior servicer, but chooses to change the computation year, determine whether the institution provided a short-year statement to the borrower. (12 CFR 1024.17(e)(1)(ii)). *See also* procedures related to 12 CFR 1024.17(i)(4).

    NOTE: Where the new servicer retains the monthly payments and accounting method used by the transferor servicer, then the new servicer may continue to use the escrow account computation year established by the transferor servicer or may choose to establish a different computation year using a short-year statement. At the completion of the escrow account computation year or any short year, the new servicer shall perform an escrow analysis and provide the borrower with an annual escrow account statement. 12 CFR 1024.17(e)(1)(ii).

35. Determine whether the institution treats shortages, surpluses, and deficiencies in the escrow account according to the procedures set forth in 12 CFR 1024.17(f).

36. 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 (12 CFR 1024.17(g)(1) and (2)).

37. Determine whether the institution performs an annual analysis of the escrow account (12 CFR 1024.17(c)(3) and (7), and 1024.17(i)).

38. Determine whether the annual escrow account statement is provided to the borrower within 30 days of the end of the computation year (12 CFR 1024.17(i)).

39. Determine if the annual escrow statement contains the following:
    - Amount of monthly mortgage payment and portion placed in escrow;
    - Amount of past year's monthly mortgage payment and portion that went into escrow;
    - Total amount paid into escrow during the past computation year;
    - Total amount paid out of escrow account during same period for taxes, insurance, and other charges;
    - Balance in the escrow account at the end of the period;
    - How a surplus, shortage, or deficiency is to be paid/handled; and
    - If applicable, the reason why the estimated low monthly balance was not reached (12 CFR 1024.17(i)(1)).

40. Determine whether the servicer complied with the requirements relating to short-year statements in 12 CFR 1024.17(i)(4) within 60 days from the end of the short year or within 60 days after receiving funds that pay off the loan.

41. Determine whether monthly escrow payments following settlement are within the limits of 12 CFR 1024.17(c).

Timely Payment of Hazard Insurance; Force-Placed Insurance

NOTE: The procedures in this section do not apply to small servicers.[31] *In addition to the information provided in this*

[31] Refer to 12 CFR 1026.41(e)(4)(ii)) and (iii). A small servicer is defined as (1) a servicer that, together with any affiliates, services 5,000 or fewer loans, for all of which the servicer or any affiliate is the creditor or assignee; (2) a servicer that is a housing finance agency under 24 CFR 226.5; or (3) a nonprofit entity (defined in 12 CFR 1026.41(e)(4)(ii)(C)(1)) that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities (defined in 12 CFR 1026.41(e)(4)(ii)(C)(2)), for all of which the servicer or an associated nonprofit is the creditor. Small servicer status is generally based on the loans serviced by the servicer and any affiliates as of January 1 for the remainder of the year. However, to determine small servicer status under the nonprofit small servicer definition, a nonprofit servicer should be evaluated based on the mortgage loans serviced by the servicer (and not those serviced by associated nonprofit entities) as of January 1 for the remainder of the calendar year. Servicers that cease to qualify as a small servicer will have the later of six months after the date they ceased to qualify, or until the next January 1 to

section, examiners should also refer to 12 CFR 1024.37, which sets forth further requirements relating to force-placed insurance.

In addition, the procedures related to 12 CFR 1024.34 and 1024.37 may be applicable to escrow accounts and fees or charges for force-placed insurance.

42. If the institution purchased force-placed insurance for a borrower who had established an escrow account for the payment of hazard insurance, determine whether the institution was permitted to do so under 12 CFR 1024.17(k)(5). Under that provision, an institution may not purchase force-placed insurance unless (i) the borrower was more than 30 days delinquent, and (ii) the institution was unable to disburse funds from the escrow account to ensure that the borrower's hazard insurance premium charges were paid in a timely manner.

    An institution is unable to disburse funds if it has a reasonable basis to believe that either (a) the borrower's property is vacant, or (b) the borrower's hazard insurance has terminated for reasons other than non-payment of the premium charges. An institution is not unable to disburse funds from the borrower's escrow account solely because the account has insufficient funds for paying hazard insurance premium charges (12 CFR 1024.17(k)(5)(ii)).

43. *Small servicer exception*. Notwithstanding the above, a small servicer may charge borrowers for force-placed insurance. If the institution is a small servicer and charged borrowers for force-placed insurance, determine whether the cost to each borrower of the force-placed insurance was less than the amount the institution would have needed to disburse from the borrower's escrow account to ensure that hazard insurance charges were paid in a timely manner (12 CFR 1024.17(k)(5)(iii)).

Subpart C – Mortgage Servicing

Applicability: Except as otherwise noted below, the provisions of Subpart C – Mortgage Servicing, 12 CFR 1024.30-41, apply to any mortgage loan, as that term is defined in 12 CFR 1024.31. Effective April 19, 2018, a servicer must treat confirmed successors in interest as borrowers under the provisions of Subpart C. (12 CFR 1024.30(d)).

come into compliance. Under 12 CFR 1026.41(e)(4)(iii), the following mortgage loans are not considered in determining whether a servicer qualifies as a small servicer: (a) mortgage loans voluntarily serviced by the servicer for a non-affiliate of the servicer and for which the servicer does not receive any compensation or fees; (b) reverse mortgage transactions; and (c) mortgage loans secured by consumers' interests in timeshare plans; and (d) certain seller-financed transactions that meet the criteria identified in 12 CFR 1026.36(a)(5).

General Disclosure Requirements – 12 CFR 1024.32(c) (*Effective April 19, 2018*)

Successors in Interest

44. For servicers providing the optional written notice and acknowledgment form under 12 CFR 1024.32(c) to confirmed successors in interest who have not assumed the mortgage loan and are otherwise liable on it:

    - Determine whether the written notice explains that the confirmed successor in interest may be entitled to receive certain notices and communications about the mortgage loan if the servicer is not providing them to another confirmed successor in interest or borrower on the account. The notice also must explain that in order to receive such notices and communications, the successor in interest must execute and provide to the servicer the acknowledgment form.

      NOTE: Servicers that send this type of notice and acknowledgement form are not required to provide to the confirmed successor in interest any written disclosure required by 12 CFR 1024.17, 1024.33, 1024.34, 1024.37, or 1024.39, or to comply with the live contact requirements in 12 CFR 1024.39(a) with respect to the confirmed successor in interest until the confirmed successor in interest either assumes the mortgage loan or executes the acknowledgment form.

    - Determine whether the servicer stated in the written notice that, regardless of whether the successor in interest executes the acknowledgement form, the successor in interest is entitled to submit notices of error under 12 CFR 1024.35, requests for information under 12 CFR 1024.36, and requests for a payoff statement under 12 CFR 1026.36. The notice must include a brief explanation of those rights and how to exercise them, including appropriate address information.

Mortgage Servicing Transfer Disclosures – 12 CFR 1024.33

Reverse Mortgage Disclosure Statement

Complete the following if the institution received an application for a reverse mortgage loan, as defined in 12 CFR 1024.31.

45. Determine whether the lender, mortgage broker who anticipates using table funding, or dealer in a first-lien dealer loan provided a proper servicing disclosure statement to the borrower within three days (excluding legal public holidays, Saturdays, and Sundays) after receipt of the application. The disclosure statement must advise whether the servicing of the mortgage loan may

be assigned, sold, or transferred to any other person at any time. A model disclosure statement is set forth in Appendix MS-1 (12 CFR 1024.33(a)).

Additionally, the disclosure statement is not required if the institution denied the application within the three-day period.

Transfers of Mortgage Servicing Rights – Disclosures

Complete the following if the institution has transferred or received mortgage servicing rights. The following are generally not considered transfers: (1) transfers between affiliates; (2) transfers resulting from mergers or acquisitions of servicers or subservicers; and (3) transfers between master servicers, when the subservicer remains the same. Additionally, the Federal Housing Administration (FHA) is not required to provide a notice of transfer to the borrower where a mortgage insured under the National Housing Act is assigned to FHA (12 CFR 1024.33(b)).

46. If the institution has *transferred* mortgage servicing rights, determine whether notice to the borrower was given at least 15 days prior to the transfer (12 CFR 1024.33(b)(3)). This notice may be combined with the transferee's notice (discussed below) into one notice if delivered to the borrower at least 15 days before the effective date of the transfer. Notices provided at the time of settlement satisfy the timing requirements.

47. If the institution has *received* mortgage servicing rights, determine whether notice was given to the borrower within 15 days after the transfer (12 CFR 1024.33(b)(3)). This notice may be combined with the transferor's notice (discussed above) into one notice if delivered to the borrower at least 15 days before the effective date of the transfer. Notices provided at the time of settlement satisfy the timing requirements.

48. Determine whether the notice sent by the institution includes the following information (12 CFR 1024.33(b)(4)). Sample language for the notice of transfer is contained in Appendix MS-2 to 12 CFR Part 1024.

    - The effective date of the transfer;
    - The name, address, and toll-free or collect-call telephone number for an employee or department of the transferee servicer that can be contacted by the borrower to obtain answers to servicing transfer inquiries;
    - The name, address, and toll-free or collect-call telephone number for an employee or department of the transferor servicer that can be contacted by the borrower to obtain answers to servicing transfer inquiries;
    - 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;
    - Whether the transfer will affect the terms or the availability of optional insurance and any action the borrower must take to maintain such coverage; and
    - A statement that the transfer does not affect the terms or conditions of the mortgage (except as directly related to servicing) (Appendix MS-2 to 12 CFR Part 1024).

49. Determine whether the notice by the transferor and transferee was sent to the borrower's address listed in the mortgage loan documents, unless the borrower notified the institution of a new address pursuant to the institution's requirements (12 CFR Part 1024, Supp. I., Comment 1024.33(b)(3)-1).

Transfers of Mortgage Servicing Rights – Treatment of Post-Transfer Payments

Complete the following if the institution has transferred or received mortgage servicing rights.

50. If the borrower sent any payments to the transferor servicer within the 60 days following a transfer of servicing rights, determine whether the institution imposed late fees or otherwise treated such payments as late (12 CFR 1024.33(c)(1)).

51. If the borrower sent any payments to the transferor servicer within the 60 days following a transfer of servicing rights, determine whether the transferor servicer either (a) forwarded the payment to the transferee servicer, or (b) returned the payment and informed the payor of the proper recipient of the payment (12 CFR 1024.33(c)(2)).

Timely Escrow Payments and Treatment of Escrow Account Balances – 12 CFR 1024.34

Complete the following if the terms of a borrower's mortgage loan, as defined in 12 CFR 1024.31, require the borrower to make payments to the institution for deposit into an escrow account to pay taxes, insurance premiums, and other charges for the mortgaged property.

52. Determine whether the institution made payments from the escrow account in a timely manner (12 CFR 1024.34). A "timely manner" means on or before the

deadline to avoid a penalty, as governed by the requirements in 12 CFR 1024.17(k).

53. Determine whether the institution returned amounts remaining in escrow within 20 days (excluding legal public holidays, Saturdays, and Sundays) after the borrower paid the mortgage loan in full (12 CFR 1024.34(b)). The institution does not need to return this amount if it and the borrower agree to credit the remaining funds towards an escrow account for certain new mortgage loans.

Error Resolution Procedures – 12 CFR 1024.35

Complete the following based upon a review of a sample of mortgage loan (as defined in 12 CFR 1024.31) files that included written error notices from borrowers or through other appropriate methods.

Address for Error Notices

54. If the institution designates an address or addresses to which borrowers must send error notices, complete the following:

- Determine whether the institution provided written notice of the address to the borrower, along with a statement that the borrower must use that address to assert errors (12 CFR 1024.35(c)).
- Determine whether the institution also provided that address to the borrower in each of the following three types of communications:
  - Any periodic statement or coupon book required under 12 CFR 1026.41;
  - Any website the institution maintains in connection with the servicing of the loan; and
  - Any notice required pursuant to 12 CFR 1024.39 (early intervention) or .41 (loss mitigation) that includes contact information for assistance (12 CFR Part 1024, Supp. I., Comment 1024.35(c)-2).
- Determine whether the institution designated the same address for receiving information requests pursuant to 12 CFR 1024.36(b) (12 CFR 1024.35(c)).
- If the institution establishes an electronic method for submitting error notices that is its exclusive online intake process, determine whether this electronic process was in addition to, and not in lieu of, any process for receiving error notices by mail (12 CFR Part 1024, Supp. I., Comment 1024.35(c)-4).

55. If the institution does not establish a specific address to which to send error notices, determine whether the institution responds to error notices sent to any of its offices (12 CFR Part 1024, Supp. I., Comment 1024.35(c)-1).

Acknowledgement of Error Notices

56. Determine whether:

- The institution properly acknowledged the error notice by providing written acknowledgement of the error notice to the borrower within five days (excluding legal public holidays, Saturdays, and Sundays) after receiving an error notice (12 CFR 1024.35(d)); or
- Acknowledgment was not required because:
  - The institution corrected the errors asserted and notified the borrower in writing within five days (excluding legal public holidays, Saturdays, and Sundays) of receiving the error notice (12 CFR 1024.35(f));
  - The institution determined that it was not required to respond and provided written notice, with the basis for its decision not to take any action, to the borrower within five days (excluding legal public holidays, Saturdays, and Sundays) after making that determination (12 CFR 1024.35(g)); or
  - The error notice related to violations of certain loss mitigation procedures under 12 CFR 1024.35(b)(9) or (10) and was received by the institution seven or fewer days before a foreclosure sale. With respect to such error notices, the institution must make a good faith attempt to respond orally or in writing to the borrower and either correct the error or state the reason the institution determined that no error occurred (12 CFR 1024.35(f)(2)).

Response to Error Notices

57. Determine whether:

- The institution properly responded to a borrower's written error notice by:
  - Correcting the errors identified by the borrower as well as any different or additional errors that were discovered during the investigation and providing written notice to the borrower of the corrections, the date the corrections took effect, and contact information for further assistance; or

- Conducting a reasonable investigation and providing the borrower with a written notice stating that the institution has determined that no error occurred, the reasons for its determination, the borrower's right to request documents relied upon by the institution in reaching its determination and how to do so, and contact information for further assistance (12 CFR 1024.35(e)); AND
- Undertaking one of the above within the following time frames:
  - If the alleged error was a failure to provide an accurate payoff balance amount, the institution responded within seven days (excluding legal public holidays, Saturdays, and Sundays) (12 CFR 1024.35(e)(3)(A));
  - If the alleged error was either (1) making the first notice or filing for a judicial or non-judicial foreclosure process in violation of 12 CFR 1024.41(f) or (j), or (2) moving for foreclosure judgment or order of sale or conducting a foreclosure sale in violation of 12 CFR 1024.41(g) or (j), the institution responded by the earlier of 30 days (excluding legal public holidays, Saturdays, and Sundays) or the date of a foreclosure sale (12 CFR 1024.35(e)(3)(B)). However, if the institution received the error notice seven or fewer days before a foreclosure sale, the institution is not required to respond in writing, but must nevertheless make a good faith attempt to respond orally or in writing to the borrower and either correct the error or state the reason the institution determined that no error occurred (12 CFR 1024.35(f)(2));
  - For all other alleged errors, the institution responded within 30 days (excluding legal public holidays, Saturdays, and Sundays) unless, prior to the expiration of that 30-day period, the institution extended the time for responding by an additional 15 days (excluding legal public holidays, Saturdays, and Sundays) by notifying the borrower in writing of the extension and the reasons for it (12 CFR 1024.35(e)(3)); OR

- The above responses were not required because:
  - The institution corrected the errors asserted and notified the borrower in writing within five days (excluding legal public holidays, Saturdays, and Sundays) of receiving the error notice (12 CFR 1024.35(f));
  - The institution determined that it was not required to respond and provided written notice, with the basis for its decision not to take any action, to the borrower within five days (excluding legal public holidays, Saturdays, and Sundays) after making that determination (12 CFR 1024.35(g)); or
  - The error notice related to violations of certain loss mitigation procedures under 12 CFR 1024.35(b)(9) or (10) and was received by the institution seven or fewer days before a foreclosure sale. With respect to such error notices, the institution must make a good faith attempt to respond orally or in writing to the borrower and either correct the error or state the reason the institution determined that no error occurred (12 CFR 1024.35(f)(2)).

Determination that No Error Occurred

58. If the institution stated that no error occurred and the borrower requested supporting documentation, determine whether the institution provided the documents that it relied upon to determine that no error occurred within 15 days (excluding legal public holidays, Saturdays, and Sundays) (12 CFR 1024.35(e)(4)). If the institution withheld documents that constituted confidential, proprietary, or privileged information, determine whether it provided written notification to the borrower within 15 days (excluding legal public holidays, Saturdays, and Sundays) (12 CFR 1024.35(e)(4)).

NOTE: A servicer responding to a notice of error request for documentation may omit location, contact, and personal financial information (other than information about the terms, status, and payment history of the mortgage loan) if: (i) the information pertains to a potential or confirmed successor in interest who is not the requester; or (ii) the requester is a confirmed successor in interest and the information pertains to any borrower who is not the requester.(12 CFR 1024.35(e)(5)) (Effective April 19, 2018).

Determination that No Response was Required

59. If the institution determined that it was exempt from the requirement to respond, determine whether the institution reasonably determined that one of the following three exemptions applied:
    - The error asserted is substantially the same as an error previously asserted by the borrower for which the institution complied with 12 CFR 1024.35(d)

and (e), unless the borrower provides new and material information to support the error;

- The error notice was overbroad. An error notice is overbroad if the institution cannot reasonably determine from the error notice the specific error that has occurred on a borrower's account; or

- The error notice was untimely. An error notice is untimely if it is delivered to the institution more than one year after either (i) the institution transferred servicing responsibility to another institution, or (ii) the mortgage loan was discharged (12 CFR 1024.35(g)(1)). A mortgage loan is discharged when both the debt and all corresponding liens have been extinguished or released, as applicable.

Asserted Errors Related to Non-Bona Fide Fees

60. If the borrower asserted that the institution charged a fee without a reasonable basis to do so, determine whether the institution in fact had a reasonable basis to impose the fee (12 CFR 1024.35(b)(5)). An institution lacks a reasonable basis to impose fees that are not bona fide, such as (i) a late fee for a payment that was not late, (ii) a charge for a service that a service provider did not actually provide, (iii) a default management fee for borrowers who are not delinquent, or (iv) a charge for force-placed insurance that is not permitted by 12 CFR 1024.37 (12 CFR Part 1024, Supp. I., Comment 1024.35(b)-2).

Impermissible Fees and Conditions and Other Restrictions

61. Determine whether the institution conditioned its investigation of the asserted error on the borrower providing supporting documentation (12 CFR 1024.35(e)(2)(i)).

62. Determine whether the institution determined that no error occurred because the borrower failed to provide any requested information without conducting a reasonable investigation (12 CFR 1024.35(e)(2)(ii)).

63. Determine whether the institution charged a fee or required the borrower to make any payments as a condition to responding to an error notice (12 CFR 1024.35(h)).

64. Determine whether the institution furnished adverse information to any consumer reporting agency regarding a payment that was the subject of an error notice within 60 days after receiving the notice (12 CFR 1024.35(i)).

Requests for Information – 12 CFR 1024.36

Complete the following based upon a review of a sample of mortgage loan (as defined in 12 CFR 1024.31) files that included written information requests from borrowers or other appropriate methods.

Address for Information Requests

65. If the institution designates an address or addresses to which borrowers must send information requests, complete the following:

    - Determine whether the institution provided written notice of the address to the borrower, along with a statement that the borrower must use that address to request information (12 CFR 1024.36(b)).

    - Determine whether the institution also provided that address to the borrower in each of the following three communications:

        - Any periodic statement or coupon book required under 12 CFR 1026.41;

        - Any website the institution maintains in connection with the servicing of the loan; and

        - Any notice required pursuant to 12 CFR 1024.39 (early intervention) or .41 (loss mitigation) that includes contact information for assistance (12 CFR Part 1024, Supp. I., Comment 1024.36(c)-2).

    - Determine whether the institution designated the same address for receiving information requests pursuant to 12 CFR 1024.35(c) (12 CFR 1024.36(b)).

    - If the institution establishes an electronic method for submitting information requests that is its exclusive online intake process, determine whether this electronic process was in addition to, and not in lieu of, any process for receiving information requests by mail (12 CFR Part 1024, Supp. I., Comment 1024.36(c)-4).

66. If the institution does not establish a specific address to which to send information requests, determine whether the institution responds to information requests sent to any of its offices (12 CFR Part 1024, Supp. I., Comment 1024.36(b)-1).

Acknowledgement of Information Requests

67. Determine whether:

    - The institution properly acknowledged the information request by providing written acknowledgement to the borrower within five days (excluding legal public holidays, Saturdays, and Sundays) after receiving the information request (12 CFR 1024.36(c)); or

- Acknowledgement was not required because:
  - The institution provided the borrower with the information requested and contact information (including telephone number) for further assistance within five days (excluding legal public holidays, Saturdays, and Sundays) (12 CFR 1024.36(e)); or
  - The institution determined that it was not required to respond and provided written notice with the basis for its determination not to respond to the request to the borrower within five days (excluding legal public holidays, Saturdays, and Sundays) after making that determination (12 CFR 1024.36(f)).

Response to Information Requests

68. Determine whether:

- The institution properly responded to the information request by:
  - Providing the requested information and contact information for further assistance (12 CFR 1024.36(d)(1)(i)); or
  - Conducting a reasonable search for the requested information and providing the borrower with a written notice advising the borrower that the institution has determined that the requested information is not available to it, the basis for the institution's determination, and contact information for further assistance (12 CFR 1024.36(d)(1)(ii)). Information is not available to the institution if the information is not in the institution's control or possession or if it cannot be retrieved in the ordinary course of business through reasonable efforts such as, for example, if electronic back-up media is not normally accessible to the institution's personnel and would take an extraordinary effort to identify and restore. Information stored offsite but which personnel can access upon request is available to the institution; AND
  - Undertaking one of the above within the following time frames:
    - If the borrower requested the identity of or contact information for the owner or assignee of a mortgage loan, responding within 10 days (excluding legal public holidays, Saturdays, and Sundays);
    - For all other information requests, responding within 30 days (excluding legal public holidays, Saturdays, and Sundays) unless, prior to the expiration of that 30-day period, the institution extended the time for responding by an additional 15 days (excluding legal public holidays, Saturdays, and Sundays) by notifying the borrower in writing of the extension and the reasons for it (12 CFR 1024.36(d)); OR
- The above responses were not required because:
  - The institution provided the borrower with the information requested and contact information (including telephone number) for further assistance within five days (excluding legal public holidays, Saturdays, and Sundays) (12 CFR 1024.36(e)); or
  - The institution determined that it was not required to respond and provided written notice with the basis for its determination not to respond to the request to the borrower within five days (excluding legal public holidays, Saturdays, and Sundays) after making that determination (12 CFR 1024.36(f)(2)).

NOTE: A servicer in its response to a request for information may omit location, contact, and personal financial information (other than information about the terms, status, and payment history of the mortgage loan) if: (i) the information pertains to a potential or confirmed successor in interest who is not the requester; or (ii) the requester is a confirmed successor in interest and the information pertains to any borrower who is not the requester. (12 CFR 1024.36(d)(3)) (Effective April 19, 2018).

Information Requests Regarding the Identity or Contact Information of the Owner or Assignee of a Mortgage Loan

69. For a borrower's information request regarding the owner or assignee of a mortgage loan, when a loan is not held in trust for which an appointed trustee receives payments on behalf of the trust, determine whether the institution complied by identifying the person on whose behalf the institution receives payments (12 CFR Part 1024, Supp. I., Comment 1024.36(a)-2.i).

    However, when the loan is held in a trust for which an appointed trustee receives payments on behalf of the trust, determine first what specific information is being requested, and second whether the servicer complied with the requirements clarified in 12 CFR Part 1024, Supp. I., Comment 1024.36(a)-2.ii:

    - For loans held in trust in which the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) is not the owner of the loan or the trustee, determine that the institution complied by identifying the name

of the trust, and the name, address, and appropriate contact information for the trustee. (12 CFR Part 1024, Supp. I., Comment 1024.36(a)-2.ii.A)

- For loans held in a trust in which Fannie Mae or Freddie Mac is the owner of the loan or trustee, determine that the institution complied by providing the following information:
  1. If the request did not expressly request the name or number of the trust or pool, the name and contact information for Fannie Mae or Freddie Mac, as applicable. The institution does not need to provide the name of the trust.
  2. If the request did expressly request the name or number of the trust or pool, the name of the trust, and the name, address, and appropriate contact information for the trustee. (12 CFR Part 1024, Supp. I., Comment 1024.36(a)-2(ii)(B)-(C)).

NOTE: Comment 36(a)-2 clarifies that a servicer is not the owner or assignee for purposes of information requests under 12 CFR 1024.36 if the servicer holds title to the loan, or title is assigned to the servicer, solely for the administrative convenience of the servicer in servicing the mortgage loan obligation. It also states that the Government National Mortgage Association (Ginnie Mae) is not the owner or assignee for purposes of such requests for information solely as a result of its role as the guarantor of the security in which the loan serves as the collateral. (12 CFR Part 1024, Supp. I., Comment 1024.36(a)-2).

Determination that No Response was Required

70. If the institution determined that it was exempt from the requirement to respond, determine whether the institution reasonably determined that one of the following five exemptions applied:

    - The information requested is substantially the same as information the borrower previously requested for which the institution has already complied with the requirements for responding to written information requests (12 CFR 1024.36(f)(1)(i));
    - The information requested is confidential, proprietary, or privileged (12 CFR 1024.36(f)(1)(ii));
    - The information requested is not directly related to the borrower's mortgage loan account (12 CFR 1024.36(f)(1)(iii));
    - The information request is overbroad or unduly burdensome. A request is overbroad if the borrower requests that the institution provide an unreasonable volume of documents or information. A request is unduly burdensome if a diligent institution could not respond within the time periods set forth in 12 CFR 1024.46(d)(2) or would incur costs (or have to dedicate resources) that would be unreasonable in light of the circumstances (12 CFR 1024.36(f)(1)(iv)); or
    - The information request is sent more than one year after either the mortgage loan balance was discharged or the institution transferred the mortgage loan to another servicer (12 CFR 1024.36(f)(1)(v)). A mortgage loan is discharged when both the debt and all corresponding liens have been extinguished or released, as applicable.

Determination that Information Request was Overbroad

71. If the institution determined that a submitted request was overbroad or unduly burdensome, determine whether the institution could reasonably have identified a valid information request in the submission and whether the institution did so (12 CFR 1024.36(f)(1)(iv)).

Impermissible Fees and Conditions

72. Determine whether the institution charged a fee, or required a borrower to make any payment that was owed on the borrower's account, as a condition of responding to an information request (12 CFR 1024.36(g)).

Potential Successors in Interest (Effective April 19, 2018)

73. In response to a written request from a potential successor in interest, determine whether the servicer provided the potential successor in interest with a written description of the documents the servicer reasonably required to confirm the person's identity and ownership interest in the property as well as contact information, including a telephone number, for further assistance. (12 CFR 1024.36(i)(1)).

74. With respect to the written request, determine whether the servicer treated the potential successor in interest as a borrower for purposes of the requirements in 12 CFR 1024.36 (c)-(g), including responding to the request not later than the time limits set forth in 12 CFR 1024.36(d)(2). (12 CFR 1024.36(i)(1); 12 CFR Part 1024, Supp. I., Comment 1024.36(i)-2).

Force-Placed Insurance – 12 CFR 1024.37

Applicability: Servicers must comply with restrictions on purchasing, renewing, and assessing fees for "force-placed insurance," which is defined as hazard insurance that a servicer obtains on behalf of the owner or assignee to insure the property securing the mortgage loan (but does not include (i) flood insurance required by the Flood Disaster Protection Act of 1973; (ii) hazard insurance obtained by a borrower but renewed by the borrower's servicer in accordance with 12 CFR

1024.17(k)(1), (2), or (5); or (iii) hazard insurance obtained by a borrower but renewed by the borrower's servicer at its discretion with the borrower's agreement).

The provisions of 12 CFR 1024.37 regulate when an institution may assess a premium charge or fee on borrowers related to force-placed insurance. These provisions apply to any mortgage loan, as that term is defined in 12 CFR 1024.31.

Assessing Charges or Fees Related to Force-Placed Insurance

Complete the following if the institution assessed a charge or fee on a borrower related to force-placed insurance.

Reasonable Basis

75. Determine whether the institution had a reasonable basis to believe that the borrower has failed to comply with the mortgage loan contract's requirement to maintain hazard insurance (12 CFR 1024.37(b)). An institution's "reasonable basis" may be based upon information about a borrower's hazard insurance which the institution receives from the borrower, the borrower's insurance provider, or the borrower's insurance agent. If the institution receives no such information, the institution may satisfy the "reasonable basis" standard if it acts with reasonable diligence to ascertain the borrower's hazard insurance status and does not receive evidence of hazard insurance. A servicer that complies with the initial and reminder notice requirements (below) has acted with reasonable diligence (12 CFR Part 1024, Supp. I, Comment 1024.37(b)-1).

Initial Notice

76. Determine whether the institution provided the initial written notice to the borrower at least 45 days before assessing a fee or charge (12 CFR 1024.37(c)).

77. Determine whether the initial notice included the following information (12 CFR 1024.37(c)). Sample language for the initial notice is contained in Appendix MS-3(A) to 12 CFR Part 1024.

    - The date of the notice;
    - The institution's name and mailing address;
    - The borrower's name and mailing address;
    - A statement that requests the borrower provide hazard insurance information for the borrower's property and that identifies the property by its physical address;
    - A statement that the borrower's hazard insurance has expired, is expiring, or provides insufficient coverage (as applicable), that the institution lacks evidence that the borrower has hazard insurance coverage past the expiration date or lacks evidence that the borrower has hazard insurance that provides sufficient coverage (as applicable), and (if applicable) that identifies the type of hazard insurance lacking. (12 CFR 1024.37(c)(2)(v));
    - A statement that hazard insurance is required on the borrower's property and that the institution has purchased or will purchase insurance at the borrower's expense;
    - A request that the borrower promptly provide the institution with insurance information;
    - A description of the requested insurance information, how the borrower may provide such information, and (if applicable) that the requested information must be in writing;
    - A statement that the insurance coverage the institution has purchased or will purchase may cost significantly more than, and provide less coverage than, hazard insurance purchased by the borrower;
    - The institution's phone number for borrower inquiries; and
    - A statement advising that the borrower review additional information provided in the same transmittal (if applicable).

78. Determine whether the initial notice was in the correct form. The notice must provide certain information in bold text and, other than the specific statements listed above and the loan number, the institution cannot provide any information on the initial notice (though the institution can provide additional information on separate pages of paper contained in the same transmittal) (12 CFR 1024.37(c)(3)-(4)). A sample notice is contained in Appendix MS-3(A) to 12 CFR Part 1024.

Reminder Notice

79. If the institution received no hazard insurance information or did not receive evidence of continuous coverage, determine whether the institution provided a reminder notice (i) at least 30 days after mailing or delivering the initial notice, and (ii) at least 15 days before assessing any charges or fees for force-placed insurance (12 CFR 1024.37(d)(1)).

80. For borrowers who *did not provide* hazard insurance information, determine whether the reminder notice (i) contains the date of the reminder notice and all of the other information provided in the initial notice; (ii) advises that it is a second and final notice; and (iii) identifies the annual cost of force-placed insurance or, if

unknown, a reasonable estimate (12 CFR 1024.37(d)(2)(i)). Sample language for the reminder notice is contained in Appendix MS-3(B) to 12 CFR Part 1024.

81. When the institution receives hazard insurance information but does *not* receive evidence of continuous sufficient coverage, determine whether the reminder notice includes the following information (12 CFR 1024.37(d)(2)(ii)). Sample language for the reminder notice is contained in Appendix MS-3(C) to 12 CFR Part 1024.

    - The date of the reminder notice;
    - The institution's name and mailing address;
    - The borrower's name and mailing address;
    - A statement requesting that the borrower provide hazard insurance information for the borrower's property and that identifies the property by its physical address;
    - A statement that the insurance coverage the servicer has purchased or will purchase may cost significantly more than, and provide less coverage than, hazard insurance purchased by the borrower;
    - The institution's phone number for borrower inquiries;
    - A statement advising that the borrower review additional information provided in the same transmittal (if applicable);
    - A statement that it is the second and final notice;
    - The annual cost of force-placed insurance, or if unknown, a reasonable estimate;
    - A statement that the institution has received the hazard insurance information that the borrower provided;
    - A request that the borrower provide the missing information; and
    - A statement that the borrower will be charged for insurance the institution purchases for the time period in which the institution cannot verify coverage.

82. Determine whether the reminder notice was in the correct form. The notice must provide certain information in bold text and, other than the specific statements listed above and the loan number, the institution cannot provide any information on the reminder notice (though the institution can provide additional information on separate pages of paper contained in the same transmittal) (12 CFR 1024.37(d)(3)-(4)). Sample notices are contained in Appendix MS-3(B) and (C) to 12 CFR Part 1024.

83. Determine whether, by the end of the 15-day period after the institution sent the reminder notice, the borrower provided evidence that it has had hazard insurance that complies with the loan contract continuously in place. As evidence, the institution may require a copy of the borrower's hazard insurance policy declaration page, the borrower's insurance certificate, the borrower's insurance policy, or other similar forms of written confirmation (12 CFR 1024.37(c)(1)(iii) and 12 CFR Part 1024, Supp. I, Comment 1024.37(c)(1)(iii)-2).

Assessing Charges or Fees for Renewing or Replacing Force-Placed Insurance

If the institution assessed a charge or fee on a borrower for renewing or replacing force-placed insurance, complete the following.

84. Determine whether the institution provided a written renewal notice to the borrower at least 45 days before assessing any fee or charge (12 CFR 1024.37(e)(1)(i)).

85. Determine whether the renewal notice includes the following information (12 CFR 1024.37(e)(2)). Sample language for the renewal of force-placed insurance notice is contained in Appendix MS-3(D) to 12 CFR Part 1024.

    - The date of the renewal notice;
    - The institution's name and mailing address;
    - The borrower's name and mailing address;
    - A statement that requests the borrower to update the hazard insurance information for the borrower's property and that identifies the property by its physical address;
    - A statement that the institution previously purchased force-placed insurance at the borrower's expense because the institution did not have evidence that the borrower had hazard insurance coverage;
    - A statement that the force-placed insurance has expired or is expiring, as applicable, and that the institution intends to renew or replace it because hazard insurance is required on the property;
    - A statement that the insurance coverage the institution has purchased or will purchase may cost significantly more than, and provide less coverage than, insurance purchased by the borrower, and

identifying the annual premium cost of force-placed insurance or a reasonable estimate;

- A statement that if the borrower purchases hazard insurance, the borrower should promptly provide the institution with insurance information;
- A description of the requested insurance information and how the borrower may provide such information, and if applicable, that the requested information must be in writing;
- The institution's telephone number for borrower inquiries; and
- A statement advising the borrower to review additional information provided in the same mailing (if applicable).

86. Determine whether the renewal notice was in the correct form. The notice must provide certain information in bold text and, other than the specific statements listed above and the loan number, the institution cannot provide any information on the renewal notice (though the institution can provide additional information on separate pages of paper contained in the same transmittal) (12 CFR 1024.37(e)(3)-(4)). A sample notice is contained in Appendix MS-3(D) to 12 CFR Part 1024.

87. Determine whether in the 45 days after sending the renewal notice the institution received evidence demonstrating that the borrower had purchased hazard insurance coverage (12 CFR 1024.37(e)(1)(ii)). As evidence, the institution may require a copy of the borrower's hazard insurance policy declaration page, the borrower's insurance certificate, the borrower's insurance policy, or other similar forms of written confirmation.

General Mailing Requirements, Canceling Force-Placed Insurance, and Bona Fide and Reasonable Fee Requirements

88. If the institution mailed any of the written initial, reminder, or renewal notices (12 CFR 1024.37(c)(1)(i), (c)(1)(ii), or (e)(1)), determine whether the servicer used a class of mail not less than first-class mail (12 CFR 1024.27(f)).

89. If the institution received evidence that the borrower had required hazard insurance coverage in place, determine whether the institution did the following within 15 days:

    - Canceled the force-placed insurance;
    - Refunded force-placed insurance premiums charges and fees for the period of overlapping coverage; and
    - Removed all force-placed charges and fees from the borrower's account for the period of overlapping coverage (12 CFR 1024.37(g)).

90. Determine whether all fees or charges assessed on the borrower related to force-placed insurance are bona fide and reasonable (except for charges subject to State regulation and charges authorized by the Flood Disaster Protection Act of 1973). A "bona fide and reasonable charge" is one that is reasonably related to the institution's cost of providing the service and is not otherwise prohibited by law (12 CFR 1024.37(h)).

General Servicing Policies, Procedures, and Requirements – 12 CFR 1024.38

Applicability: The general servicing policies, procedures, and requirements apply to all mortgage loans, as that term is defined in 12 CFR 1024.31, except that the requirements do not apply to (i) small servicers, as that term is defined in 12 CFR 1026.41(e)(4)(ii);[32] (ii) reverse mortgage transactions, as that term is defined in 12 CFR 1026.33(a); and (iii) qualified lenders, as defined under the Farm Credit Act of 1971 and accompanying regulations.

Policies and Procedures – Accessing and Providing Timely and Accurate Information

91. Determine whether the institution has policies and procedures that are reasonably designed to ensure that it has access to and provides timely and accurate information (12 CFR 1024.38(a) and (b)(1)). This includes policies and procedures that are reasonably designed to ensure the following:

[32] Refer to 12 CFR 1026.41(e)(4)(ii)) and (iii). A small servicer is defined as (1) a servicer that, together with any affiliates, services 5,000 or fewer loans, for all of which the servicer or any affiliate is the creditor or assignee; (2) a servicer that is a housing finance agency under 24 CFR 226.5; or (3) a nonprofit entity (defined in 12 CFR 1026.41(e)(4)(ii)(C)(1)) that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities (defined in 12 CFR 1026.41(e)(4)(ii)(C)(2)), for all of which the servicer or an associated nonprofit is the creditor. Small servicer status is generally based on the loans serviced by the servicer and any affiliates as of January 1 for the remainder of the year. However, to determine small servicer status under the nonprofit small servicer definition, a nonprofit servicer should be evaluated based on the mortgage loans serviced by the servicer (and not those serviced by associated nonprofit entities) as of January 1 for the remainder of the calendar year. Servicers that cease to qualify as a small servicer will have the later of six months after the date they ceased to qualify, or until the next January 1 to come into compliance. Under 12 CFR 1026.41(e)(4)(iii), the following mortgage loans are not considered in determining whether a servicer qualifies as a small servicer: (a) mortgage loans voluntarily serviced by the servicer for a non-affiliate of the servicer and for which the servicer does not receive any compensation or fees; (b) reverse mortgage transactions; and (c) mortgage loans secured by consumers' interests in timeshare plans; and (d) certain seller-financed transactions that meet the criteria identified in 12 CFR 1026.36(a)(5).

- Providing accurate and timely disclosures to the borrower;
- Investigating, responding to, and making corrections in response to borrowers' complaints, including promptly obtaining information from service providers to investigate and if applicable correct errors resulting from actions of service providers;
- Providing borrowers with accurate and timely information and documents in response to borrower requests for information with respect to the borrower's mortgage loan;
- Providing owners and assignees of mortgage loans with accurate and current information and documents about all the mortgage loans they own, including information about the institution's evaluations of borrowers for loss mitigation options and loss mitigation agreements with borrowers;
- Submitting accurate and current information and documents that comply with applicable law during the foreclosure process;
- Upon notification of a borrower's death, promptly communicating with the borrower's successor in interest concerning the secured property(*Effective until April 19, 2018*);
- Upon receiving notice of a borrower's death or of any transfer of the secured property, promptly facilitating communication with any potential or confirmed successors in interest regarding the property (*Effective April 19, 2018*);
- Upon receiving notice of the existence of a potential successor in interest, promptly determining the documents the servicer reasonably requires to confirm the person's identity and ownership interest in the property (see commentary to 12 CFR 1024.38(b)(1)(vi) for illustrative examples) and promptly providing to the potential successor in interest a description of those documents and how the person may submit a written request under 12 CFR 1024.36(i) (*Effective April 19, 2018);* and
- Upon the receipt of such documents, promptly making a confirmation determination and promptly notifying the person, as applicable, that the servicer has confirmed the person's status, has determined that additional documents are required (and what those documents are), or has determined that the person is not a successor in interest (*Effective April 19, 2018)*

Policies and Procedures – Proper Evaluation of Loss Mitigation Applications

92. Determine whether the institution has policies and procedures that are reasonably designed to ensure that its personnel properly evaluate loss mitigation applications (12 CFR 1024.38(a) and (b)(2)). This includes policies and procedures that are reasonably designed to ensure the following:
    - Providing accurate information regarding available loss mitigation options from the owner or assignee of the borrower's loan;
    - Identifying with specificity all loss mitigation options for which a borrower may be eligible, including identifying, with respect to each owner or assignee, all of the loss mitigation options the institution may consider when evaluating a borrower, as well as the criteria the institution should apply for each option;
    - Providing the loss mitigation personnel assigned to the borrower's mortgage loan pursuant to 12 CFR 1026.40 with prompt access to all of the documents and information that the borrower submitted in connection with a loss mitigation option;
    - Identifying the documents and information a borrower must submit to complete a loss mitigation application;
    - In response to a complete loss mitigation application, properly evaluating the borrower for all eligible loss mitigation options pursuant to any requirements established by the owner or assignee of the mortgage loan, even if those requirements are otherwise beyond the requirements of 12 CFR 1024.41; and
    - Promptly identifying and obtaining documents or information not in the borrower's control that the servicer requires to determine which loss mitigation options, if any, to offer the borrower in accordance with the requirements of 12 CFR 1024.41(c)(4).

Policies and Procedures – Oversight of Servicer Providers

93. Determine whether the institution has policies and procedures that are reasonably designed to facilitate oversight of, and compliance by, service providers (12 CFR 1024.38(a) and (b)(3)). This includes policies and procedures that are reasonably designed to ensure the following:
    - Providing appropriate personnel with access to accurate and current documents and information concerning the service providers' actions;

- Facilitating periodic reviews of service providers; and

- Facilitating the sharing of accurate and current information regarding the status of a borrower's loss mitigation application and any foreclosure proceeding among appropriate institution personnel, including the loss mitigation personnel assigned to the borrower's mortgage loan, and appropriate service provider personnel, including service provider personnel responsible for handling foreclosure proceedings.

    - For instance, the policies and procedures must be reasonably designed to ensure that the servicer promptly informs service provider personnel handling foreclosure proceedings that the servicer has received a complete loss mitigation application and promptly instructs foreclosure counsel to take any step required by 12 CFR 1024.41(g) sufficiently timely to avoid violating the prohibition against moving for judgment or order of sale, or conducting a foreclosure sale.

Policies and Procedures – Transfer of Information

94. Determine whether the institution has policies and procedures that are reasonably designed to facilitate the transfer of information during servicing transfers (12 CFR 1024.38(a) and (b)(4)). This includes policies and procedures that are reasonably designed to ensure the following:

    - For a transferor servicer, the timely and accurate transfer of all information and documents in its possession and control related to a transferred mortgage loan to the transferee servicer in a manner that ensures its accuracy and that allows the transferee to comply with the terms of the mortgage loan and applicable law, including any information about the status of any loss mitigation agreements or discussions with the borrower and any analysis performed with respect to potential recovery from non-performing mortgage loans; and

    - For a transferee servicer, identifying necessary documents or information that may not have been transferred, obtaining such missing documentation or information from the transferor servicer (for documents and information related to loss mitigation, the transferee's policies and procedures must address obtaining missing documents from the transferor servicer before attempting to obtain such documents from the borrower).

Policies and Procedures – Notifying Borrowers of Error Notice and Information Request Procedures

95. Determine whether the institution has policies and procedures that are reasonably designed to inform borrowers of procedures for submitting written error notices and written information requests (12 CFR 1024.38(a) and (b)(5)). This includes policies and procedures reasonably designed to ensure that the institution informs borrowers who are dissatisfied with the institution's response to oral complaints or information requests of the procedures for submitting written error notices under 12 CFR 1024.35 and written information requests under 12 CFR 1024.36.

Record Retention – Accurate Records

96. For any mortgage loan, determine if the institution is retaining accurate records that document actions with respect to the mortgage loan account (which includes any mortgage loan that has been transferred or paid in full). The institution must retain these records until one year after the loan is discharged or the institution transfers servicing for the mortgage loan to a transferee servicer. (12 CFR 1024.38(c)(1)).

Servicing File – Facilitating Aggregation of Information

97. For documents or information created on or after January 10, 2014, determine whether the institution maintains the following five items for each mortgage loan file in a manner that allows the institution to aggregate these items into a servicing file within five days:

    - A schedule of all credits and debits to the account (including escrow accounts and suspense accounts);

    - A copy of the security instrument that establishes the lien securing the mortgage loan;

    - Any notes created by institution personnel reflecting communications with the borrower concerning the account;

    - A report of the data fields relating to the borrower's account created by the institution's electronic systems (if applicable); and

    - Copies of any information or documents provided by the borrower to the institution in connection with written error notices or loss mitigation (12 CFR 1024.38(c)(2)).

Early Intervention Requirements for Certain Borrowers – 12 CFR 1024.39

Applicability: The early intervention requirements apply to only those mortgage loans, as that term is defined in 12 CFR 1024.31, that are secured by the borrower's principal

residence (12 CFR 1024.30(c)(2)). The requirements do not apply to (i) small servicers, as that term is defined in 12 CFR 1026.41(e)(4)(ii),[33] (ii) reverse mortgage transactions, as that term is defined in 12 CFR 1026.33(a), and (iii) qualified lenders, as defined under the Farm Credit Act of 1971 and accompanying regulations (12 CFR 1024.30(b)). Refer to 12 CFR 1024.39(c)-(d) and associated commentary for an institution's obligation to comply with the live contact requirements under 12 CFR 1024.39(a) and written notice requirements under 12 CFR 1024.39(b) for borrowers in bankruptcy and for borrowers who have invoked cease communication rights under the FDCPA.

Complete the following for any delinquent borrowers.

NOTE: Delinquency for purposes of 12 CFR 1024.39 (and certain other sections in Regulation X) means a period of time during which a borrower and a borrower's mortgage loan obligation are delinquent. A borrower and a borrower's mortgage loan obligation are delinquent beginning on the date a periodic payment sufficient to cover principal, interest, and, if applicable, escrow becomes due and unpaid, until such time as no periodic payment is due and unpaid. (12 CFR 1024.31). For purposes of 12 CFR 1024.39, this definition does not include borrowers performing as agreed under a loss mitigation agreement designed to bring the borrower current on a previously missed payment. (12 CFR Part 1024, Supp. I., Comment 1024.39(a)-1.ii).

Live Contact

98. Determine whether the institution made good faith efforts to establish live contact with the borrower within 36 days after each time the borrower became delinquent (12 CFR 1024.39(a)).

99. After the institution established live contact, determine whether the institution promptly informed the borrower of loss mitigation options, if appropriate (as determined based on the institution's reasonable discretion) (12 CFR 1024.39(a)).

Written Notice

100. Determine whether the institution sent a written notice to the borrower within 45 days after the borrower became delinquent (12 CFR 1024.39(b)(1)). The institution generally does not need to send the notice to a borrower more than once in a 180-day period. Different timing requirements might apply when a borrower has filed for bankruptcy (*see* 12 CFR 1024.39(c)) or has provided a cease communication notice pursuant to section 805(c) of the FDCPA (*see* 12 CFR 1024.39(d)).

101. Determine whether the notice included the following items (12 CFR 1024.39(b)(2)). Sample language for the notice is contained in Appendix MS-4(A), MS-4(B), MS-4(C), and MS-4(D) (that servicers subject to the FDCPA can use to comply with a new disclosure requirement for the written notice) to 12 CFR Part 1024.

- A statement encouraging the borrower to contact the institution;
- The telephone number to access assigned loss mitigation personnel;
- A brief description of examples of loss mitigation options that may be available to the borrower (if applicable);
- Loss mitigation application instructions or instructions as to how to obtain more information about loss mitigation options (such as by contacting the institution), if applicable;
- Either the CFPB's or HUD's website to access homeownership counselors or counseling organizations list and HUD's toll-free number to access homeownership counselors or counseling organizations; and
- If a mortgage servicer is a debt collector under the FDCPA with regard to a borrower's mortgage loan, a statement that the servicer may or intends to invoke its specified remedy of foreclosure.

[33] Refer to 12 CFR 1026.41(e)(4)(ii)) and (iii). A small servicer is defined as (1) a servicer that, together with any affiliates, services 5,000 or fewer loans, for all of which the servicer or any affiliate is the creditor or assignee; (2) a servicer that is a housing finance agency under 24 CFR 226.5; or (3) a nonprofit entity (defined in 12 CFR 1026.41(e)(4)(ii)(C)(1)) that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities (defined in 12 CFR 1026.41(e)(4)(ii)(C)(2)), for all of which the servicer or an associated nonprofit is the creditor. Small servicer status is generally based on the loans serviced by the servicer and any affiliates as of January 1 for the remainder of the year. However, to determine small servicer status under the nonprofit small servicer definition, a nonprofit servicer should be evaluated based on the mortgage loans serviced by the servicer (and not those serviced by associated nonprofit entities) as of January 1 for the remainder of the calendar year. Servicers that cease to qualify as a small servicer will have the later of six months after the date they ceased to qualify, or until the next January 1 to come into compliance. Under 12 CFR 1026.41(e)(4)(iii), the following mortgage loans are not considered in determining whether a servicer qualifies as a small servicer: (a) mortgage loans voluntarily serviced by the servicer for a non-affiliate of the servicer and for which the servicer does not receive any compensation or fees; (b) reverse mortgage transactions; and (c) mortgage loans secured by consumers' interests in timeshare plans; and (d) certain seller-financed transactions that meet the criteria identified in 12 CFR 1026.36(a)(5).

Borrowers in Bankruptcy

102. Determine whether the institution is exempt under 12 CFR 1024.39(c)(1)(i) for purposes of the live contact requirements or exempt under 12 CFR 1024.39(c)(1)(ii) for purposes of the written notice requirements.

103. For servicers that are not exempt under 12 CFR 1024.39(c)(1)(i) or (ii), determine whether the servicer complied with, as applicable, the live contact requirements under 12 CFR 1024.39(a) or the written notice requirements under 12 CFR 1024.39(b) as modified by 12 CFR 1024.39(c)(1)(iii).

104. For servicers that were exempt under 12 CFR 1024.39(c)(1)(i) and (ii) (unless they have discharged personal liability for the mortgage loan through bankruptcy), determine whether the servicer resumed compliance with the live contact and written notice requirements after the next payment due date that followed the earliest of the following events: (i) the bankruptcy case is dismissed; (ii) the bankruptcy case is closed; or (iii) the borrower reaffirms personal liability for the mortgage loan. (12 CFR 1024.39(c)(2)(i)).

105. With respect to a mortgage loan for which the borrower has discharged personal liability under sections 727, 1141, 1228, or 1328 of title 11 of the United States Code, determine whether the servicer resumed compliance with the written notice requirements under 12 CFR 1024.39(b) if the borrower has made any partial or periodic payment on the mortgage loan after the commencement of the borrower's bankruptcy case. (12 CFR 1024.39(c)(2)(ii)). (The servicer need not resume compliance with the live contact requirements under 12 CFR 1024.39(a) if the borrower has discharged personal liability as set forth above.)

Fair Debt Collection Practices Act (FDCPA)

Note: Servicers subject to the FDCPA can use MS-4(D) to comply with a new disclosure requirement for the written notice.

106. If a mortgage servicer was a debt collector under the FDCPA with regard to a borrower's mortgage loan for which any borrower has invoked cease communication rights pursuant to Section 805(c) of the FDCPA:

- Determine whether the servicer was exempt from the written notice requirements under 12 CFR 1024.39(b) because either:
  - No loss mitigation option was available; or
  - A borrower on the mortgage loan was a debtor in bankruptcy under title 11 of the United States Code. (12 CFR 1024.39(d)(2)).
- Determine whether the servicer was required to provide a modified written early intervention notice and that notice complied with the following:
  - Content:
    - The modified written notice included a statement that the servicer may or intends to invoke its remedy of foreclosure.
    - The written notice did not contain a request for payment.
  - Timing:
    - The servicer did not provide the written notice more than once during any 180-day period.
      - If a borrower was 45 days or more delinquent at the end of any 180–day period after the servicer had provided the written notice, determine whether the servicer provided the written notice again no later than 190 days after the provision of the prior written notice.
      - If a borrower was less than 45 days delinquent at the end of any 180–day period after the servicer has provided the written notice, determine whether the servicer provided the written notice again no later than 45 days after the payment due date for which the borrower remained delinquent or 190 days after the provision of the prior written notice, whichever was later.

(12 CFR 1024.39(d)(3)).

NOTE: A mortgage servicer that is a debt collector under the FDCPA with regard to a borrower's mortgage loan for which any borrower has invoked cease communication rights pursuant to section 805(c) of the FDCPA institution is exempt from the live contact requirements under 12 CFR 1024.39(a).

Continuity of Contact – 12 CFR 1024.40

Applicability: The continuity of contact requirements apply to only those mortgage loans, as that term is defined in 12 CFR 1024.31, that are secured by the borrower's principal residence (12 CFR 1024.30(c)(2)). The requirements do not apply to (i) small servicers, as that term is defined in 12 CFR

1026.41(e)(4)(ii),[34] (ii) reverse mortgage transactions, as that term is defined in 12 CFR 1026.33(a), and (iii) qualified lenders, as defined under the Farm Credit Act of 1971 and accompanying regulations (12 CFR 1024.30(b)).

107. Determine whether the institution had policies and procedures reasonably designed to assign personnel to a delinquent borrower by the time the written early intervention notice was provided, and in any event, within 45 days after the borrower became delinquent (12 CFR 1024.40(a)).

108. Determine whether the institution had policies and procedures reasonably designed to ensure that the assigned personnel were available, via telephone, to answer the borrower's questions and (as applicable) assist the borrower with available loss mitigation options until the borrower has made, without incurring a late charge, two consecutive mortgage payments in accordance with the terms of a permanent loss mitigation agreement (12 CFR 1024.40(a)(2)).

109. Determine whether the institution had policies and procedures reasonably designed to ensure that, if a borrower contacts the assigned personnel and does not immediately receive a live response, the institution can provide a live response in a timely manner (12 CFR 1024.40(a)(3)).

110. Determine whether the institution maintains policies and procedures reasonably designed to ensure that the assigned personnel can perform, among others, the following tasks:

- Provide the borrower with accurate information about available loss mitigation options, including the steps the borrower must take to be evaluated for such options, including how to complete a loss mitigation application or appeal a denial of a loan modification option (if applicable);
- Provide the borrower with accurate information about the status of any loss mitigation application submitted;
- Provide the borrower with accurate information about the circumstances under which the institution may refer the account to foreclosure;
- Provide the borrower with accurate information about applicable loss mitigation deadlines;
- Timely retrieve a complete record of the borrower's payment history and all written information the borrower has provided to the institution (or the institution's predecessors) in connection with a loss mitigation application, and provide these documents to other persons required to evaluate the borrower for available loss mitigation options; and
- Provide the borrower with information about submitting a written error notice or written request for information (12 CFR 1024.40(b)).

Loss Mitigation Procedures – 12 CFR 1024.41

Applicability: The loss mitigation procedure requirements apply to only those mortgage loans, as that term is defined in 12 CFR 1024.31, that are secured by the borrower's principal residence (12 CFR 1024.30(c)(2)). Except for the requirements of 12 CFR 1024.41(j), the loss mitigation procedure requirements do not apply to (i) small servicers, as that term is defined in 12 CFR 1026.41(e)(4)(ii),[35] (ii) reverse

[34] Refer to 12 CFR 1026.41(e)(4)(ii)) and (iii). A small servicer is defined as (1) a servicer that, together with any affiliates, services 5,000 or fewer loans, for all of which the servicer or any affiliate is the creditor or assignee; (2) a servicer that is a housing finance agency under 24 CFR 226.5; or (3) a nonprofit entity (defined in 12 CFR 1026.41(e)(4)(ii)(C)(1)) that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities (defined in 12 CFR 1026.41(e)(4)(ii)(C)(2)), for all of which the servicer or an associated nonprofit is the creditor. Small servicer status is generally based on the loans serviced by the servicer and any affiliates as of January 1 for the remainder of the year. However, to determine small servicer status under the nonprofit small servicer definition, a nonprofit servicer should be evaluated based on the mortgage loans serviced by the servicer (and not those serviced by associated nonprofit entities) as of January 1 for the remainder of the calendar year. Servicers that cease to qualify as a small servicer will have the later of six months after the date they ceased to qualify, or until the next January 1 to come into compliance. Under 12 CFR 1026.41(e)(4)(iii), the following mortgage loans are not considered in determining whether a servicer qualifies as a small servicer: (a) mortgage loans voluntarily serviced by the servicer for a non-affiliate of the servicer and for which the servicer does not receive any compensation or fees; (b) reverse mortgage transactions; (c) mortgage loans secured by consumers' interests in timeshare plans; and (d) certain seller-financed transactions that meet the criteria identified in 12 CFR 1026.36(a)(5).

[35] Refer to 12 CFR 1026.41(e)(4)(ii)) and (iii). A small servicer is defined as (1) a servicer that, together with any affiliates, services 5,000 or fewer loans, for all of which the servicer or any affiliate is the creditor or assignee; (2) a servicer that is a housing finance agency under 24 CFR 226.5; or (3) a nonprofit entity (defined in 12 CFR 1026.41(e)(4)(ii)(C)(1)) that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities (defined in 12 CFR 1026.41(e)(4)(ii)(C)(2)), for all of which the servicer or an associated nonprofit is the creditor. Small servicer status is generally based on the loans serviced by the servicer and any affiliates as of January 1 for the remainder of the year. However, to determine small servicer status under the nonprofit small servicer definition, a nonprofit servicer should be evaluated based on the mortgage loans serviced by the servicer (and not those serviced by associated nonprofit entities) as of January 1 for the remainder of the calendar year. Servicers that cease to qualify as a small servicer will have the later of six months after the date they ceased to qualify, or until the next January 1 to come into compliance. Under 12 CFR 1026.41(e)(4)(iii), the following mortgage loans are not considered in determining whether a servicer qualifies as a small servicer: (a) mortgage loans voluntarily serviced by the servicer for

mortgage transactions, as that term is defined in 12 CFR 1026.33(a), and (iii) qualified lenders, as defined under the Farm Credit Act of 1971 and accompanying regulations (12 CFR 1024.30(b)). A servicer must comply with the loss mitigation procedures for subsequent loss mitigation applications, unless the servicer previously complied with the requirements for a complete loss mitigation application from a borrower and the borrower has been delinquent at all times since submitting the prior complete application. (12 CFR 1024.41(i)).

Calculating Time Periods: 12 CFR 1024.41 provides borrowers certain protections if the institution receives a complete loss mitigation application at least a specified number of days before a foreclosure sale. See, e.g., 12 CFR 1024.41(c)(1) (37 days), and 12 CFR 1024.41(e) and (h) (90 days). These time periods are calculated as of the date the servicer receives a complete loss mitigation application. Thus, scheduling or rescheduling a foreclosure sale after the servicer receives the complete loss mitigation application will not affect the borrower's protections (12 CFR Part 1024, Supp. I., Comment 1024.41(b)(3)-2). (However, scheduling the sale is not necessarily the same as making the first notice or filing. If the servicer has not made the first notice or filing required by applicable law by the time it receives a complete application, it is generally prohibited from doing so before evaluating the application, pursuant to 1024.41(c).) If no foreclosure sale is scheduled as of the date the servicer receives a complete loss mitigation application, the application is considered received more than 90 days before a foreclosure sale (12 CFR Part 1024, Supp. I., Comment 1024.41(b)(3)-1).

Definition of First Notice or Filing: 12 CFR 1024.41 includes certain prohibitions on making the first notice or filing for a judicial or non-judicial foreclosure and provides borrowers certain protections depending on whether such a notice or filing has been made at the time the servicer receives a complete application. Whether a particular document qualifies as the first notice or filing depends on the foreclosure process under the applicable state law at issue:

- *Judicial foreclosure*. Where foreclosure procedure requires a court action or proceeding, the first notice or filing is the earliest document required to be filed with a court or other judicial body to commence the action or proceeding. Depending on the particular foreclosure process, examples of these documents could be a complaint, petition, order to docket, or notice of hearing;

- *Non-judicial foreclosure – recording or publication requirement*. Where foreclosure procedure does not require an action or court proceeding (such as under a power of sale), the first notice or filing is the earliest document required to be recorded or published to initiate the foreclosure process; or

- *Non-judicial foreclosure – no recording or publication requirement*. Where foreclosure procedure does not require an action or court proceeding, and also does not require any document to be recorded or published, the first notice or filing is the earliest document that establishes, sets, or schedules a date for the foreclosure sale.

Note that a document provided to the borrower but not initially required to be filed, recorded, or published is not considered the first notice or filing on the sole basis that the documents must later be included as an attachment accompanying another document that is required to be filed, recorded, or published to carry out a foreclosure (12 CFR Part 1024, Supp. I., Comment 1024.41(f)-1).

Receipt of a Loss Mitigation Application (12 CFR 1024.41(b))

Review of an application received at least 45 days before a foreclosure sale (12 CFR 1024.41(b)(2))

111. If the institution received a loss mitigation application at least 45 days before a foreclosure sale, determine that the institution:

- Promptly upon receipt of a loss mitigation application, reviewed the loss mitigation application to determine if the loss mitigation application was complete. (12 CFR 1024.41(b)(2)(i)(A); 12 CFR 1024.41(b)(1)).

  NOTE: A loss mitigation application that would trigger this requirement is viewed expansively and includes oral inquiries by the borrower where the borrower also provides information the institution would use to evaluate loss mitigation applications, or where a borrower requests that the institution determines whether the borrower is "prequalified" for a loss mitigation application by evaluating the borrower against preliminary criteria (12 CFR Part 1024, Supp. I., Comment 1024.41(b)(1)-2).

a non-affiliate of the servicer and for which the servicer does not receive any compensation or fees; (b) reverse mortgage transactions; and (c) mortgage loans secured by consumers' interests in timeshare plans; and (d) certain seller-financed transactions that meet the criteria identified in 12 CFR 1026.36(a)(5).

A complete loss mitigation application means an application in connection with which a servicer has received all the information that the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower. (12 CFR 1024.41(b)(1)). If no foreclosure sale has been scheduled as of the date a servicer receives a loss mitigation application, the servicer must treat the application as having been received 45 days or more before any foreclosure sale. (12 CFR Part 1024, Supp. I., Comment 1024.41(b)(2)(i)-1).

- Notified the borrower in writing within 5 days (excluding legal public holidays, Saturdays, and Sundays) after receiving the loss mitigation application that the servicer acknowledged receipt of the loss mitigation application and determined that the loss mitigation application was either complete or incomplete. (12 CFR 1024.41(b)(2)).
    - If the application is complete, determine that the written acknowledgement stated that the application was complete and included a statement that the borrower should consider contacting servicers of any other mortgage loans secured by the same property to discuss available loss mitigation options (12 CFR 1024.41(b)(2)(i)(B) and (b)(2)(ii)).
    - If a loss mitigation application is incomplete, stated, in the notice: (i) the additional documents and information the borrower must submit to make the loss mitigation application complete, (ii) the reasonable date by which the borrower must submit such documents or information, and (iii) a statement that the borrower should consider contacting servicers of any other mortgage loans secured by the same property to discuss available loss mitigation options. (12 CFR 1024.41(b)(2)).

NOTE: For the reasonable date deadline, 30 days from the date the servicer provides the written notice is generally reasonable. The reasonable date, however, must be no later than the earliest of following milestones, but not less than seven days from the date of the notice: (a) the date by which any document or information submitted by the borrower will be stale or invalid, (b) the 120th day of the borrower's delinquency, (c) 90 days before a foreclosure sale; or (d) 38 days before a foreclosure sale (12 CFR Part 1024, Supp. I., Comments 1024. 41(b)(2)(ii)-1 through .41(b)(2)(ii)-3).

Reasonable diligence requirements (12 CFR 1024.41(b)(1))

112. If the institution received an incomplete loss mitigation application, determine whether the institution exercised reasonable diligence to collect information needed to complete the application after receiving the loss mitigation application. (12 CFR 1024.41(b)(1); 12 CFR Part 1024, Supp. I., Comments 1024.41(b)(1)-1, and .41(b)(1)-4).

    NOTE: Examples of reasonable diligence include: (a) where the institution requires additional information from the borrower (such as an address or telephone number to verify employment), promptly contacting the borrower to obtain the information; and (b) where the borrower's loan is transferred to the institution from another servicer, reviewing documents the institution received from the prior servicer to determine if the required information is contained in those documents. (12 CFR Part 1024, Supp. I., Comments 1024.41(b)(1)-4i and .41(b)(1)-4ii).

    - For borrowers offered short-term payment forbearance programs or short-term repayment plans on the basis of an incomplete application under 12 CFR 1024.41(c)(2)(iii), refer to Comment 1024.41(b)(1)-4.iii for guidance relating to a servicer's reasonable diligence obligations. (12 CFR Part 1024, Supp. I., Comment 1024.41(b)(2)(ii)).

113. If the institution stopped collecting documents and information for a particular loss mitigation option, determine whether its decision was based on receiving information confirming that, pursuant to requirements established by the owner or assignee of the borrower's mortgage loan, the borrower was ineligible for that option. (12 CFR Part 1024, Supp. I., Comment 1024.41(b)(1)-1).

NOTE: A servicer may not stop collecting documents and information for any loss mitigation option based solely upon the borrower's stated preference but may stop collecting documents and information for any loss mitigation option based on the borrower's stated preference in conjunction with other information, as prescribed by any requirements established by the owner or assignee. (12 CFR Part 1024, Supp. I., Comment 1024.41(b)(1)-1).

Evaluation of Loss Mitigation Applications (12 CFR 1024.41(c))

Complete loss mitigation application evaluation (12 CFR 1024.41(c)(1))

114. If the institution received a complete loss mitigation application more than 37 days before a foreclosure sale, determine whether the institution, within 30 days of receiving the complete loss mitigation application:

- Evaluated the borrower for all loss mitigation options available to the borrower (12 CFR 1024.41(c)(1)(i)); and
- Provided the borrower with a written notice of the institution's determination stating:
  - Which loss mitigation options (if any) the institution would offer the borrower,
  - The amount of time the borrower has to accept or reject an offered loss mitigation option pursuant to 12 CFR 1024.41(e), and
  - If applicable, that the borrower has the right to appeal a denial of a loan modification option and the time period for making any appeal pursuant to 12 CFR 1024.41(h)

(12 CFR 1024.41(c)(1)).

Incomplete loss mitigation application evaluation (12 CFR 1024.41(c)(2)(i)-(iii))

115. If the borrower submitted an incomplete application and the institution has offered a loss mitigation option, determine whether the institution's offer was permitted because:

- The offer of the loss mitigation option was not based on any evaluation of information submitted by the borrower in connection with such application (12 CFR Part 1024, Supp. I., Comment 1024.41(c)(2)(i)-1);
- The institution offered a loss mitigation option upon the evaluation of an incomplete application after it exercised reasonable diligence in obtaining documents and information to complete the loss mitigation application, but the application remained incomplete for a significant period of time under circumstances without any further progress by the borrower to complete the application (12 CFR 1024.41(c)(2)(ii)); or

  Note: Any such evaluation and offer is not subject to the requirements of this section and shall not constitute an evaluation of a single complete loss mitigation application for purposes of the duplicative request exception in 12 CFR 1024.41(i)

- The institution offered a short-term payment forbearance program or a short-term repayment plan based upon an evaluation of an incomplete application (12 CFR 1024.41(c)(2)(iii).

116. If the institution offered the borrower a short-term payment forbearance plan or short-term repayment plan based upon information contained in an incomplete loss mitigation application, determine whether the institution promptly provided the borrower, unless the borrower rejected the offer, a written notice stating:

- The specific payment terms and duration of the program or plan;
- That the servicer offered the program or plan based on an evaluation of an incomplete application,
- That other loss mitigation options may be available; and
- That the borrower has the option to submit a complete loss mitigation application to receive an evaluation for all loss mitigation options available to the borrower regardless of whether the borrower accepts the program or plan.

(12 CFR 1024.41(c)(2)(iii)).

NOTE: A short-term payment forbearance program for these purposes allows a borrower to forgo making certain payments or portions of payments due over a period of no more than six months (12 CFR Part 1024, Supp. I., Comment 1024.41(c)(2)(iii)-1). A short-term repayment plan for these purposes is a loss mitigation option with terms under which a borrower would repay all past due payments over a specified period of time to bring the mortgage loan account current. A short-term repayment plan allows for the repayment of no more than three months of past due payments and allows a borrower to repay the arrearage over a period lasting no more than six months. (12 CFR Part 1024, Supp. I., Comment 1024.41(c)(2)(iii)-4).

117. If the institution offered the borrower a short-term payment forbearance plan or short-term repayment plan based upon information contained in an incomplete loss mitigation application, determine whether the institution improperly (a) made the first notice or filing for any judicial or non-judicial foreclosure process, (b) moved for foreclosure judgment or an order of sale, or (c) conducted a foreclosure sale while the borrower was performing under such plan (12 CFR 1024.41(c)(2)(iii)).

Facially Complete Application – Additional Information or Corrected Documents Required (12 CFR 1024.41(c)(2)(iv))

118. If the application was facially complete but the servicer later discovered that additional information or corrected documents were required to complete the application, determine whether:

- The institution (i) promptly requested the missing information or corrected documents, and (ii) gave

the borrower a reasonable opportunity to complete the application (12 CFR 1024.41(c)(2)(iv)).

NOTE: A loss mitigation application is facially complete when (i) the institution's initial notice under 12 CFR 1024.41(b)(2)(i)(B) advised the borrower that the application was complete, (ii) the institution's initial notice under 12 CFR 1024.41(b)(2)(i)(B) requested additional information from the borrower to complete the application and the borrower submits such additional information; or (iii) the servicer is required to provide the borrower a written notice of a complete application under 12 CFR 1024.41(c)(3)(i).A reasonable opportunity depends on the particular facts and circumstances, but must provide the borrower sufficient time to gather the necessary information and documents (12 CFR Part 1024, Supp. I., Comment 1024.41(c)(2)(iv)-1).

119. In this same scenario, determine whether the institution treated the borrower's application as complete for purposes of 12 CFR 1024.41(f)(2) ("Application received before foreclosure referral") and 12 CFR 1024(g) ("Prohibition on foreclosure sale") until the borrower is given a reasonable opportunity to submit additional information or corrected documents (12 CFR 1024.41(c)(2)(iv)).

Notice of Complete Application (12 CFR 1024.41(c)(3))

120. If none of the exceptions to the notice of complete application requirement listed in 12 CFR 1024.41(c)(3)(ii) apply (see Note below), determine whether the institution has provided a written notice that the application is complete in accordance with 12 CFR 1024.41(c)(3)(i). The notice of complete application must be provided within five days (excluding legal public holidays, Saturdays, and Sundays) after receiving a borrower's complete loss mitigation application and must include the following information:

- That the loss mitigation application is complete;
- The date the servicer received the complete application;
- That the servicer expects to complete its evaluation within 30 days of the date it received the complete application;
- That the borrower is entitled to certain foreclosure protections because the servicer has received the complete application, and, as applicable, either:
  - If the servicer has not made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, that the servicer cannot make the first notice or filing required to commence or initiate the foreclosure process under applicable law before evaluating the borrower's complete application; or
  - If the servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, that the servicer has begun the foreclosure process, and that the servicer cannot conduct a foreclosure sale before evaluating the borrower's complete application;
- That the servicer may need additional information at a later date to evaluate the application, in which case the servicer will request that information from the borrower and give the borrower a reasonable opportunity to submit it, the evaluation process may take longer, and the foreclosure protections could end if the servicer does not receive the information as requested; and
- That the borrower may be entitled to additional protections under state or federal law.

NOTE: Under 12 CFR 1024.41(c)(3)(ii), a servicer is not required to provide a notice of complete application if: The servicer has already provided the borrower an acknowledgement notice under 1024.41(b)(2)(i)(B) stating the application is complete and the servicer has not subsequently requested additional information or corrected versions of previously submitted documents; The application was not complete or facially complete more than 37 days before a foreclosure sale; or The servicer has already provided the borrower a notice of its determination under 1024.41(c)(1)(ii).

Information not in the borrower's control (12 CFR 1024.41(c)(4))

121. Determine whether the servicer exercised reasonable diligence in obtaining information not in the borrower's control that the servicer needs to determine which loss mitigation options to offer the borrower (12 CFR 1024.41(c)(4)(i)).

122. Determine whether the servicer improperly denied the borrower's complete loss mitigation application solely because the servicer lacks required documents or information not in the borrower's control, (12 CFR 1024.41(c)(4)(ii)(A)(i), unless it was unable to obtain the documents and information for a significant period of time following the 30-day evaluation period and was unable to make a determination on the complete application. (12 CFR 1024.41(c)(4)(ii)(A)(2)). If this is the case, determine whether the servicer provided the written denial notice in accordance with 12

CFR1024.41(c)(1)(ii) and the written notice required under 12 CFR 1024.41(c)(4)(ii)(B) (*see* question below).

NOTE: A servicer, however, is permitted to offer a borrower a loss mitigation option, even if the servicer does not obtain the requested documents or information. (12 CFR Part 1024, Supp. I., Comment 1024.41(c)(4)(ii)-2).

123. If the servicer is unable to make a determination within 30 days of receiving a borrower's complete loss mitigation application due to the lack of the third-party information, review whether the servicer provided the written required notice to the borrower under 12 CFR 1024.41(c)(4)(ii)(B) containing the following information:

- That the servicer has not received the third-party documents or information that the servicer requires to determine which loss mitigation options, if any, it will offer to the borrower;
- The specific documents or information that the servicer lacks;
- That the servicer has requested such documents or information; and
- That the servicer will complete its evaluation of the borrower for all available loss mitigation options promptly upon receiving the documents or information.

Denial of loan modification options (12 CFR 1024.41(d))

124. If the institution denied the borrower's complete application for any trial or permanent loan modification option available to the borrower, determine whether the notice provided to the borrower pursuant to 12 CFR 1024.41(c)(1)(ii) also stated the specific reason or reasons for denying each such option, and, if applicable, that the borrower was not evaluated on other criteria (12 CFR 1024.41 (d)). Specifically:

- If the institution denied an application for a loan modification option due to a failure to meet investor guidelines, determine whether the institution identified in its notice to the borrower (i) the owner or assignee of the mortgage loan, and (ii) the specific criteria the borrower failed to meet (12 CFR 1024.41(d); 12 CFR Part 1024, Supp. I., Comment 41(d)-1).

  Note: If the borrower's application was evaluated under an investor's waterfall and the borrower qualified for a particular option, it is sufficient for the institution to inform the borrower that the investor's requirements include a ranking of options and that an offer of a loan modification option necessarily results in a denial of any other options ranked below the option for which the borrower is eligible (12 CFR Part 1024, Supp. I., Comment 41(d)-1).

- If the institution denied the application due to a net present value calculation, determine whether the institution disclosed the inputs used in that calculation (12 CFR Part 1024, Supp. I., Comment 41(d)-2).
- If the institution established a hierarchy of eligibility criteria and, after reaching the first criterion that causes a denial, did not evaluate whether the borrower would have satisfied the remaining criteria, determine whether the institution identified in the notice: (i) the specific reason or reasons why the borrower was actually rejected, and (ii) that the borrower was not evaluated on other criteria. (12 CFR Part 1024, Supp. I., Comment 41(d)-4).

  Note: An institution is not required to determine or disclose whether a borrower would have been denied based on other criteria if the servicer did not actually evaluate these additional criteria (12 CFR Part 1024, Supp. I., Comment 41(d)-4).

Borrower response (12 CFR 1024.41(e))

125. If institution received the complete application at least 90 days before a foreclosure sale and offered a loss mitigation option, determine whether the institution provided the borrower with at least 14 days to accept or reject any offered loan modification option after the servicer provided notice of the offer to the borrower (12 CFR 1024.41(e)(1)).

Note: If no foreclosure sale was scheduled when the servicer received the application, the application is considered to have been received more than 90 days before any foreclosure sale. (12 CFR Part 1024, Supp. I., Comment 41(b)(3)-1). The acceptance period can be extended if, within 14 days, the borrower makes an appeal of a denial of any loan modification option pursuant to 12 CFR 1024.41(h). (12 CFR 1024.41(e)(2)(iii)). In the event of an appeal, the borrower's time for acceptance is extended to 14 days after the institution provides a notice of its determination of the appeal. (12 CFR 1024.41(e)(2)(iii)).

126. If institution received the complete application fewer than 90 days before a foreclosure sale but more than 37 days before the sale and offered a loss mitigation option, determine whether the institution provided the borrower with at least seven days to accept or reject any offered

loss mitigation options after the servicer provided notice of the offer to the borrower (12 CFR 1024.41(e)(1)).

127. If the institution offered a borrower a trial loan modification plan and the borrower did not respond within seven or 14 days (as applicable under 12 CFR 1024.41(e)(1)), determine (i) whether the borrower submitted payments in accordance with the offered plan, and (ii) if so, whether the institution gave the borrower a reasonable period of time to fulfill any remaining requirements to accept the plan (12 CFR 1024.41(e)(2)(ii)).

Prohibition on foreclosure referral and sale (12 CFR 1024.41(f) and 1024.41(g))

128. Determine whether the institution made the first judicial or non-judicial foreclosure notice or filing without meeting one of the following conditions: (i) the borrower was more than 120 days delinquent; (ii) the foreclosure is based on a borrower's violation of a due-on-sale clause; or (iii) the institution is joining the foreclosure action of a subordinate or superior lienholder (12 CFR 1024.41(f)(1)). (Note that this requirement as applicable to small servicers is addressed below.)

129. If the institution received a complete loss mitigation application either within the first 120 days of delinquency or before the institution made the first judicial or non-judicial foreclosure notice or filing, determine whether the institution made the first foreclosure notice or filing only after one of the following occurred: (i) the institution notified the borrower that the borrower is ineligible for any loss mitigation option and if an appeal is available, either the appeal period expired or the appeal had been denied; (ii) the borrower rejected all the offered loss mitigation options; or (iii) the borrower failed to perform under a loss mitigation agreement (12 CFR 1024.41(f)(2)).

130. If the institution received a complete loss mitigation application after the institution made the first foreclosure notice or filing required under applicable law but more than 37 days before a foreclosure sale, determine whether the institution improperly conducted a foreclosure sale or moved for foreclosure judgment or order of sale before one of the following occurred: (i) the institution notified the borrower that it had denied the loss mitigation application for any loss mitigation option and if an appeal is available, either the appeal period had expired or the appeal had been denied; (ii) the borrower rejected all the offered loss mitigation options; or (iii) the borrower fails to perform under a loss mitigation agreement (12 CFR 1024.41(g)).

NOTE: A servicer must instruct foreclosure counsel promptly not to make a dispositive motion for foreclosure judgment or order of sale; where such a dispositive motion is pending, to avoid a ruling on the motion or issuance of an order of sale; and, where a sale is scheduled, to prevent conduct of a foreclosure sale, unless one of the conditions in 12 CFR 1024.41(g)(1) through (3) is met. (12 CFR Part 1024, Supp. I., Comment 41(g)-3). A servicer is not relieved of its obligations because foreclosure counsel's actions or inaction caused a violation. Absent one of the specified circumstances, conduct of the sale violates the regulation, even if a person other than the servicer administers or conducts the foreclosure sale proceedings.

Appeal Process (12 CFR 1024.41(h))

Complete the following if (a) the institution denied a complete loss mitigation application for any trial or permanent loan modification option, and (b) the institution received that complete application (i) before the borrower was more than 120 days delinquent, (ii) before the institution made the first judicial or non-judicial foreclosure notice or filing, or (iii) at least 90 days before a foreclosure sale.

131. For any borrower who timely appealed a denial of an available loan modification option, determine whether the institution provided a notice to the borrower within 30 days stating (i) whether it will offer the borrower a loss mitigation option based on the appeal, and (ii) if applicable, how long the borrower has to accept or reject this loss mitigation option or a previously offered loss mitigation option. (12 CFR 1024.41(h)(4)).

132. For any appeal that the institution granted, determine whether the institution afforded the borrower 14 days to accept or reject any offered loan modification option (12 CFR 1024.41(h)(4)).

133. Determine whether the institution used different personnel to evaluate the appeal than the personnel who had evaluated the borrower's loss mitigation application (12 CFR 1024.41(h)(3)).

Duplicative Requests (12 CFR 1024.41(i))

134. Determine whether the institution complied with the loss mitigation procedures for all loss mitigation applications, unless the servicer previously complied for a complete loss mitigation application from a borrower and the borrower has been delinquent at all times since submitting the prior complete application.

Small Servicers (12 CFR 1024.41(j))

135. If the institution is a small servicer, determine whether the institution made the first foreclosure notice or filing before (i) the borrower was more than 120 days delinquent, (ii) the foreclosure is based on a borrower's violation of a due-on-sale clause, or (iii) the institution is joining a subordinate or superior lienholder's foreclosure action (12 CFR 1024.41(j)).

136. If the institution is a small servicer and the borrower is performing according to the terms of a loss mitigation agreement, determine whether the institution (i) made the first foreclosure notice or filing, (ii) moved for a foreclosure judgment or order of sale, or (iii) conducted a foreclosure sale (12 CFR 1024.41(j)).

Servicing Transfers – (12 CFR 1024.41(k))

137. If the transferee (new) servicer acquired the servicing of a mortgage loan with a pending loss mitigation application as of the transfer date, determine whether the transferee servicer complied with the requirements of the loss mitigation procedures within the applicable timeframes. (The transfer date is defined for these provisions as the date on which the transferee servicer will begin accepting payments relating to the mortgage loan, as disclosed on the notice of transfer of servicing pursuant to 12 CFR 1024.33(b)(4)(iv). (12 CFR 1024.41(k)(1)(ii)).)

NOTE: In general, subject to the modifications below, the institution must comply within the timeframes that were applicable to the transferor (previous) servicer based on the date the transferor servicer received the loss mitigation application. A borrower continues to retain the rights and protections under 12 CFR 1024.41(c) through (h) to which a borrower was entitled before the servicing was transferred. (12 CFR 1024.41(k)(1)(i)). A loss mitigation application is considered pending if the application is subject to the loss mitigation rules but was not fully resolved prior to the transfer date. (12 CFR Part 1024, Supp. I., Comment 41(k)-1).

a. If a transferee servicer acquired the servicing of a mortgage loan for which the period to provide the acknowledgement notice required by 12 CFR 1024.41(b)(2)(i)(B) had not expired as of the transfer date and the transferor did not provide the acknowledgement notice, determine whether the transferee servicer provided the acknowledgment notice within 10 days (excluding legal public holidays, Saturdays, and Sundays) of the transfer date. (12 CFR 1024.41(k)(2)(i)).

b. If a transferee servicer was required to provide the acknowledgment notice as discussed in the previous question:

i. Determine that the servicer did not make the first notice or filing for any judicial or non-judicial foreclosure process prior to the reasonable date disclosed in the acknowledgment notice to submit documents and information necessary to complete the application, notwithstanding the exceptions contained in 12 CFR 1024.41(f)(1). (12 CFR 1024.41(k)(2)(ii)(A)).

ii. And the borrower submitted a complete loss mitigation application to the transferee or transferor servicer 37 or fewer days before the foreclosure sale but on or before the reasonable date disclosed in the acknowledgment notice, determine whether the servicer complied with the requirements regarding the evaluation of the loss mitigation application (12 CFR 1024.41(c)); denial of loan modification options (12 CFR 1024.41(d), and prohibition on foreclosure sale (1024.41(g)). (12 CFR 1024.41(k)(2)(ii)(B)).

c. For pending complete loss mitigation applications as of the transfer date, determine whether the transferee servicer complied with the applicable requirements regarding complete loss mitigation applications (12 CFR 1024.41(c)(1)) and information not in the borrower's control (12 CFR 1024.41(c)(4)) within 30 days of the transfer date. (12 CFR 1024.41(k)(3)).

d. For applications subject to the appeal process, if a transferee servicer acquired the servicing of a mortgage loan for which an appeal of a transferor servicer's determination pursuant to 12 CFR 1024.41(h) had not been resolved by the transferor servicer as of the transfer date or was timely filed after the transfer date, determine whether:

i. The transferee servicer made a determination on the appeal, if it was able to do so, and provided the required appeal determination notice under 12 CFR 1024.41(h)(4) within 30 days of the transfer date or 30 days of the date the borrower made the appeal, whichever is later. (12 CFR 1024.41(k)(4)(i)).

e. If a transferee servicer was unable to make a determination on an application subject to the appeal process, determine whether the servicer complied with the loss mitigation provisions, including evaluating the borrower for all loss mitigation options available to the borrower from the transferee servicer. (12 CFR 1024.41(k)(4)(ii)).

f. Determine whether the transferee servicer allowed the borrower to accept or reject a pending loss mitigation offer during the unexpired balance of the applicable time period as required by 12 CFR 1024.41(k)(5).

Applications Received from Successors in Interest
(Effective April 19, 2018)

138. If the servicer receives a loss mitigation application from a confirmed successor in interest, determine whether the servicer is treating a confirmed successor in interest as a borrower for purposes of the loss mitigation procedures

and complying with the relevant requirements. (12 CFR Part 1024, Supp. I., Comment 1024.41(b)-1.i).

139. If the servicer receives a loss mitigation application from a potential successor in interest and elects not to review and evaluate the loss mitigation application before confirming the person's identity and ownership interest in the property:

- Determine whether the servicer has preserved the loss mitigation application and all documents submitted in connection with the application. (12 CFR Part 1024, Supp. I., Comment 1024.41(b)-1.ii).
- Upon confirmation of the successor in interest's status, determine whether the servicer has reviewed and evaluated the loss mitigation application in accordance with the procedures set forth in 12 CFR 1024.41 if the property is the confirmed successor in interest's principal residence and the loss mitigation procedures are otherwise applicable. (12 CFR Part 1024, Supp. I., Comment 1024.41(b)-1.ii).

  NOTE: For purposes of 12 CFR 1024.41, the servicer must treat the loss mitigation application as if it had been received on the date that the servicer confirmed the successor in interest's status. If the loss mitigation application is incomplete at the time of confirmation because documents submitted by the successor in interest became stale or invalid after they were submitted and confirmation is 45 days or more before a foreclosure sale, the servicer must identify the stale or invalid documents that need to be updated in a notice pursuant to 12 CFR 1024.41(b)(2). (12 CFR Part 1024, Supp. I., Comment 1024.41(b)-1.ii).

References

12 USC §2601: Real Estate Settlement Procedures Act of 1974

24 CFR §1024: Real Estate Settlement Procedures Act

Financial Institution Letters

FIL 45-2000: Guidance on Completing HUD-1, HUD-1A and Good Faith Estimate Forms for Home Mortgage Loans

FIL 103-99: Potential Violations of Section 8 of the Real Estate Settlement Procedures Act

FIL 21-99: HUD Policy Statement on Lender Payments to Mortgage Brokers

FIL 61-97: Revisions to HUD's Special Information Booklet for Applications of Residential Real Estate Loans

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 §1024.17 of the Department of Housing and Urban Development's Regulation X.

TILA-RESPA Integrated Disclosure Rule – Compliance Guide

TILA-RESPA Integrated Disclosure Rule – Guide to Forms

Homeownership Counseling Act

Introduction

Section 106(c)(5) of the Housing and Urban Development Act of 1968 (the Act) (12 U.S.C. 1701x (c)(5)) requires that creditors servicing a home loan provide homeownership counseling notification to eligible homeowners.

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). In addition, the original purpose of the loan is not relevant to the notification requirement. Therefore, a mortgage on the primary residence or a commercial or agriculture loan that includes the primary residence as collateral would also be subject to this notification requirement.

Requirements

Notice Requirements[1]

A creditor must provide notification of the availability of homeownership counseling to any eligible homeowner 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;
  - Any similar loss or reduction experienced by any person who contributes to the homeowner's income;
  - A significant reduction in the income of the household due to divorce or death; or
  - Under certain circumstances, a significant increase in basic expenses of the homeowner or an immediate family member of the homeowner.

Contents of Notice

The notice must:

- notify the homeowner of the availability of any homeownership counseling offered by the creditor;
- provide either a list of HUD-approved nonprofit homeownership counseling organizations or the toll-free number[2] HUD has established through which a list of such organizations may be obtained;
- if applicable, notify the homeowner by a statement or notice, written in plain English by the Secretary of Housing and Urban Development, in consultation with the Secretary of Defense and the Secretary of Treasury, explaining the mortgage and foreclosure rights of servicemembers, and the dependents of such servicemembers, under the Servicemembers Civil Relief Act (50 U.S.C. App. 501 et seq.), including the toll-free military one source number to call if servicemembers, or the dependents of such servicemembers, require further assistance; and
- notify the housing or mortgage applicant of the availability of mortgage software systems provided pursuant to subsection (g)(3).

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.

1 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.

2 The number is 1-800-569-4287.

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[3]

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
- 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).

The HUD toll-free number to locate an approved housing counselor is: **1-800-569-4287**.

To locate a list of counselors, go to the HUD internet site.

[3] These reflect the interagency examination procedures in their entirety.

Homeowners Protection Act

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)[1] 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[2] of a single-family dwelling that serves as a borrower's principal residence.[3] 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).[4]

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,"[5] irrespective of the outstanding balance,

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1 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.

2 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 §1026.20.

3 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.

4 All sections of these procedures and Handbook apply to BPMI. For LPMI, relevant sections begin under that heading and follow thereafter.

5 "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.

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[6]), or any date thereafter that:

- the borrower submits a written cancellation request;
- the borrower has a good payment history;[7]
- the borrower is current;[8] 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)).

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

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6 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.

7 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.

8 The Act does not define current.

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.[9] 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.[10] 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.

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9 This limit was $417,000 in 2015; however, it is reviewed annually and has differing tiers based on geography and number of units.

10 Fannie Mae and Freddie Mac have not defined high-risk loans as of the date of this publication.

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 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:[11]

- 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 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 §1026.20), 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

11 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.

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[12]

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

[12] These reflect the interagency examination procedures in their entirety.

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

12 USC §§4901 – 4910 (2001)
[not found in FDIC Laws, Regulations and Related Acts]

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))		
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))		

	Yes	No
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 Act

The National Flood Insurance Program (NFIP) is administered primarily under the National Flood Insurance Act of 1968 (1968 Act) and the Flood Disaster Protection Act of 1973 (FDPA).[1] 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, administered by a department of the Federal Emergency Management Agency (FEMA) known as the Federal Insurance and Mitigation Administration (FIMA), makes federally backed flood insurance available to consumers through NFIP Direct Program agents who deal directly with FEMA or through the Write Your Own Program (WYO), which allows consumers to purchase federal flood insurance from private insurance carriers. The NFIP aims to reduce the impact of flooding by providing affordable insurance to property owners and by encouraging communities to adopt and enforce floodplain management regulations. 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 an SFHA in a community participating in the NFIP unless the property securing the loan is covered by flood insurance. Flood insurance may be provided through the NFIP or through a private insurance carrier.

Title V of the Riegle Community Development and Regulatory Improvement Act of 1994[2] which is called the National Flood Insurance Reform Act of 1994 (1994 Act), comprehensively revised the Federal flood insurance statutes. The purpose of the 1994 Act was 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.[3] The 1994 Act required the federal financial regulatory agencies, the Board of Governors of the Federal Reserve System (FRB); the Federal Deposit Insurance Corporation (FDIC); the National Credit Union Administration (NCUA); and the Office of the Comptroller of the Currency (OCC) to revise their current flood insurance regulations and brought lenders regulated by the Farm Credit Administration (FCA) under the coverage of the Federal flood insurance statutes. The federal financial regulatory agencies and the FCA (collectively, the Agencies) jointly issued regulations on August 29, 1996 (61 FR 45684).[4]

The 1994 Act also made the flood insurance requirements directly applicable 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 (SBA), Federal Housing Administration (FHA), and the Department of Veterans Affairs (VA).

The mandatory flood insurance purchase requirements of the FDPA were again significantly amended with the passage of the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act) and the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA). These statutes made changes to the provisions pertaining to force placement of flood insurance; escrowing of flood insurance premiums and fees; exemptions to the mandatory flood insurance purchase requirement; and civil money penalties. Moreover, a new provision mandating the acceptance of a private flood insurance policy meeting certain criteria as satisfaction of the mandatory purchase requirement was added to the FDPA. The Agencies jointly issued rules addressing force placement, escrow, and the exemption to the mandatory purchase requirement for detached structures on July 21, 2015 (80 FR 43215). The Agencies jointly issued rules implementing the private flood insurance provisions of the Biggert-Waters Act on February 20, 2019 (84 FR 4953).

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 FHA, SBA and the 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.

Structures Eligible for Flood Insurance Under the NFIP

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. The following

[1] These statutes are codified at 42 USC §4001-4129. FEMA administers the NFIP; its regulations implementing the NFIP appear at 44 CFR Parts 59-80.

[2] Pub. L.103-325, Title V, 108 Stat. 2160, 2255-87 (September 23, 1994).

[3] H.R. Conf. Rep. No. 652, 103d Cong. 2d Sess. 195 (1994). (Conference Report).

[4] Agency regulations are codified at 12 CFR 22 (OCC); 12 CFR 208 (FRB); 12 CFR 339 (FDIC); 12 CFR 614 (FCA); 12 CFR 760 (NCUA).

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, either issued through the NFIP or from a private insurance provider, is required for the term of the loan on buildings or mobile homes when an institution makes, increases, extends or renews a designated loan, meaning all three of the following factors are present:

- The loan (commercial or consumer) is 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 in which the property is located participates in the NFIP.

The FDPA provides that a regulated lending institution may not make, increase, extend, or renew any loan secured by improved real property that is located in an SFHA unless the improved real property is covered by the minimum amount of flood insurance required by statute. This includes situations where a security interest in improved real property is taken only "out of an abundance of caution."

Nonparticipating Communities

Although a lender may make, increase, extend, or renew a loan in a nonparticipating community, a lender is still required to determine whether the security property is located in an SFHA and if so, to notify the borrower. The lender must also notify the borrower that flood insurance coverage under the NFIP is not available because the community does not participate in the NFIP. If the nonparticipating community has been identified for at least one year as containing an SFHA, properties located in the community will not be eligible for federal disaster relief assistance in the event of a federally declared disaster.

Because of the lack of NFIP flood insurance coverage and limited federal disaster assistance available, a lender should carefully evaluate the risk involved in making such a loan. A lender making a loan in a nonparticipating community may want to require the purchase of private flood insurance, if available. Also, a lender with significant lending in nonparticipating communities should establish procedures to ensure that such loans do not constitute an unacceptably large portion of the financial institution's loan portfolio.

Federal agency lenders such as the FHA, the SBA and the VA will not subsidize, insure or guarantee any loan if the property securing the loan is in a SFHA of a community not participating in the NFIP. In addition, Freddie Mac and Fannie Mae will not purchase mortgages secured by improved properties located in SFHAs in nonparticipating communities.

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.

For flood hazard determination purposes, the substance of the table funded transaction should control and 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.

Exemptions to the Purchase Requirement

The flood insurance purchase requirement does not apply to the following three loan situations:

- Loans on state-owned property covered under an adequate policy of self-insurance satisfactory to the Administrator of FEMA. The Administrator 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.
- Any structure that is a part of any residential property but is detached from the primary residential structure of such property and does not serve as a residence.
    - A structure that is part of a residential property is a structure used primarily for personal, family, or household purposes, and not used primarily for agricultural, commercial, industrial, or other business purposes. It is detached from the primary residential structure if it is not joined by any structural connection to that structure.
    - Whether a structure serves as a residence is based on the institution's good faith determination that the structure is intended for residential use or actually used as a residence, which generally includes sleeping, bathroom, or kitchen facilities, but not necessarily all three.

Amount of Flood Insurance Required

The minimum amount of flood insurance required must be at least equal to the lesser of the outstanding principal balance of the loan, the maximum amount available under the NFIP for the type of structure, or the insurable value of the property. Flood insurance coverage under the NFIP is limited to the building or mobile home and any personal property that secures the loan and not the land itself.

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.
- $500,000 for non-condominium residential buildings of five units or greater and $100,000 for personal contents.[5]

Acceptance of Private Insurance Policies

A regulated lending institution is required to accept a private insurance policy to satisfy the flood insurance purchase requirement if the policy meets the definition of "private flood insurance" as set forth in the regulation (mandatory acceptance).

A regulated lending institution may choose to accept certain flood insurance policies that do not meet the definition of "private flood insurance" set forth in the regulation if the policy meets certain criteria (discretionary acceptance). A regulated lending institution may also exercise its discretion to accept certain plans providing flood coverage issued by "mutual aid societies" provided that certain criteria are met.

Mandatory Acceptance

- Under the regulation, "private flood insurance" means an insurance policy that: is issued by an insurance company that is licensed, admitted or otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located, or
- is recognized, or not disapproved as a surplus lines insurer by the insurance regulator of the State or jurisdiction in which the property to be insured is located in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property;
- provides flood insurance coverage that is at least as broad as the coverage provided under the NFIP's Standard Flood Insurance Policy (SFIP) for the same type of property, including when considering deductibles, exclusions and conditions offered by the insurer; to be at least as broad as the coverage provided under an SFIP, the policy must at a minimum:
    - define the term "flood" to include the events defined as "flood" in an SFIP;
    - contain the coverage specified in an SFIP, including that relating to building property coverage; personal property coverage; other coverages; and increased cost of compliance coverage;
    - contain deductibles no higher than the specified maximum, and include similar non-applicability provisions, as under an SFIP, for any total policy coverage amount up to the maximum available under the NFIP at the time the policy is provided to the institution;
    - provide coverage for direct physical loss caused by a flood and may only exclude other causes of loss that are excluded in an

[5] This amount was increased from $250,000 to $500,000 as of June 1, 2014.

SFIP. Any exclusions other than those in an SFIP may pertain only to coverage that is in addition to the amount and type of coverage that could be provided by an SFIP or have the effect of providing broader coverage to the policyholder; and

- not contain conditions that narrow the coverage provided in an SFIP;

- provides that the insurer will give written notice 45 days before cancellation or non-renewal of flood insurance coverage to the insured and the regulated lending institution, or servicer acting on its behalf;
- includes information about the availability of flood insurance coverage under the NFIP;
- includes a mortgage interest clause similar to the clause contained in an SFIP; includes a provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and
- contains cancellation provisions that are as restrictive as the provisions in an SFIP.

For purposes of the definition of "private flood insurance," the SFIP is the policy that is in effect as of the date the private flood insurance policy is provided to the regulated lending institution. The SFIP is available on the FEMA website: https://www.fema.gov/national-flood-insurance-program/standard-flood-insurance-policy-forms. The regulation includes a compliance aid provision to help a regulated lending institution determine whether a flood insurance policy meets the definition of "private flood insurance" and must be accepted under the regulation. A regulated lending institution may determine that a policy meets the definition of "private flood insurance" without further review of the policy if the policy or an endorsement to the policy states: "This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation."

Discretionary Acceptance

Under the regulation, a regulated lending institution may, at its discretion, accept a flood insurance policy issued by a private insurer, even if the policy does not meet the statutory and regulatory definition of "private flood insurance" as set forth above. A regulated lending institution, may, at its discretion, accept a private flood insurance policy in satisfaction of the flood insurance purchase requirement if the policy:

- provides coverage in the amount as required under the regulation;
- is issued by an insurer that is licensed, admitted or otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located; or in the case of a policy of difference in conditions, multiple peril, all risk or other blanket coverage insuring nonresidential commercial property, is issued by a surplus lines insurer recognized, or not disapproved by the insurance regulator of the State or jurisdiction where the property to be insured is located;
- covers both the mortgagor(s) and the mortgagee(s) as loss payees, except in the case of a policy that is provided by a condominium association, cooperative, homeowners association, or other applicable group and for which the premium is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense; and
- provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the regulated lending institution documents its conclusion regarding sufficiency of the protection of the loan in writing.

Some factors that a regulated lending institution could consider in determining whether a flood insurance policy provides sufficient protection of a loan include:

- whether the flood insurance policy's deductibles are reasonable based on the borrower's financial condition;
- whether the insurer provides adequate notice of cancellation to the mortgagor and mortgagee to ensure timely force placement of flood insurance, if necessary;
- whether the terms and conditions of the flood insurance policy with respect to payment per occurrence or per loss and aggregate limits are adequate to protect the regulated lending institution's interest in the collateral;
- whether the flood insurance policy complies with applicable State insurance laws; and
- whether the private insurance company has the financial solvency, strength, and ability to satisfy claims.

Plans Provided by Mutual Aid Societies

The regulation defines a "mutual aid society" as an organization: (1) whose members share a common religious, charitable, educational, or fraternal bond; (2) that covers losses caused by damage to members' property pursuant to an agreement, including damages caused by flooding, in accordance with this common bond; and (3) that has a demonstrated history of fulfilling the terms of agreements to cover losses to members' property caused by flooding. A regulated lending institution may, at its discretion, accept a plan issued by a mutual aid society in satisfaction of the flood insurance purchase requirement, if the following criteria are met:

- the regulated lending institution's primary Federal supervisory agency has determined that such plans qualify as flood insurance for purposes of the Federal flood insurance statute;
- the plan provides coverage in the amount required under the regulation;

- the plan covers both the mortgagor(s) and the mortgagee(s) as loss payees; and
- the plan provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the regulated lending institution documents its conclusion regarding sufficiency of the protection of the loan in writing.

FDIC Instructions for the Qualification of Plans Provided by Mutual Aid Societies

In general, FDIC examiners will evaluate whether mutual aid society plans qualify as flood insurance on a case-by-case basis. To satisfy the first criterion listed above for the acceptance of plans offered by a mutual aid society, a plan can be deemed to qualify as flood insurance for purposes of the Flood Disaster Protection Act of 1973, if either the:

(1) *mutual aid society* issuing the plan is licensed, admitted, or otherwise approved to engage in the business of insurance by the insurance regulator of the state or jurisdiction in which the property to be insured is located; or
(2) *mutual aid plan* is considered and regulated as insurance by that state or jurisdiction in which the property to be insured is located.

- When a financial institution uses its discretion to accept a mutual aid society plan, FDIC examiners will rely on the requirements of individual states' laws and the financial institution's due diligence when assessing compliance with the final rule's first criterion. Evidence of compliance may include, among other things, for example, a certificate or other documentation indicating that *either* the mutual aid society is licensed, admitted, or otherwise approved to engage in the business of insurance in the state or jurisdiction in which the property to be insured is located, *or* the mutual aid plan is considered and regulated as insurance by that state or jurisdiction.

Waiting Period

NFIP flood insurance policies that are not issued in conjunction with the making, increasing, extending or renewing of a loan have a 30-day waiting period. The congressional intent behind this requirement was to prevent the purchase of flood insurance (and any direct loss to the U.S. government) in times of imminent loss. However, if the initial purchase of flood insurance is made during the 13-month period following revision or update of a Flood Insurance Rate Map for the community, there is a one-day waiting period.

There is no waiting period when an additional amount of NFIP insurance is required in connection with the making, increasing, extending or renewing of a loan, such as a second mortgage, home equity loan, or refinancing.

Special Situations—Second Mortgages/Home Equity Loans

Both second mortgages and home equity loans are transactions that may be subject to the mandatory purchase requirements of the FDPA. Because only one NFIP flood insurance policy can be issued on a building, an institution should not request a new NFIP 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 NFIP coverage if necessary and issue an endorsement that will reflect the institution as a lien holder.

As an alternative, the borrower may also consider obtaining a private flood insurance policy in the proper amount.

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. If 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:

- As part of its procedures, an institution should 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 line, the value of the improved property or the maximum amount of flood insurance coverage available, whichever is less.

Special Situations—Condominium Policies

FEMA's condominium master policy is called a Residential Condominium Building Association Policy (RCBAP). The RCBAP covers both the common and individually owned building elements within the units, improvements within the units, and contents owned in common if contents coverage is purchased. The maximum amount of building flood insurance coverage that can be purchased under an RCBAP is either 100 percent of the replacement cost value of the building, or the total number of units in the condominium building times $250,000, whichever is less.

An institution must ensure that the minimum amount of flood

insurance covering the condominium unit is the lesser of:

- the outstanding principal balance of the loan, or
- the maximum amount of insurance available under the NFIP which is the lesser of:
  - the maximum limit available for the residential condominium unit, or
  - the insurable value allocated to the residential condominium unit which is the replacement cost value of the condominium building divided by the number of units.

Therefore, an institution must require a borrower whose loan is secured by a residential condominium unit to either:

- Ensure the condominium owners association has purchased an RCBAP, or other flood insurance policy, covering either 100 percent of the replacement cost value of the building, or the total number of units in the condominium building times $250,000, whichever is less; or
- Obtain a Dwelling Policy if the condominium owners association has not purchased flood insurance as described above or if that coverage is less than either 100 percent of the replacement cost value of the building or the total number of units in the condominium building times $250,000, whichever is less. The amount of coverage under a Dwelling Policy required to be purchased by the individual unit owner would be the difference between the condominium policy's coverage allocated to that unit and the mandatory flood insurance purchase requirements discussed above.

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 cost value of the building was $10,000,000, the condominium association could purchase a policy of $10,000,000. This amount of insurance would meet the requirements of the regulations for any individual unit insurance requirement in the condominium.

Non-residential condominium buildings are not eligible for coverage under the RCBAP. The NFIP offers a maximum amount of building coverage up to $500,000 for these buildings and $500,000 for commonly owned contents. Under the NFIP, the owner of a non-residential condominium unit within a non-residential condominium building may purchase only contents coverage for that unit. Building coverage may not be purchased in the name of the unit owner. The maximum allowable contents coverage for non-residential owners is $500,000.

Other Special Situations

- *Multiple Structures*— Multiple structures that secure a loan located in an SFHA must each be covered by flood insurance, even though the value of one structure may be sufficient to cover the loan amount. Under the NFIP, FEMA generally requires one policy per building, but also permits borrowers to insure non-residential buildings using one policy with a schedule separately listing each building. This coverage alternative may be especially useful for loans secured by agricultural properties and improvements.
- *Other Real Estate Owned*— An institution with other real estate owned (OREO) in SFHAs should, as a prudent practice, purchase flood insurance policies on its OREO property, although it is not required to do so by the regulations.

Escrow Requirements

The regulations require the escrowing of flood insurance premiums and fees for designated loans secured by residential improved real estate or a mobile home made, increased, renewed, or extended on or after January 1, 2016. In addition, institutions must offer and make available the option to escrow for flood insurance premiums and fees to borrowers with designated loans secured by residential improved real estate or a mobile home outstanding as of January 1, 2016. The escrow provisions are designed to improve compliance with flood insurance requirements by ensuring that borrowers with designated loans secured by residential improved real estate or a mobile home set aside funds to maintain flood insurance for the life of the loan.

While the escrow requirement pertains generally to any designated loan secured by residential improved real estate or a mobile home, there are two types of exceptions: a small lender exception and a loan-type exception. The regulation provides that an institution is not required to escrow if it has total assets of less than $1 billion as of December 31 of either of the two prior calendar years and, as of July 6, 2012:

- The institution was not required by Federal or State law to escrow taxes, insurance premiums, fees, or any other charges for the term of the loan; and
- The institution did not have a policy of uniformly and consistently escrowing the same.

If an excepted institution no longer qualifies for the exception because its assets exceeded the threshold for two consecutive calendar year ends, it must begin escrowing for any designated loan secured by residential improved real estate or a mobile home made, increased, extended, or renewed on or after July 1 of the first calendar year of changed status. If a financial institution provides escrow accounts only upon requests from borrowers, this does not constitute a uniform or consistent policy of requiring escrows.

In addition, the escrow requirement does not apply to the following types of loans:

- Extensions of credit primarily for business, commercial, or agricultural purposes even if secured by residential real estate;

- Loans in a subordinate position to a senior lien secured by the same property upon which the borrower has obtained sufficient flood insurance;
- Loans secured by a property that is covered by a flood insurance policy with sufficient flood insurance coverage, which is provided by a condominium, cooperative, or homeowners association;
- Home equity lines of credit;
- Nonperforming loans; or
- Loans with a term of no longer than 12 months.

A nonperforming loan in this instance is a loan that is 90 or more days past due and remains nonperforming until it is permanently modified or until the entire amount past due, including principal, accrued interest, and penalty interest incurred as the result of the past due status, is collected or otherwise discharged in full.

A loan that has a term exceeding 12 months does not qualify for the 12 month exception, even if one phase of the loan is for 12 months or less.

If the institution determines that a loan no longer qualifies for one of these loan-type exceptions, the institution must begin escrowing as soon as reasonably practicable.

Option to escrow: An institution (or its servicer) must offer and make available to borrowers the option to escrow flood insurance premiums and fees for designated loans secured by residential improved real estate or a mobile home that are outstanding as of January 1, 2016. In addition, an institution must provide the option to escrow notice to borrowers by June 30, 2016. A model clause for the notice on the option to escrow is provided in Appendix B of the regulations.

An institution that no longer qualifies for the small lender exception must provide a notice of the option to escrow flood insurance premiums and fees for loans outstanding on July 1 of the first calendar year in which it has a change in status by September 30 of that year. Further, the financial institution must begin escrowing as soon as reasonably practicable after receiving a borrower's request to escrow. The notice regarding the option to escrow does not have to be provided in conjunction with any other disclosure or be segregated from other information provided to the borrower. An institution may choose whether to provide a separate notice or add it to any other disclosure the lender provides the borrower, such as a periodic statement.

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[6] 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 Federal flood insurance statutes.

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. Accordingly, any electronic format used by an institution must contain all mandatory fields indicated on the SFHDF.

The SFHDF is available on the FEMA Website at: http://www.fema.gov/media-library/assets/documents/225

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, Letter of Map Revision (LOMR) or Letter of Map Amendment (LOMA), respectively, may be performed only by FEMA.

Letter of Map Amendment (LOMA)

- A flood map will occasionally show a property as being in an SFHA, even though the building on the property is actually above the base flood elevation. In practice, flood insurance maps do not reflect every rise in terrain, and there may be instances of high ground inadvertently included in the SFHAs. Nevertheless, lenders are bound by the information shown on the FEMA maps until the map is changed by FEMA.
- To resolve such a situation, a property owner can submit elevation materials with a request to FEMA for a LOMA to remove the property from the SFHA. The request must be submitted on the appropriate FEMA application form available at: https://www.fema.gov/flood-mapping-related-forms.
- Upon receiving a complete application package, FEMA will normally complete its review and issue its determination within 4-6 weeks.
- After obtaining a LOMA, a borrower must submit it to the lender for the flood insurance requirement to be waived. The lender has the discretion to continue to require flood insurance if the lender determines it is prudent to do so.

Letter of Map Revision (LOMR)

- A LOMR is appropriate when physical changes are necessary to raise the land above the base flood elevation 100-year flood level. For example, a LOMR request is appropriate when a property, located within a SFHA, is graded and filled to raise the level of the land above the base flood elevation

[6] *See* 63 FR 27857 (May 21, 1998) (codified at 44 CFR § 65.16).

100-year flood level. The request for a LOMR must be initiated and approved by the community since changes in land level may affect other property owners. Community approval also confirms that the change in the land has been reviewed and is compatible with the community's planning.

- A LOMR request must be submitted to FEMA on the appropriate form, available at: https://www.fema.gov/flood-mapping-related-forms.
- After obtaining a LOMR, the borrower must submit it to the lender before the flood insurance requirement is waived. The lender has the discretion to continue to require flood insurance if the lender determines that it is prudent to do so.

Flood maps, Standard Flood Hazard Determination forms, and Community Status Books may be obtained from FEMA by:

- Calling: **1-800-358-9616 or 1-800-611-6125,** or
- Ordering online: **www.msc.fema.gov**

To obtain information on a community's participation status, contact a FEMA representative at 1-800-358-9616 to request a community status book. Information on community status is also available on the Internet at www.fema.gov/national-flood-insurance-program/national-flood-insurance-program-community-status-book.

Reliance on prior determination

An institution may rely on a prior flood 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 the previous determination was recorded on the SFHDF.

There are, however some circumstances in which an institution may not rely on a previous determination, such as:

- If FEMA's map revisions or updates show that the security property has been remapped into 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.

An institution may also rely on a previous determination, which is not more than seven years old and is set forth on an SFHDF, when it increases, extends, renews, or purchases a loan. The making of a loan is not listed as a permissible event that permits an institution to rely on a previous determination. However, when the loan involves a refinancing or assumption by the same lender who obtained the original flood determination on the same property, the institution may rely on the previous determination, but only if the original determination was made not more than seven years before the date of the transaction, the basis for the determination was set forth on the SFHDF, and there were no map revisions affecting the property since the original determination was made. The same is true for multiple loans made by the same lender to the same borrower secured by the same property. A new determination is required when a loan refinancing or assumption is made by a lender different from the one who obtained the original determination because this constitutes a new loan.

Force Placement Requirements

An institution is not required to monitor for map changes, and flood determinations are not required to 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 Agencies' regulations require initiation of force placement procedures.

An institution or a servicer acting on its behalf is required to purchase or "force place" flood insurance for the borrower if the institution or the servicer determines that coverage is inadequate. An institution, or servicer acting on its behalf, upon discovering that the security property is not covered by an adequate amount of flood insurance, must provide notice to the borrower that the borrower should obtain flood insurance. If the borrower fails to purchase flood insurance in the appropriate amount within 45 days, the lender must purchase insurance on the borrower's behalf. If there is a brief delay in force placing coverage, the Agencies expect the lender to be able to provide a reasonable explanation, for example, because the lender uses batch processing when purchasing force-placed flood insurance policies.

An institution or its servicer continues to be responsible for ensuring that if 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.

Under the Biggert-Waters Act, an institution may force place and charge for insurance beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount. The Biggert-Waters Act also provides that an institution must terminate force-placed insurance within 30 days of receipt of confirmation of a borrower's existing flood insurance coverage. Additionally, an institution must refund to the borrower all premiums and fees for force-placed insurance paid by the borrower during any period of overlap between the borrower's policy and the force-placed policy. Because an insurer is the entity that actually cancels the policy, an institution need only

notify the insurer to terminate the force-placed policy in order to comply with the termination requirement.

Force 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 coverage available under the NFIP. If a borrower fails to obtain the required amount of flood insurance coverage upon notification by an institution or its servicer, the amount that must be force placed is equal to the difference between the present amount of coverage, if any, and the lesser of the outstanding principal balance or the maximum coverage limit.

There is no required form of notice to borrowers for use in connection with the force placement procedures. An institution or its servicer may choose to send the notice directly or may use the insurance company that issues the force placement policy to send the notice. Force-placed flood insurance policies are available through private insurers or through the NFIP. FEMA has developed the Mortgage Portfolio Protection Program (MPPP) to assist lenders in connection with force placement procedures. For information concerning the MPPP, lenders and others should consult FEMA's Website.[7]

Determination Fees

The regulations permit an institution or its servicer to 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 force placement provision.

The loan agreement or other contractual documents between the parties may also permit the imposition of fees.

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 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 monitoring. The fee for the original flood determination (i.e., whether a security property is in an 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.[8] 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 of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

When an institution makes, increases, extends or renews a loan secured by property that is or will be located in a SFHA, the institution must provide a written notice of special flood hazards to the borrower and the servicer, if there is one. This notice of special flood hazards 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 section 102(b) of the FDPA, as amended.
- A statement, if applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers.
- A statement that flood insurance coverage is available from private insurance companies that issue standard flood insurance policies on behalf of the NFIP or directly from the NFIP.
- A statement that flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may also be available from a private insurance company that issues policies on behalf of the company.
- A statement that the borrower is encouraged to compare flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies, and that the borrower should inquire about the availability, cost, and comparisons of flood insurance coverage to an insurance agent.
- 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.

[7] http://www.fema.gov/media-library-data/1444065610669-6de95573a833329e4a889e95569d5d9b/11_mppp_508_nov2015.pdf.

[8] *See* 12 CFR part 1026, supplement 1, comment 4(c)(7)-3.

For any loan for which an institution is required to escrow under the regulations, the institution must provide a written notice with the notice of special flood hazards informing the borrower that the institution is required to escrow all premiums and fees for flood insurance required under the regulations. The language in the notice about escrow should be substantially similar to the model clauses provided in Appendix A of the regulations, under the section titled "Escrow Requirements for Residential Loans." The escrow notice may be provided in the notice of special flood hazards or separately.

An institution may use the sample form contained in Appendix A to the regulations to comply with the notice requirements. The sample form is an example of an acceptable form the notice may take and contains additional information not required under the regulations. Lenders may also personalize, change the format of, and add information 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 regulations.

The regulations permit an institution to rely on assurances from a seller or lessor that the seller or lessor has provided the requisite notice to the purchaser or lessee. As an example, this alternate form of notice might arise in a situation in which 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.

Delivery of the notice of special flood hazards 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 Agencies generally regard ten days as a "reasonable" time interval.

Notice to Servicer

Loan servicers must also be notified of special flood hazards. In many cases, the servicer's identity will not be known until well after the loan closing; consequently, notification to the servicer in advance of the loan closing would not be possible or would serve no purpose. Notice to the servicer is required as promptly as practicable after the institution provides notice to the borrower, and must be given no later than at the time the lender transmits to the servicer other loan data concerning hazard insurance and taxes. Delivery to the servicer of a copy of the borrower's notice suffices as notice to the servicer.

Notice to the Administrator of FEMA

An institution must notify the Administrator of FEMA, or the Administrator'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 thereof, and at FEMA's request this designation is stated in the regulations. 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. Notice is required 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, the information should be sufficient for the Administrator, or the Administrator's designee, to identify the security property and the loan, as well as the new servicer and its address.

Notice of Option to Escrow

When an institution must offer and make available to a borrower the option to escrow flood insurance premiums and fees, the institution is required to mail or deliver to the borrower a written notice of the option to escrow for required flood insurance. The language in this notice must be similar to the language in the model clause of Appendix B of the regulations. The notice must also include the method(s) by which the borrower may request the escrow. Institutions must mail or deliver the notice no later than June 30, 2016 for any loan covered by flood insurance and outstanding on January 1, 2016.

Institutions that no longer qualify for the small lender exception must mail or deliver, for any loan covered by flood insurance and outstanding on July 1 of the first calendar year in which the institution had a change in status, the notice by September 30 of that year.

Record-Keeping Requirements

The record keeping requirements of the regulations include retention of:

- Copies of completed SFHDFs in either hard copy or electronic form, for as long as the institution owns the loan; and
- Records of the receipt of the notice of special flood hazards to the borrower and the servicer for as long as the institution owns the loan.

There is no particular form required 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 that retain these records electronically must be able to retrieve them within a reasonable time.

Penalties and Liabilities

The FDPA provides penalties for violations of:

- Mandatory flood purchase requirement;
- Escrow requirements;
- Notice requirements; and
- Force placement requirements.

If an institution is found to have a pattern or practice of committing any of these violations, the Agencies are required to assess civil money penalties in an amount not to exceed $2,000 per violation. Any penalty assessed will be paid into the FEMA National Flood Mitigation Fund. Liability for violations cannot be transferred to a subsequent purchaser of a loan. No penalty may be imposed after the expiration of four years beginning on the date of the occurrence of the violation.

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 regulations.
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 in a participating community.
3. To determine if the institution provides the required notices to the borrower and servicer when the property is located in a SFHA, and to the Administrator 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 required by law.
5. To determine if the institution complies with the force 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 determine if the institution complies with the private flood insurance requirements of the regulation.
7. To require corrective action when policies or internal controls are deficient, or when violations of law are identified.

Examination Procedures[9]

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;
- By reviewing consumer complaints submitted to the institution.[10]
- By discussing procedures with management; and
- By reviewing a sample of loan files.

Coverage and Internal Control

1. Determine if the institution has effective internal controls in place through appropriate policies, procedures, training, and monitoring to ensure compliance with the requirements of the regulations.
2. Determine the method(s) used by the institution to ascertain whether improved real estate or mobile homes are or will be located in an SFHA.
3. Verify that the process used accurately identifies special flood hazard areas.
4. For those special flood hazard areas identified, determine if the communities in which they are located participate in the NFIP.
5. If the detached structure is not covered by flood insurance, review the institution's documented conclusion and verify that the structure meets the exemption.
6. If the institution provides "table funding" to close loans originated by mortgage brokers or dealers, verify that it complies with regulatory requirements.
7. 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.
8. 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.

[9] These reflect the interagency examination procedures in their entirety.

[10] Consumer complaints can be a source of information about private flood policies that the institution did not accept.

Property Determination Requirements

1. Verify that flood zone determinations are accurately recorded on the SFHDF. (Note: An institution is required to prepare a flood hazard determination for all detached structures, including those that may not be in a SFHA or require flood insurance coverage. Because a flood hazard determination is often needed to identify the number and types of structures on the property, conducting a flood hazard determination remains necessary to ensure compliance with the flood insurance requirements.)
2. Verify that the institution relies on a previous determination only if it is not more than seven years old; the determination was recorded on the SFHDF; and the determination is not on a property located 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.
    a. If the institution accepted a private flood insurance policy in accordance with the mandatory acceptance requirements, verify that the policy either: (a) contains the compliance aid assurance clause exactly as follows: "This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation" or (b) that the policy meets the definition of "private flood insurance" as set forth in the regulation.
    b. If the institution accepted a flood insurance policy issued by a private insurer in accordance with the discretionary acceptance requirements, verify the following:
        - the policy provides a sufficient amount of insurance;
        - the policy is issued by an insurer permitted under the regulation;
        - the policy covers both the mortgagor(s) and the mortgagee(s) as loss payees; and
        - the institution determined that the policy provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and that the institution documented its conclusion regarding sufficiency of the protection of the loan in writing.
    c. If the institution accepted a plan issued by a mutual aid society in accordance with the requirements for acceptance of such a plan, verify the following:
        - the institution's regulator has determined that such plans qualify as flood insurance;
            - for FDIC-regulated institutions, assess whether the regulated lending institution has completed the due diligence necessary to determine that the mutual aid plan is considered insurance under applicable state law. (See page 5 for more information)
        - the plan provides coverage in the amount required;
        - the plan covers both the mortgagor(s) and the mortgagee(s) as loss payees; and
        - the institution documented in writing its conclusion that the plan provides sufficient protection of the designated loan, consistent with general safety and soundness principles.
2. In connection with a residential property, if flood insurance was not required for a detached structure, determine whether the institution followed its internal policies and procedures and verify that the institution documented its decision in writing not to require insurance for such structure at the time of loan origination.
3. If the institution makes loans insured or guaranteed by a government agency (SBA, VA, or FHA) determine how it complies with the prohibition against making these loans if the security property is in an 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 force 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

Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

1. Ascertain that when an institution makes, increases, extends or renews a loan secured by property located in an SFHA, written notice is mailed or delivered to the borrower within a reasonable time prior to completion of the transaction.
2. Verify that the notice contains:
   - A warning that the property securing the loan is or will be located in an 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;
   - A statement that flood insurance coverage is available from private insurance companies that issue standard flood insurance policies on behalf of the NFIP or directly from the NFIP;
   - A statement that flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may also be available from a private insurance company that issues policies on behalf of the company;
   - A statement that the borrower is encouraged to compare flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies, and that the borrower should inquire about the availability, cost, and comparisons of flood insurance coverage to an insurance agent;
   - 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 an institution is required to escrow under the regulations, verify that the institution provided a written notice with the notice of special flood hazards informing the borrower that the institution is required to escrow all premiums and fees for flood insurance, similar to the model clause in Appendix A of the regulations.
4. 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.
5. Verify that the institution retains a record of receipt of the notice provided to the borrower for as long as it owns the loan.
6. 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.

Notice of the Option to Escrow

1. If the institution is required to send a notice of option to escrow flood insurance premiums and fees, ascertain that written notice is mailed or delivered to the borrower: 1) by June 30, 2016 for any loan covered by flood insurance and outstanding on January 1, 2016; or, if applicable, 2) by September 30 of the first calendar year in which the institution has had a change in status and no longer qualifies for the small lender exception for any loan covered by flood insurance and outstanding as of July 1 of that calendar year.
2. Verify that the notice contains:
   - A statement that the borrower has an option to escrow required flood insurance premiums and fees.
   - A statement about the methods the borrower may use to request the escrow.

Notice of Servicer's Identity

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 (the Administrator of FEMA's designee) within prescribed time frames.

Escrow Requirements

1. Verify that the institution escrows for flood insurance premiums and fees for designated loans made, increased, renewed, or extended on or after January 1, 2016 unless the loan qualifies for one of the exceptions or the institution qualifies for the small lender exception.
2. If a designated loan no longer qualifies for a loan-related exception, verify that the institution established an escrow account as soon as reasonably practicable.
3. If the institution no longer qualifies for the small lender exception, verify that the institution started requiring escrow on designated loans made, increased, extended or renewed on or after July 1 of the first calendar year of changed status.
4. Verify that an institution (or its servicer) offered and made available to borrowers the option to escrow flood insurance premiums and fees for loans secured by residential improved real estate or a mobile home that are outstanding as of January 1, 2016. In addition, verify that an institution started escrowing

as soon as reasonably practicable after receiving the borrower's request to escrow.

5. Verify that, for institutions that no longer qualify for the small lender exception, the institution mailed or delivered, for any loan covered by flood insurance and outstanding on July 1 of the first calendar year in which the institution no longer qualifies for the small lender exception, the notice of the option to escrow by September 30 of that year. In addition, verify that the institution started escrowing as soon as reasonably practicable after receiving a borrower's request to escrow.
6. Verify that the institution's escrow procedures comply with section 10 of RESPA.

Force Placement Requirements

1. If the institution determines that flood insurance coverage is less than the amount required by the FDPA, ascertain that it has appropriate policies and procedures in place to exercise its force 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.
3. If the institution purchases required flood insurance on the borrower's behalf and charges the borrower for premiums and fees incurred for coverage, verify that within 30 days of receiving confirmation of a borrower's existing flood insurance coverage, the institution:
   - Notifies the insurance provider to terminate the existing force-placed insurance, and
   - Refunds to the borrower all force-placed insurance premiums and any fees paid for by the borrower during any period of overlap between the borrower's policy and the force-placed policy.

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 regulations? 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 regulations 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 require the servicer to meet the requirements of the regulations?

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 SFHDF 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 SFHDF either in hard copy or electronic form for as long as it owns the loan?
4. When increasing, extending, renewing, or purchasing a loan (not making a loan), 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 force 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. For those loans subject to TILA, 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?

4. Are the fees charged by the institution for making a flood determination reasonable?

Notice Requirements

Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

1. Are borrowers whose security property is located in an SFHA provided written notice of special flood hazards 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;
   - A statement that flood insurance coverage is available from private insurance companies that issue standard flood insurance policies on behalf of the NFIP or directly from the NFIP;
   - A statement that flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may also be available from a private insurance company that issues policies on behalf of the company;
   - A statement that the borrower is encouraged to compare flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies, and that the borrower should inquire about the availability, cost, and comparisons of flood insurance coverage to an insurance agent;
   - 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 an institution is required to escrow under the regulations, verify that the institution provided a written notice with the notice of special flood hazards informing the borrower that the institution is required to escrow all premiums and fees for flood insurance, similar to the model clause in Appendix A of the regulations.
4. 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?
5. Does the institution provide a copy of the notice of special flood hazards to the servicer of the loan within the required time frames?
6. 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?

Notice of Option to Escrow

1. If the institution is required to mail or deliver a notice of the option to escrow flood insurance premiums and fees, ascertain that written notice is mailed or delivered to the borrower: 1) by June 30, 2016 for any loan covered by flood insurance and outstanding as of January 1, 2016; or 2) if applicable, by September 30 of the first calendar year in which the institution has had a change in status and no longer qualifies for the small lender exception in the regulation for any loan covered by flood insurance and outstanding on July 1 of that calendar year.
2. Verify that the notice contains:
   - A statement that the borrower has an option to escrow required flood insurance premiums and fees.
   - A statement about the methods the borrower may use to request the escrow.

Insurance Requirements

1. If an improved property or mobile home is located in an 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. When 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.)
3. If the institution accepts a private flood insurance policy in accordance with the mandatory acceptance requirements set forth in the regulation, does the institution verify that either: (a) the policy or an endorsement to the policy contains the compliance aid assurance clause exactly as follows: “This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation”; or (b) the policy meets the definition of “private flood insurance” as set forth in the regulation?
4. If the institution exercises its discretion to accept flood insurance issued by a private insurer that does not meet the statutory definition of private flood insurance, does the institution comply with the regulation’s discretionary acceptance requirements?

5. If the institution accepts mutual aid plans, are the plans accepted in accordance with the regulation's requirements?

Escrow Requirements

1. Does the institution require the escrow of premiums and fees for flood insurance on designated loans secured by residential improved real estate or a mobile home made, increased, extended, or renewed after January 1, 2016 unless the loan qualifies for one of the exceptions or the institution qualifies for the small lender exception?
2. If a designated loan secured by residential improved real estate or a mobile home no longer qualifies for the loan-related exception, does the lender establish an escrow as soon as reasonably practicable?
3. If the institution no longer qualifies for the small lender exception, did the lender begin requiring escrow on designated loans secured by residential improved real estate or a mobile home made, increased, extended, or renewed on or after July 1 of the first calendar year of changed status?
4. Did the institution (or its servicer) offer and make available to borrowers the option to escrow flood insurance premiums and fees for designated loans secured by residential improved real estate or a mobile home that are outstanding as of January 1, 2016? In addition, did the institution start escrowing as soon as reasonably practicable after receiving a borrower's request to escrow?
5. If the institution no longer qualifies for the small lender exception, did the institution mail or deliver, for any loan covered by flood insurance and outstanding on July 1 of the first calendar year in which the institution no longer qualifies for the small lender exception, the notice of the option to escrow by September 30 of that year? In addition, did the institution start escrowing as soon as reasonably practicable after receiving a borrower's request to escrow?
6. Does the institution comply with the provisions of section 10 of RESPA (12 CFR §1024.17 of Regulation X) for escrows?

Force 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 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 45 days after the notice to the borrower has been sent?
2. If the institution purchases required flood insurance on the borrower's behalf and charges the borrower for premiums and fees incurred for coverage, verify that within 30 days of receiving confirmation of a borrower's existing flood insurance coverage, the institution:
   - Notifies the insurance provider to terminate the existing force-placed insurance, and
   - Refunds to the borrower all force-placed insurance premiums and any fees paid for by the borrower during any period of overlap between the borrower's policy and the force-placed policy.

Notice to Administrator of FEMA

1. Does the institution provide the appropriate notice to the carrier of the insurance policy (the Administrator 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 Administrator's designee within 60 days of the effective date of the transfer of the servicing?

References

Flood Disaster Protection Act of 1973, as amended

12 CFR Part 339: Loans in Areas Having Special Flood Hazards

Interagency Policy Regarding the Assessment of Civil Money Penalties by the Federal Financial Institutions Regulatory Agencies

Advisory Opinion 96-10: Loans Made by Insured Depository Institutions for Properties Located in Communities Not Participating In the National Flood Insurance Program

2009 Interagency Flood Insurance Questions and Answers

2011 Interagency Flood Insurance Questions and Answers

FIL-42-2009 Flood Insurance: Revised Interagency Questions and Answers Regarding Flood Insurance

FIL-14-2013 Interagency Statement on the Impact of Biggert-Waters Act

FIL 28-2014: Interagency Statement on Increased Maximum Flood Insurance Coverage for "Other Residential Buildings"

Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance

Background

The National Flood Insurance Reform Act of 1994 (the Reform Act) (Title V of the Riegle Community Development and Regulatory Improvement Act of 1994) comprehensively revised the two federal flood insurance statutes, the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973. The Reform Act required the OCC, Board, FDIC, and NCUA to revise their flood insurance regulations and required the FCA to promulgate a flood insurance regulation for the first time. The OCC, Board, FDIC, NCUA, and FCA (collectively, "the Agencies") fulfilled these requirements by issuing a joint final rule in the summer of 1996. See 61 FR 45684 (August 29, 1996).

In connection with the 1996 joint rulemaking process, the Agencies received a number of requests to clarify specific issues covering a wide spectrum of the proposed rule's provisions. The Agencies addressed many of these requests in the preamble to the joint final rule. The Agencies concluded, however, that given the number, level of detail, and diversity of the requests, guidance addressing the technical compliance issues would be helpful and appropriate. Consequently, the Agencies decided to issue guidance to address these technical issues subsequent to the promulgation of the final rule (61 FR at 45685-86). The Federal Financial Institutions Examination Council (FFIEC) fulfilled that objective through the initial release of the Interagency Questions and Answers in 1997 (1997 Interagency Questions and Answers). 62 FR 39523 (July 23, 1997).

After notice and comment, on July 21, 2009, the Agencies updated the interagency guidance (2009 Interagency Questions and Answers). See 74 FR 35914 (July 21, 2009). In this publication, the Agencies also proposed five new questions and answers for comment. See 74 FR 35931. The proposed questions and answers addressed issues related to insurable value and force placement of flood insurance.

Two questions and answers were adopted as final on October 1, 2011, to supplement the 2009 Interagency Questions and Answers and other guidance or interpretations issued by the Agencies and FEMA.

Since the publication of the latest Interagency Questions and Answers Regarding Flood insurance in 2011, FEMA has rescinded the Mandatory Purchase of Flood Insurance Guidelines (FEMA Guidelines). Several flood insurance requirements were also amended by the Biggert-Waters Act and the HFIAA.

Interagency Questions and Answers Regarding Flood Insurance

The Interagency Questions and Answers are organized by topic. Each topic addresses a major area of the Act and Regulation. For ease of reference, the following terms are used throughout this document: "Act" refers to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as revised by the National Flood Insurance Reform Act of 1994 (codified at 42 U.S.C. 4001 et seq.). "Regulation" refers to each agency's current final rule. [1] The agencies are providing answers to questions pertaining to the following topics:

6. Determining when certain loans are designated loans for which flood insurance is required under the Act and Regulation.
7. Determining the appropriate amount of flood insurance required under the Act and Regulation.
8. Exemptions from the mandatory flood insurance requirements.
9. Flood insurance requirements for construction loans.
10. Flood insurance requirements for nonresidential buildings.
11. Flood insurance requirements for residential condominiums.
12. Flood insurance requirements for home equity loans, lines of credit, subordinate liens, and other security interests in collateral located in an SFHA.
13. Flood insurance requirements in the event of the sale or transfer of a designated loan and/or its servicing rights.
14. Escrow requirements.
15. Force placement of flood insurance.
16. Private insurance policies.
17. Required use of Standard Flood Hazard Determination Form (SFHDF).
18. Flood determination fees.
19. Flood zone discrepancies.
20. Notice of special flood hazards and availability of Federal disaster relief.
21. Mandatory civil money penalties.

Determining when certain loans are designated loans for which flood insurance is required under the Act and Regulation

[1] See note 1 above.

1. *Does the Regulation apply to a loan where the building or mobile home securing such loan is located in a community that does not participate in the National Flood Insurance Program (NFIP)?*

   Answer: Yes. The Regulation does apply; however, a lender need not require borrowers to obtain flood insurance for a building or mobile home located in a community that does not participate in the NFIP, even if the building or mobile home securing the loan is located in a Special Flood Hazard Area (SFHA). Nonetheless, a lender, using the standard Special Flood Hazard Determination Form (SFHDF), must still determine whether the building or mobile home is located in an SFHA. If the building or mobile home is determined to be located in an SFHA, a lender is required to notify the borrower. In this case, a lender, generally, may make a conventional loan without requiring flood insurance, if it chooses to do so. However, a lender may not make a government-guaranteed or insured loan, such as a Small Business Administration, Veterans Administration, or Federal Housing Administration loan secured by a building or mobile home located in an SFHA in a community that does not participate in the NFIP. See 42 U.S.C. 4106(a). Also, a lender is responsible for exercising sound risk management practices to ensure that it does not make a loan secured by a building or mobile home located in an SFHA where no flood insurance is available, if doing so would be an unacceptable risk.

2. *What is a lender's responsibility if a particular building or mobile home that secures a loan, due to a map change, is no longer located within an SFHA*?

   Answer: The lender is no longer obligated to require mandatory flood insurance; however, the borrower can elect to convert the existing NFIP policy to a Preferred Risk Policy. For risk management purposes, the lender may, by contract, continue to require flood insurance coverage.

3. *Does a lender's purchase of a loan, secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act, from another lender trigger any requirements under the Regulation?*

   Answer: No. A lender's purchase of a loan, secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act, alone, is not an event that triggers the Regulation's requirements, such as making a new flood determination or requiring a borrower to purchase flood insurance. Requirements under the Regulation, generally, are triggered when a lender makes, increases, extends, or renews a designated loan. A lender's purchase of a loan does not fall within any of those categories.

   However, if a lender becomes aware at any point during the life of a designated loan that flood insurance is required, the lender must comply with the Regulation, including force placing insurance, if necessary. Depending upon the circumstances, safety and soundness considerations may sometimes necessitate such due diligence upon purchase of a loan as to put the lender on notice of lack of adequate flood insurance. If the purchasing lender subsequently extends, increases, or renews a designated loan, it must also comply with the Regulation.

4. *How do the Agencies enforce the mandatory purchase requirements under the Act and Regulation when a lender participates in a loan syndication or participation?*

   Answer: As with purchased loans, the acquisition by a lender of an interest in a loan either by participation or syndication after that loan has been made does not trigger the requirements of Act or Regulation, such as making a new flood determination or requiring a borrower to purchase flood insurance. Nonetheless, as with purchased loans, depending upon the circumstances, safety and soundness considerations may sometimes necessitate that the lender undertake due diligence to protect itself against the risk of flood or other types of loss.

   Lenders who pool or contribute funds that will be simultaneously advanced to a borrower or borrowers as a loan secured by improved real estate would all be subject to the requirements of Act or Regulation. Federal flood insurance requirements would also apply to those situations where such a group of lenders decides to extend, renew, or increase a loan. Although the agreement among the lenders may assign compliance duties to a lead lender or agent, and include clauses in which the lead lender or agent indemnifies participating lenders against flood losses, each participating lender remains individually responsible for ensuring compliance with the Act and Regulation. Therefore, the Agencies will examine whether the regulated institution/ participating lender has performed upfront due diligence to ensure both that the lead lender or agent has undertaken the necessary activities to ensure that the borrower obtains appropriate flood insurance and that the lead lender or agent has adequate controls to monitor the loan(s) on an ongoing basis for compliance with the flood insurance requirements. Further, the Agencies expect the participating lender to have adequate controls to monitor the activities of the lead lender or agent to ensure compliance with flood insurance requirements over the term of the loan.

5. *Does the Regulation apply to loans that are being restructured or modified?*

   Answer: It depends. If the loan otherwise meets the definition of a designated loan and if the lender increases the amount of the loan, or extends or renews the terms of the original loan, then the Regulation applies.

6. *Are table funded loans treated as new loan originations?*

   Answer: Yes. Table funding, as defined under Real Estate Settlement Procedure Act (RESPA) rule, 12 CFR 1024.2, is a settlement at which a loan is funded by a contemporaneous advance of loan funds and the

assignment of the loan to the person advancing the funds. A loan made through a table funding process is treated as though the party advancing the funds has originated the loan. The funding party is required to comply with the Regulation. The table funding lender can meet the administrative requirements of the Regulation by requiring the party processing and underwriting the application to perform those functions on its behalf.

7. *Is a lender required to perform a review of its, or of its servicer's, existing loan portfolio for compliance with the flood insurance requirements under the Act and Regulation?*

   Answer: No. Apart from the requirements mandated when a loan is made, increased, extended, or renewed, a regulated lender need only review and take action on any part of its existing portfolio for safety and soundness purposes, or if it knows or has reason to know of the need for NFIP coverage. Regardless of the lack of such requirement in the Act and Regulation, however, sound risk management practices may lead a lender to conduct scheduled periodic reviews that track the need for flood insurance on a loan portfolio.

Determining the appropriate amount of flood insurance required under the Act and Regulation

8. *The Regulation states that the amount of flood insurance required "must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act." What is meant by the "maximum limit of coverage available for the particular type of property under the Act"?*

   Answer: "The maximum limit of coverage available for the particular type of property under the Act" depends on the value of the secured collateral. First, under the NFIP, there are maximum caps on the amount of insurance available. For single-family and two-to-four family dwellings and other residential buildings located in a participating community under the regular program, the maximum cap is $250,000. For nonresidential structures located in a participating community under the regular program, the maximum cap is $500,000. (In participating communities that are under the emergency program phase, the caps are $35,000 for single-family and two-to- four family dwellings and other residential structures, and $100,000 for nonresidential structures).

   In addition to the maximum caps under the NFIP, the Regulation also provides that "flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located," which is commonly referred to as the "insurable value" of a structure. The NFIP does not insure land; therefore, land values should not be included in the calculation.

   An NFIP policy will not cover an amount exceeding the "insurable value" of the structure. In determining coverage amounts for flood insurance, lenders often follow the same practice used to establish other hazard insurance coverage amounts. However, unlike the insurable valuation used to underwrite most other hazard insurance policies, the insurable value of improved real estate for flood insurance purposes also includes the repair or replacement cost of the foundation and supporting structures. It is very important to calculate the correct insurable value of the property; otherwise, the lender might inadvertently require the borrower to purchase too much or too little flood insurance coverage. For example, if the lender fails to exclude the value of the land when determining the insurable value of the improved real estate, the borrower will be asked to purchase coverage that exceeds the amount the NFIP will pay in the event of a loss. (Please note, however, when taking a security interest in improved real estate where the value of the land, excluding the value of the improvements, is sufficient collateral for the debt, the lender must nonetheless require flood insurance to cover the value of the structure if it is located in a participating community's SFHA).

9. *What is insurable value?*

   Answer: The insurable value of a building is the same as the overall value of a property minus the land on which the property is located. FEMA's Mandatory Purchase of Flood Insurance Guidelines state that the insurable value of a building is the same as 100 percent replacement cost value (RCV) of the insured building, which is defined as ''[t]he cost to replace property with the same kind of material and construction without deduction for depreciation.''[2] FEMA's guidelines, however, also provide that lenders should avoid creating a situation in which the insured pays for more coverage than the NFIP would pay in the event of a loss.[3] Strictly linking insurable value to RCV is not practical in all cases. In cases involving certain residential or condominium properties, insurance policies should be written to, and the insurance loss payout usually would be the equivalent of, RCV.[4] However, in cases involving nonresidential properties, and even some residential

[2] FEMA,Mandatory Purchase of Flood Insurance Guidelines,at GLS 10.
[3] FEMA,
Mandatory Purchase of Flood Insurance Guidelines, at 27.
[4] A single-family dwelling, including a single-family unit in a building under a condominium form of ownership, used as the insured's primary residence is covered under the NFIP's Dwelling Policy and, upon loss, payment is settled at RCV if the dwelling is insured for at least the lesser of 80 percent of the dwelling's full RCV or the maximum limit of coverage under the NFIP. Losses on other residential properties are settled at actual cash value. See FEMA, Flood Insurance Manual, at POL 3–20. Residential condominium buildings are covered under the NFIP's Residential Condominium Building Association Policy (RCBAP). Losses on residential condominium buildings are settled at RCV, unless subject to a co- insurance penalty, which applies when the building coverage is less than the lesser of 80 percent of full RCV or the

properties, where the insurance loss payout would normally be based on actual cash value, which is RCV less physical depreciation,[5] insurance policies written at RCV may require an insured to pay for coverage that exceeds the amount the NFIP would pay in the event of a loss. Therefore, it is reasonable for lenders, in determining the amount of flood insurance required, to consider the extent of recovery allowed under the NFIP policy for the type of property being insured. This allows the lender to assist the borrower in avoiding situations in which the insured pays for coverage that exceeds the amount the NFIP will pay in the event of a loss. Lenders need to be equally mindful of avoiding situations in which, as a result of insuring at a level below RCV, they underinsure property.

In calculating the amount of insurance to require, the lender and borrower (either by themselves or in consultation with the flood insurance provider or other appropriate professional) may choose from a variety of approaches or methods to establish the insurable value. They may use an appraisal based on a cost-value (not market-value) approach, a construction-cost calculation, the insurable value used in a hazard insurance policy (recognizing that the insurable value for flood insurance purposes may differ from the coverage provided by the hazard insurance and that adjustments may be necessary; for example, most hazard policies do not cover foundations), or any other reasonable approach, so long as it can be supported.

10. *Are there any alternatives to the definition of insurable value?*

    Answer: [Reserved]

11. *What are examples of residential buildings?*

    Answer: Residential buildings include one-to-four family dwellings; apartment or other residential buildings containing more than four dwelling units; condominiums and cooperatives in which at least 75 percent of the square footage is residential; hotels or motels where the normal occupancy of a guest is six months or more; and rooming houses that have more than four roomers. A residential building may have incidental nonresidential use, such as an office or studio, as long as the total area of such incidental occupancy is limited to less than 25 percent of the square footage of the building, or 50 percent for single-family dwellings.

12. *What are examples of nonresidential buildings?*

    Answer: Nonresidential buildings include those used for small businesses, churches, schools, farm activities (including grain bins and silos), pool houses, clubhouses, recreation, mercantile structures, agricultural and industrial structures, warehouses, hotels and motels with normal room rentals for less than six months' duration, nursing homes, and mixed-use buildings with less than 75 percent residential square footage.

13. *How much insurance is required on a building located in an SFHA in a participating community?*

    Answer: The amount of insurance required by the Act and Regulation is the lesser of:

    - The outstanding principal balance of the loan(s) or
    - The maximum amount of insurance available under the NFIP, which is the lesser of:
        - The maximum limit available for the type of structure or
        - The "insurable value" of the structure.

    Example: (calculating insurance required on a nonresidential building):

    Loan security includes one equipment shed located in an SFHA in a participating community under the regular program.

    - Outstanding loan principal is $300,000
    - Maximum amount of insurance available under the NFIP:
        - Maximum limit available for type of structure is $500,000 per building (nonresidential building)
        - Insurable value of the equipment shed is $30,000

    The minimum amount of insurance required by the Regulation for the equipment shed is $30,000.

14. *Is flood insurance required for each building when the real estate security contains more than one building located in an SFHA in a participating community? If so, how much coverage is required?*

    Answer: Yes. The lender must determine the amount of insurance required on each building and add these individual amounts together. The total amount of required flood insurance is the lesser of:

    - The outstanding principal balance of the loan(s) or
    - The maximum amount of insurance available under the NFIP, which is the lesser of:
        - The maximum limit available for the type of structures or
        - The "insurable value" of the structures.

    The amount of total required flood insurance can be allocated among the secured buildings in varying amounts, but all buildings in an SFHA must have some coverage.

    Example: Lender makes a loan in the principal amount of $150,000 secured by five nonresidential buildings, only three of which are located in SFHAs within participating communities.

    - Outstanding loan principal is $150,000

maximum limit of coverage under the NFIP. See id. at POL 43–60.

[5] FEMA,Mandatory Purchase of Flood Insurance Guidelines, at GLS 1.

- Maximum amount of insurance available under the NFIP
  - Maximum limit available for the type of structure is $500,000 per building (nonresidential buildings); or
  - Insurable value (for each nonresidential building for which insurance is required, which is $100,000, or $300,000 total)

Amount of insurance required for the three buildings is $150,000. This amount of required flood insurance could be allocated among the three buildings in varying amounts, so long as each is covered by flood insurance.

15. *If the insurable value of a building or mobile home, located in an SFHA in which flood insurance is available under the Act, securing a designated loan is less than the outstanding principal balance of the loan, must a lender require the borrower to obtain flood insurance up to the balance of the loan?*

    Answer: No. The Regulation provides that the amount of flood insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for a particular type of property under the Act. The Regulation also provides that flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the building or mobile home is located. Since the NFIP policy does not cover land value, lenders should determine the amount of insurance necessary based on the insurable value of the improvements.

16. *Can a lender require more flood insurance than the minimum required by the Regulation?*

    Answer: Yes. Lenders are permitted to require more flood insurance coverage than required by the Regulation. The borrower or lender may have to seek such coverage outside the NFIP. Each lender has the responsibility to tailor its own flood insurance policies and procedures to suit its business needs and protect its ongoing interest in the collateral. However, lenders should avoid creating situations where a building is "over-insured."

17. *Can a lender allow the borrower to use the maximum deductible to reduce the cost of flood insurance?*

    Answer: Yes. However, it is not a sound business practice for a lender to allow the borrower to use the maximum deductible amount in every situation. A lender should determine the reasonableness of the deductible on a case-by-case basis, taking into account the risk that such a deductible would pose to the borrower and lender. A lender may not allow the borrower to use a deductible amount equal to the insurable value of the property to avoid the mandatory purchase requirement for flood insurance.

Exemptions from the mandatory flood insurance requirements

18. *What are the exemptions from coverage?*

    Answer: There are only two exemptions from the purchase requirements. The first applies to state-owned property covered under a policy of self-insurance satisfactory to the Director of FEMA. The second applies if both the original principal balance of the loan is $5,000 or less, and the original repayment term is one year or less.

Flood insurance requirements for construction loans

19. *Is a loan secured only by land that is located in an SFHA in which flood insurance is available under the Act and that will be developed into buildable lot(s) a designated loan that requires flood insurance?*

    Answer: No. A designated loan is defined as a loan secured by a building or mobile home that is located or to be located in an SFHA in which flood insurance is available under the Act. Any loan secured only by land that is located in an SFHA in which flood insurance is available is not a designated loan since it is not secured by a building or mobile home.

20. *Is a loan secured or to be secured by a building in the course of construction that is located or to be located in an SFHA in which flood insurance is available under the Act a designated loan?*

    Answer: Yes. Therefore, a lender must always make a flood determination prior to loan origination to determine whether a building to be constructed that is security for the loan is located or will be located in an SFHA in which flood insurance is available under the Act. If so, then the loan is a designated loan and the lender must provide the requisite notice to the borrower prior to loan origination that mandatory flood insurance is required. The lender must then comply with the mandatory purchase requirement under the Act and Regulation.

21. *Is a building in the course of construction that is located in an SFHA in which flood insurance is available under the Act eligible for coverage under an NFIP policy?*

    Answer: Yes. FEMA's Flood Insurance Manual, under general rules, states:

    > Buildings in the course of construction that have yet to be walled and roofed are eligible for coverage except when construction has been halted for more than 90 days and/or if the lowest floor used for rating purposes is below the Base Flood Elevation (BFE). Materials or supplies intended for use in such construction, alteration, or repair are not insurable unless they are contained within an enclosed building on the premises or adjacent to the premises.

    FEMA, Flood Insurance Manual at p. GR 4 (FEMA's Flood Insurance Manual is updated every six months). The definition section of the Flood Insurance Manual defines "start of construction" in the case of new construction as "either the first placement of permanent

construction of a building on site, such as the pouring of a slab or footing, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured (mobile) home on a foundation." FEMA, Flood Insurance Manual, at p. DEF 9. While an NFIP policy may be purchased prior to the start of construction, as a practical matter, coverage under an NFIP policy is not effective until actual construction commences or when materials or supplies intended for use in such construction, alteration, or repair are contained in an enclosed building on the premises or adjacent to the premises.

22. *When must a lender require the purchase of flood insurance for a loan secured by a building in the course of construction that is located in an SFHA in which flood insurance is available?*

    Answer: Under the Act, as implemented by the Regulation, a lender may not make, increase, extend, or renew any loan secured by a building or a mobile home, located or to be located in an SFHA in which flood insurance is available, unless the property is covered by adequate flood insurance for the term of the loan. One way for lenders to comply with the mandatory purchase requirement for a loan secured by a building in the course of construction that is located in an SFHA is to require borrowers to have a flood insurance policy in place at the time of loan origination.

    Alternatively, a lender may allow a borrower to defer the purchase of flood insurance until either a foundation slab has been poured and/or an elevation certificate has been issued or, if the building to be constructed will have its lowest floor below the Base Flood Elevation, when the building is walled and roofed.[6] However, the lender must require the borrower to have flood insurance in place before the lender disburses funds to pay for building construction (except as necessary to pour the slab or perform preliminary site work, such as laying utilities, clearing brush, or the purchase and/or delivery of building materials) on the property securing the loan. If the lender elects this approach and does not require flood insurance to be obtained at loan origination, then it must have adequate internal controls in place at origination to ensure that the borrower obtains flood insurance no later than when the foundation slab has been poured and/or an elevation certificate has been issued.

23. *Does the 30-day waiting period apply when the purchase of the flood insurance policy is deferred in connection with a construction loan?*

    Answer: No. The NFIP will rely on an insurance agent's representation on the application for flood insurance that the purchase of insurance has been properly deferred unless there is a loss during the first 30 days of the policy period. In that case, the NFIP will require documentation of the loan transaction, such as settlement papers, before adjusting the loss.

Flood insurance requirements for nonresidential buildings

24. *Some borrowers have buildings with limited utility or value and, in many cases; the borrower would not replace them if lost in a flood. Is a lender required to mandate flood insurance for such buildings*?

    Answer: Yes. Under the Regulation, lenders must require flood insurance on real estate improvements when those improvements are part of the property securing the loan and are located in an SFHA and in a participating community. The lender may consider "carving out" buildings from the security it takes on the loan. However, the lender should fully analyze the risks of this option. In particular, a lender should consider whether it would be able to market the property securing its loan in the event of foreclosure. Additionally, the lender should consider any local zoning issues or other issues that would affect its collateral.

25. *What are a lender's requirements under the Regulation for a loan secured by multiple buildings located throughout a large geographic area where some of the buildings are located in an SFHA in which flood insurance is available and other buildings are not? What if the buildings are located in several jurisdictions or counties where some of the communities participate in the NFIP and others do not?*

    Answer: A lender is required to make a determination as to whether the improved real property securing the loan is in an SFHA. If secured improved real estate is located in an SFHA, but not in a participating community, no flood insurance is required, although a lender can require the purchase of flood insurance (from a private insurer) as a matter of safety and soundness. Conversely, where secured improved real estate is located in a participating community but not in an SFHA, no insurance is required. A lender must provide appropriate notice and require the purchase of flood insurance for designated loans located in an SFHA in a participating community.

Flood insurance requirements for residential condominiums

26. *Are residential condominiums, including multi-story condominium complexes, subject to the statutory and regulatory requirements for flood insurance?*

    Answer: Yes. The mandatory flood insurance purchase requirements under the Act and Regulation apply to loans secured by individual residential condominium units, including those located in multi-story condominium complexes, located in an SFHA in which flood insurance is available under the Act. The mandatory purchase

[6] FEMA, *Mandatory Purchase of Flood Insurance Guidelines*, at 30

requirements also apply to loans secured by other condominium property, such as loans to a developer for construction of the condominium or loans to a condominium association.

27. *What is an NFIP Residential Condominium Building Association Policy (RCBAP)?*

Answer: The RCBAP is a master policy for residential condominiums issued by FEMA. A residential condominium building is defined as having 75 percent or more of the building's floor area in residential use. It may be purchased only by condominium owners associations. The RCBAP covers both the common and individually owned building elements within the units, improvements within the units, and contents owned in common (if contents coverage is purchased). The maximum amount of building coverage that can be purchased under an RCBAP is either 100 percent of the replacement cost value of the building, including amounts to repair or replace the foundation and its supporting structures, or the total number of units in the condominium building times $250,000, whichever is less. RCBAP coverage is available only for residential condominium buildings in Regular Program communities.

28. *What is the amount of flood insurance coverage that a lender must require with respect to residential condominium units, including those located in multi- story condominium complexes, to comply with the mandatory purchase requirements under the Act and the Regulation?*

Answer: To comply with the Regulation, the lender must ensure that the minimum amount of flood insurance covering the condominium unit is the lesser of:

- The outstanding principal balance of the loan(s) or
- The maximum amount of insurance available under the NFIP, which is the lesser of:
  - The maximum limit available for the residential condominium unit or
  - The "insurable value" allocated to the residential condominium unit, which is the replacement cost value of the condominium building divided by the number of units.

Effective October 1, 2007, FEMA required agents to provide on the declaration page of the RCBAP the replacement cost value of the condominium building and the number of units. Lenders may rely on the replacement cost value and number of units on the RCBAP declaration page in determining insurable value unless they have reason to believe that such amounts clearly conflict with other available information. If there is a conflict, the lender should notify the borrower of the facts that cause the lender to believe there is a conflict. If the lender believes that the borrower is underinsured, it should require the purchase of a Dwelling Policy for supplemental coverage.

Assuming that the outstanding principal balance of the loan is greater than the maximum amount of coverage available under the NFIP, the lender must require a borrower whose loan is secured by a residential condominium unit to either:

Ensure the condominium owners association has purchased an NFIP Residential Condominium Building Association Policy (RCBAP) covering either 100 percent of the insurable value(replacement cost) of the building, including amounts to repair or replace the foundation and its supporting structures, or the total number of units in the condominium building times $250,000, whichever is less; or

Obtain a dwelling policy if there is no RCBAP, as explained in question and answer 29, or if the RCBAP coverage is less than 100 percent of the replacement cost value of the building or the total number of units in the condominium building times $250,000, whichever is less, as explained in question and answer 30.

Example: Lender makes a loan in the principal amount of $300,000 secured by a condominium unit in a 50-unit condominium building, which is located in an SFHA within a participating community, with a replacement cost of $15 million and insured by an RCBAP with $12.5 million of coverage.

- Outstanding principal balance of loan is $300,000
- Maximum amount of coverage available under the NFIP, which is the lesser of:
  - Maximum limit available for the residential condominium unit is $250,000; or
  - Insurable value of the unit based on 100 percent of the building's replacement cost value

    ($15 million ÷ 50 = $300,000).

The lender does not need to require additional flood insurance since the RCBAP's $250,000 per unit coverage ($12.5 million ÷ 50 = $250,000) satisfies the Regulation's mandatory flood insurance requirement. (This is the lesser of the outstanding principal balance ($300,000), the maximum coverage available under the NFIP ($250,000), or the insurable value ($300,000)).

The guidance in this question and answer will apply to any loan that is made, increased, extended, or renewed after the effective date of this revised guidance. This revised guidance will not apply to any loans made prior to the effective date of this guidance until a trigger event occurs (that is, the loan is refinanced, extended, increased, or renewed) in connection with the loan. Absent a new trigger event, loans made prior to the effective date of this new guidance will be considered compliant if they complied with the Agencies' previous guidance, which stated that an RCBAP that provided 80 percent RCV coverage was sufficient.

29. *What action must a lender take if there is no RCBAP coverage?*

Answer: If there is no RCBAP, either because the condominium association will not obtain a policy or because individual unit owners are responsible for obtaining their own insurance, then the lender must require the individual unit owner/borrower to obtain a dwelling policy in an amount sufficient to meet the requirements outlined in Question 28.

A dwelling policy is available for condominium unit owners' purchase when there is no or inadequate RCBAP coverage. When coverage by an RCBAP is inadequate, the dwelling policy may provide individual unit owners with supplemental building coverage to the RCBAP. The RCBAP and the dwelling policy are coordinated such that the dwelling policy purchased by the unit owner responds to shortfalls on building coverage pertaining either to improvements owned by the insured unit owner or to assessments. However, the dwelling policy does not extend the RCBAP limits, nor does it enable the condominium association to fill in gaps in coverage.

Example: The lender makes a loan in the principal amount of $175,000 secured by a condominium unit in a 50-unit condominium building, which is located in an SFHA within a participating community, with a replacement cost value of $10 million; however, there is no RCBAP.

- Outstanding principal balance of loan is $175,000
- Maximum amount of coverage available under the NFIP, which is the lesser of:
    - Maximum limit available for the residential condominium unit is $250,000; or
    - Insurable value of the unit based on 100 percent of the building's replacement cost value($10 million ÷ 50 = $200,000).

The lender must require the individual unit owner/borrower to purchase a flood insurance dwelling policy in the amount of at least $175,000, since there is no RCBAP, to satisfy the Regulation's mandatory flood insurance requirement. (This is the lesser of the outstanding principal balance ($175,000), the maximum coverage available under the NFIP ($250,000), or the insurable value ($200,000).)

30. *What action must a lender take if the RCBAP coverage is insufficient to meet the Regulation's mandatory purchase requirements for a loan secured by an individual residential condominium unit?*

Answer: If the lender determines that flood insurance coverage purchased under the RCBAP is insufficient to meet the Regulation's mandatory purchase requirements, then the lender should request that the individual unit owner/borrower ask the condominium association to obtain additional coverage that would be sufficient to meet the Regulation's requirements (see question and answer 28). If the condominium association does not obtain sufficient coverage, then the lender must require the individual unit owner/borrower to purchase a dwelling policy in an amount sufficient to meet the Regulation's flood insurance requirements. The amount of coverage under the dwelling policy required to be purchased by the individual unit owner would be the difference between the RCBAP's coverage allocated to that unit and the Regulation's mandatory flood insurance requirements (see question and answer 29).

Example: Lender makes a loan in the principal amount of $300,000 secured by a condominium unit in a 50-unit condominium building, which is located in an SFHA within a participating community, with a replacement cost value of $10 million; however, the RCBAP is at 80 percent of replacement cost value ($8 million or$160,000 per unit).

22. Outstanding principal balance of loan is $300,000
23. Maximum amount of coverage available under the NFIP, which is the lesser of:
    - Maximum limit available for the residential condominium unit is $250,000; or
    - Insurable value of the unit based on 100 percent of the building's replacement value

      ($10 million ÷ 50 = $200,000).

The lender must require the individual unit owner/borrower to purchase a flood insurance dwelling policy in the amount of $40,000 to satisfy the Regulation's mandatory flood insurance requirement of $200,000. (This is the lesser of the outstanding principal balance ($300,000), the maximum coverage available under the NFIP ($250,000), or the insurable value ($200,000).) The RCBAP fulfills only $160,000 of the Regulation's flood insurance requirement.

While the individual unit owner's purchase of a separate dwelling policy that provides for adequate flood insurance coverage under the Regulation will satisfy the Regulation's mandatory flood insurance requirements, the lender, and the individual unit owner/borrower may still be exposed to additional risk of loss. Lenders are encouraged to apprise borrowers of this risk. The dwelling policy provides individual unit owners with supplemental building coverage to the RCBAP. The policies are coordinated such that the dwelling policy purchased by the unit owner responds to shortfalls on building coverage pertaining either to improvements owned by the insured unit owner or to assessments. However, the dwelling policy does not extend the RCBAP limits, nor does it enable the condominium association to fill in gaps in coverage.

The risk arises because the individual unit owner's dwelling policy may contain claim limitations that prevent the dwelling policy from covering the individual unit owner's share of the co-insurance penalty, which is triggered when the amount of insurance under the RCBAP is less than 80 percent of the building's replacement cost value at the time of loss. In addition, following a major flood loss, the insured unit owner may have to rely upon the condominium association's and other unit owners'

financial ability to make the necessary repairs to common elements in the building, such as electricity, heating, plumbing, and elevators. It is incumbent on the lender to understand these limitations.

31. *What must a lender do when a loan secured by a residential condominium unit is in a complex whose condominium association allows its existing RCBAP to lapse?*

Answer: If a lender determines at any time during the term of a designated loan that the loan is not covered by flood insurance or is covered by such insurance in an amount less than that required under the Act and the Regulation, the lender must notify the individual unit owner/borrower of the requirement to maintain flood insurance coverage sufficient to meet the Regulation's mandatory requirements. The lender should encourage the individual unit owner/borrower to work with the condominium association to acquire a new RCBAP in an amount sufficient to meet the Regulation's mandatory flood insurance requirement (see question and answer 28). Failing that, the lender must require the individual unit owner/borrower to obtain a flood insurance dwelling policy in an amount sufficient to meet the Regulation's mandatory flood insurance requirement (see questions and answers 29 and 30). If the borrower/unit owner or the condominium association fails to purchase flood insurance sufficient to meet the Regulation's mandatory requirements within 45 days of the lender's notification to the individual unit owner/borrower of inadequate insurance coverage, the lender must force place the necessary flood insurance.

32. *How does the RCBAP's co-insurance penalty apply in the case of residential condominiums, including those located in multi-story condominium complexes?*

Answer: In the event the RCBAP's coverage on a condominium building at the time of loss is less than 80 percent of either the building's replacement cost or the maximum amount of insurance available for that building under the NFIP (whichever is less), then the loss payment, which is subject to a co-insurance penalty, is determined as follows (subject to all other relevant conditions in this policy, including those pertaining to valuation, adjustment, settlement, and payment of loss):

A. Divide the actual amount of flood insurance carried on the condominium building at the time of loss by 80 percent of either its replacement cost or the maximum amount of insurance available for the building under the NFIP, whichever is less.

B. Multiply the amount of loss, before application of the deductible, by the figure determined in A above.

C. Subtract the deductible from the figure determined in B above.

The policy will pay the amount determined in C above, or the amount of insurance carried, whichever is less.

Example 1: (inadequate insurance amount to avoid penalty)

Replacement value of the building	$250,000
80% of replacement value of the building	$200,000
Actual amount of insurance carried	$180,000
Amount of the loss	$150,000
Deductible	$ 500

Step A: 180,000 ÷ 200,000 = .90

(90% of what should be carried to avoid co-insurance penalty)

Step B: 150,000 x .90 = 135,000

Step C: 135,000 – 500 = 134,500

The policy will pay no more than $134,500. The remaining $15,500 is not covered due to the co-insurance penalty ($15,000) and application of the deductible ($500). Unit owners' dwelling policies will not cover any assessment that may be imposed to cover the costs of repair that are not covered by the RCBAP.

Example 2: (adequate insurance amount to avoid penalty)

Replacement value of the building	$250,000
80% of replacement value of the building	$200,000
Actual amount of insurance carried	$200,000
Amount of the loss	$150,000
Deductible	$ 500

Step A: 200,000 ÷ 200,000 = 1.00

(100% of what should be carried to avoid co-insurance penalty)

Step B: 150,000 x 1.00 = 150,000

Step C: 150,000 – 500 = 149,500 In this example there is no co-insurance penalty, because the actual amount of insurance carried meets the 80 percent requirement to avoid the co-insurance penalty.

The policy will pay no more than $149,500 ($150,000 amount of loss minus the $500 deductible). This example also assumes a $150,000 outstanding principal loan balance.

33. *What are the major factors involved with the individual unit owner's dwelling policy's coverage limitations with respect to the condominium association's RCBAP coverage?*

Answer: The following examples demonstrate how the unit owner's dwelling policy may cover in certain loss situations:

Example 1: (RCBAP insured to at least 80 percent of building replacement cost)

- If the unit owner purchases building coverage under the dwelling policy and if there is an RCBAP covering at least 80 percent of the building replacement cost value, the loss assessment coverage under the dwelling policy will pay that part of a loss

that exceeds 80 percent of the association's building replacement cost allocated to that unit.

- The loss assessment coverage under the dwelling policy will not cover the association's policy deductible purchased by the condominium association.
- If building elements within units have also been damaged, the dwelling policy pays to repair building elements after the RCBAP limits that apply to the unit have been exhausted. Coverage combinations cannot exceed the total limit of $250,000 per unit.

Example 2: (RCBAP insured to less than 80 percent of building replacement cost)

- If the unit owner purchases building coverage under the dwelling policy and there is an RCBAP that was insured to less than 80 percent of the building replacement cost value at the time of loss, the loss assessment coverage cannot be used to reimburse the association for its co-insurance penalty.
- Loss assessment is available only to cover the building damages in excess of the 80-percent required amount at the time of loss. Thus, the covered damages to the condominium association building must be greater than 80 percent of the building replacement cost value at the time of loss before the loss assessment coverage under the dwelling policy becomes available. Under the dwelling policy, covered repairs to the unit, if applicable, would have priority in payment over loss assessments against the unit owner.

Example 3: (No RCBAP)

- If the unit owner purchases building coverage under the dwelling policy and there is no RCBAP, the dwelling policy covers assessments against unit owners for damages to common areas up to the dwelling policy limit.

- However, if there is damage to the building elements of the unit as well, the combined payment of unit building damages, which would apply first, and the loss assessment may not exceed the building coverage limit under the dwelling policy.

Flood insurance requirements for home equity loans, lines of credit, subordinate liens, and other security interests in collateral located in an SFHA.

34. *Is a home equity loan considered a designated loan that requires flood insurance?*

    Answer: Yes. A home equity loan is a designated loan, regardless of the lien priority, if the loan is secured by a building or a mobile home located in an SFHA in which flood insurance is available under the Act.

35. *Does a draw against an approved line of credit secured by a building or mobile home, which is located in an SFHA in which flood insurance is available under the Act, require a flood determination under the Regulation?*

    Answer: No. While a line of credit secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act is a designated loan and, therefore, requires a flood determination before the loan is made, draws against an approved line do not require further determinations. However, a request made for an increase in an approved line of credit may require a new determination, depending upon whether a previous determination was done. (See response to question 68 in Section XIII Required use of Standard Flood Hazard Determination Form.)

36. *When a lender makes, increases, extends, or renews a second mortgage secured by a building or mobile home located in an SFHA, how much flood insurance must the lender require?*

    Answer: The lender must ensure that adequate flood insurance is in place or require that additional flood insurance coverage be added to the flood insurance policy in the amount of the lesser of either the combined total outstanding principal balance of the first and second loan, the maximum amount available under the Act (currently $250,000 for a residential building and $500,000 for a nonresidential building), or the insurable value of the building or mobile home. The junior lienholder should also ensure that the borrower adds the junior lienholder's name as mortgagee/loss payee to the existing flood insurance policy. Given the provisions of NFIP policies, a lender cannot comply with the Act and Regulation by requiring the purchase of an NFIP flood insurance policy only in the amount of the outstanding principal balance of the second mortgage without regard to the amount of flood insurance coverage on a first mortgage.

    A junior lienholder should work with the senior lienholder, the borrower, or with both of these parties, to determine how much flood insurance is needed to cover improved real estate collateral. A junior lienholder should obtain the borrower's consent in the loan agreement or otherwise for the junior lienholder to obtain information on balance and existing flood insurance coverage on senior lien loans from the senior lienholder.

    Junior lienholders also have the option of pulling a borrower's credit report and using the information from that document to establish how much flood insurance is necessary upon increasing, extending or renewing a junior lien, thus protecting the interests of the junior lienholder, the senior lienholders, and the borrower. In the limited situation where a junior lienholder or its servicer is unable to obtain the necessary information about the amount of flood insurance in place on the outstanding balance of a senior lien (for example, in the context of a loan renewal), the lender may presume that the amount of insurance coverage relating to the senior lien in place at the time the junior lien was first established (provided that the amount

of flood insurance relating to the senior lien was adequate at the time) continues to be sufficient.

Example 1: Lender A makes a first mortgage with a principal balance of $100,000, but improperly requires only $75,000 of flood insurance coverage, which the borrower satisfied by obtaining an NFIP policy. Lender B issues a second mortgage with a principal balance of $50,000. The insurable value of the residential building securing the loans is $200,000. Lender B must ensure that flood insurance in the amount of $150,000 is purchased and maintained. If Lender B were to require additional flood insurance only in an amount equal to the principal balance of the second mortgage ($50,000), its interest in the secured property would not be fully protected in the event of a flood loss because Lender A would have prior claim on $100,000 of the loss payment towards its principal balance of $100,000, while Lender B would receive only $25,000 of the loss payment toward its principal balance of $50,000.

Example 2: Lender A, who is not directly covered by the Act or Regulation, makes a first mortgage with a principal balance of $100,000 and does not require flood insurance. Lender B, who is directly covered by the Act and Regulation, issues a second mortgage with a principal balance of $50,000. The insurable value of the residential building securing the loans is $200,000. Lender B must ensure that flood insurance in the amount of $150,000 is purchased and maintained. If Lender B were to require flood insurance only in an amount equal to the principal balance of the second mortgage ($50,000) through an NFIP policy, then its interest in the secured property would not be protected in the event of a flood loss because Lender A would have prior claim on the entire $50,000 loss payment towards its principal balance of $100,000.

Example 3: Lender A made a first mortgage with a principal balance of $100,000 on improved real estate with a fair market value of $150,000. The insurable value of the residential building on the improved real estate is $90,000; however, Lender A improperly required only $70,000 of flood insurance coverage, which the borrower satisfied by purchasing an NFIP policy. Lender B later takes a second mortgage on the property with a principal balance of $10,000. Lender B must ensure that flood insurance in the amount of $90,000 (the insurable value) is purchased and maintained on the secured property to comply with the Act and Regulation. If Lender B were to require flood insurance only in an amount equal to the principal balance of the second mortgage ($10,000), its interest in the secured property would not be protected in the event of a flood loss because Lender A would have prior claim on the entire $70,000 loss payment towards the insurable value of $90,000.

37. *If a borrower requesting a loan secured by a junior lien provides evidence that flood insurance coverage is in place, does the lender have to make a new determination? Does the lender have to adjust the insurance coverage?*

Answer: It depends. Assuming the requirements in Section 528 of the Act (42 U.S.C. 4104b) are met and the same lender made the first mortgage, then a new determination may not be necessary, when the existing determination is not more than seven years old, there have been no map changes, and the determination was recorded on an SFHDF. If, however, a lender other than the one that made the first mortgage loan is making the junior lien loan, a new determination would be required because this lender would be deemed to be "making" a new loan. In either situation, the lender will need to determine whether the amount of insurance in force is sufficient to cover the lesser of the combined outstanding principal balance of all loans (including the junior lien loan), the insurable value, or the maximum amount of coverage available on the improved real estate. This will hold true whether the subordinate lien loan is a home equity loan or some other type of junior lien loan.

38. *If the loan request is to finance inventory stored in a building located within an SFHA, but the building is not security for the loan, is flood insurance required?*

Answer: No. The Act and the Regulation provide that a lender shall not make, increase, extend, or renew a designated loan, that is a loan secured by a building or mobile home located or to be located in an SFHA, "unless the building or mobile home and any personal property securing such loan" is covered by flood insurance for the term of the loan. In this example, the collateral is not the type that could secure a designated loan because it does not include a building or mobile home; rather, the collateral is the inventory alone.

39. *Is flood insurance required if a building and its contents both secure a loan, and the building is located in an SFHA in which flood insurance is available?*

Answer: Yes. Flood insurance is required for the building located in the SFHA and any contents stored in that building.

Example: Lender A makes a loan for $200,000 that is secured by a warehouse with an insurable value of $150,000 and inventory in the warehouse worth $100,000. The Act and Regulation require that flood insurance coverage be obtained for the lesser of the outstanding principal balance of the loan or the maximum amount of flood insurance that is available under the NFIP. The maximum amount of insurance that is available for both building and contents is $500,000 for each category. In this situation, federal flood insurance requirements could be satisfied by placing $150,000 worth of flood insurance coverage on the warehouse, thus insuring it to its insurable value, and $50,000 worth of contents flood insurance coverage on the inventory, thus providing total coverage in the amount of the outstanding principal balance of the loan. Note that this holds true even though the inventory is worth $200,000.

40. *If a loan is secured by Building A, which is located in an SFHA, and contents, which are located in Building B, is flood insurance required on the contents securing a loan?*

    Answer: No. If collateral securing the loan is stored in Building B, which does not secure the loan, then flood insurance is not required on those contents whether or not Building B is located in an SFHA.

41. *Does the Regulation apply where the lender takes a security interest in a building or mobile home located in an SFHA only as an ''abundance of caution''?*

    Answer: Yes. The Act and Regulation look to the collateral securing the loan. If the lender takes a security interest in improved real estate located in an SFHA, then flood insurance is required.

42. *If a borrower offers a note on a single-family dwelling as collateral for a loan but the lender does not take a security interest in the dwelling itself, is this a designated loan that requires flood insurance?*

    Answer: No. A designated loan is a loan secured by a building or mobile home. In this example, the lender did not take a security interest in the building; therefore, the loan is not a designated loan.

43. *If a lender makes a loan that is not secured by real estate, but is made on the condition of a personal guarantee by a third party who gives the lender a security interest in improved real estate owned by the third party that is located in an SFHA in which flood insurance is available, is it a designated loan that requires flood insurance?*

    Answer: Yes. The making of a loan on condition of a personal guarantee by a third party and further secured by improved real estate, which is located in an SFHA, owned by that third party is so closely tied to the making of the loan that it is considered a designated loan that requires flood insurance.

Flood insurance requirements in the event of the sale or transfer of a designated loan and/or its servicing rights.

44. *How do the flood insurance requirements under the Regulation apply to regulated lenders under the following scenarios involving loan servicing?*

    Scenario 1: A regulated lender originates a designated loan secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act. The regulated lender makes the initial flood determination, provides the borrower with appropriate notice, and flood insurance is obtained. The regulated lender initially services the loan; however, the regulated lender subsequently sells both the loan and the servicing rights to a nonregulated party. What are the regulated lender's requirements under the Regulation? What are the regulated lender's requirements under the Regulation if it only transfers or sells the servicing rights, but retains ownership of the loan?

    Answer: The regulated lender must comply with all requirements of the Regulation, including making the initial flood determination, providing appropriate notice to the borrower, and ensuring that the proper amount of insurance is obtained. In the event the regulated lender sells or transfers the loan and servicing rights, the regulated lender must provide notice of the identity of the new servicer to FEMA or its designee. Once the regulated lender has sold the loan and the servicing rights, the lender has no further obligation regarding flood insurance on the loan.

    If the regulated lender retains ownership of the loan and only transfers or sells the servicing rights to a non-regulated party, the regulated lender must notify FEMA or its designee of the identity of the new servicer. The servicing contract should require the servicer to comply with all the requirements that are imposed on the regulated lender as owner of the loan, including escrow of insurance premiums and force placement of insurance, if necessary.

    Generally, the Regulation does not impose obligations on a loan servicer independent from the obligations it imposes on the owner of a loan. Loan servicers are covered by the escrow, force placement, and flood hazard determination fee provisions of the Act and Regulation primarily so that they may perform the administrative tasks for the regulated lender, without fear of liability to the borrower for the imposition of unauthorized charges. It is the Agencies' longstanding position, as described in the preamble to the Regulation that the obligation of a loan servicer to fulfill administrative duties with respect to the flood insurance requirements arises from the contractual relationship between the loan servicer and the regulated lender or from other commonly accepted standards for performance of servicing obligations. The regulated lender remains ultimately liable for fulfillment of those responsibilities, and must take adequate steps to ensure that the loan servicer will maintain compliance with the flood insurance requirements.

Scenario 2: A non-regulated lender originates a designated loan, secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act. The non-regulated lender does not make an initial flood determination or notify the borrower of the need to obtain insurance. The non-regulated lender sells the loan and servicing rights to a regulated lender. What are the regulated lender's requirements under the Regulation? What are the regulated lender's requirements if it only purchases the servicing rights?

Answer: A regulated lender's purchase of a loan and servicing rights, secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act, is not an event that triggers any requirements under the Regulation, such as

making a new flood determination or requiring a borrower to purchase flood insurance. The Regulation's requirements are triggered when a regulated lender makes, increases, extends, or renews a designated loan. A regulated lender's purchase of a loan does not fall within any of those categories. However, if a regulated lender becomes aware at any point during the life of a designated loan that flood insurance is required, then the regulated lender must comply with the Regulation, including force placing insurance, if necessary. Depending upon the circumstances, safety and soundness considerations may sometimes necessitate that the lender undertake sufficient due diligence upon purchase of a loan as to put the lender on notice of lack of adequate flood insurance. If the purchasing lender subsequently extends, increases, or renews a designated loan, it must also comply with the Act and Regulation.

Where a regulated lender purchases only the servicing rights to a loan originated by a non-regulated lender, the regulated lender is obligated only to follow the terms of its servicing contract with the owner of the loan. In the event the regulated lender subsequently sells or transfers the servicing rights on that loan, the regulated lender must notify FEMA or its designee of the identity of the new servicer, if required to do so by the servicing contract with the owner of the loan.

45. *When a regulated lender makes a designated loan and will be servicing that loan, what are the requirements for notifying the Director of FEMA or the Director's designee?*
Answer: FEMA stated in a June 4, 1996, letter that the Director's designee is the insurance company issuing the flood insurance policy. The borrower's purchase of a policy (or the regulated lender's force placement of a policy) will constitute notice to FEMA when the regulated lender is servicing that loan.
In the event the servicing is subsequently transferred to a new servicer, the regulated lender must provide notice to the insurance company of the identity of the new servicer no later than 60 days after the effective date of such a change.

46. *Would a RESPA Notice of Transfer sent to the Director of FEMA (or the Director's designee) satisfy the regulatory provisions of the Act?*
Answer: Yes. The delivery of a copy of the Notice of Transfer or any other form of notice is sufficient if the sender includes, on or with the notice, the following information that FEMA has indicated is needed by its designee:

24. Borrower's full name;
25. Flood insurance policy number;
26. Property address (including city and state);
27. Name of lender or servicer making notification;
28. Name and address of new servicer; and
29. Name and telephone number of contact person at new servicer.

47. *Can delivery of the notice be made electronically, including batch transmissions?*
Answer: Yes. The Regulation specifically permits transmission by electronic means. A timely batch transmission of the notice would also be permissible, if it is acceptable to the Director's designee.

48. *If the loan and its servicing rights are sold by the regulated lender, is the regulated lender required to provide notice to the Director or the Director's designee?*
Answer: Yes. Failure to provide such notice would defeat the purpose of the notice requirement because FEMA would have no record of the identity of either the owner or servicer of the loan.

49. *Is a regulated lender required to provide notice when the servicer, not the regulated lender, sells or transfers the servicing rights to another servicer?*
Answer: No. After servicing rights are sold or transferred, subsequent notification obligations are the responsibility of the new servicer. The obligation of the regulated lender to notify the Director or the Director's designee of the identity of the servicer transfers to the new servicer. The duty to notify the Director or the Director's designee of any subsequent sale or transfer of the servicing rights and responsibilities belongs to that servicer. For example, a financial institution makes and services the loan. It then sells the loan in the secondary market and also sells the servicing rights to a mortgage company. The financial institution notifies the Director's designee of the identity of the new servicer and the other information requested by FEMA so that flood insurance transactions can be properly administered by the Director's designee. If the mortgage company later sells the servicing rights to another firm, the mortgage company, not the financial institution, is responsible for notifying the Director's designee of the identity of the new servicer.

50. *In the event of a merger or acquisition of one lending institution with another, what are the responsibilities of the parties for notifying the Director's designee?*
Answer: If an institution is acquired by or merges with another institution, the duty to provide notice for the loans being serviced by the acquired institution will fall to the successor institution in the event that notification is not provided by the acquired institution prior to the effective date of the acquisition or merger.

Escrow Requirements

51. *Are multi-family buildings or mixed-use properties included in the definition of "residential improved real estate" under the Regulation for which escrows are required?*
Answer: "Residential improved real estate" is defined under the Regulation as "real estate upon which a home or other residential building is located or to be located." A

loan secured by residential improved real estate located or to be located in an SFHA in which flood insurance is available is a designated loan. Lenders are required to escrow flood insurance premiums and fees for mandatory flood insurance for such loans if the lender requires the escrow of taxes, hazard insurance premiums or any other charges for loans secured by residential improved real estate. A lender is not required to escrow flood insurance premiums and fees for a particular loan if it does not require escrowing of any other charges for that loan.

Multi-family buildings. For the purposes of the Act and the Regulation, the definition of residential improved real estate does not make a distinction between whether a building is single- or multi-family, or whether a building is owner- or renter-occupied. Single-family dwellings (including mobile homes), two-to-four family dwellings, and multi-family properties containing five or more residential units are covered under the Act's escrow provisions. If the building securing the loan meets the Regulation's definition of residential improved real estate and the lender requires the escrow of any other charges such as taxes or hazard insurance premiums, then the lender is required to also escrow premiums and fees for flood insurance.

Mixed-use properties. The lender should look to the primary use of a building to determine whether it meets the definition of "residential improved real estate." (See questions and answers 11 and 12 for guidance on residential and nonresidential buildings.) If the primary use of a mixed-use property is for residential purposes, the Regulation's escrow requirements apply.

52. *When must escrow accounts be established for flood insurance purposes?*

Answer: If a lender requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by residential improved real estate or a mobile home, the lender must also require the escrow of all flood insurance premiums and fees. When administering loans secured by one-to-four family dwellings, lenders should look to the definition of "federally related mortgage loan" contained in the Real Estate Settlement Procedures Act (RESPA) to see whether a particular loan is subject to the escrow requirements in Section 10 of RESPA. (This includes individual units of condominiums. Individual units of cooperatives, although covered by Section 10 of RESPA, are not insurable under the NFIP and are not covered by the Regulation.) Loans on multi-family dwellings with five or more units are not covered by RESPA requirements. Pursuant to the Regulation, however, lenders must escrow premiums and fees for any required flood insurance if the lender requires escrows for other purposes, such as hazard insurance or taxes.

53. *Do voluntary escrow accounts established at the request of the borrower trigger a requirement for the lender to escrow premiums for required flood insurance?*

Answer: No. If escrow accounts for other purposes are established at the voluntary request of the borrower, the lender is not required to establish escrow accounts for flood insurance premiums. Examiners should review the loan policies of the lender and the underlying legal obligation between the parties to the loan to determine whether the accounts are, in fact, voluntary. For example, when a lender's loan policies require borrowers to establish escrow accounts for other purposes and the contractual obligation permits the lender to establish escrow accounts for those other purposes, the lender will have the burden of demonstrating that an existing escrow was made pursuant to a voluntary request by the borrower.

54. *Will premiums paid for credit life insurance, disability insurance, or similar insurance programs be viewed as escrow accounts requiring the escrow of flood insurance premiums?*

Answer: No. Premiums paid for these types of insurance policies will not trigger the escrow requirement for flood insurance premiums.

55. *Will escrow-type accounts for commercial loans, secured by multi-family residential buildings, trigger the escrow requirement for flood insurance premiums?*

Answer: It depends. Escrow-type accounts established in connection with the underlying agreement between the buyer and seller, or that relate to the commercial venture itself, such as "interest reserve accounts," "compensating balance accounts," "marketing accounts," and similar accounts are not the type of accounts that constitute escrow accounts for the purpose of the Regulation. However, escrow accounts established for the protection of the property, such as escrows for hazard insurance premiums or local real estate taxes, are the types of escrow accounts that trigger the requirement to escrow flood insurance premiums.

56. *Which requirements for escrow accounts apply to properties adequately covered by RCBAPs?*

Answer: RCBAPs (Residential Condominium Building Association Policies) are policies purchased by the condominium association on behalf of itself and the individual unit owners in the condominium. A portion of the periodic dues paid to the association by the condominium owners applies to the premiums on the policy. When a lender makes, increases, renews, or extends a loan secured by a condominium unit that is adequately covered by an RCBAP and dues to the condominium association apply to the RCBAP premiums, an escrow account is not required. However, if the RCBAP coverage is inadequate and the unit is also covered by a dwelling form policy, premiums for the dwelling form policy would need to be escrowed if the lender requires escrow for other purposes, such as hazard insurance or taxes. Lenders should exercise due diligence with respect to continuing compliance with the insurance requirements on the part of the condominium association.

Force placement of flood insurance

57. *What is the requirement for the force placement of flood insurance under the Act and Regulation?*

    Answer: [Reserved]

58. *Can a servicer force place on behalf of a lender?*

    Answer: Yes. Assuming the statutory prerequisites for force placement are met, and subject to the servicing contract between the lender and the servicer, the Act clearly authorizes servicers to force place flood insurance on behalf of the lender, following the procedures set forth in the Regulation.

59. *When force placement occurs, what is the amount of insurance required to be placed?*

    Answer: The amount of flood insurance coverage required is the same regardless of how the insurance is placed. (See Section II. Determining the appropriate amount of flood insurance required under the Act and Regulation and also Section VII. Flood Insurance Requirements for Home Equity Loans, Lines of Credit, Subordinate Liens, and Other Security Interests in Collateral Located in an SFHA.)

60. *Can the 45-day notice period be accelerated by sending notice to the borrower prior to the actual date of expiration of flood insurance coverage?*

    Answer: [Reserved]

61. *Is a reasonable period of time allowed after the end of the 45-day notice period for a lender or its servicer to implement force placement?*

    Answer: The Regulation provides that the lender or its servicer shall purchase insurance on the borrower's behalf if the borrower fails to obtain flood insurance within 45 days after notification. However, where there is a brief delay in force placing required insurance, the Agencies will expect the lender to provide a reasonable explanation for the delay, for example, where a lender uses batch processing to purchase force-placed flood insurance policies.

62. *Does a lender or its servicer have the authority to charge a borrower for the cost of insurance coverage during the 45-day notice period?*

    Answer: [Reserved]

Private insurance policies

63. *May a lender rely on a private insurance policy to meet its obligation to ensure that its designated loans are covered by an adequate amount of flood insurance?*

    Answer: It depends. A private insurance policy may be an adequate substitute for NFIP insurance if it meets the criteria set forth by FEMA in its Mandatory Purchase of Flood Insurance Guidelines. Similarly, a private insurance policy may be used to supplement NFIP insurance for designated loans where the property is underinsured if it meets the criteria set forth by FEMA in its Mandatory Purchase of Flood Insurance Guidelines. FEMA states that, to the extent that a private policy differs from the NFIP Standard Flood Insurance Policy, the differences should be carefully examined before the policy is accepted as sufficient protection under the law. FEMA also states that the suitability of private policies need only be considered when the mandatory purchase requirement applies.

64. *When may a lender rely on a private insurance policy that does not meet the criteria set forth by FEMA?*

    Answer: A lender may rely on a private insurance policy that does not meet the criteria set forth by FEMA only in limited circumstances. For example, when a flood insurance policy has expired and the borrower has failed to renew coverage, private insurance policies that do not meet the criteria set forth by FEMA, such as private insurance policies providing portfolio-wide blanket coverage, may be useful protection for the lender for a gap in coverage in the period of time before a force placed policy takes effect. However, the lender must still force place adequate coverage in a timely manner, as required, and may not rely on a private insurance policy that does not meet the criteria set forth by FEMA on an ongoing basis.

Required use of Standard Flood Hazard Determination Form (SFHDF)

65. *Does the SFHDF replace the borrower notification form?*

    Answer: No. The SFHDF is used by the lender to determine whether the building or mobile home offered as collateral security for a loan is or will be located in an SFHA in which flood insurance is available under the Act. The notification form, on the other hand, is used to notify the borrower(s) that the building or mobile home is or will be located in an SFHA and to inform them about flood insurance requirements and the availability of Federal disaster relief assistance.

66. *May a lender provide the SFHDF to the borrower?*

    Answer: Yes. While not a statutory requirement, a lender may provide a copy of the flood determination to the borrower so the borrower can provide it to the insurance agent in order to minimize flood zone discrepancies between the lender's determination and the borrower's policy. A lender would also need to make the determination available to the borrower in case of a special flood hazard determination review, which must be requested jointly by the lender and the borrower. In the event a lender provides the SFHDF to the borrower, the signature of the borrower is not required to acknowledge receipt of the form.

67. *May the SFHDF be used in electronic format*?

    Answer: Yes. In the final rule adopting the SFHDF, FEMA stated: "If an electronic format is used, the format and exact layout of the Standard Flood Hazard Determination Form is not required, but the fields and

elements listed on the form are required. Any electronic format used by lenders must contain all mandatory fields indicated on the form." It should be noted, however, that the lender must be able to reproduce the form upon receiving a document request by its federal supervisory agency.

68. *May a lender rely on a previous determination for a refinancing or assumption of a loan or multiple loans to the same borrower secured by the same property?*

Answer: It depends. Section 528 of the Act, 42 U.S.C. 4104b(e), permits a lender to rely on a previous flood determination using the SFHDF when it is increasing, extending, renewing, or purchasing a loan secured by a building or a mobile home. Under the Act, the "making" of a loan is not listed as a permissible event that permits a lender to rely on a previous determination. When the loan involves a refinancing or assumption by the same lender who obtained the original flood determination on the same property, the lender may rely on the previous determination only if the original determination was made not more than seven years before the date of the transaction, the basis for the determination was set forth on the SFHDF, and there were no map revisions or updates affecting the security property since the original determination was made. A loan refinancing or assumption made by a lender different from the one who obtained the original determination constitutes a new loan, thereby requiring a new determination. Further, if the same lender makes multiple loans to the same borrower secured by the same improved real estate, the lender may rely on its previous determination if the original determination was made not more than seven years before the date of the transaction, the basis for the determination was set forth on the SFHDF, and there were no map revisions or updates affecting the security property since the original determination was made.

Flood determination fees

69. *When can lenders or servicers charge the borrower a fee for making a determination?*

Answer: There are four instances under the Act and Regulation when the borrower can be charged a specific fee for a flood determination:

30. When the determination is made in connection with the making, increasing, extending, or renewing of a loan that is initiated by the borrower;
31. When the determination is prompted by a revision or updating by FEMA of floodplain areas or flood-risk zones;
32. When the determination is prompted by FEMA's publication of notices or compendia that affect the area in which the security property is located; or
33. When the determination results in force placement of insurance.

Loan or other contractual documents between the parties may also permit the imposition of fees.

70. *May charges made for life-of-loan reviews by flood determination firms be passed along to the borrower?*

Answer: Yes. In addition to the initial determination at the time a loan is made, increased, renewed, or extended, many flood determination firms provide a service to the lender to review and report changes in the flood status of a dwelling for the entire term of the loan. The fee charged for the service at loan closing is a composite one for conducting both the original and subsequent reviews. Charging a fee for the original determination is clearly within the permissible purpose envisioned by the Act. The Agencies agree that a determination fee may include, among other things, reasonable fees for a lender, servicer, or third party to monitor the flood hazard status of property securing a loan in order to make determinations on an ongoing basis.

However, the life-of-loan fee is based on the authority to charge a determination fee and, therefore, the monitoring fee may be charged only if the events specified in the answer to Question 69 occur. Further, a lender may not charge a composite determination and life-of-loan fee if the loan does not close, because the life-of-loan fee would be an unearned fee in violation of the Real Estate Settlement Procedures Act.

Flood zone discrepancies

71. *What should a lender do when there is a discrepancy between the flood hazard zone designation on the flood determination form and the flood insurance policy?*

Answer: A lender should only be concerned about a discrepancy on the Standard Flood Hazard Determination Form (the SFHDF) and the one on the flood insurance policy if the discrepancy is between a high-risk zone (A or V) and a low- or moderate-risk zone (B, C, D, or X). In other words, a lender need not be concerned about subcategory differences between flood zones on these two documents. Once in possession of a copy of the flood insurance policy, a lender should systematically compare the flood zone designation on the policy with the zone shown on the SFHDF. If the flood insurance policy shows a lower risk zone than the SFHDF, then lender should investigate. As noted in FEMA's Mandatory Purchase of Flood Insurance Guidelines, federal law sets the ultimate responsibility to place flood insurance on the lender, with limited reliance permitted on third parties to the extent that the information that those third parties provide is guaranteed.

A lender should first determine whether the difference results from the application of the NFIP's "Grandfather Rule." This rule provides for the continued use of a rating on an insured property when the initial flood insurance policy was issued prior to changes in the hazard rating for the particular flood zone where the property is located.

The Grandfather Rule allows policyholders who have maintained continuous coverage and/or who have built in compliance with the Flood Insurance Rate Map to continue to benefit from the prior, more favorable rating for particular pieces of improved property. A discrepancy resulting from application of the NFIP's Grandfather Rule is reasonable and acceptable, but the lender should substantiate these findings.

A lender should also determine whether a difference in flood zone designations is the result of a mistake. To do so, a lender should facilitate communication between itself or the third-party service provider that performed the flood hazard determination for the lender. If it appears that the discrepancy is the result of a mistake, a lender should recheck its determination. If there still appears to be a discrepancy after this step has been taken, a lender and borrower may jointly request that FEMA review the determination to confirm or review the accuracy of the original determination performed by a lender or on the lender's behalf. However, FEMA will only conduct this review if the request is submitted within 45 days of the date the lender notified the borrower that a building or manufactured home is in an SFHA and flood insurance is required.

If, despite these efforts, the discrepancy is not resolved, or in the course of attempting to resolve a discrepancy, a borrower or an insurance company or its agent is uncooperative in assisting a lender in this attempt, the lender should notify the insurance agent about the insurer's duty pursuant to FEMA's letter of April 16, 2008 (W-08021), to write a flood insurance policy that covers the most hazardous flood zone. When providing this notification, the lender should include its zone information and it should also notify the insurance company itself. The lender should substantiate these communications in its loan file.

72. *Can a lender be found in violation of the requirements of the Regulation if, despite the lender's diligence in making the flood hazard determination, notifying the borrower of the risk of flood and the need to obtain flood insurance, and requiring mandatory flood insurance, there is a discrepancy between the flood hazard zone designation on the flood determination form and the flood insurance policy?*

    Answer: As noted in question and answer 71 above, lenders should have a process in place to identify and resolve flood zone discrepancies. A lender is in the best position to coordinate between the various parties involved in a mortgage loan transaction to resolve any flood zone discrepancy. If a lender is able to substantiate in its loan file a bona fide effort to resolve a discrepancy, either by finding a legitimate reason for such discrepancy or by attempting to resolve the discrepancy, for example, by contacting FEMA to review the determination, no violation will be cited. If a pattern or practice of unresolved discrepancies is found in a lender's loan portfolio due to a lack of effort on the lender's part to resolve such discrepancies, the Agencies may cite the lender for a violation of the mandatory purchase requirements.

Notice of special flood hazards and availability of Federal disaster relief

73. *Does the notice have to be provided to each borrower for a real estate related loan?*

    Answer: No. In a transaction involving multiple borrowers, the lender need only provide the notice to any one of the borrowers in the transaction. Lenders may provide multiple notices if they choose. The lender and borrower(s) typically designate the borrower to whom the notice will be provided. The notice must be provided to a borrower when the lender determines that the property securing the loan is or will be located in an SFHA.

74. *Lenders making loans on mobile homes may not always know where the home is to be located until just prior to, or sometimes after, the time of loan closing. How is the notice requirement applied in these situations?*

    Answer: When it is not reasonably feasible to give notice before the completion of the transaction, the notice requirement can be met by lenders in mobile home loan transactions if notice is provided to the borrower as soon as practicable after determination that the mobile home will be located in an SFHA. Whenever time constraints can be anticipated, regulated lenders should use their best efforts to provide adequate notice of flood hazards to borrowers at the earliest possible time. In the case of loan transactions secured by mobile homes not located on a permanent foundation, the Agencies note that such "home only" transactions are excluded from the definition of mobile home and the notice requirements would not apply to these transactions.

    However, as indicated in the preamble to the Regulation, the Agencies encourage a lender to advise the borrower that if the mobile home is later located on a permanent foundation in an SFHA, flood insurance will be required. If the lender, when notified of the location of the mobile home subsequent to the loan closing, determines that it has been placed on a permanent foundation and is located in an SFHA in which flood insurance is available under the Act, flood insurance coverage becomes mandatory and appropriate notice must be given to the borrower under those provisions. If the borrower fails to purchase flood insurance coverage within 45 days after notification, the lender must force place the insurance.

75. *When is the lender required to provide notice to the servicer of a loan that flood insurance is required?*

    Answer: Because the servicer of a loan is often not identified prior to the closing of a loan, the Regulation requires that notice be provided no later than the time the lender transmits other loan data, such as information concerning hazard insurance and taxes, to the servicer.

76. *What will constitute appropriate form of notice to the servicer?*

    Answer: Delivery to the servicer of a copy of the notice given to the borrower is appropriate notice. The Regulation also provides that the notice can be made either electronically or by a written copy.

77. *In the case of a servicer affiliated with the lender, is it necessary to provide the notice?*

    Answer: Yes. The Act requires the lender to notify the servicer of special flood hazards and the Regulation reflects this requirement. Neither contains an exception for affiliates.

78. *How long does the lender have to maintain the record of receipt by the borrower of the notice?*

    Answer: The record of receipt provided by the borrower must be maintained for the time that the lender owns the loan. Lenders may keep the record in the form that best suits the lender's business practices. Lenders may retain the record electronically, but they must be able to retrieve the record within a reasonable time pursuant to a document request from their federal supervisory agency.

79. *Can a lender rely on a previous notice if it is less than seven years old, and it is the same property, same borrower, and same lender?*

    Answer: No. The preamble to the Regulation states that subsequent transactions by the same lender with respect to the same property will be treated as a renewal and will require no new determination. However, neither the Regulation nor the preamble addresses waiving the requirement to provide the notice to the borrower. Therefore, the lender must provide a new notice to the borrower, even if a new determination is not required.

80. *Is use of the sample form of notice mandatory?*

    Answer: No. Although lenders are required to provide a notice to a borrower when it makes, increases, extends, or renews a loan secured by an improved structure located in an SFHA, use of the sample form of notice provided in Appendix A of the Regulation or in Appendix 4 of FEMA's Mandatory Purchase of Flood Insurance Guidelines is not mandatory. It should be noted that the sample form includes other information in addition to what is required by the Act and the Regulation. Lenders may personalize, change the format of, and add information to the sample form of notice, if they choose. However, a lender-revised notice must provide the borrower with at least the minimum information required by the Act and Regulation. Therefore, lenders should consult the Act and Regulation to determine the information needed.

Mandatory civil money penalties

81. *Which violations of the Act can result in a mandatory civil money penalty?*

    Answer: A pattern or practice of violations of any of the following requirements of the Act and their implementing Regulation triggers a mandatory civil money penalty:

    34. Purchase of flood insurance where available(42 U.S.C. 4012a(b));
    35. Escrow of flood insurance premiums (42 U.S.C. 4012a(d));
    36. Force placement of flood insurance (42 U.S.C. 4012a(e));
    37. Notice of special flood hazards and the availability of Federal disaster relief assistance (42 U.S.C. 4104a(a)); and
    38. Notice of servicer and any change of servicer (42 U.S.C. 4101a(b)).

82. *What constitutes a "pattern or practice" of violations for which civil money penalties must be imposed under the Act?*

    Answer: The Act does not define "pattern or practice." The Agencies make a determination of whether a pattern or practice exists by weighing the individual facts and circumstances of each case. In making the determination, the Agencies look both to guidance and experience with determinations of pattern or practice under other regulations (such as Regulation B (Equal Credit Opportunity) and Regulation Z (Truth in Lending)), as well as Agencies' precedents in assessing civil money penalties for flood insurance violations.

    The *Policy Statement on Discrimination in Lending* (Policy Statement) provided the following guidance on what constitutes a pattern or practice:

    > Isolated, unrelated, or accidental occurrences will not constitute a pattern or practice. However, repeated, intentional, regular, usual, deliberate, or institutionalized practices will almost always constitute a pattern or practice. The totality of the circumstances must be considered when assessing whether a pattern or practice is present.

    In determining whether a financial institution has engaged in a pattern or practice of flood insurance violations, the Agencies' considerations may include, but are not limited to, the presence of one or more of the following factors:

    - Whether the conduct resulted from a common cause or source within the financial institution's control;
    - Whether the conduct appears to be grounded in a written or unwritten policy or established practice;
    - Whether the noncompliance occurred over an extended period of time;
    - The relationship of the instances of noncompliance to one another (for example, whether the instances of noncompliance occurred in the same area of a financial institution's operations);
    - Whether the number of instances of noncompliance is significant relative to the total number of

applicable transactions. (Depending on the circumstances, however, violations that involve only a small percentage of an institution's total activity could constitute a pattern or practice);

- Whether a financial institution was cited for violations of the Act and Regulation at prior examinations and the steps taken by the financial institution to correct the identified deficiencies;
- Whether a financial institution's internal and/or external audit process had not identified and addressed deficiencies in its flood insurance compliance; and
- Whether the financial institution lacks generally effective flood insurance compliance policies and procedures and/or a training program for its employees.

Although these guidelines and considerations are not dispositive of a final resolution, they do serve as a reference point in assessing whether there may be a pattern or practice of violations of the Act and Regulation in a particular case. As previously stated, the presence or absence of one or more of these considerations may not eliminate a finding that a pattern or practice exists.

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 Compliance Examination Manual, 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 CFPB's Regulation B, found at 12 CFR Part 1002, implements 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 1002.

In January 2013, the CFPB amended Regulation B to reflect the Dodd-Frank Act amendments requiring creditors to provide applicants with free copies of all appraisals and other written valuations developed in connection with all credit applications to be secured by a first lien on a dwelling. This amendment to Regulation B also requires creditors to notify applicants in writing that copies of all appraisals will be provided to them promptly.

As discussed above, each aspect of the regulation discussed in this section pertains to the technical compliance review of the ECOA and Regulation B. The technical compliance review is an important aspect of the consumer compliance examination. Technical compliance reviews have led to the discovery of substantive fair lending violations. Based on the direction provided in the scoping section of the manual, examiners should review sufficient information to ensure compliance with the applicable provisions of Regulation B described below. Note that the language that follows is taken directly from the regulation, which appears in the References portion of this section.

Rules for Taking Applications – 12 CFR § 1002.5

Under Regulation B, a creditor may request any information[1] in connection with a credit transaction, unless the information requested or collected concerns one or more of the specific prohibited bases listed above. Nevertheless, the regulation permits a creditor to collect such information when required for monitoring or enforcing compliance with fair lending or other laws as follows:

- *Monitoring Purposes*
  Required by Court or an Enforcement Agency
  Special Purpose Credit

In addition, Regulation B permits the collection of certain prohibited information on a limited basis.

Limitations on Requests for Information Concerning Race, Color, Religion, National Origin, or Sex — 12 CFR § 1002.5(b)

In cases where it is not required to collect information, a creditor shall not inquire about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction, except in the following cases:

- *Self-test*
- *Sex*

Limitations on Requests for Information Concerning a Spouse or Former Spouse — 12 CFR § 1002.5(c)

Regulation B limits the information that a creditor may collect from an applicant's spouse or former spouse to the following circumstances:

- The spouse will be permitted to use the account;
- The spouse will be contractually liable on the account;
- The applicant is relying on the spouse's income as a basis for repayment of the credit requested;
- The applicant resides in a community property state or is relying on property located in such a state as a basis for repayment of the credit requested; or
- The applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested.

[1] A request for information under Regulation B does not limit or abrogate any Federal or state law regarding privacy, privileged information, credit reporting limitations, or similar restrictions on obtainable information.

A creditor may request that an applicant list any account on which the applicant is contractually liable and to provide the name and address of the person in whose name the account is held. A creditor may also ask an applicant to list the names in which the applicant has previously received credit.

Limitations on Requests for Information Concerning Marital Status — 12 CFR § 1002.5(d)(1)

Regulation B also limits inquiries about an applicant's marital status to the following:

- *Individual unsecured credit* - If an applicant applies for individual unsecured credit, a creditor may inquire about the applicant's marital status if the applicant resides in a community property state or is relying on property located in such a state as a basis for repayment of the credit requested.
- *Other credit* - If an application is for other than individual unsecured credit, a creditor may inquire about the applicant's marital status, but shall use only the terms *married, unmarried,* and *separated.* A creditor may explain that the category unmarried includes single, divorced, and widowed persons.

Limitation on Disclosure of Income From Alimony, Child Support, or Separate Maintenance — 12 CFR § 1002.5(d)(2)

A creditor shall not inquire whether income stated in an application is derived from alimony, child support, or separate maintenance payments unless the creditor discloses to the applicant that such income need not be revealed if the applicant does not want the creditor to consider it in determining the applicant's creditworthiness.

Limitation on Requests for Information Concerning Childbearing or Childrearing — 12 CFR § 1002.5(d)(3)

A creditor shall not inquire about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children. A creditor may inquire about the number and ages of an applicant's dependents or about dependent-related financial obligations or expenditures, provided such information is requested without regard to sex, marital status, or any other prohibited basis.

Permanent Residency and Immigration Status — 12 CFR § 1002.5(e)

A creditor may inquire about the permanent residency and immigration status in the United States of an applicant or any other person in connection with a credit transaction.

Rules Concerning Evaluation of Applications — 12 CFR § 1002.6

General Rule — 12 CFR § 1002.6(a)

Except as otherwise provided for in the ECOA and Regulation B, a creditor may consider any information obtained to evaluate an applicant's credit worthiness, so long as the information is not used to discriminate against the applicant on a prohibited basis.

Specific Rules Concerning Use of Information — 12 CFR § 1002.6(b)

In any system of evaluating the creditworthiness of an applicant, a creditor may not:

- Consider any of the prohibited bases, including age (provided that the applicant has the capacity to enter into a binding contract) [2] and the receipt of public assistance (with certain limitations, as described below, a creditor may use the applicant's age and income derived from public assistance);
- Use childbearing or childrearing information to make assumptions or use aggregate statistics to determine whether the applicant's income will be diminished or interrupted in the future;
- Take into account whether there is a telephone listing in the name of an applicant for consumer credit but may take into account whether there is a telephone in the applicant's residence;
- Discount or exclude from consideration the income of an applicant or the spouse of an applicant because the income is derived from part-time employment or from other sources, such as an annuity, pension, or other retirement benefit; but may consider the amount and probable continuance of any income in evaluating an applicant's creditworthiness.

Limitations on the Use of an Applicant's Age and Income Derived from Public Assistance — 12 CFR § 1002.6(b)(2)

Although generally prohibited, a creditor may use an applicant's age and income derived from public assistance in the following systems for analyzing credit:

[2] According to the official staff commentary for Regulation B, any system of evaluating creditworthiness may favor a credit applicant who is age 62 or older. A credit program that offers more favorable credit terms to applicants age 62 or older is also permissible; a program that offers more favorable credit terms to applicants at an age lower than 62 is permissible only if it meets the special-purpose credit requirements of § 1002.8

- *Empirical Derived Credit Scoring System*
- *Judgmental Systems*
- *Any System of Evaluating Creditworthiness*

Use of Credit History Information — 12 CFR § 1002.6(b)(6)

To the extent that a creditor considers credit history in evaluating the creditworthiness of similarly qualified applicants for a similar type and amount of credit, in evaluating an applicant's creditworthiness a creditor shall consider:

- The credit history, when available, of accounts designated as accounts that the applicant and the applicant's spouse are permitted to use or for which both are contractually liable;
- On the applicant's request, any information the applicant may present that tends to indicate the credit history being considered by the creditor does not accurately reflect the applicant's creditworthiness; and
- On the applicant's request, the credit history, when available, of any account reported in the name of the applicant's spouse or former spouse that the applicant can demonstrate accurately reflects the applicant's creditworthiness.

Use of Information Concerning Immigration Status — 12 CFR § 1002.6(b)(7)

A creditor may consider the applicant's immigration status or status as a permanent resident of the United States, and any additional information that may be necessary to ascertain the creditor's rights and remedies regarding repayment.

Use of Information Concerning Marital Status — 12 CFR § 1002.6(b)(8)

Except as otherwise permitted or required by law, a creditor shall evaluate married and unmarried applicants by the same standards; and in evaluating joint applicants, a creditor shall not treat applicants differently based on the existence, absence, or likelihood of a marital relationship between the parties.

Use of Information Concerning Race, Color, Religion, National Origin, or Sex — 12 CFR § 1002.6(b)(9)

Except as otherwise permitted or required by law, a creditor shall not consider race, color, religion, national origin, or sex (or an applicant's or other person's decision not to provide the information) in any aspect of a credit transaction.

State Property Laws — 12 CFR § 1002.6(c)

A creditor's consideration or application of state property laws directly or indirectly affecting creditworthiness does not constitute unlawful discrimination for the purposes of the ECOA or Regulation B.

Rules for Extensions of Credit — 12 CFR § 1002.7

Regulation B has specific provisions regarding extensions of credit.

Individual accounts. A creditor shall not refuse to grant an individual account to a creditworthy applicant on the basis of sex, marital status, or any other prohibited basis.

Designation of name. A creditor shall not refuse to allow an applicant to open or maintain an account in a birth-given first name and a surname that is the applicant's birth-given surname, the spouse's surname, or a combined surname.

Action Concerning Existing Open-End Accounts — 12 CFR § 1002.7(c)

Limitations. In the absence of evidence of the applicant's inability or unwillingness to repay, a creditor shall not take any of the following actions regarding an applicant who is contractually liable on an existing open-end account on the basis of the applicant's reaching a certain age or retiring or on the basis of a change in the applicant's name or marital status:

- Require a reapplication, except as provided under § 1002.7(c)(2);
- Change the terms of the account; or
- Terminate the account.

Requiring Reapplication — 12 CFR § 1002.7(c)(2)

A creditor may require a reapplication for an open-end account on the basis of a change in the marital status of an applicant who is contractually liable if the credit granted was based in whole or in part on income of the applicant's spouse and if information available to the creditor indicates that the applicant's income may not support the amount of credit currently available.

Signature Requirements — 12 CFR § 1002.7(d)

Rule for qualified applicant. Except as provided in this paragraph, a creditor shall not require the signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested. A creditor shall not deem the submission of a joint financial statement or other evidence of jointly held assets as an application for joint credit.

Unsecured credit. If an applicant requests unsecured credit and relies in part upon property that the applicant owns jointly with another person to satisfy the creditor's standards of creditworthiness, the creditor may require the signature of the other person only on the instrument(s) necessary, or reasonably believed by the creditor to be necessary, under the law of the state in which the property is located, to enable the creditor to reach the property being relied upon in the event of the death or default of the applicant.

Unsecured credit—community property states. If a married applicant requests unsecured credit and resides in a community property state, or if the applicant is relying on property located in such a state, a creditor may require the signature of the spouse on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the community property available to satisfy the debt in the event of default if:

- Applicable state law denies the applicant power to manage or control sufficient community property to qualify for the credit requested under the creditor's standards of creditworthiness; and
- The applicant does not have sufficient separate property to qualify for the credit requested without regard to community property.

Secured credit. If an applicant requests secured credit, a creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the property being offered as security available to satisfy the debt in the event of default, for example, an instrument to create a valid lien, pass clear title, waive inchoate rights, or assign earnings.

Additional parties. If, under a creditor's standards of creditworthiness, the personal liability of an additional party is necessary to support the credit requested, a creditor may request a cosigner, guarantor, endorser, or similar party. The applicant's spouse may serve as an additional party, but the creditor shall not require that the spouse be the additional party.

Rights of additional parties. A creditor shall not impose requirements upon an additional party that the creditor is prohibited from imposing upon an applicant under this section.

Insurance. A creditor shall not refuse to extend credit and shall not terminate an account because credit life, health, accident, disability, or other credit-related insurance is not available on the basis of the applicant's age.

Notifications — 12 CFR § 1002.9

Regulation B provides specific requirements for creditors regarding notification of action taken, ECOA notices, and statement of specific reasons to applicants.

Notification of Action Taken, ECOA Notice, and Statement of Specific Reasons — 12 CFR § 1002.9(a)

When Notification is Required — 12 CFR § 1002.9(a)(1)

A creditor shall notify an applicant of action taken within:

- 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application;
- 30 days after taking adverse action on an incomplete application, unless notice is provided in accordance with the requirements for incomplete applications under § 1002.9(c);
- 30 days after taking adverse action on an existing account; or
- 90 days after notifying the applicant of a counteroffer if the applicant does not expressly accept or use the credit offered.

Content of Notification When Adverse Action is Taken — 12 CFR § 1002.9(a)(2)

A notification given to an applicant when adverse action is taken shall be in writing and shall contain a statement of the action taken; the name and address of the creditor; a statement of the provisions of section 701(a) of the ECOA; the name and address of the Federal agency that administers compliance with respect to the creditor; and either:

- A statement of specific reasons for the action taken; (§ 1002.9(a)(2)(i)) or
- A disclosure of the applicant's right to a statement of specific reasons within 30 days, if the statement is requested within 60 days of the creditor's notification. The disclosure shall include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the reasons orally, the creditor shall also disclose the applicant's right to have them confirmed in writing within 30 days of receiving the applicant's written request for confirmation. (§ 1002.9(a)(2)(ii))

Notification to business credit applicants. For business credit, a creditor shall comply with the notification requirements of § 1002.9 in the following manner:

> *Businesses with gross revenues of $1 million or less* (§ 1002.9(a)(3)(i)) – Businesses that had gross revenues of $1 million or less in its preceding fiscal year (other than an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit), a creditor shall comply with the timing and content requirements of action taken, except that:
>
> - The statement of the action taken may be given orally or in writing, when adverse action is taken;
> - Disclosure of an applicant's right to a statement of reasons may be given at the time of application, instead of when adverse action is taken, provided the disclosure contains the information required by § 1002.9(a)(2)(ii) and the ECOA notice specified in § 1002.9(b)(1);
> - For an application made entirely by telephone, a creditor satisfies the requirements of § 1002.9(a)(3)(i) by an oral statement of the action taken and of the applicant's right to a statement of reasons for adverse action.
>
> *Businesses with gross revenues in excess of $1 million* - Businesses that had gross revenues in excess of $1 million in its preceding fiscal year or an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit, a creditor shall:
>
> - Notify the applicant, within a reasonable time, orally or in writing, of the action taken; and
> - Provide a written statement of the reasons for adverse action and the ECOA notice specified in § 1002.9(b)(1) if the applicant makes a written request for the reasons within 60 days of the creditor's notification.

Form of ECOA Notice and Statement of Specific Reasons — 12 CFR § 1002.9(b)(1)

ECOA notice. To satisfy the disclosure requirements of the notice of adverse action regarding the prohibited basis for discrimination of section 701(a) of the ECOA, the creditor shall provide a notice that is substantially similar to the following:

> The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency or agencies listed in Appendix A of Regulation B].

Statement of Specific Reasons — 12 CFR § 1002.9(b)(2)

The statement of reasons for adverse action required must be specific and indicate the principal reason(s) for the adverse action. Statements that the adverse action was based on the creditor's internal standards or policies or that the applicant, joint applicant, or similar party failed to achieve a qualifying score on the creditor's credit scoring system are insufficient. Note: According to the staff commentary, a creditor must disclose the principal reasons for denying an application or taking other adverse action. The regulation does not mandate that a specific number of reasons be disclosed, but disclosure of more than four reasons is not likely to be helpful to the applicant.

Incomplete Applications — 12 CFR § 1002.9(c)

Notice alternatives. Within 30 days after receiving an application that is incomplete regarding matters that an applicant can complete, the creditor shall notify the applicant either:

- Of action taken, in accordance with § 1002.9(a); or
- Of the incompleteness, in accordance with § 1002.9(c)(2)

Notice of Incompleteness — 12 CFR § 1002.9(c)(2)

If additional information is needed from an applicant, the creditor shall send a written notice to the applicant specifying the information needed, designating a reasonable period of time for the applicant to provide the information, and informing the applicant that failure to provide the information requested will result in no further consideration being given to the application. The creditor shall have no further obligation under this section if the applicant fails to respond within the designated time period. If the applicant supplies the requested information within the designated time period, the creditor

shall take action on the application and notify the applicant in accordance the requirements of § 1002.9(a) described above.

Oral Request for Information — 12 CFR § 1002.9(c)(3)

At its option, a creditor may inform the applicant orally of the need for additional information. If the application remains incomplete, the creditor shall send a notice in accordance with the notice alternatives for incomplete applications.

Oral Notifications by Small-Volume Creditors — 12 CFR § 1002.9(d)

In the case of a creditor that did not receive more than 150 applications during the preceding calendar year, the requirements of this section (including statements of specific reasons) are satisfied by oral notifications.

Withdrawal of Approved Application — 12 CFR § 1002.9(e)

When an applicant submits an application and the parties contemplate that the applicant will inquire about its status, if the creditor approves the application and the applicant has not inquired within 30 days after applying, the creditor may treat the application as withdrawn and need not comply with the timing requirements of action taken under § 1002.9(a)(1).

Multiple Applicants — 12 CFR § 1002.9(e)

When an application involves more than one applicant, notification need only be given to one of them but must be given to the primary applicant where one is readily apparent.

Applications Submitted Through a Third Party — 12 CFR § 1002.9(g)

When an application is made on behalf of an applicant to more than one creditor and the applicant expressly accepts or uses credit offered by one of the creditors, notification of action taken by any of the other creditors is not required. If no credit is offered or if the applicant does not expressly accept or use the credit offered, each creditor taking adverse action must comply with this section, directly or through a third party. A notice given by a third party shall disclose the identity of each creditor on whose behalf the notice is given.

Furnishing of Credit Information — 12 CFR § 1002.10

Regulation B provides specific requirements for creditors regarding designation of accounts.

Designation of Accounts — 12 CFR § 1002.10(a)

A creditor that furnishes credit information shall 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 to reflect such participation, within 90 days after receiving a written request to do so from one of the spouses.

Routine Reports to Consumer Reporting Agency — 12 CFR § 1002.10(b)

If a creditor furnishes credit information to a consumer reporting agency concerning an account designated to reflect the participation of both spouses, the creditor shall furnish the information in a manner that will enable the agency to provide access to the information in the name of each spouse.

Reporting in Response to Inquiry — 12 CFR § 1002.10(c)

If a creditor furnishes credit information in response to an inquiry, concerning an account designated to reflect the participation of both spouses, the creditor shall furnish the information in the name of the spouse about whom the information is requested.

Record Retention — 12 CFR § 1002.12

Regulation B provides specific record retention requirements for creditors.

Retention of Prohibited Information — 12 CFR § 1002.12(a)

A creditor may retain in its files information that is prohibited by the ECOA or Regulation B for use in evaluating applications, without violating the ECOA or Regulation B, if the information was obtained:

(1) From any source prior to March 23, 1977;

(2) From consumer reporting agencies, an applicant, or others without the specific request of the creditor; or

(3) As required to monitor compliance with the ECOA and this Regulation B or other Federal or state statutes or regulations.

Preservation of Records — 12 CFR § 1002.12(b)

Applications. For 25 months (12 months for business credit, except as provided for in the "*special rule for certain business credit applications*") after the date that a creditor notifies an applicant of action taken on an application or of incompleteness, the creditor shall retain in original form or a copy thereof:

- Any application that it receives, any information required to be obtained concerning characteristics of the applicant to monitor compliance with the ECOA and Regulation B or other similar law, and any other written or recorded information used in evaluating the application and not returned to the applicant at the applicant's request;
- A copy of the following documents if furnished to the applicant in written form (or, if furnished orally, any notation or memorandum made by the creditor):
  - The notification of action taken; and
  - The statement of specific reasons for adverse action; and
- Any written statement submitted by the applicant alleging a violation of the ECOA or Regulation B.

Existing accounts. For 25 months (12 months for business credit, except as provided for in the "*special rule for certain business credit applications*") after the date that a creditor notifies an applicant of adverse action regarding an existing account, the creditor shall retain as to that account, in original form or a copy thereof:

- Any written or recorded information concerning the adverse action; and
- Any written statement submitted by the applicant alleging a violation of the ECOA or Regulation B.

Other applications. For 25 months (12 months for business credit, except as provided for in the "*special rule for certain business credit applications*") after the date that a creditor receives an application for which the creditor is not required to comply with the notification requirements of § 1002.9, the creditor shall retain all written or recorded information in its possession concerning the applicant, including any notation of action taken.

Enforcement proceedings and investigations. A creditor shall retain the information beyond 25 months (12 months for business credit, except as provided for in the "*special rule for certain business credit applications*") if the creditor has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the ECOA or Regulation B, by the Attorney General of the United States or by an enforcement agency charged with monitoring that creditor's compliance with the ECOA and Regulation B, or if it has been served with notice of an action filed pursuant to section 706 of the ECOA and § 1002.16 of Regulation B. The creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

Special rule for certain business credit applications. With regard to a business that had gross revenues in excess of $1 million in its preceding fiscal year, or an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit, the creditor shall retain records for at least 60 days after notifying the applicant of the action taken. If within that time period the applicant requests in writing the reasons for adverse action or that records be retained, the creditor shall retain records for 12 months.

Self-tests. For 25 months after a self-test (as defined in § 1002.15(b)(1) of Regulation B) has been completed, the creditor shall retain all written or recorded information about the self-test. A creditor shall retain information beyond 25 months if it has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation, or if it has been served with notice of a civil action. In such cases, the creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by the appropriate agency or court order.

Prescreened solicitations. For 25 months after the date on which an offer of credit is made to potential customers (12 months for business credit, except as provided for in the "special rule for certain business credit applications"), the creditor shall retain in original form or a copy thereof:

- The text of any prescreened solicitation;
- The list of criteria the creditor used to select potential recipients of the solicitation; and
- Any correspondence related to complaints (formal or informal) about the solicitation.

Information for Monitoring Purposes — 12 CFR § 1002.13

Information to be Requested — 12 CFR § 1002.13(a)

A creditor that receives an application for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit will be secured by the dwelling, shall request as part of the application the following information regarding the applicant(s):

- 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;
- Sex;

- Marital status, using the categories married, unmarried, and separated; and
- Age.

Dwelling means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit and a mobile or other manufactured home.

Obtaining information. — 12 CFR § 1002.13(b)

Questions regarding ethnicity, race, sex, marital status, and age may be listed, at the creditor's option, on the application form or on a separate form that refers to the application. The applicant(s) shall be asked but not required to supply the requested information. If the applicant(s) chooses not to provide the information or any part of it, that fact shall be noted on the form. The creditor shall then also note on the form, to the extent possible, the ethnicity, race, and sex of the applicant(s) on the basis of visual observation or surname.

Disclosure to applicant(s) — 12 CFR § 1002.13(c)

The creditor shall inform the applicant(s) that the information regarding ethnicity, race, sex, marital status, and age is being requested by the Federal Government for the purpose of monitoring compliance with Federal statutes that prohibit creditors from discriminating against applicants on those bases. The creditor shall also inform the applicant(s) that if the applicant(s) chooses not to provide the information, the creditor is required to note the ethnicity, race and sex on the basis of visual observation or surname.

Substitute Monitoring Program — 12 CFR § 1002.13(d)

A monitoring program required by an agency charged with administrative enforcement under section 704 of the ECOA may be substituted for the monitoring requirements of § 1002.13(a)-(c).

Providing Appraisals and Other Valuations – 12 CFR § 1002.14(a)(1)

Regulation B requires that creditors provide applicants with a copy of all appraisals and other written valuations[3] developed in connection with an application for credit to be secured by a first lien on a dwelling. A creditor shall provide the copy of each such appraisal or other written valuation promptly upon completion, or at least three business days prior to consummation of the transaction (for closed-end credit) or account opening (for open-end credit), whichever is earlier.

An applicant may waive the timing requirement and agree to receive any copy at or before consummation or account opening, except where otherwise prohibited by law. Any such waiver must be obtained at least three business days prior to consummation or account opening, unless the waiver pertains solely to the applicant's receipt of a copy of an appraisal or other written valuation that contains only clerical changes from a previous version provided to the applicant or other written valuation provided to the applicant three or more business days prior to consummation or account opening. If the applicant provides a waiver and the transaction is not consummated or the account is not opened, the creditor must provide these copies no later than 30 days after the creditor determines consummation will not occur or the account will not be opened.

Disclosure – 12 CFR 1002.14(a)(2)

A creditor shall mail or deliver a notice in writing of the applicant's right to receive a copy of all written appraisals or valuations developed in connection with the application, no later than the third business day after the creditor receives an application for credit that is to be secured by a first lien on a dwelling. A special timing rule applies if an application for credit is not to be secured by a first lien on a dwelling at the time of application, but the creditor later determines that it will be secured by such a lien. In that case, the creditor shall mail or deliver the same disclosure in writing no later than the third business day after determining that the loan is to be secured by a first lien on a dwelling. If the disclosure required under 12 CFR 1002.14(a)(2) accompanies an application accessed by the applicant in electronic form, it may be provided in electronic form on or with the application form, without regard to the consumer consent or other provisions of the E-Sign Act. (15 U.S.C. 7001 et seq.). See 12 CFR 1002.4(d)(2).

Reimbursement – 12 CFR 1002.14(a)(3)

A creditor shall not charge an applicant for providing a copy of appraisals and/or other written valuations, but may require applicants to pay a reasonable fee to reimburse the creditor for the cost of the appraisal or other written valuation unless otherwise provided by law.

Withdrawn, Denied, or Incomplete Applications – 12 CFR 1002.14(a)(4)

The requirements to provide copies of appraisals and other written valuations developed in connection with an application for credit to be secured by a first lien on a dwelling apply whether credit is extended or denied or if the application is incomplete or withdrawn.

[3] Regulation B defines a valuation as "any estimate of the value of a dwelling developed in connection with an application for credit." 12 CFR 1002.14(b)(3). Additionally, examples of valuations can be found in the Official Interpretations of Regulation B at 1002.14(b)(3)(1)(i) – (v).

Copies in Electronic Form – 12 CFR 1002.14(a)(5)

Required copies of appraisals and other written valuations may be provided to the applicant in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq*.).

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.

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

References

12 CFR Part 1002

FIL 09-2014; Interagency Consumer Compliance Examination Procedures for Mortgage Rules Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)

FIL 02-09: Guidance on Avoiding Violations of the Spousal Signatures Provisions of Regulation B

FIL 06-04: Spousal Signature Provision of Regulation B

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 (§1002.13(a) and (b)) and that it noted this information on the application form or on a separate form referring to the application (§1002.13(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 information to only those loans secured by the applicant's principal dwelling, as required in §1002.5(a)&(b); 1002.13(a).*			
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? (§1002.13(c))			
3. Does the bank note on the monitoring form applicant's refusals to disclose monitoring information? (§1002.13(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? (§1002.13(b)), Comment 13(b)-4) 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? (§1002.4(c), §1002.13(a))			
6. Are disclosures clear, conspicuous and except for those required by §1002.5 and §1002.13, in a form the applicant can retain? (§1002.4(d))			
7. Are disclosures in electronic form provided in compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce (E-Sign) Act? (§1002.4(d)(2))			
8. If an applicant accesses a credit application electronically from a place other than a creditor's office, were the required disclosures provided in electronic form? (Comment 4(d)-2)			
Rules Concerning Requests for Information			
9. 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? (§1002.5(d)(3))			

10. Does the loan file indicate that the bank did not request information about spouses except for transactions which: a. The spouse is permitted to use the account, b. The spouse is liable 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? (§1002.5(c))			
11. 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? (§1002.5(d)(1))			
12. 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"? (§1002.5(d)(1))			
13. 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? (§1002.5(d)(2))			

14. Is any special purpose program established and administered so as to avoid discriminating on a prohibited basis? (§1002.5(a)(3), §1002.8(b)(2))			
15. 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 §1002.15? b. Does the creditor disclose to the applicant, orally or in writing, when requesting the information that:, i. Applicant isn't required to provide information? ii. The bank is requesting information to monitor its compliance with ECOA? iii. 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? iv. If applicable, certain information will be collected based on visual observation or surname if not provided by the applicant or other person? (§1002.5(b))			
16. 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? (§1002.5(b)(2))			
Rules Concerning Extensions of Credit			
17. For joint applications, do application files indicate an applicant's intent to apply for joint credit at the time of application? (Supplement I to 12 CFR 1002, Staff Commentary, comment no. 3 to §1002.7(d)(1))			

Notifications			
18. 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? (§1002.9(a)(1)(i), §1002.9(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)? (§1002.9(a)(1)(ii) and (c)(2)) c. Adverse action (within 30 days of taking such action) on existing accounts? (§1002.9(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)? (§1002.9(a)(1)(iv))			
19. 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? (§1002.9(a)(2) b. A written statement substantially similar to that in §1002.9(b)(1)? c. A written statement of specific reasons for the action taken or written disclosure as specified in §1002.9(a)(2)(ii)) of the applicant's right to such a statement? (§1002.9(a)(2)(i) and (ii))			

20. 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 §1002.9(a)(1)), was the disclosure of the right to a statement of reasons given in writing at the time of application in accordance with §1002.9(a)(3)(i)(B)?			
21. 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? (§1002.9(a)(3)(ii)(B)):			
22. Does the statement of reason(s) for adverse action contain the principal and specific reason(s) for the action? (§1002.9(b)(2))			
23. When an application involves multiple applicants, does the bank provide notification of action to the primary applicant, when one is readily apparent? (§1002.9(f))			
24. 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? (§1002.9(g))			
Furnishing Credit Information			
25. 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 Requirement? (If answer is No, there appears to be a violation.) 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? (§1002.10(b))			

26. When an application involves multiple applicants, does the bank provide notification of action to the primary applicant, when one is readily apparent? (§1002.9(f))			
Record Retention			
27. 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? (§1002.12(b)(1)(i)); b) All information obtained for monitoring purposes? (§1002.12(b)(1)(i)); c) The notification of action taken, if written, or any notation or memorandum by the bank, if made orally? (§1002.12(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? (§1002.12(b)(1)(ii)(B)) e) Any written statement submitted by the applicant alleging a violation of ECOA or Regulation B? (§1002.12(b)(1)(iii))			
28. 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? (§1002.12(b)(2)(i)); b) Any written statement submitted by the applicant alleging a violation of ECOA or Regulation B? (§1002.12(b)(2)(ii))			
29. Does the bank retain application files for other applications, for which §1002.9'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 the date the bank receives the application, containing all written or recorded information in its possession concerning the applicant, including any notation of action taken? (§1002.12(b)(3))			

30. 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? (§1002.12(b)(5))			
31. 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? (§1002.12(b)(7))			
32. Was information relative to an investigative enforcement or civil action retained until final disposition of the matter? (§1002.12(b)(4))			
33. If the bank conducts a self-test pursuant to §1002.15, 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? (§1002.12(b)(6))			

34. With respect to applications for credit to be secured by a first lien on a dwelling, in the absence of a waiver, does the creditor: a) Provide copies of all appraisals and other written valuations developed in connection with the application for credit promptly upon completion, or three business days prior to consummation of the transaction (for closed-end-credit) or at, or before, account opening (for open-end credit), whichever is earlier, whether credit is granted or denied or the application is withdrawn; or b) If the creditor obtains a waiver of the timing requirements that is not otherwise prohibited by law, does the creditor: i. Obtain the waiver at least three business days prior to consummation or account opening (except in the case of waivers pertaining solely to the applicant's receipt of a copy of an appraisal or other written valuation that contains only clerical changes from a previous version of the appraisal or other written valuation provided to the applicant three or more business days prior to consummation or account opening); ii. Provide the applicant a copy of the appraisal or other valuation at or before consummation or account opening, where the loan is consummated or the account is opened; and iii. Where the loan is not consummated or the account is not opened, provide the applicant with copies no later than 30 days after determining the consummation will not occur or the account will not be opened? (12 CFR 1002.14(a)).			
35. With respect to applications for credit to be secured by a first lien on a dwelling, does the creditor refrain from charging an applicant for providing required copies of appraisals and other written valuations? (A creditor may charge a reasonable fee to reimburse for the cost of the appraisal or other written valuation unless otherwise provided by the law but a creditor may not charge an applicant for providing a copy of appraisals and other written valuations.) (12 CFR 1002.14(a)(3))			

36. With respect to applications for credit to be secured by a first lien on a dwelling, does the creditor mail or deliver a written notice of the applicant's right to receive a copy of all written appraisals developed in connection with the application no later than the third business day after the creditor receives the application for credit; or if the creditor determines that credit was not to be secured by a first lien on a dwelling at the time of application but later determined the credit will be secured by a first lien on a dwelling, does the creditor mail or deliver the same written notice no later than the third business day after such determination? (12 CFR 1002.14(a)(2))			
37. Are the creditor's written disclosures that are required by Regulation B clear, conspicuous, and except for those required by 12 CFR 1002.5 (self-tests) and 1002.13 (monitoring), in a form the applicant can retain? (12 CFR 1002.4(d))			
General Rule			
38. 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? (§1002.4(b))			

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 1002.13(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 1002.12). This requirement also applies to rec-

ords 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

- Fair Housing Act, 42 USC §3601
- 12 CFR Part 338
- 12 CFR Part 1002

Home Mortgage Disclosure Act[1]

Background

The Home Mortgage Disclosure Act requires certain financial institutions to collect, report, and disclose information about their mortgage lending activity. HMDA was originally enacted by the Congress in 1975 and is implemented by Regulation C (12 CFR Part 1003).

HMDA was enacted given public concern over credit shortages in certain neighborhoods. In particular, Congress believed that some financial institutions had contributed to the decline of various geographic areas through their failure to provide adequate home financing to qualified applicants on reasonable terms and conditions. Thus, one statutory purpose of HMDA is to provide the public with information that will help show whether financial institutions are serving the housing credit needs of the communities and neighborhoods in which they are located. A second statutory purpose is to aid public officials in distributing public sector investment so as to attract private investment to areas where it is needed. Finally, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) amended HMDA to require the collection and disclosure of data about applicant and borrower characteristics to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination 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 geographic area.

Between 1988 and 1992, Congress amended HMDA's coverage. 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 by the Federal Deposit Insurance Corporation Improvement Act of 1991 HMDA amendments. For a more detailed discussion of the history of HMDA, see the Federal Financial Institutions Examination Council's (FFIEC) website at www.ffiec.gov/hmda/history2.htm.

Prior to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), HMDA required financial institutions to report data regarding applications, loan originations, and loan purchases, as well as certain requests under a pre-approval program (as defined in Regulation C). HMDA also required financial institutions to report certain applicant and borrower demographic data, such as ethnicity, race, gender, and gross income. In addition, the reporting of certain pricing information and the type of purchaser was required. Data was reported in a "register" reporting format, compiled by supervisory agencies, and disclosed to the public.

The Dodd-Frank Act amended HMDA to, among other things, require reporting of additional data points, transfer HMDA rulemaking authority from the Board of Governors of the Federal Reserve System (FRB) to the Consumer Financial Protection Bureau (Bureau), and provide the Bureau with authority to mandate collection, recording, and reporting of such other information as the Bureau may require.[2] In August 2014, the Bureau proposed amendments to Regulation C to implement the Dodd-Frank Act changes; to require collection, recording, and reporting of additional information to further HMDA's purposes; and to modernize the manner in which covered financial institutions report HMDA data. The Bureau published a final rule amending Regulation C in October 2015 (2015 HMDA Rule).[3] The Bureau published a final rule further amending Regulation C in September 2017 to facilitate implementation of the 2015 HMDA Rule (2017 HMDA Rule).[4]

Beginning in 2018, as discussed further below, the 2015 HMDA Rule requires that financial institutions continue to report data regarding applications, loan originations, and loan purchases. The Bureau's 2015 HMDA Rule changed: (1) the definition of a financial institution that is subject to Regulation C; (2) the types of transactions that are subject to Regulation C; (3) the data that financial institutions are required to collect, record, and report pursuant to Regulation C; and (4) the processes for reporting and disclosing HMDA data. The data are submitted electronically to the Bureau on behalf of the appropriate Federal agency associated with the reporter, and most of the data are made available to the public on both an aggregate and a loan-level basis.[5]

On May 24, 2018, the President signed the Economic Growth, Regulatory Relief, and Consumer Protection Act (2018 Act) into law.[6] Effective May 24, 2018, Section 104(a) of the 2018 Act created partial exemptions from some of HMDA's requirements for certain covered institutions. On August 31, 2018, the Bureau issued an interpretive and procedural rule (2018 HMDA Rule) to implement and clarify Section 104(a)

[1] 12 USC 2801–2810. The HMDA Interagency Examination Procedures cover HMDA data collected in or after 2018, that is, for loans and applications for which final action was taken in or after 2018.

[2] In December 2011, the Bureau restated the FRB's existing Regulation C at 12 CFR 1003. See 76 Fed. Reg. 78465 (Dec. 19, 2011).

[3] 80 Fed. Reg. 66128 (Oct. 28, 2015).

[4] 82 Fed. Reg. 43088 (Sept. 13, 2017).

[5] Information about the HMDA Platform through which financial institutions submit HMDA data to the Bureau to be processed and disclosed is available at https://ffiec.cfpb.gov/.

[6] Pub. L. 115-174, 132 Stat. 1296 (2018), Section 104(a) (codified at 12 USC 2803).

of the 2018 Act (2018 HMDA Rule). The 2018 HMDA Rule was published in the Federal Register on September 7, 2018.[7]

The Federal supervisory agencies use HMDA data to support a variety of activities.[8] For example, some Federal supervisory agencies use HMDA data as part of their fair lending examination process, and other agencies use HMDA data in conducting Community Reinvestment Act (CRA) performance evaluations.[9] Moreover, HMDA disclosures provide the public with information on the home mortgage lending activities of particular reporting entities and on activity in their communities. These disclosures are used by local, State, and Federal officials to evaluate housing trends and issues and by community organizations to monitor financial institution lending patterns. Because HMDA data serve numerous important purposes, validating the accuracy of HMDA data is a key element of the Federal supervisory agencies' examination activities.

Coverage

A. Institutional Coverage

Institutional Coverage Generally

An institution is required to comply with Regulation C only if it is a financial institution as that term is defined in Regulation C. The definition of financial institution includes both depository financial institutions and nondepository financial institutions, as those terms are separately defined in Regulation C. 12 CFR 1003.2(g).

An institution uses these two definitions, which are outlined below, as coverage tests to determine whether it is a financial institution that is required to comply with Regulation C. For the purpose of these examination procedures, the term financial institution refers to an institution that is either a depository financial institution or a nondepository financial institution that is subject to Regulation C.

Institutional Coverage Tests

Depository Financial Institutions

A bank, savings association, or credit union is a depository financial institution and subject to Regulation C if it meets ALL of the following:

1. **Asset-Size Threshold**. On the preceding December 31, the bank, savings association, or credit union had assets in excess of the asset-size threshold published annually in the Federal Register, as included in the Official Interpretations, 12 CFR Part 1003, Comment 2(g)-2, and posted on the Bureau's website. 12 CFR 1003.2(g)(1)(i).

   The phrase "preceding December 31" refers to the December 31 immediately preceding the current calendar year. For example, in 2019, the preceding December 31 is December 31, 2018. Comment 2(g)-1.

2. **Location Test**. On the preceding December 31, the bank, savings association, or credit union had a home or branch office located in a metropolitan statistical area (MSA). 12 CFR 1003.2(g)(1)(ii).

   For purposes of this location test, a branch office for a bank, savings association, or credit union is an office: (a) of the bank, savings association, or credit union (b) that is considered a branch by the institution's Federal or State supervisory agency. For purposes of Regulation C, an automated teller machine or other free-standing electronic terminal is not a branch office regardless of whether the supervisory agency would consider it a branch. 12 CFR 1003.2(c)(1). A branch office of a credit union is any office where member accounts are established or loans are made, whether or not a Federal or State agency has approved the office as a branch. Comment 2(c)(1)-1.

3. **Loan-Activity Test**. During the preceding calendar year, the bank, savings association, or credit union originated at least one home purchase loan or refinancing of a home purchase loan secured by a first lien on a one-to-four-unit dwelling. 12 CFR 1003.2(g)(1)(iii). For more information on whether a loan is secured by a dwelling, is a home purchase loan, or is a refinancing, see 12 CFR 1003.2(f), (j), and (p) and associated commentary.

4. **Federally Related Test**. The bank, savings association, or credit union:

   a. Is federally insured; or

   b. Is federally regulated; or

   c. Originated at least one home purchase loan or refinancing of a home purchase loan that was secured by a first lien on a one-to-four-unit dwelling and also (i) was insured, guaranteed, or supplemented by a Federal agency or (ii) was intended for sale to the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac). 12 CFR 1003.2(g)(1)(iv).

5. **Loan-Volume Thresholds**. The bank, savings association, or credit union meets or exceeds either the closed-end mortgage loan or the open-end line of credit loan-volume threshold in each of the two preceding calendar years.

- A bank, savings association, or credit union that originated at least 25 closed-end mortgage loans in each of the two preceding calendar years, or originated at least 500 open-end lines of credit in each of the two preceding

[7] 83 Fed. Reg. 45325 (Sept. 7, 2018).

[8] 15 USC 1691–1691f, 42 USC 3605, and 12 CFR 1002.

[9] 12 USC 2901–2908, and 12 CFR 25, 195, 228, and 345.

calendar years meets or exceeds the loan-volume threshold.

When the bank, savings association, or credit union determines whether it meets these loan-volume thresholds, it does not count transactions excluded by 12 CFR 1003.3(c)(1) through (10) and (13). 12 CFR 1003.2(g)(1)(v). Closed-end mortgage loans, open-end lines of credit, and these excluded transactions are discussed below in TRANSACTIONAL COVERAGE.

When determining if it meets the loan-volume thresholds, a bank, savings association, or credit union only counts closed-end mortgage loans and open-end lines of credit that it originated. Only one institution is deemed to have originated a specific closed-end mortgage loan or open-end line of credit under Regulation C, even if two or more institutions are involved in the origination process. Only the institution that is deemed to have originated the transaction under Regulation C counts it for purposes of the loan-volume threshold. Comment 2(g)-5; see also comments 4(a)-2 through -4. These requirements are discussed below in TRANSACTIONS INVOLVING MULTIPLE ENTITIES.

Regulation C also includes a separate test to ensure that financial institutions that meet only the closed-end mortgage loan threshold are not required to report their open-end lines of credit, and that financial institutions that meet only the open-end line of credit threshold are not required to report their closed-end mortgage loans. 12 CFR 1003.3(c)(11) and (12).

Nondepository Financial Institutions

Under Regulation C, a for-profit mortgage-lending institution other than a bank, savings association, or credit union is a nondepository financial institution and subject to Regulation C if it meets BOTH of the following:

1. **Location Test**. The institution had a home or branch office in a metropolitan statistical area (MSA) on the preceding December 31. 12 CFR 1003.2(g)(2)(i). The phrase "preceding December 31" refers to the December 31 immediately preceding the current calendar year. For example, in 2019, the preceding December 31 is December 31, 2018. Comment 2(g)-1.

   For purposes of this location test, a branch office of a nondepository financial institution is any one of the institution's offices at which the institution takes from the public applications for covered loans. A nondepository financial institution is also deemed to have a branch office in an MSA or metropolitan division (MD) if, in the preceding calendar year, it received applications for, originated, or purchased five or more covered loans related to property located in that MSA or MD, even if it does not have an office in that MSA. 12 CFR 1003.2(c)(2). Covered loans and applications for covered loans are discussed below in TRANSACTIONAL COVERAGE.

2. **Loan-Volume Thresholds**. The institution meets or exceeds either the closed-end mortgage loan threshold or the open-end line of credit threshold in each of the two preceding calendar years.

- An institution that originated at least 25 closed-end mortgage loans in each of the two preceding calendar years, or originated at least 500 open-end lines of credit in each of the two preceding calendar years meets or exceeds the loan-volume threshold.

When an institution determines whether it meets the loan-volume thresholds, it does not count transactions excluded by 12 CFR 1003.3(c)(1) through (10) and (13). 12 CFR 1003.2(g)(2)(ii). Closed-end mortgage loans, open-end lines of credit, and these excluded transactions are discussed below in TRANSACTIONAL COVERAGE.

When determining if it meets the loan-volume thresholds, an institution only counts closed-end mortgage loans and open-end lines of credit that it originated. Only one institution is deemed to have originated a specific closed-end mortgage loan or open-end line of credit under Regulation C, even if two or more institutions are involved in the origination process. Only the institution that is deemed to have originated the transaction under Regulation C counts it for purposes of the loan-volume threshold. Comment 2(g)-5. See also comments 4(a)-2 through -4. These requirements are discussed below in TRANSACTIONS WITH MULTIPLE ENTITIES.

Regulation C also includes a separate test to ensure that financial institutions that meet only the closed-end mortgage loan threshold are not required to report their open-end lines of credit, and that financial institutions that meet only the open-end line of credit threshold are not required to report their closed-end mortgage loans. 12 CFR 1003.3(c)(11)–(12).

B. Exemptions Based on State Law

Regulation C provides that financial institutions may apply for an exemption from coverage. Specifically, the Bureau may exempt a State-chartered or State-licensed financial institution if the Bureau determines that the financial institution is subject to a State disclosure law that contains requirements substantially similar to those imposed by Regulation C and adequate enforcement provisions. Any State-licensed or State-chartered financial institution or association of such institutions may apply to the Bureau for an exemption. An exempt institution shall submit the data required by State law to its State supervisory agency. 12 CFR 1003.3(a). A financial institution that loses its exemption must comply with Regulation C beginning with the calendar year following the year for which it last reported data under the State disclosure law. 12 CFR 1003.3(b).

C. Transaction Coverage

A financial institution is required to collect, record, and report information only for transactions that are subject to Regulation C.

Covered Loans

A covered loan can be either a closed-end mortgage loan or an open-end line of credit, but an excluded transaction cannot be a covered loan. 12 CFR 1003.2(e).

To determine if a transaction is subject to Regulation C, a financial institution should first determine whether the loan or line of credit involved in the transaction is either a closed-end mortgage loan or an open-end line of credit. See CLOSED-END MORTGAGE LOANS AND OPEN-END LINES OF CREDIT, below. If the loan or line of credit is neither a closed-end mortgage loan nor an open-end line of credit, the transaction does not involve a covered loan, and the financial institution is not required to report information related to the transaction. If the loan or line of credit is either a closed-end mortgage loan or an open-end line of credit, the financial institution must determine if the closed-end mortgage loan or open-end line of credit is an excluded transaction. See EXCLUDED TRANSACTIONS, below. If the closed-end mortgage loan or the open-end line of credit is an excluded transaction, it is not a covered loan, and the financial institution is not required to report information related to the transaction. If the loan or line of credit is a closed-end mortgage loan or an open-end line of credit and is not an excluded transaction, the financial institution may be required to report information related to the transaction. See REPORTABLE ACTIVITY, below.

Closed-End Mortgage Loans and Open-End Lines of Credit

A closed-end mortgage loan is:

1. An extension of credit;
2. Secured by a lien on a dwelling; and
3. Not an open-end line of credit. 12 CFR 1003.2(d).

An open-end line of credit is:

1. An extension of credit;
2. Secured by a lien on a dwelling; and
3. An open-end credit plan for which:
   a. The lender reasonably contemplates repeated transactions;
   b. The lender may impose a finance charge from time-to-time on an outstanding unpaid balance; and
   c. The amount of credit that may be extended to the borrower during the term of the plan (up to any limit set by the lender) is generally made available to the extent that any outstanding balance is repaid. 12 CFR 1003.2(o); 12 CFR 1026.2(a)(20).

Financial institutions may rely on Regulation Z, 12 CFR 1026.2(a)(20), and its official commentary when determining whether a transaction is extended under a plan for which the lender reasonably contemplates repeated transactions, the lender may impose a finance charge from time-to-time on an outstanding unpaid balance, and the amount of credit that may be extended to the borrower during the term of the plan is generally made available to the extent that any outstanding balance is repaid.

A business-purpose transaction that is exempt from Regulation Z but is otherwise open-end credit under Regulation Z, 12 CFR 1026.2(a)(20), would be an open-end line of credit under Regulation C if it is an extension of credit secured by a lien on a dwelling and is not an excluded transaction. Comment 2(o)-1.

Extension of Credit

A closed-end loan or open-end line of credit is not a closed-end mortgage loan or an open-end line of credit under Regulation C unless it involves an extension of credit. Individual draws on an open-end line of credit are not separate extensions of credit. Comment 2(o)-2.

Under Regulation C,[10] an "extension of credit" generally requires a new debt obligation. Comment 2(d)-2. Thus, for example, a loan modification where the existing debt obligation is not satisfied and replaced is not generally a covered loan (*i.e.*, closed-end mortgage loan or open-end line of credit) under Regulation C. Except as described below, if a transaction modifies, renews, extends, or amends the terms of an existing debt obligation, but the existing debt obligation is not satisfied and replaced, the transaction is not a covered loan.

Regulation C provides two narrow exceptions to the requirement that an "extension of credit" involve a new debt obligation. The exceptions are designed to capture transactions that are substantially similar to new debt obligations and should be treated as such.

First, assumptions are extensions of credit under Regulation C. A loan assumption is a transaction in which a financial institution enters into a written agreement accepting a new borrower in place of an existing borrower as the obligor on an existing debt obligation. Regulation C clarifies that assumptions include successor-in-interest transactions in which an individual succeeds the prior owner as the property owner and then assumes the existing debt secured by the

[10] It is important to note that Regulation C, comments 2(d)-2 and 2(o)-2, defines the phrase "extension of credit" differently than Regulation B, 12 CFR Part 1002.2(q).

property. Assumptions are extensions of credit even if the new borrower merely assumes the existing debt obligation and no new debt obligation is created. Comment 2(d)-2.i.

Second, Regulation C provides that transactions completed pursuant to a New York State consolidation, extension, and modification agreement (New York CEMA) and classified as a supplemental mortgage under New York Tax Law Section 255, such that the borrower owes reduced or no mortgage recording taxes, is an extension of credit. However, the regulation also provides that certain transactions providing new funds that are consolidated into a New York CEMA are excluded from the HMDA reporting requirements. Comment 2(d)-2.ii; 12 CFR 1003.3(c)(13).

Secured by a Lien on a Dwelling

A loan is not a closed-end mortgage loan and a line of credit is not an open-end line of credit unless it is secured by a lien on a dwelling. A dwelling is a residential structure. There is no requirement that the structure be attached to real property or that it be the applicant's or borrower's residence. Examples of dwellings include:

1. Principal residences;
2. Second homes and vacation homes;
3. Investment properties;
4. Residential structures whether or not attached to real property;
5. Detached residential structures;
6. Individual condominium and cooperative units;
7. Manufactured homes or other factory-built homes; and
8. Multifamily residential structures or communities, such as apartment buildings, condominium complexes, cooperative buildings or housing complexes, and manufactured home communities. 12 CFR 1003.2(f); comments 2(f)-1 and -2.

A dwelling is not limited to a structure that has four or fewer units. It also includes a multifamily dwelling, which is a dwelling that includes five or more individual dwelling units. A multifamily dwelling includes a manufactured home community.

A loan related to a manufactured home community is secured by a dwelling even if it is not secured by any individual manufactured homes, but is secured only by the land that constitutes the manufactured home community. However, a loan related to a multifamily residential structure or community other than a manufactured home community is not secured by a dwelling unless it is secured by one or more individual dwelling units. For example, a loan that is secured only by the common areas of a condominium complex or only by an assignment of rents from an apartment building is not secured by a dwelling. Comment 2(f)-2. Further, a covered loan secured by five or more separate dwellings, which are not multifamily dwellings, in more than one location is not a loan secured by a multifamily dwelling. For example, assume a landlord uses a covered loan to improve five or more dwellings, each with one individual dwelling unit, located in different parts of a town, and the loan is secured by those properties. The covered loan is not secured by a multifamily dwelling as defined by § 1003.2(n). Likewise, a covered loan secured by five or more separate dwellings that are located within a multifamily dwelling, but which is not secured by the entire multifamily dwelling (e.g., an entire apartment building or housing complex), is not secured by a multifamily dwelling as defined by § 1003.2(n). For example, assume that an investor purchases 10 individual unit condominiums in a 100-unit condominium complex using a covered loan. The covered loan would not be secured by a multifamily dwelling as defined by § 1003.2(n). Comment 2(n)-3.

The following are not dwellings:

1. Recreational vehicles, such as boats, campers, travel trailers, or park model recreational vehicles;
2. Houseboats, floating homes, or mobile homes constructed before June 15, 1976;
3. Transitory residences, such as hotels, hospitals, college dormitories, or recreational vehicle parks; and
4. Structures originally designed as a dwelling but used exclusively for commercial purposes, such as a home converted to a daycare facility or professional office. Comment 2(f)-3.

A property that is used for both residential and commercial purposes, such as a building that has apartment and retail units, is a dwelling if the property's primary use is residential. Comment 2(f)-4.

A property used for both long-term housing and to provide assisted living or supportive housing services is a dwelling. However, transitory residences used to provide such services are not dwellings. Properties used to provide medical care, such as skilled nursing, rehabilitation, or long-term medical care, are not dwellings. If a property is used for long-term housing, to provide related services (such as assisted living), and to provide medical care, the property is a dwelling if its primary use is residential. Comment 2(f)-5.

A financial institution may use any reasonable standard to determine a property's primary use, such as square footage, income generated, or number of beds or units allocated for each use. It may select the standard on a case-by-case basis. Comments 2(f)-4 and -5.

D. Excluded Transactions

Regulation C does not apply to transactions that are specifically excluded from coverage. 12 CFR 1003.3(c).

Therefore, an excluded transaction is not a covered loan. Regulation C retains and clarifies existing categories of transactions that are excluded from coverage. It also expands the existing exclusion for agricultural loans, and adds new categories of transactions that are excluded from coverage. Effective January 1, 2018, the following are excluded transactions:

1. A closed-end mortgage loan or an open-end line of credit that a financial institution originates or purchases in a fiduciary capacity, such as a closed-end mortgage loan or an open-end line of credit that a financial institution originates or purchases as a trustee. 12 CFR 1003.3(c)(1); comment 3(c)(1).
2. A closed-end mortgage loan or an open-end line of credit secured by a lien on unimproved land. 12 CFR 1003.3(c)(2). Generally, a loan or line of credit must be secured by a dwelling to be a covered loan. Regulation C also lists closed-end mortgage loans and open-end lines of credit secured only by vacant or unimproved land as excluded transactions.[11] However, a loan or line of credit secured by a lien on unimproved land is deemed to be secured by a dwelling (and might not be excluded) if the financial institution knows, based on information that it receives from the applicant or borrower at the time the application is received or the credit decision is made, that the proceeds of that loan or credit line will be used within two years after closing or account opening to construct a dwelling on, or to purchase a dwelling to be placed on, the land. Comment 3(c)(2)-1.
3. A closed-end mortgage loan or an open-end line of credit that is temporary financing. 12 CFR 1003.3(c)(3). A transaction is excluded as temporary financing if it is designed to be replaced by separate permanent financing extended to the same borrower at a later time. The separate permanent financing may be extended by any lender (*i.e.*, by either the lender that extended the temporary financing or another lender). In addition, a construction-only loan or line of credit is considered temporary financing and excluded under Regulation C if the loan or line of credit is extended to a person exclusively to construct a dwelling for sale. Comments 3(c)(3)-1 and -2.
4. The purchase of an interest in a pool of closed-end mortgage loans or open-end lines of credit, such as mortgage-participation certificates, mortgage-backed securities, or real estate mortgage investment conduits. 12 CFR 1003.3(c)(4); comment 3(c)(4)-1.
5. The purchase solely of the right to service closed-end mortgage loans or open-end lines of credit. 12 CFR 1003.3(c)(5).
6. The purchase of a closed-end mortgage loan or an open-end line of credit as part of a merger or acquisition or as part of the acquisition of all of a branch office's assets and liabilities. 12 CFR 1003.3(c)(6); comment 3(c)(6)-1. For more information on mergers and acquisitions under Regulation C, see comments 2(g)-3 and -4.
7. A closed-end mortgage loan or an open-end line of credit, or an application for a closed-end mortgage loan or open-end line of credit, for which the total dollar amount is less than $500. 12 CFR 1003.3(c)(7).
8. The purchase of a partial interest in a closed-end mortgage loan or an open-end line of credit. 12 CFR 1003.3(c)(8); comment 3(c)(8)-1.
9. A closed-end mortgage loan or an open-end line of credit if the proceeds are used primarily for agricultural purposes or if the closed-end mortgage loan or open-end line of credit is secured by a dwelling that is located on real property that is used primarily for agricultural purposes. 12 CFR 1003.3(c)(9); comment 3(c)(9)-1. Regulation C directs financial institutions to Regulation Z's official commentary for guidance on what is an agricultural purpose. Regulation Z's official commentary states that agricultural purposes include planting, propagating, nurturing, harvesting, catching, storing, exhibiting, marketing, transporting, processing, or manufacturing food, beverages, flowers, trees, livestock, poultry, bees, wildlife, fish, or shellfish by a natural person engaged in farming, fishing, or growing crops, flowers, trees, livestock, poultry, bees, or wildlife. See comment 3(a)-8 in the official interpretations of Regulation Z, 12 CFR Part 1026. A financial institution may use any reasonable standard to determine the primary use of the property, and may select the standard to apply on a case-by-case basis. Comment 3(c)(9)-1.
10. A closed-end mortgage loan or an open-end line of credit that is or will be made primarily for business or commercial purposes, unless it is a home improvement loan, a home purchase loan, or a refinancing. 12 CFR 1003.3(c)(10). Not all transactions that are primarily for a business purpose are excluded transactions. Thus, a financial institution must collect, record, and report data for dwelling-secured, business-purpose loans and lines of credit that are home improvement loans, home purchase loans, or refinancings if no other exclusion applies. For more information on determining whether a loan or line of credit is a home purchase loan, home improvement

[11] A dwelling also includes a multifamily residential structure or community such as an apartment, condominium, cooperative building or complex, or a manufactured home community. A loan related to a manufactured home community is secured by a dwelling for purposes of § 1003.2(f) even if it is not secured by any individual manufactured homes, but only by the land that constitutes the manufactured home community including sites for manufactured homes. Comment 2(f)(2).

loan, or refinancing, see 12 CFR 1003.2(f), (i), (j), and (p) and the associated commentary.

Regulation C provides that, if a closed-end mortgage loan or an open-end line of credit is deemed to be primarily for a business, commercial, or organizational purpose under Regulation Z, 12 CFR 1026.3(a) and its official commentary, then the loan or line of credit also is deemed to be primarily for a business or commercial purpose. Comment 3(c)(10)-2. For more information and examples of business-purpose or commercial-purpose transactions that are covered loans, see comments 3(c)(10)-3 and -4.

11. A closed-end mortgage loan if the financial institution originated fewer than 25 closed-end mortgage loans in either of the two preceding calendar years. 12 CFR 1003.3(c)(11). A financial institution is not required to collect, record, or report closed-end mortgage loans if it originated fewer than 25 of them in either of the two preceding calendar years. However, the financial institution may still be required to collect and report information regarding open-end lines of credit, depending on the number of open-end lines of credit it originates in the preceding two calendar years. Comment 3(c)(11)-1. For more information on how to determine if a financial institution "originated" a particular loan when multiple entities are involved in the transaction, see comments 4(a)-2 through -4.

    A financial institution may report applications for, originations of, and purchases of closed-end mortgage loans that are excluded transactions under 12 CFR 1003.3(c)(11). However, a financial institution that chooses to report such excluded applications, originations, and purchases must report all such applications it received for closed-end mortgage loans, all closed-end mortgage loans it originates, and all closed-end mortgage loans it purchases that would otherwise be covered loans for a given calendar year. 12 CFR 1003.3(c)(11). Regulation B permits a financial institution to collect information regarding the ethnicity, race, and sex of an applicant for a closed-end mortgage loan that is an excluded transaction under 12 CFR 1003.3(c)(11), if the financial institution submits HMDA data concerning such closed-end mortgage loans and applications or if it submitted such HMDA data for any of the preceding five calendar years.[12]

12. An open-end line of credit if the number of open-end lines of credit that the financial institution originated in either of the two preceding calendar years does not meet or exceed the applicable threshold. 12 CFR 1003.3(c)(12); comment 3(c)(12)-1. A financial institution is not required to collect, record, or report open-end lines of credit if it originated fewer than 500 of them in either of the two preceding calendar years. However, the financial institution will still be required to collect and report information regarding closed-end mortgage loans if it originated at least 25 of them in each of the two preceding calendar years. Comment 3(c)(12)-1. For more information on how to determine if a financial institution "originated" a particular line of credit when multiple entities are involved in the transaction, see comments 4(a)-2 through -4.

    A financial institution may report applications for, originations of, or purchases of open-end lines of credit that are excluded transactions under 12 CFR 1003.3(c)(12). However, a financial institution that chooses to report such excluded applications, originations, or purchases must report all applications for otherwise covered open-end lines of credit that it receives, all otherwise covered open-end lines of credit it originates, and all otherwise covered open-end lines of credit it purchases that would otherwise be covered loans for a given calendar year. 12 CFR 1003.3(c)(12); comment 3(c)(12)-2. Regulation B permits a financial institution to collect information regarding the ethnicity, race, and sex of an applicant for an open-end line of credit that is an excluded transaction under 12 CFR 1003.3(c)(12), if it submits HMDA data concerning such open-end lines of credit and applications or if it submitted such HMDA data for any of the preceding five calendar years.[13]

13. A transaction that provided (or, in the case of an application, proposed to provide) new funds to the borrower in advance of being consolidated in a New York CEMA classified as a supplemental mortgage under New York Tax Law Section 255. However, the transaction is excluded only if final action on the consolidation was taken in the same calendar year as the final action on the new funds transaction. 12 CFR 1003.3(c)(13). Additionally, the transaction is excluded only if, at the time that it originated the transaction providing the new funds, the financial institution intended to consolidate the loan into a New York CEMA. This exclusion does not apply to similar preliminary transactions that are consolidated pursuant to laws other than New York Tax Law Section 255. Such preliminary transactions under other laws must be reported if they are covered loans and

[12] Amendments to Equal Credit Opportunity Act (Regulation B) Ethnicity and Race Information Collection. 82 Fed. Reg. 45680 (Oct. 2, 2017) (October 2017 Regulation B Amendments). This final rule amends Regulation B to allow creditors flexibility in complying with Regulation B to facilitate compliance with Regulation C and transition to the 2016 Uniform Residential Loan Application (URLA).

[13] October 2017 Regulation B Amendments.

are not covered by another exclusion. Comment 3(c)(13)-1.

New funds provided in advance of being consolidated into a New York CEMA classified as a supplemental mortgage under New York Tax Law Section 255 are reported only insofar as they form part of the total amount of the reported New York CEMA. They are not reported as a separate amount. If a New York CEMA that consolidates an excluded preliminary transaction is carried out in a transaction involving an assumption, the financial institution reports the New York CEMA and does not report the preliminary transaction separately. Comment 3(c)(13)-1.

Reportable Activity

Once a financial institution has determined whether a transaction involves a covered loan, it must determine whether it has engaged in activity that obligates it to report information about the transaction. Generally, a financial institution is required to report information for actions taken on applications (as that term is defined below) for covered loans, originations of covered loans, and purchases of covered loans. If a financial institution receives an application and that application results in the financial institution originating a covered loan, the financial institution reports the origination of the covered loan, and does not separately report the application. For more information on when to report information regarding applications and covered loans, see APPLICATIONS and ORIGINATIONS AND PURCHASES OF COVERED LOANS, below. There are special rules that apply if multiple entities are involved in the transaction. These special rules are discussed in TRANSACTION INVOLVING MULTIPLE ENTITIES, below. There are also partial exemptions for which the financial institution would not be required to collect, record, or report certain data points for the transaction that qualifies for the partial exemption. These partial exemptions are discussed below in PARTIAL EXEMPTIONS.

A. Applications

For purposes of Regulation C, an application is: (a) an oral or written request (b) for a covered loan (c) that is made in accordance with procedures the financial institution uses for the type of credit requested. 12 CFR 1003.2(b)(1).

This definition of application is similar to the Regulation B definition, except that prequalification requests are not applications under Regulation C. Interpretations that appear in the official commentary to Regulation B are generally applicable to the definition of application under Regulation C, except for those interpretations that include a prequalification request within the definition of application. Comment 2(b)-1.

Under Regulation C, a request for a preapproval may be treated differently than a request for a prequalification for certain types of loans. The determination of whether a request is a prequalification request (which is not an application) or a preapproval request (which might be an application) is based on Regulation C, not on the labels that a financial institution uses or interpretations of other regulations, such as Regulation B.

A preapproval request is an application under Regulation C if the request is:

1. For a home purchase loan;
2. Not secured by a multifamily dwelling;
3. Not for an open-end line of credit or for a reverse mortgage; and
4. Reviewed under a preapproval program (see definition of preapproval program immediately below). 12 CFR 1003.2(b)(2).

A preapproval program for purposes of Regulation C is a program in which the financial institution:

1. Conducts a comprehensive analysis of the applicant's creditworthiness (including income verification), resources, and other matters typically reviewed as part of the financial institution's normal credit evaluation program; and then
2. Issues a written commitment that: (a) is for a home purchase loan; (b) is valid for a designated period of time and up to a specified amount; and (c) is subject only to specifically permitted conditions. 12 CFR 1003.2(b)(2); comment 2(b)-3.

The written commitment issued as part of the preapproval program can be subject to only the following types of conditions:

1. Conditions that require the identification of a suitable property;
2. Conditions that require that no material change occur regarding the applicant's financial condition or creditworthiness prior to closing; and
3. Limited conditions that (a) are not related to the applicant's financial condition or creditworthiness and (b) the financial institution ordinarily attaches to a traditional home mortgage application. Examples of conditions ordinarily attached to a traditional home mortgage application include requiring an acceptable title insurance binder or a certificate indicating clear termite inspection and, if the applicant plans to use the proceeds from the sale of the applicant's present home to purchase a new home, a settlement statement showing adequate proceeds from the sale of the present home. 12 CFR 1003.2(b)(2); comment 2(b)-3.

A program that a financial institution describes as a "preapproval program" but that does not satisfy the Regulation C definition is not a preapproval program for purposes of the regulation. Comment 2(b)-3.

If a financial institution does not regularly use procedures to consider requests but instead considers requests on an ad hoc basis, the financial institution is not required to treat the ad hoc requests as having been reviewed under a preapproval program. However, a financial institution should be generally consistent in following uniform procedures for considering such ad hoc requests. Comment 2(b)-3.

Under Regulation C, a financial institution must collect, record, and report data regarding an application it receives if: (1) the application did not result in the financial institution originating a covered loan; and (2) the financial institution took action on the application or the applicant withdrew the application while the financial institution was reviewing it. For example, a financial institution reports information regarding an application that it denied, that it approved but the applicant did not accept, or that it closed for incompleteness. 12 CFR 1003.4(a), 1003.5(a) comment 4(a)-1. If the application results in the financial institution originating a covered loan, the financial institution reports the covered loan, not the application itself. For more information on reporting applications when multiple entities are involved, see TRANSACTIONS INVOLVING MULTIPLE ENTITIES, below.

Although requests under preapproval programs are applications, a financial institution reports data regarding a request under a preapproval program only if the preapproval request is denied or approved but not accepted. A financial institution will also report a request under a preapproval program that results in the financial institution originating a home purchase loan, but it will be reported as an originated covered loan. Comment 4(a)-1.ii.

A financial institution reports the data for an application, including a reportable preapproval request, on the HMDA Loan/Application Register (LAR) for the calendar year during which it takes action even if the financial institution received the application in a previous calendar year. Comment 4(a)-1.iv.

B. Originations and Purchases of Covered Loans

A financial institution must collect, record, and report information regarding originations and purchases of covered loans. For more information on when a financial institution reports the origination or purchase of a covered loan when multiple entities are involved, see TRANSACTIONS INVOLVING MULTIPLE ENTITIES, below.

A purchase includes a repurchase of a covered loan, regardless of whether the financial institution chose to repurchase the covered loan or was required to repurchase it because of a contractual obligation, and regardless of whether the repurchase occurred within the same calendar year that the covered loan was originated or in a different calendar year. Comment 4(a)-5.

A purchase does not include a temporary transfer of a covered loan to an interim funder or warehouse creditor as part of an interim funding agreement under which the financial institution that originated the covered loan is obligated to repurchase it for sale to a subsequent investor. Such funding agreements are often referred to as repurchase agreements and are sometimes used as the functional equivalents of warehouse lines of credit. Comment 4(a)-5.

C. Transactions Involving Multiple Entities

Only one financial institution reports the origination of a covered loan. If more than one institution is involved in the origination of a covered loan, the institution that makes the credit decision approving the application before loan closing or account opening is responsible for reporting the origination of the covered loan. It is not relevant whether the loan closed in the reporting financial institution's name. If more than one institution approved an application prior to loan closing or account opening and one of those institutions purchased the covered loan after closing or account opening, the institution that purchased the covered loan after closing or account opening is responsible for reporting the origination of the covered loan. Comment 4(a)-2.

If a financial institution reports a covered loan as an origination, it reports all of the information required to be reported for the origination of a covered loan, even if the covered loan was not initially payable to the financial institution that is reporting the covered loan as an origination. Comment 4(a)-2. When reporting a covered loan as an origination, a financial institution cannot rely on exceptions or exclusions that apply to purchased covered loans, but that do not apply to originations of covered loans. See comment 4(a)-2.

In the case of an application that did not result in an origination, a financial institution reports the action it took on that application if it made a credit decision on the application or was reviewing the application when the application was withdrawn or closed for incompleteness. The financial institution is also required to report the application if the financial institution was reviewing the application when it was withdrawn or the file was closed for incompleteness. Comment 4(a)-2.ii.

If a financial institution makes a credit decision on a covered loan or application through the actions of an agent, the financial institution reports the covered loan or application. State law determines whether one party is the agent of another party. Comment 4(a)-4.

D. Partial Exemptions

The 2018 Act created partial exemptions from some of the 2015 HMDA Rule's requirements for certain financial institutions. Only certain covered loans and applications are

covered under each of the two partial exemptions. If a covered loan or application is covered by a partial exemption, the financial institution is not required to collect, record, and report specific data points. The partial exemptions were effective May 24, 2018, and apply to the collection, recording, and reporting of HMDA data on or after that date. A list of the data points covered by the partial exemptions is provided below. See A Guide to HMDA Reporting: Getting It Right! Appendix G for a list of both the partially exempt data fields and data points.

As discussed below, only a financial institution that is an insured credit union or an insured depository institution is eligible for the partial exemptions. Additionally, as explained below, in order to be eligible for the partial exemptions, an insured depository institution must not have received certain ratings in its most recent performance evaluations under the Community Reinvestment Act (CRA).[14]

As discussed below, each of the partial exemptions applies only to certain covered loans and applications and only if an applicable loan-volume threshold is met. An insured depository institution or insured credit union: (1) must meet the applicable loan-volume threshold for closed-end mortgage loans in order for a partial exemption to apply to its closed-end mortgage loan transactions; and (2) must meet the applicable loan-volume threshold for open-end lines of credit in order for a partial exemption to apply to its open-end line of credit transactions.

The 2018 Act created partial exemptions, not complete exclusions. Therefore, if a covered loan or application is covered by a partial exemption, the financial institution is required to collect, record, and report 22 specific data points specified in 12 CFR 1003.4(a)(1)–(38), but is exempt from collecting, recording, and reporting 26 other specific data points for that transaction. Additionally, the financial institution may voluntarily report any or all of these remaining 26 data points for a covered loan or application covered by a partial exemption. COLLECTING, RECORDING, AND REPORTING FOR TRANSACTIONS COVERED BY A PARTIAL EXEMPTION, below, discusses the scope of the partial exemptions and includes tables that list both the 22 data points that are required to be collected, recorded, and reported and the 26 data points that are not required to be collected, recorded, and reported if a partial exemption applies to a covered loan or application.

Eligible Financial Institutions

In order to be eligible for a partial exemption, a financial institution must be an:

1. "Insured credit union," as defined in Section 101 of the Federal Credit Union Act, 12 U.S.C. 1752; or
2. "Insured depository institution," as defined in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813.

Additionally, a financial institution that satisfies the definition of "insured depository institution" must not have received a less than satisfactory rating in its most recent CRA performance evaluations in order to be eligible for a partial exemption. More specifically, an insured depository institution must not have received either of the following:

1. A rating of "needs to improve record of meeting community credit needs" during each of its two most recent examinations under Section 807(b)(2) of the CRA; or
2. A rating of "substantial noncompliance in meeting community credit needs" on its most recent examination under Section 807(b)(2) of the CRA.

The CRA ratings used to determine if an insured depository institution is eligible for a partial exemption are the institution's two most recent ratings as of December 31 of the preceding year.

A financial institution that does not satisfy either the definition of an "insured credit union" or an "insured depository institution" may not rely on either of the partial exemptions, even if it satisfies the loan-volume thresholds discussed in LOAN-VOLUME THRESHOLDS, below. Similarly, an insured depository institution that does not satisfy the criteria regarding CRA examination history cannot rely on either of the partial exemptions.

Loan-Volume Thresholds

In order for a partial exemption to apply to an application or covered loan (including a purchased covered loan), an eligible financial institution must also meet the applicable loan-volume threshold.

A partial exemption applies to an eligible financial institution's applications for, originations of, and purchases of closed-end mortgage loans if the institution originated fewer than 500 closed-end mortgage loans in each of the two preceding calendar years. When a financial institution determines whether it meets the loan-volume thresholds for a

[14] Partial Exemptions from the Requirements of the Home Mortgage Disclosure Act Under the Economic Growth, Regulatory Relief, and Consumer Protection Act (Regulation C), 83 Fed. Reg. 45325 (Sept. 7, 2018).

partial exemption, it does not count transactions excluded by 12 CFR 1003.3(c)(1) through (10) and (13).

A partial exemption applies to an eligible financial institution's applications for, originations of, and purchases of open-end lines of credit if the institution originated fewer than 500 open-end lines of credit in each of the two preceding calendar years. However, a financial institution is not required to collect or report any information for open-end lines of credit if the institution originated fewer than 500 open-end lines of credit during either of the two preceding calendar years. This is because open-end lines of credit are excluded transactions for a financial institution that originated fewer than 500 open-end lines of credit during either of the two preceding calendar years. See the discussion regarding excluded transactions in TRANSACTIONAL COVERAGE, above.

The partial exemption for closed-end mortgage loans and the partial exemption for open-end lines of credit operate independently of one another. Thus, in a given calendar year, an eligible financial institution may be able to rely on one or both partial exemptions.

Collecting, Recording, and Reporting for Transactions Covered by a Partial Exemption

If a partial exemption applies to a covered loan or application (as discussed above), the financial institution is not required to collect, record, and report some of the data points that the 2015 HMDA Rule would otherwise require the institution to collect, record, and report for that transaction. More specifically, if a partial exemption applies to a covered loan or application, a financial institution is not required under the HMDA Rule to collect, record, or report the 26 data points listed immediately below.

Data Points Eligible Financial Institutions Need Not Collect or Report under the 2018 HMDA Rule for Transactions Covered by a Partial Exemption

- Universal Loan Identifier (ULI) (1003.4(a)(1)(i))[15]
- Application Channel (1003.4(a)(33))
- Loan Term (1003.4(a)(25))
- Reasons for Denial (1003.4(a)(16)[16]
- Property Address (1003.4(a)(9)(i))
- Manufactured Home Secured Property Type (1003.4(a)(29))
- Manufactured Home Land Property Interest (1003.4(a)(30))
- Property Value (1003.4(a)(28))
- Multifamily Affordable Units (1003.4(a)(32))
- Debt-to-Income Ratio (1003.4(a)(23))
- Combined Loan-to-Value Ratio (1003.4(a)(24))
- Credit Score (1003.4(a)(15))
- Automated Underwriting System (1003.4(a)(35))
- Interest Rate (1003.4(a)(21))
- Introductory Rate Period (1003.4(a)(26))
- Rate Spread (1003.4(a)(12))
- Non-Amortizing Features (1003.4(a)(27))
- Total Loan Costs or Total Points and Fees (1003.4(a)(17))
- Origination Charges (1003.4(a)(18))
- Discount Points (1003.4(a)(19))
- Lender Credits (1003.4(a)(20))
- Prepayment Penalty Term (1003.4(a)(22))
- Reverse Mortgage Flag (1003.4(a)(36))
- Open-End Line of Credit Flag (1003.4(a)(37))
- Business or Commercial Purpose Flag (1003.4(a)(38))
- Mortgage Loan Originator Identifier (1003.4(a)(34))

A financial institution may opt to collect, record, and report one or more of these 26 data points for a covered loan or application that is covered by a partial exemption.

Seven of these 26 data points (i.e., property address, credit score, reasons for denial, total loan costs or total points and fees, non-amortizing features, application channel, and automated underwriting system) have multiple data fields. If a financial institution opts to report a data point with multiple fields, it must report all of the data fields that make up that data point.

If a financial institution opts not to report one of the 26 data points other than the ULI, the financial institution generally reports that the covered loan or application is exempt from that data point. However, if a data point is not applicable to the particular transaction and the transaction is exempt from that data point, the financial institution may choose to report either that the data point is not applicable or that the transaction is exempt from the data point.

[15] If the financial institution chooses not to report a ULI for a covered loan or application covered by a partial exemption, it must report a non-universal loan identifier.

[16] Financial institutions supervised by the OCC are required to report reasons for denial on their HMDA loan/application registers (HMDA LARs), even if a partial exemption applies. 12 CFR 27.3(a)(1)(i), 128.6. Similarly, pursuant to regulations transferred from the Office of Thrift Supervision, certain financial institutions supervised by the Federal Deposit Insurance Corporation (FDIC) are required to report reasons for denial on their HMDA LARs, even if a partial exemption applies. 12 CFR 390.147.

If a covered loan or application is covered by a partial exemption, a financial institution must collect, record, and report 22 data points for the covered loan or application. These 22 data points are set forth below.

Data Points that Must Be Collected and Reported under the 2018 HMDA Rule for Covered Loans and Applications Covered by a Partial Exemption

- Ethnicity (1003.4(a)(10)(i))
- Race (1003.4(a)(10)(i))
- Sex (1003.4(a)(10)(i))
- Age (1003.4(a)(10)(ii))
- Income (1003.4(a)(10)(iii))
- Legal Entity Identifier (LEI) (1003.5(a)(3))
- Application Date (1003.4(a)(1)(ii)
- Preapproval (1003.4(a)(4))
- Loan Type (1003.4(a)(2))
- Loan Purpose (1003.4(a)(3))
- Loan Amount (1003.4(a)(7))
- Action Taken (1003.4(a)(8)(i))
- Action Taken Date (1003.4(a)(8)(ii))
- State (1003.4(a)(9)(ii)(A))
- County (1003.4(a)(9)(ii)(B))
- Census Tract (1003.4(a)(9)(ii)(C))
- Construction Method (1003.4(a)(5))
- Occupancy Type (1003.4(a)(6)
- Lien Status (1003.4(a)(14))
- Number of Units (1003.4(a)(31))
- HOEPA Status (1003.4(a)(13))
- Type of Purchaser (1003.4(a)(11))

Because the partial exemptions do not affect these 22 data points, financial institutions must continue to collect, record, and report these 22 data points for covered loans and applications in the manner specified in the 2015 HMDA Rule, as amended and clarified by the 2017 HMDA Rule. As discussed above, a financial institution is not required to collect or report any information for open-end lines of credit if the institution originated fewer than 500 open-end lines of credit during either of the two preceding calendar years. See the discussion regarding excluded transactions in TRANSACTIONAL COVERAGE, above.

For more information on reporting data points if a covered loan or application is covered by a partial exemption, see the following COMPILATION OF LOAN DATA section of these procedures and the Filing Instructions Guide that incorporates the 2018 HMDA Rule available at http://www.consumerfinance.gov/data-research/hmda/for-filers.

Compilation of Loan Data

Attachment A is a summary of the data points required to be collected, recorded, and reported beginning in 2018 and provides information on where to find specific guidance in the regulation and commentary on what should be included for each data point.[17] Additional information on the data fields and codes used in preparing the HMDA LAR is provided in the HMDA Filing Instructions Guide (FIG) available at https://ffiec.cfpb.gov/.[18]

Reporting

A. Recording

Regulation C requires a financial institution to record the data about a covered loan or application on a HMDA LAR within 30 calendar days after the end of the calendar quarter in which the financial institution takes final action on the covered loan or application. 12 CFR 1003.4(f). A financial institution is not required to record all of its HMDA data for a quarter on a single HMDA LAR. Rather, a financial institution may record data on a single HMDA LAR or may record data on one or more HMDA LARs for different branches or different loan types (such as home purchase loans or home improvement loans or loans on multifamily dwellings). Comment 4(f)-1.

Other State or Federal regulations may require a financial institution to record its data on a HMDA LAR more frequently. Comment 4(f)-2.

Financial institutions may maintain their quarterly records in electronic or any other format, provided they can make the information available to their regulatory agencies in a timely manner upon request. Comment 4(f)-3.

B. Reporting

In addition to the required data discussed in 12 CFR 1003.4(a) and (b), effective January 1, 2019, a financial institution must include the following when it submits its HMDA data:

[17] Each data point may correspond to more than one field reported on the HMDA LAR. Accordingly there are 48 data points described in Regulation C and 110 fields reported on the HMDA LAR. One example of a data point that corresponds to multiple fields is the ethnicity data point. Each applicant and co-applicant may enter up to five ethnicities on their application. See 12 CFR 1003.4(a)(10)(i); Appendix B to Part 1003.

[18] The FIG, available at https://ffiec.cfpb.gov/ contains the file specifications, edit specifications, and additional resources for filing HMDA data collected in or after 2018.

1. Its name;
2. The calendar year and, effective January 1, 2020, if applicable, the calendar quarter to which the data relate (see 12 CFR 1003.5(a)(1)(ii)[19] for information on quarterly reporting);
3. The name and contact information for a person who can be contacted with questions about the submission;
4. The financial institution's appropriate Federal agency;
5. The total number of entries in the submission;
6. The financial institution's Federal Taxpayer Identification Number (TIN); and
7. The financial institution's Legal Entity Identifier (LEI). 12 CFR 1003.5(a)(3).

If the appropriate Federal agency for a financial institution changes, the financial institution must identify its new appropriate Federal agency in its annual submission for the year of the change. Comment 5(a)-2. For example, if a financial institution's appropriate Federal agency changes in February 2018, it must identify its new appropriate Federal agency beginning with its annual submission of 2018 data by March 1, 2019. Comment 5(a)-5. For a financial institution required to comply with quarterly reporting requirements (see 12 CFR 1003.5(a)(1)(ii)), the financial institution also must identify its new appropriate Federal agency in its quarterly submission beginning with its submission for the quarter of the change, unless the change occurs during the fourth quarter (in which case, the financial institution would identify the new appropriate Federal agency in its annual submission). For example, if the appropriate Federal agency for a financial institution changes during February 2020, the financial institution must identify its new appropriate Federal agency beginning with its quarterly submission for the first quarter of 2020. Comment 5(a)-2.

If a financial institution obtains a new TIN, it must provide the new TIN in its subsequent data submissions. For example, if two financial institutions that previously reported HMDA data merge and the surviving financial institution retained its LEI but obtained a new TIN, the surviving financial institution reports the new TIN beginning with its next HMDA data submission. Comment 5(a)-5.

A financial institution that is a subsidiary of a bank or savings association must complete its own HMDA LAR and submit it, directly or through its parent, to the appropriate Federal agency for the subsidiary's parent. 12 CFR 1003.5(a)(2). A financial institution is a subsidiary of a bank or savings association (for purposes of reporting HMDA data to the same agency as the parent) if the bank or savings association holds or controls an ownership interest in the financial institution that is greater than 50 percent. Comment 5(a)-3.

C. Annual Reporting

Regulation C maintains the annual reporting requirement, but requires financial institutions to submit data electronically in accordance with the procedures published by the Bureau. 12 CFR 1003.5(a)(5). These procedures do not provide detailed information about the HMDA submission process or file, data, and edit specifications. Information about those topics can be found on the FFIEC's web pages available at https://ffiec.cfpb.gov and https://www.ffiec.gov/hmda/.

Under Regulation C, a financial institution must submit its annual HMDA LAR in electronic format to its appropriate Federal supervisory agency by March 1 of the year following the calendar year for which the data are collected. 12 CFR 1003.5(a)(1)(i). An individual who is an authorized representative of the financial institution and who has knowledge regarding the submitted data must certify its accuracy and completeness. 12 CFR 1003.5(a)(1)(i).

A financial institution must retain a copy of its submitted annual HMDA LAR for at least three years. 12 CFR 1003.5(a)(1)(i). Financial institutions may retain their annual HMDA LARs in either paper or electronic form. Comment 5(a)-4.

For more information on reporting under Regulation C or on the electronic submission of data, please see https://ffiec.cfpb.gov.

D. Quarterly Reporting

The HMDA Rule requires some financial institutions to report data on a quarterly basis as well as on an annual basis. The quarterly reporting requirement is effective January 1, 2020. It applies to a financial institution that reported at least 60,000 originated covered loans and applications (combined) for the preceding calendar year. The financial institution does not count purchased covered loans when determining whether the quarterly reporting requirement applies. If quarterly reporting is required, the financial institution must report all data required to be recorded for the calendar quarter within 60 calendar days after the end of the calendar quarter. The quarterly reporting requirement does not apply, however, to the fourth quarter of the year. A financial institution subject to the quarterly reporting requirement reports its fourth quarter data as part of its annual submission. In its annual submission, a quarterly reporter will resubmit the data previously submitted for the first three calendar quarters of the year,

[19] The quarterly reporting requirement, 12 CFR 1003.5(a)(1)(ii), becomes effective January 1, 2020.

including any corrections to the data, as well as its fourth quarter data. 12 CFR 1003.5(a)(ii).

Disclosure of Data

A. Disclosure Statement

Under Regulation C, the FFIEC shall provide a notice to the financial institution that the financial institution's disclosure statement (aggregated data derived from loan-level data submitted for the prior calendar year) is available. 12 CFR 1003.5(b)(1). No later than three business days (any calendar day other than a Saturday, Sunday, or legal public holiday) after receiving notice from the FFIEC, the financial institution must make available to the public, upon request, a written notice that clearly conveys that the financial institution's disclosure statement may be obtained on the Bureau's website at http://www.consumerfinance.gov/hmda. 12 CFR 1003.5(b)(2); comment 5(b)-1. A financial institution's disclosure statement may also be obtained from https://ffiec.cfpb.gov. A financial institution may, but is not required to, use the sample notice in to satisfy Regulation C's disclosure statement requirement. The notice may be made available in paper or electronic form. Comment 5(b)-2.

A financial institution must make the notice available to the public for a period of five years. 12 CFR 1003.5(d)(1).

At its discretion, a financial institution may also provide its disclosure statement and impose a reasonable fee for costs incurred reproducing or providing the statement. 12 CFR 1003.5(d)(2). Even if it provides the disclosure statement, a financial institution must comply with the notice requirement.

B. Modified HMDA LAR[20]

Upon request from a member of the public, a financial institution must provide a written notice regarding the availability of its modified HMDA LAR (the financial institution's HMDA LAR, as modified by the Bureau to protect applicant and borrower privacy). 12 CFR 1003.5(c). The written notice must clearly convey that the financial institution's HMDA LAR, as modified by the Bureau to protect borrower and applicant privacy, may be obtained on the Bureau's website at http://www.consumerfinance.gov/hmda. A financial institution's HMDA LAR is also available at https://ffiec.cfpb.gov.

A financial institution may, but is not required to, use the sample notice in comment 5(c)-2 to the regulation to satisfy Regulation C's modified HMDA LAR requirement. Comment 5(c)-2. A financial institution may, but is not required to, use the same notice for purposes of this disclosure requirement and the disclosure statement requirement discussed in the DISCLOSURE STATEMENT section above. The notice may be made available in paper or electronic form. Comment 5(c)-1.

The notice must be made available in the calendar year following the calendar year for which the financial institution collected data. 12 CFR 1003.5(d)(1). The notice must be made available for three years. For example, for data that it was required to collect in 2018, a financial institution must make available a notice through calendar year 2021 that its modified HMDA 2018 LAR is available.

At its discretion, a financial institution may also provide its HMDA LAR, as modified by the Bureau, and impose a reasonable fee for any costs incurred to reproduce or provide the data. 12 CFR 1003.5(d)(2). Even if it decides to provide the modified HMDA LAR, a financial institution must comply with the notice requirement.

C. Posted Notices

A financial institution must post, in the lobby of its home office and each branch office physically located in an MSA or Metropolitan Division (MD), a general notice about the availability of its HMDA data on the Bureau's website. 12 CFR 1003.5(e). A financial institution may, but is not required to, use the sample notice in comment 5(e)-1 to the regulation to satisfy this requirement. In any case, the notice must clearly convey that the financial institution's HMDA data are available on the Bureau's website at http://www.consumerfinance.gov/hmda. Comment 5(e)-1.

D. Aggregated Data

The FFIEC will use the annual data submitted pursuant to Regulation C to make available aggregated data for each MSA and MD, showing lending patterns by property location, age of housing stock, and income level, sex, ethnicity, and race. 12 CFR 1003.5(f).

Administrative Enforcement

A violation of Regulation C is subject to administrative sanctions, including civil money penalties. Compliance can be enforced by the Bureau, the U.S. Department of Housing and Urban Development, the FDIC, the FRB, the National Credit Union Administration, or the Office of the Comptroller of Currency.

[20] The Bureau's final policy guidance describing the modifications it will make to protect consumer privacy for data collected in 2018 and reported in 2019 is available at https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-announces-policy-guidance-disclosure-home-mortgage-data/.

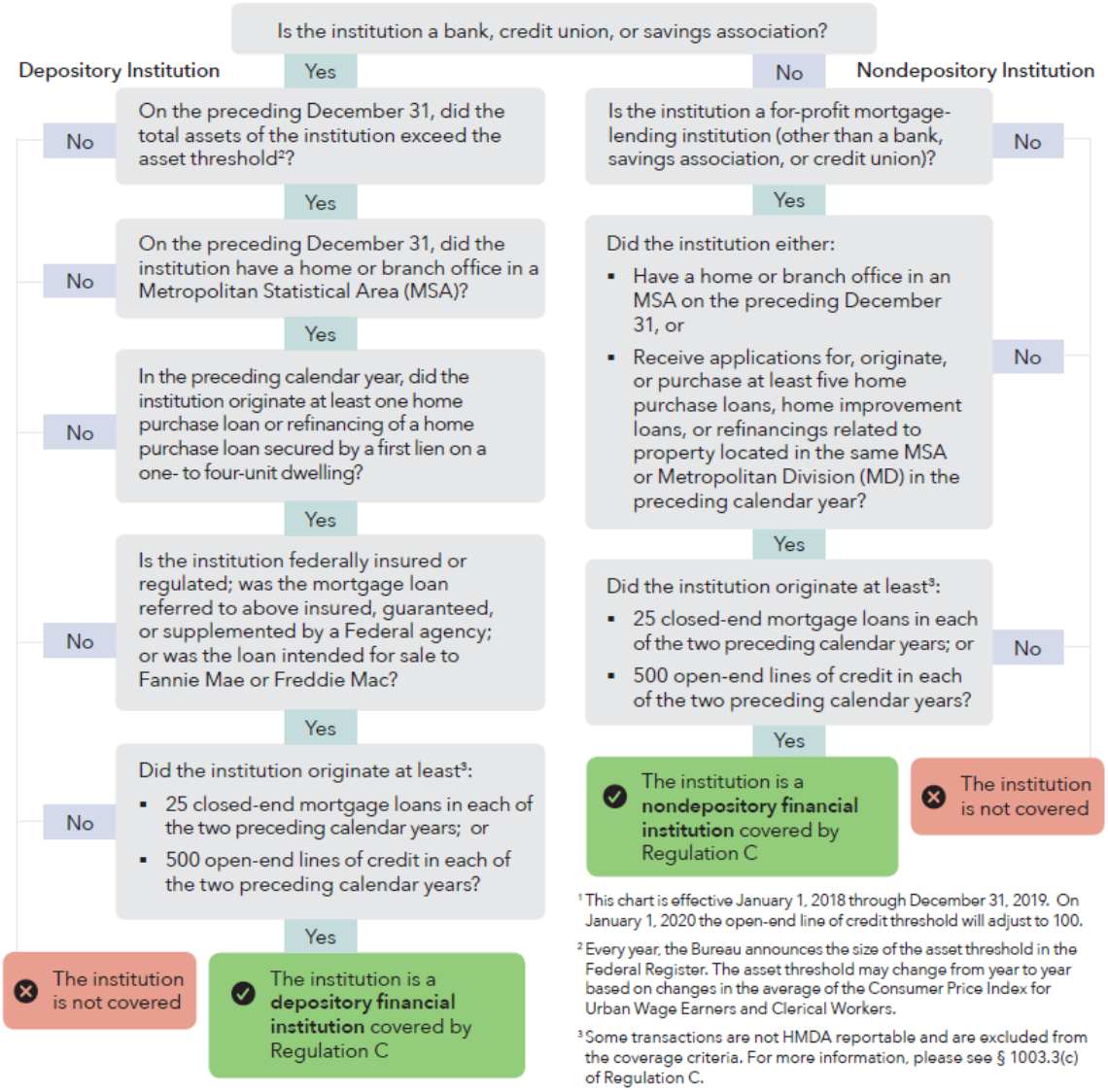
An error in compiling or recording data for a covered loan or application is not a violation of HMDA or Regulation C if the error was unintentional and occurred despite maintenance of procedures reasonably adapted to avoid such errors. 12 CFR 1003.6(b)(1). However, a financial institution that obtains the property-location information for applications and covered loans from third parties is responsible for ensuring that the information reported is correct. Comment 6(b)-1. An incorrect entry for a census tract number is deemed a bona fide error and is not a violation if the financial institution maintains procedures reasonably adapted to avoid such an error. 12 CFR 1003.6(b)(2).

If an institution makes a good-faith effort to record all data concerning covered transactions fully and accurately within thirty calendar days after the end of each calendar quarter, and some data are nevertheless inaccurate or incomplete, the error or omission is not a violation of HMDA or Regulation C, provided that the institution corrects or completes the information prior to submitting the loan/application register to its regulatory agencies. 12 CFR 1003.6(b)(3).

WHO MUST REPORT: HMDA INSTITUTIONAL COVERAGE

The precise criteria for whether an institution is covered by Regulation C are codified in 12 CFR § 1003.2(g). These criteria are illustrated by the following diagrams.

Coverage criteria | Effective January 1, 2018 through December 31, 2019[1]



[1] This chart is effective January 1, 2018 through December 31, 2019. On January 1, 2020 the open-end line of credit threshold will adjust to 100.

[2] Every year, the Bureau announces the size of the asset threshold in the Federal Register. The asset threshold may change from year to year based on changes in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers.

[3] Some transactions are not HMDA reportable and are excluded from the coverage criteria. For more information, please see § 1003.3(c) of Regulation C.

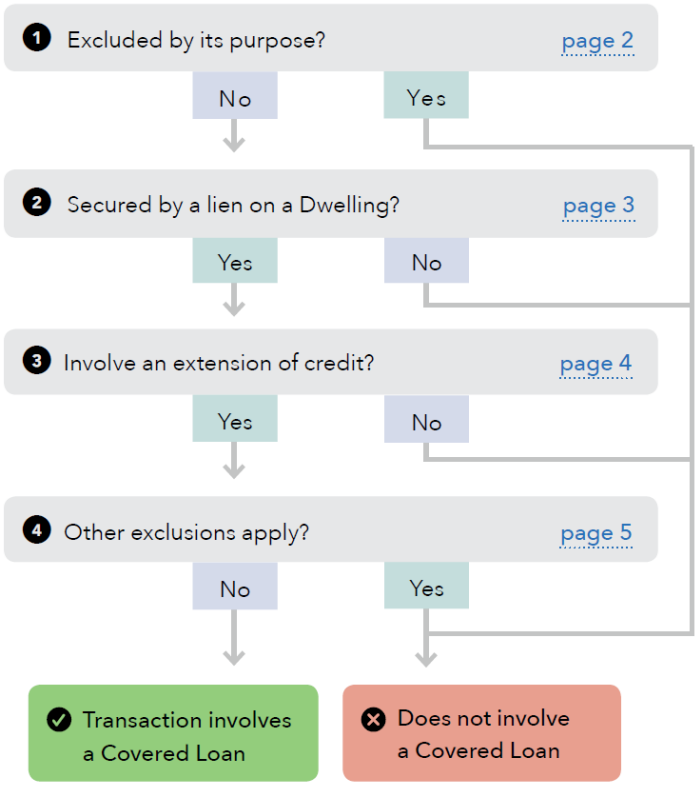
This chart summarizes requirements under HMDA and Regulation C, and does not itself establish any binding obligations. It is intended only to act as a quick reference and not as a substitute for the regulation or its commentary. Always consult the regulation text and official commentary for a complete understanding of the law. Version 2.0, 9/28/2017

HMDA TRANSACTIONAL COVERAGE

Effective January 1, 2018

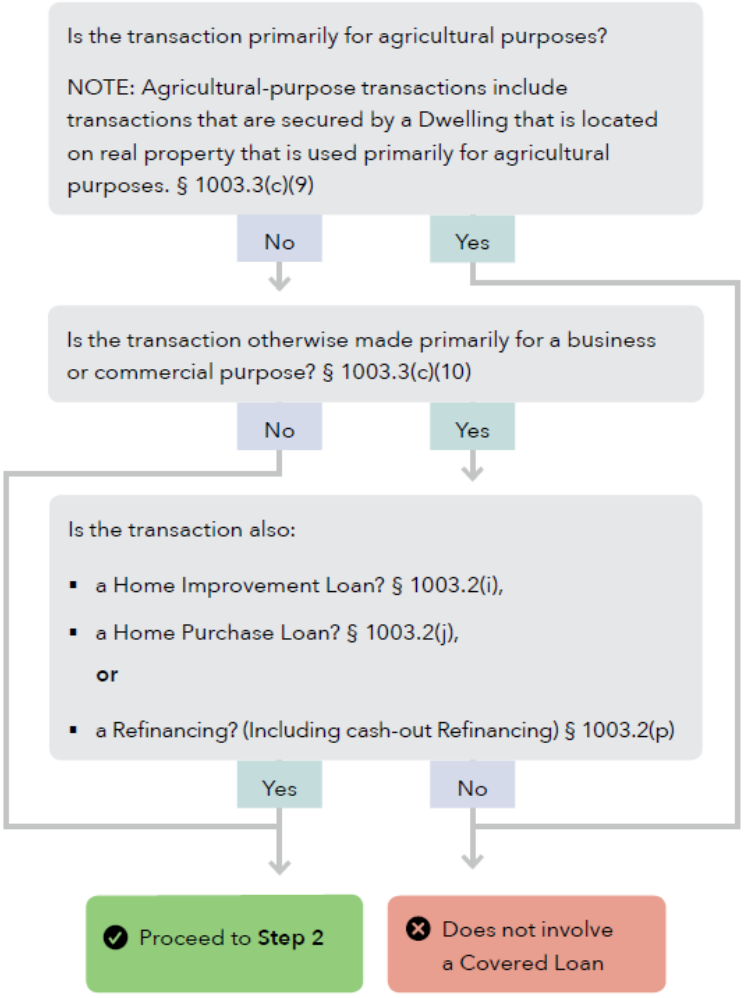
Under HMDA and Regulation C, a transaction is reportable only if it is an Application for, an origination of, or a purchase of a Covered Loan. These materials illustrate one approach to help determine whether a transaction involves a Covered Loan. If the transaction involves a Covered Loan, it is reported only if the institution meets the applicable loan-volume thresholds. Terms that are defined in Regulation C are capitalized in this document for ease of reference. Click on the numbers below to view the instructions for each step.

Does the transaction involve a Covered Loan?

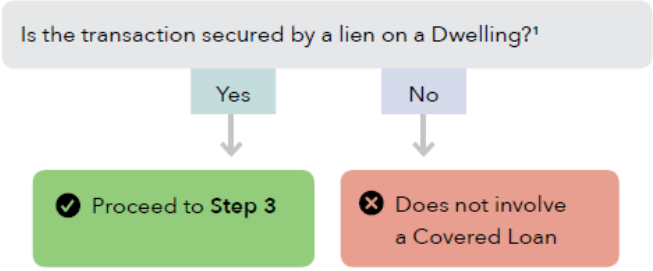


These materials summarize requirements under HMDA and Regulation C and do not themselves establish any binding obligations. They are intended only to act as a reference and not as a substitute for the regulation or its official commentary. Always consult the regulation text and official commentary for a complete understanding of the law. Version 2.0, 9/28/2017

❶ Is the transaction excluded by its purpose?



❷ Is the transaction secured by a lien on a Dwelling?[1]

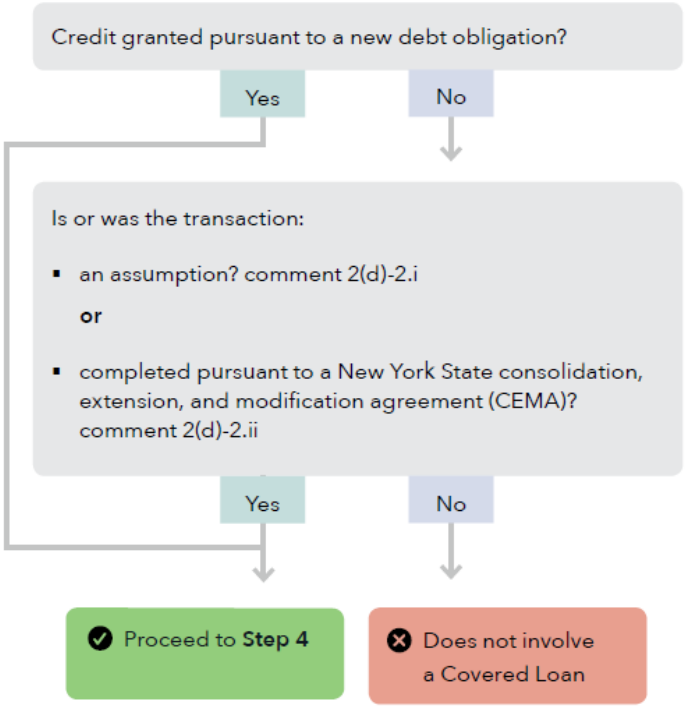


Use the table below to help determine whether the transaction is secured by a lien on a Dwelling.

Single family structures	Multifamily structures	Mixed-use purposes
Dwelling	Dwelling	Dwelling
▪ Principal residences ▪ Second homes ▪ Vacation homes ▪ Manufactured Homes or other factory built homes ▪ Investment properties ▪ Individual condominium units ▪ Detached homes ▪ Individual cooperative units	▪ Apartment buildings or complexes ▪ Manufactured home communities ▪ Condominium buildings or complexes ▪ Cooperative buildings or complexes	▪ Mixed-use property if primary use is residential ▪ Properties for long-term housing and related services (such as assisted living for senior citizens or supportive housing for people with disabilities) ▪ Properties for long-term housing and medical care if primary use is residential
Not a Dwelling	Not a Dwelling	Not a Dwelling
▪ Transitory residences ▪ Recreational vehicles ▪ Boats ▪ Campers ▪ Travel trailers ▪ Park model RVs ▪ Floating homes ▪ Houseboats ▪ Mobile homes constructed before June 15, 1976	▪ Transitory residences ▪ Hotels ▪ Hospitals and properties used to provide medical care (such as skilled nursing, rehabilitation, or long-term medical care) ▪ College dormitories ▪ Recreational vehicle parks	▪ Mixed-use property if primary use is not residential ▪ Transitory residences ▪ Structures originally designed as Dwellings but used exclusively for commercial purposes ▪ Properties for long-term housing and medical care if primary use is not residential

[1]Dwelling means a residential structure, whether or not attached to real property. § 1003.2(f) and comments 2(f)-1 through -5.

❸ Does the transaction involve an extension of credit?[2]



[2] Generally under Regulation C, an extension of credit refers to the granting of credit only pursuant to a new debt obligation. If the transaction modifies, renews, extends, or amends the terms of an existing debt obligation, but the existing debt obligation is not satisfied and replaced, the transaction is not a new extension of credit, unless it falls within the two exceptions noted above. § 1003.2(d) and (o), and comments 2(d)-2 and 2(o)-2

❹ Do other exclusions apply? § 1003.3(c)(1) through (8) and (c)(13)

Is or was the transaction:

- originated or purchased by the Financial Institution acting in a fiduciary capacity?
- secured by a lien on unimproved land?
- temporary financing?
- the purchase of an interest in a pool of otherwise Covered Loans, such as mortgage-participation certificates, mortgage-backed securities, or real estate mortgage investment conduits?
- the purchase solely of the right to service an otherwise Covered Loan?
- a purchase as part of a merger or acquisition, or as part of the acquisition of all of the assets and liabilities of a branch office?
- for a total dollar amount that is less than $500?
- a purchase of a partial interest in an otherwise Covered Loan?
- to provide new funds in advance of a consolidation agreement completed pursuant to a New York State CEMA where consolidation occurred in the same year as final action on the transaction?

If **NO** to **all** of the questions → ✔ Transaction involves a Covered Loan

If **YES** to **any** of the questions → ✘ Does not involve a Covered Loan

Transaction involves a Covered Loan

Regulation C provides different loan-volume reporting thresholds for transactions that involve a Covered Loan depending on whether they involve a Closed-End Mortgage Loan or an Open-End Line of Credit. § 1003.3(c)(11) and (12). Reporting is required if a threshold is met in each of the two preceding calendar years.[3] (See 2018 Institutional Coverage Chart for guidance regarding institutional coverage.)

Closed-End Mortgage Loan § 1003.2(d)

Lending activity

Originated at least **25 Closed-End Mortgage Loans** in each of the two preceding calendar years?

§ 1003.3(c)(11)

Yes → Data reporting: **Required** to report all Closed-End Mortgage Loan Applications, originations, and purchases

No → Data reporting: **Not required** to report Closed-End Mortgage Loan Applications, originations, and purchases

Open-End Line of Credit § 1003.2(o)

Lending activity

Originated at least **500 Open-End Lines of Credit** in each of the two preceding calendar years?

§ 1003.3(c)(12)

Yes → Data reporting: **Required** to report all Open-End Lines of Credit Applications, originations, and purchases

No → Data reporting: **Not required** to report Open-End Lines of Credit Applications, originations, and purchases

- Only **originated** Covered Loans count toward the loan-volume thresholds. If a threshold is met, the institution reports all Applications for Covered Loans that it receives, Covered Loans that it originates, and Covered Loans that it purchases for that type of transaction (either Closed-End Mortgage Loan or Open-End Line of Credit, or both, if both thresholds are met).
- Covered consumer and business or commercial purpose originations should be counted together when assessing the individual thresholds for Closed-End Mortgage Loans and Open-End Lines of Credit.
- A financial institution may voluntarily report Closed-End Mortgage Loans or Open-End Lines of Credit that are excluded because the financial institution does not meet the transactional threshold for that type of transaction. However, if it chooses to voluntarily report Closed-End Mortgage Loans or Open-End Lines of Credit, the financial institution must report all such transactions that would otherwise be covered loans for that calendar year.

[3] The threshold for open-end lines of credit is set at 500 for calendar years 2018 and 2019. See the Bureau's August 2017 Final Rule for more information about the temporary threshold increase for open-end lines of credit, available at consumerfinance.gov/policy-compliance/rulemaking/final-rules/regulation-c-home-mortgage-disclosure-act.

Examination Objectives

1. To determine the accuracy and timeliness of the financial institution's HMDA LAR.
2. To determine the financial institution's compliance with disclosure requirements.

Examination Procedures[21]

Initial Procedures

A. Institutional Coverage

Determine whether an institution is subject to Regulation C because it meets the definition of financial institution. 12 CFR 1003.2(g).

Depository Financial Institutions

A depository financial institution is subject to Regulation C if the requirements of 12 CFR 1003.2(g)(1) are met. If the institution is a bank, savings association, or credit union, determine whether it meets the Asset-Size Threshold Test, the Location Test, the Loan Activity Test, the Federally Related Test, and the Loan-Volume Threshold Test, which are listed below. If all five tests are satisfied, then the financial institution is required to report mortgage data in accordance with Regulation C.

1. **Asset-Size Threshold Test**. Determine whether, on the preceding December 31, the institution had assets in excess of the asset-size threshold published annually in the *Federal Register*, as included in the Official Interpretations, 12 CFR Part 1003, comment 2(g)-2. 12 CFR 1003.2(g)(1)(i).
2. **Location Test.** Determine whether, on the preceding December 31, the institution had a home or branch office located in an MSA. 12 CFR 1003.2(g)(1)(ii).
3. **Loan Activity Test**. Determine whether the institution originated at least one home purchase loan or refinancing of a home purchase loan secured by a first lien on a one-to-four-unit dwelling during the preceding calendar year. 12 CFR 1003.2(g)(1)(iii).
4. **Federally Related Test**. Determine whether the institution meets one of following criteria:
   a. The institution is federally insured or federally regulated.
   (12 CFR 1003.2(g)(1)(iv)(A)); or
   b. The institution originated at least one home purchase loan or refinancing of a home purchase loan that was secured by a first lien on a one-to-four-unit dwelling and also (i) was insured, guaranteed, or supplemented by a Federal agency or (ii) was intended for sale to Fannie Mae or Freddie Mac (12 CFR 1003.2(g)(1)(iv)(B)).
5. **Loan-Volume Threshold Test**. Determine whether the institution originated at least 25 closed-end mortgage loans in each of the two preceding calendar years, or originated at least 500 open-end lines of credit in each of the two preceding calendar years. Determine whether transactions are appropriately excluded from coverage by Regulation C according to criteria in 12 CFR 1003.3(c)(1)–(13). The list of excluded transactions and definitions for closed-end mortgage loans and open-end lines of credit are described below in the Transactional Coverage section of these procedures.

Nondepository Financial Institutions

A nondepository financial institution is subject to Regulation C if the requirements of 12 CFR 1003.2(g)(2) are met. If the institution is a nondepository financial institution other than a bank, savings association, or credit union, determine whether it meets the Location Test and the Loan-Volume Threshold Test described below. If both tests are satisfied, then the financial institution is required to report mortgage data in accordance with Regulation C.

1. **Location Test**. Determine whether the institution had a home or branch office in an MSA on the preceding December 31. 12 CFR 1003.2(g)(2)(i).
2. **Loan-Volume Threshold Test**. Determine whether the institution originated at least 25 closed-end mortgage loans in each of the two preceding calendar years, or originated at least 500 open-end lines of credit in each of the two preceding calendar years. Determine whether any transactions are appropriately excluded from coverage by Regulation C according to criteria in 12 CFR 1003.3(c)(1)-(13).

   The list of excluded transactions and definitions for closed-end mortgage loans and open-end lines of credit are described below in the TRANSACTIONAL COVERAGE section.

Merger or Acquisition Activity

If recent merger or acquisition activity has occurred, determine whether the surviving or newly formed institution meets the definition of financial institution in 12 CFR 1003.2(g). After a merger or acquisition, the surviving or newly formed institution is a financial institution according

[21] These reflect the interagency examination procedures. See FIL-16-2019, *FFIEC A Guide to HMDA Reporting: Getting It Right! for 2019 HMDA Data and Updated HMDA Examination Procedures*.

to 12 CFR 1003.2(g) if it, considering the combined assets, location, and lending activity of the surviving or newly formed institution and the merged or acquired institutions or acquired branches, satisfies the criteria included in 12 CFR 1003.2(g). For examples of institutional coverage by Regulation C after merger or acquisition activity, please see Official Interpretations, Supplement I to 12 CFR Part 1003, comment 2(g)-3.

B. Transactional Coverage

Determine whether a transaction is subject to Regulation C because it:

(1) meets the definition of a covered loan as defined in 12 CFR 1003.2(e), and

(2) is not an excluded transaction as defined in 12 CFR 1003.3(c)(1)–(13).

Covered Loans

Institutions that meet the definition of financial institution according to 12 CFR 1003.2(g) must report data on transactions that meet the definition of a covered loan in 12 CFR 1003.2(e). Types of transactions enumerated in 12 CFR 1003.3(c)(1)–(13) are explicitly excluded from Regulation C reporting requirements.

1. **Covered Loan.** Determine whether the transaction meets the definition of covered loan according to 12 CFR 1003.2(e) and should be reported under Regulation C. A covered loan is a closed-end mortgage loan or an open-end line of credit that is not a transaction specifically excluded from the reporting requirements of the regulation.

a. Determine whether the transaction is a closed-end mortgage loan as defined in 12 CFR 1003.2(d). A closed-end mortgage loan is:

i. An extension of credit;

ii. Secured by a lien on a dwelling; and

iii. Is not an open-end line of credit, as defined by 12 CFR 1003.2(o).

b. Determine whether the transaction is an open-end line of credit as defined in 12 CFR 1003.2(o). An open-end line of credit is:

i. An extension of credit;

ii. Secured by a lien on a dwelling; and

iii. Is an open-end credit plan as defined in Regulation Z, 12 CFR 1026.2(a)(20), but without regard to whether the credit is consumer credit, as defined in 12 CFR 1026.2(a)(12), is extended by a creditor as defined in 12 CFR 1026.2(a)(17), or is extended to a consumer as defined in 12 CFR 1026.2(a)(11).

Note: Further, a covered loan secured by five or more separate dwellings, which are not multifamily dwellings, in more than one location is not a loan secured by a multifamily dwelling. For example, assume a landlord uses a covered loan to improve five or more dwellings, each with one individual dwelling unit, located in different parts of a town, and the loan is secured by those properties. The covered loan is not secured by a multifamily dwelling as defined by § 1003.2(n). Likewise, a covered loan secured by five or more separate dwellings that are located within a multifamily dwelling, but which is not secured by the entire multifamily dwelling (e.g., an entire apartment building or housing complex), is not secured by a multifamily dwelling as defined by § 1003.2(n). For example, assume that an investor purchases 10 individual unit condominiums in a 100-unit condominium complex using a covered loan. The covered loan would not be secured by a multifamily dwelling as defined by § 1003.2(n). Comment 2(n)-3.

3. **Excluded Transactions**. Determine whether the type of transaction is listed as an excluded transaction in 12 CFR 1003.3(c). The following transactions are not required to be reported under Regulation C:

a. A closed-end mortgage loan or open-end line of credit originated or purchased by a financial institution acting in a fiduciary capacity (12 CFR 1003.3(c)(1));

b. A closed-end mortgage loan or open-end line of credit secured by a lien on unimproved land (12 CFR 1003.3(c)(2));

c. Temporary financing (12 CFR 1003.3(c)(3));

d. The purchase of an interest in a pool of closed-end mortgage loans or open-end lines of credit (12 CFR 1003.3(c)(4));

e. The purchase solely of the right to service closed-end mortgage loans or open-end lines of credit (12 CFR 1003.3(c)(5));

f. The purchase of closed-end mortgage loans or open-end lines of credit as part of a merger or acquisition, or as part of the acquisition of all of the assets and liabilities of a branch office as defined in 12 CFR 1003.2(c) (12 CFR 1003.3(c)(6));

g. A closed-end mortgage loan or open-end line of credit, or an application for a closed-end mortgage loan or open-end line of credit, for which the total dollar amount is less than $500 (12 CFR 1003.3(c)(7));

h. The purchase of a partial interest in a closed-end mortgage loan or open-end line of credit (12 CFR 1003.3(c)(8));

i. A closed-end mortgage loan or open-end line of credit that is or will be used primarily for agricultural purposes (12 CFR 1003.3(c)(9));

j. A closed-end mortgage loan or open-end line of credit that is or will be made primarily for a business or commercial purpose, unless the closed-end mortgage loan or open-end line of credit is a home improvement loan under 12 CFR 1003.2(i), a home purchase loan under 12 CFR 1003.2(j), or a refinancing under 12 CFR 1003.2(p) (12 CFR 1003.3(c)(10));

k. Exclusions based on a financial institution's loan-volume:

   i. An institution that originated fewer than 25 closed-end mortgage loans in either of the two proceeding calendar years is not required to report closed-end mortgage loans (12 CFR 1003.3(c)(11)).

   ii. An institution that originated fewer than 500 open-end lines of credit in either of the two preceding calendar years is not required to report open-end lines of credit, (12 CFR 1003.3(c)(12)).

l. A transaction that provided or, in the case of an application, proposed to provide new funds to the applicant or borrower in advance of being consolidated in a New York State consolidation, extension, and modification agreement (as before, New York CEMA) classified as a supplemental mortgage under New York Tax Law section 255, where final action was taken on the consolidation and the new funds transaction in the same calendar year. (12 CFR 1003.3(c)(13)).

Disclosure and Reporting – 12 CFR 1003.5

- Determine whether the financial institution satisfies requirements related to disclosure and reporting:

a. **Reporting to agency.** Determine whether the financial institution submits its HMDA LAR to the appropriate Federal agency no later than March 1 following the calendar year for which the data are compiled. 12 CFR 1003.5(a)(1)(i).

b. **HMDA LAR retention.** Determine whether the financial institution retained a copy of its submitted annual HMDA LAR for at least three years. 12 CFR 1003.5(a)(1)(i).

c. **Disclosure statement.** Determine whether no later than three business days after the financial institution receives notice from the FFIEC that the financial institution's disclosure statement is available the financial institution makes available to the public upon request at its home office, and each branch office physically located in each MSA and each MD, a written notice that clearly conveys that the financial institution's disclosure statement may be obtained on the Bureau's website at www.consumerfinance.gov/hmda. 12 CFR 1003.5(b)(2). A financial institution's disclosure statement may also be obtained from https://ffiec.cfpb.gov.

d. **Modified HMDA LAR.** Determine whether the financial institution makes available to the public upon request at its home office, and each branch office physically located in each MSA and each MD, a written notice that clearly conveys that the financial institution's HMDA LAR, as modified by the Bureau to protect applicant and borrower privacy, may be obtained on the Bureau's website at www.consumerfinance.gov/hmda. 12 CFR 1003.5(c). A financial institution's modified HMDA LAR may also be obtained from https://ffiec.cfpb.gov.

e. **Posted notice of availability of data.** Determine whether the financial institution 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 each MSA and each MD. This notice must clearly convey that the financial institution's HMDA data is available on the Bureau's website at www.consumerfinance.gov/hmda. 12 CFR 1003.5(e). A financial institution's HMDA data is also available at https://ffiec.cfpb.gov.

If the financial institution is a bank or savings association and has a subsidiary covered by HMDA, determine whether the subsidiary completed a separate HMDA LAR and either submitted it directly or through its parent to the appropriate Federal agency for the parent. For this purpose, a financial institution is a subsidiary of a bank or savings association if the bank or savings association holds or controls an ownership interest of greater than 50 percent in the financial institution. (12 CFR 1003.5(a)(2), comment 5(a)-6).

FFIEC HMDA Examiner Transaction Testing Guidelines

1. To conduct HMDA transaction testing, examiners select a random sample of entries from the financial institution's HMDA LAR (Total Sample) and ask the financial institution to provide the loan or application files (loan files) that correspond to the HMDA LAR sample entries. The size of the Total Sample will depend on the size of the financial institution's HMDA LAR, as shown in column A of the "HMDA Transaction Testing Sample Sizes and Thresholds" table (HMDA table) on page 38.

2. If a financial institution's HMDA data are collected through multiple data collection and reporting systems, examiners may test a single sample from the financial institution's entire HMDA LAR, test separate samples from each system, or test samples from selected systems chosen based on risk. If examiners do not take a single sample from the entire HMDA LAR, they should document in their work papers from which system(s) they chose the sample(s) and why.
3. Once examiners receive the loan files from the financial institution, they should verify the accuracy of the data in the entries in the HMDA LAR sample(s) against the corresponding loan files. Examiners should document in their work papers any differences between the data in the HMDA LAR and information in files, and determine whether the differences may be explained by any additional information that the financial institution may provide. Differences that are not adequately explained should be identified as errors.
4. All data fields within the sample may be reviewed, or the supervisory agency may prioritize designated fields for review.
5. HMDA transaction testing can be divided into two stages. Both stages test for errors only in individual data fields that are selected for review as provided above in paragraph 4. In Stage 1, examiners review only a subset of the sample (Initial Sample). The size of the Initial Sample will depend on the size of the financial institution's HMDA LAR, as shown in column B of the HMDA table. If the number of errors identified in the Initial Sample falls below the Initial Sample Threshold in column C of the HMDA table for each and every data field reviewed, no further sample review is required and the examiners may conclude the transaction testing. If the number of errors in any data field reviewed equals or exceeds the Initial Sample Threshold in column C of the HMDA table, examiners should proceed to Stage 2 and review the remainder of the Total Sample. In Stage 2, examiners must review all data fields that had one or more errors in the Initial Sample and may review any or all Initial Sample data fields reviewed and found to have no errors in Stage 1.
6. If, after reviewing the remainder of the Total Sample in Stage 2, the total number of errors in any data field equals or exceeds the Resubmission Threshold in column D of the HMDA table, examiners should direct the financial institution to correct any such data field in its full HMDA LAR and resubmit its HMDA LAR with the corrected data field(s).
7. A financial institution may also be directed to correct one or more individual data fields and resubmit its HMDA LAR, even if errors in that field or fields do not meet the Resubmission Threshold in column D of the HMDA table, if examiners have a reasonable basis to believe that errors in that field or fields will likely make analysis of the HMDA data unreliable. To illustrate, assume examiners discover that a financial institution has incorrectly coded withdrawn applications as denials to such an extent that it likely prevents reliable analysis of underwriting disparities in a fair lending examination. Examiners may direct a financial institution to correct the Action Taken data field and resubmit the HMDA LAR even if the number of Action Taken errors found in the Total Sample does not equal or exceed the Resubmission Threshold in column D of the HMDA table.
8. A financial institution may be directed to resubmit its HMDA LAR in order to include reportable applications or loans that examiners determined were previously omitted from the HMDA LAR.

Tolerances

9. For the sole purpose of determining whether the number of errors equals or exceeds the Initial Sample Threshold in column C or the Resubmission Threshold in column D of the HMDA table, examiners should not count the following differences between data in the HMDA LAR and in the loan files as errors:
   - Three calendar days or less in the date the application was received or the date shown on the application form reported pursuant to 12 CFR 1003.4(a)(1)(ii);
   - One thousand dollars or less in the amount of the covered loan or the amount applied for, as applicable, reported pursuant to 12 CFR 1003.4(a)(7);
   - Three calendar days or less in the date of the action taken by the financial institution reported pursuant to 12 CFR 1003.4(a)(8)(ii), provided that such differences do not result in reporting data for the wrong calendar year; and
   - Rounding errors in reporting the dollar amount, rounded to the nearest thousand, of the gross annual income relied on in making the credit decision or, if a credit decision was not made, the gross annual income relied on in processing the application, reported pursuant to 12 CFR 1003.4(a)(10)(iii).

   To illustrate, if a loan file indicates June 4 as the application date, a HMDA LAR application date of June 1 or June 7 would not be counted as an error because it is within three calendar days of June 4, but a HMDA LAR application date of May 31 or June 8 would be counted as an error because it is more than three calendar days from June 4.

Ethnicity or Race Data Errors

10. For purposes of these guidelines, the term "data field" generally refers to individual HMDA Filing Instructions

Guide (FIG) fields, each identified by a distinct Data Field Number and Data Field Name. With respect to information on the ethnicity or race of an applicant or borrower, or co-applicant or co-borrower, however, a data field consists of a group of FIG fields as follows:

- The Ethnicity of Applicant or Borrower data field group: comprised of six FIG fields with information on an applicant's or borrower's ethnicity (FIG Data Field Numbers 19-24);
- The Ethnicity of Co-Applicant or Co-Borrower data field group: comprised of six FIG fields with information on a co-applicant's or co-borrower's ethnicity (FIG Data Field Numbers 25-30);
- The Race of Applicant or Borrower data field group: comprised of eight FIG fields with information on an applicant's or borrower's race (FIG Data Field Numbers 33-40); and
- The Race of Co-Applicant or Co-Borrower data field group: comprised of eight FIG fields with information on a co-applicant's or co-borrower's race (FIG Data Field Numbers 41-48).[22]

To illustrate, for an applicant who indicates "Hispanic or Latino" and "Mexican" in response to the question of ethnicity, a financial institution reports the information in two FIG fields, for example, Ethnicity of Applicant or Borrower: 1 (1: Hispanic or Latino) and Ethnicity of Applicant or Borrower: 2 (11: Mexican). If one or more of the six Ethnicity of Applicant or Borrower FIG fields have errors, they would count as one (and only one) error for that data field group. If the Ethnicity of Applicant or Borrower data field group has errors in the Total Sample that meet or exceed the Resubmission Threshold in column D of the HMDA table, examiners should direct the financial institution to correct the six Ethnicity of Applicant or Borrower FIG fields and resubmit its HMDA LAR with those FIG fields corrected. See example 4 in the HMDA TRANSACTION TESTING SAMPLE SIZES AND THRESHOLDS section below.[23]

Prospective Changes

11. Examiners may direct the financial institution to make any appropriate changes in its policies, procedures, audit processes, or other aspects of its compliance management system needed to prevent the reoccurrence of errors identified within the sample that are—absent such changes—capable of repetition, even if the number of errors does not equal or exceed either the Initial Sample Threshold in column C or the Resubmission Threshold in column D of the HMDA table, or even if the errors fall within the tolerances provided in paragraph 9.

HMDA Transaction Testing Sample Sizes and Thresholds

HMDA LAR count	**A** **Total Sample size**	**B** **Initial Sample size**	**C** **Initial Sample Threshold**	**D** **Resubmission Threshold**	
				#	%
25–50	30*	15	2	3	10.0*
51–100	30	20	2	3	10.0
101–130	47	29	2	3	6.4
131–190	56	29	2	3	5.4
191–500	59	30	2	3	5.1
501–100,000	79	35	2	4	5.1
100,001+	159	61	2	4	2.5

*For financial institutions with fewer than 30 HMDA LAR lines, the full sample size is the financial institution's total number of HMDA LAR lines. The Resubmission Threshold number remains at 3. Accordingly, the Resubmission Threshold percentage will be higher for financial institutions with fewer than 30 HMDA LAR lines.

[22] Data fields indicating whether ethnicity or race information was collected on the basis of visual observation or surname (FIG Data Field Numbers 31, 32, 49, and 50) are not included in any data group enumerated in paragraph 10 and are treated as individual data fields for purposes of these guidelines.

[23] Example 4 describes analogous error rates and corrective actions for the race field.

Examples

1. Financial Institution A's HMDA LAR contains 35 entries. Examiners select a Total Sample of 30 loans as shown in column A of the HMDA table.
   - Examiners test the Initial Sample of 15 as shown in column B of the HMDA table and find two errors in the Action Taken data field, which equals the Initial Sample Threshold in column C of the HMDA table.
   - Accordingly, the examiners proceed to review the remaining 15 entries in the Total Sample and find one additional error in the Action Taken data field for a total of three errors in that field, which equals the Resubmission Threshold in column D of the HMDA table. In the review of the remaining entries in the Total Sample, examiners also find two errors in the Rate Spread data field, which is below the Resubmission Threshold in column D of the HMDA table.
   - Therefore, Financial Institution A is directed to correct the Action Taken data field and resubmit its HMDA LAR with that field corrected.
2. Financial Institution B's HMDA LAR contains 125 entries. Examiners select a Total Sample of 47 loans as shown in column A of the HMDA table.
   - Examiners test the Initial Sample of 29 loans as shown in column B of the HMDA table and find one error in the Action Taken data field, which is less than the Initial Sample Threshold in column C of the HMDA table; one error in the Loan Type data field, which is less than the Initial Sample Threshold; and no other errors.
   - Therefore, examiners end the HMDA transaction testing for Financial Institution B and do not proceed to Stage 2 testing of the 18 remaining entries in the Total Sample because no Stage 1 errors in any single data field equaled or exceeded the Initial Sample Threshold.
3. Financial Institution C's HMDA LAR contains 500,000 entries. Examiners select a Total Sample of 159 loans as shown in column A of the HMDA table.
   - Examiners test the Initial Sample of 61 loans as shown in column B of the HMDA table and find two errors in the Action Taken data field, which equals the Initial Sample Threshold in column C of the HMDA table; and five errors in the Loan Amount data field, which exceeds the Initial Sample Threshold in column C of the HMDA table.
   - Accordingly, examiners proceed to test the remaining 98 entries in the Total Sample and find two additional errors in the Action Taken data field, for a total of four errors in that field, which equals the Resubmission Threshold in column D of the HMDA table; five additional errors in the Loan Amount data field, for a total of ten errors in that field, which exceeds the Resubmission Threshold in column D of the HMDA table; and four errors in the Census Tract data field, which equals the Resubmission Threshold in column D of the HMDA table.
   - Therefore, Financial Institution C is directed to correct the Action Taken data field, the Loan Amount data field, and the Census Tract data field and resubmit its HMDA LAR with those fields corrected.
4. Financial Institution D's HMDA LAR contains 1,000 entries. Examiners select a Total Sample of 79 loans as shown in column A of the HMDA table.
   - Examiners test the Initial Sample of 35 loans as shown in column B of the HMDA table and find one loan with an error in the FIG Applicant or Borrower Race: 1 field, and a different loan with an error in the FIG Applicant or Borrower Race: 2 field, for a total of two errors in the Race of Applicant or Borrower data field group, which equals the Initial Sample Threshold in column C of the HMDA table.
   - Accordingly, the examiners proceed to test the remaining 44 entries in the Total Sample and find one loan with an error in the FIG Applicant or Borrower Race: 2 field, and one loan with errors in both the FIG Applicant or Borrower Race: 1 field and the FIG Applicant or Borrower Race: 2 field, for a total of four loans with at least one error in one of the eight Race of Applicant or Borrower FIG fields, which equals the Resubmission Threshold in column D of the HMDA table.
   - Therefore, Financial Institution D is directed to correct all eight FIG fields in the Race of Applicant or Borrower data field group and resubmit its HMDA LAR with those FIG fields corrected.
   - The following table summarizes how the errors in this example are counted toward the Resubmission Threshold in column D of the HMDA table:

Example: Calculating Error Rates for Applicant or Borrower Race

	FIG Applicant or Borrower Race: 1 field	**FIG Applicant or Borrower Race: 2 field**	**Race of Applicant or Borrower data field group**
Loan #1	Error (Initial Sample)		1
Loan #2		Error (Initial Sample)	1
Loan #3		Error (Remaining Sample)	1
Loan #4	Error (Remaining Sample)	Error (Remaining Sample)	1
Total errors			**4**

Attachment A

Data Fields and Data Points Chart

FDIC HMDA Validation Instructions

A. Purpose of HMDA Validation

The financial regulatory agencies rely on HMDA data reported by financial institutions to support a variety of activities. For example, the FDIC uses HMDA data in conducting fair lending reviews and Community Reinvestment Act (CRA) performance evaluations for HMDA reporters. Moreover, HMDA disclosures provide the public with information on the home mortgage lending activities of particular reporting entities and on activity in their communities. These disclosures are used by local, state, and federal officials to evaluate housing trends and issues and by community organizations to monitor institution lending patterns.

Because HMDA data serve numerous important purposes, validating the accuracy of HMDA data is a key element of the FDIC's supervisory activities. In addition, review of an institution's HMDA-related compliance management system (CMS) helps determine the extent to which an institution's policies, procedures, and practices ensure compliance with HMDA requirements. These HMDA Validation Instructions (the Instructions) explain FDIC examination instructions for validating the accuracy and completeness of the institution's reported HMDA Loan/Application Register (LAR) and assessing the strength of an institution's HMDA-related CMS.[24] The Instructions supplement, and do not replace, the instructions provided in the FFIEC HMDA Examiner Transaction Testing Guidelines (FFIEC Testing Guidelines).

B. Review of the HMDA-Related CMS

For all HMDA reporters, examination staff will assess the strength of the financial institution's HMDA-related CMS, considering whether it is comprehensive and commensurate with an institution's lending activity, size, structure, complexity, and risk profile.

During the Pre-Examination Planning (PEP) process, examination staff will obtain information necessary to determine whether an institution's policies, procedures, and practices ensure the following:

1. appropriate collection, recording, and reporting of data on applications for covered loans that it receives, covered loans that it originates, and covered loans that it purchases pursuant to HMDA and Regulation C requirements; and
2. compliance with HMDA and Regulation C's disclosure requirements.

Examination staff will conduct this assessment through a review of HMDA LARs, written policies and procedures, internal controls, and training materials, as well as discussions with management. When assessing the strength of the HMDA-related CMS, examination staff will consider the factors addressed in the questions below, which focus on a financial institution's Board and management oversight and consumer compliance program.

Board and Management Oversight

During the review of the financial institution's system for ensuring compliance with HMDA and Regulation C, obtain and review copies of policies, procedures, monitoring and/or audit reviews, and any applicable compliance management program materials to determine whether:

1. An institution annually or more frequently if appropriate, conducts analysis to determine whether it must collect, record, and report data regarding dwelling-secured applications and loans (covered transactions) pursuant to HMDA and Regulation C.
2. An institution conducts analysis to ensure that all reportable applications and loans are collected and recorded on the HMDA LAR.
3. An institution has assigned one or more individuals responsibility for the oversight of HMDA compliance, including HMDA data collection, recording, and reporting.
4. An institution has ensured individuals responsible for HMDA compliance receive access to and appropriate training on HMDA, Regulation C and its commentary, all applicable regulatory and statutory changes, the Filing Instructions Guide, the *Guide to HMDA Reporting: Getting It Right!*, and any other relevant materials.
5. The Board of Directors and management possess sufficient knowledge to ensure oversight of compliance with HMDA and Regulation C.
6. The Board of Directors and management provide appropriate resources and oversight regarding ensuring an institution's compliance with HMDA and Regulation C.
7. An institution takes effective corrective action in response to identified HMDA deficiencies.
8. Management and, if appropriate, the Board of Directors reviews policies and procedures, monitoring and/or audit, and compliance reports regarding the institution's HMDA data reporting, commensurate with its HMDA risk profile.

[24] For purposes of these Instructions, the term "examination staff" includes examiners and HMDA Analysts, as applicable given the specific examination steps being discussed.

Consumer Compliance Program

Evaluate whether the financial institution's consumer compliance program—specifically, its policies, procedures, and internal controls—is adequate to ensure compliance with HMDA and Regulation C. Consider whether:

9. The individuals responsible for ensuring HMDA compliance possess an adequate level of knowledge regarding HMDA and Regulation C, including all applicable statutory and regulatory changes.
10. An institution has developed appropriate policies and procedures, and revised those policies and procedures as necessary, to ensure HMDA compliance.
11. HMDA data are collected at all branches (if applicable), and, if so, whether relevant branch personnel are appropriately trained on HMDA data collection, recording, and reporting requirements.
12. An institution's loan officers, including the commercial loan department, who may handle HMDA-reportable applications, are informed of collection, recording, and reporting requirements.
13. An institution has policies and procedures to ensure continuing HMDA compliance during and after major changes in an institution's business or structure.
14. An institution has established internal review procedures, monitoring, and/or audit schedules, depending on the circumstances, that comprehensively cover all pertinent HMDA and Regulation C requirements, including all applicable statutory and regulatory changes since prior compliance reviews and/or audits.
15. An institution conducts compliance reviews and/or audits, as appropriate, that include a sufficient level of transactional analysis as well as written reports that detail findings and recommendations for corrective action. Also, determine whether the Board of Directors and management are informed of these findings and recommendations.
16. An institution adequately monitors vendors and other third-party service providers that perform functions or deliver services related to HMDA data collection, recording, and reporting.

C. Timing of Transaction Testing

The timing of the HMDA transaction testing is determined based on the number of reported LAR lines in the most recent full calendar year. FDIC HMDA reporters are divided into one of the following two size categories: financial institutions with 500 or more LAR lines, and financial institutions with fewer than 500 total LAR lines.

1. Financial institutions with 500 or more total LAR lines: Examination staff will conduct transaction testing for accuracy and completeness in advance of the on-site portion of the consumer compliance examination. This approach allows an institution to resolve data errors, if any, so the examination can proceed without significant delay.

2. Financial institutions with fewer than 500 total LAR lines: Examination staff will conduct transaction testing for accuracy and completeness during the on-site portion of the consumer compliance examination, unless testing in advance of the on-site portion promotes examination efficiencies and effectiveness. For example, there may be risk indicators from an institution's previous HMDA review(s), such as a history of significant HMDA-related CMS deficiencies or Level 2 (Medium Severity) or Level 3 (High Severity) violations that required corrective actions related to HMDA. The risk indicators could serve as a red flag signaling that an extended period of time or additional resources may be required to conduct HMDA validation at an institution. Consequently, transaction testing in advance of the on-site portion of the examination would promote examination efficiencies and effectiveness.

D. Notifying Reporters of Upcoming HMDA Validation

The PEP process details specific timelines and requirements that provide financial institutions with notice of upcoming HMDA reviews. Examination staff will follow these timelines when scheduling and providing notice to financial institutions about upcoming HMDA reviews. In particular, examination staff will ensure that the HMDA/CRA Validation letter is provided to HMDA reporters at the appropriate time. For validations completed in advance of the on-site portion of the consumer compliance examination, this letter is either sent with or after the Informational Packet to allow an institution sufficient time to prepare for the data validation. For validations completed during the on-site portion of the compliance examination, if applicable, this information is included in the Entry Letter.

E. Systemic Errors Identified Prior to Transaction Testing

Prior to transaction testing, examination staff may determine an institution's HMDA policies, procedures, or practices are likely to produce systemic errors. For example, examination staff may find that an institution's written policies reflect a misunderstanding of Regulation C's requirements regarding which business-purpose transactions are covered by HMDA. In such cases, examination staff will confirm the errors through discussion with bank management. If examination staff determines that systemic errors likely will make analysis of the HMDA data unreliable, examination transaction testing should not be completed until bank

management has ensured that the errors are addressed. Once the LAR data is corrected, examination staff will complete transaction testing in accordance with the FFIEC Testing Guidelines and these Instructions.

F. Scope of Transaction Testing

In general, for each HMDA reporter, FDIC examination staff initially will review the LAR reported as final for the prior full calendar year. During or after transaction testing as provided in these Instructions, examination staff will investigate the root cause of any errors found, focusing on data fields for which the number of errors exceeded the applicable resubmission threshold. (As discussed later in these Instructions, examination staff prioritizes review of key data fields but may review additional data fields in specified circumstances.)

Examination staff will determine through discussions with bank management if the root cause of the errors that triggered resubmission in the LAR reviewed would impact LARs previously submitted for earlier years. If the root cause of errors in each such data field is systemic across prior years, examination staff may request that bank management correct and resubmit additional years' LARs, as appropriate, without additional transaction testing. However, if examination staff determines that the root cause of systemic errors in the prior year's LAR did not impact LARs from earlier years for any such data field, examination staff may determine that testing LARs from additional years is unnecessary.

If the root cause of errors in one or more of the data fields for which resubmission is triggered does not appear to be systemic, or if examination staff is unable to determine the root cause of the errors in any such data field, examination staff will determine whether it is necessary to test additional years' LARs. Examination staff will make this determination in consultation with FDIC field territory management.

G. Sampling Multiple Data Collection and Reporting Systems

Paragraph 1 of the FFIEC Testing Guidelines discusses selection of a random sample of entries from a financial institution's LAR. Paragraph 2 of the FFIEC Testing Guidelines discusses alternative methods for sampling HMDA data collected through multiple data collection and reporting systems. FDIC examination staff will conduct transaction testing by selecting a sample of entries from the entire reported LAR, even if an institution aggregates reportable covered loan application data from multiple data collection systems or departments to create the final reported LAR.

H. Validating Designated Key HMDA Data Fields

Paragraph 4 of the FFIEC Testing Guidelines states that all data fields within the sample may be reviewed or a supervisory agency may prioritize designated data fields for review. For the purpose of evaluating financial institutions' compliance with HMDA requirements, FDIC examination staff will focus primary attention on Designated HMDA Key Data Fields (key data fields). Specifically, during the validation process, FDIC examination staff generally will review the key data fields rather than all 110 data fields.

Data Voluntarily Reported When a Partial Exemption Applies

An insured depository institution (IDI) eligible for a partial exemption from HMDA reporting may report an exemption code for data fields associated with exempt data points or may report such data fields voluntarily. If an IDI is eligible for a partial exemption with respect to a particular data point, examination staff will validate data fields associated with that data point as part of the HMDA data validation process but will not require resubmission of, or cite a violation in connection with, those data fields.

Transaction Testing of Non-key Data Fields

In certain limited circumstances specified in these Instructions and consistent with the FFIEC Testing Guidelines, examination staff may determine it is necessary to review additional HMDA data fields, as appropriate.

FDIC examination staff will transaction test non-key data fields only under one of two circumstances. The first circumstance is where data from non-key fields is needed to complete an aspect of the consumer compliance examination that considers HMDA data, such as a fair lending review or CRA performance evaluation. The second circumstance is where data from non-key fields are needed to determine the root cause of an error in a key data field. Examination staff will consult with field territory management when making this determination.

Examples of these two circumstances where examination staff may seek to review data from non-key data fields include the following situations:

1. *Fair lending review*–The fair lending review established a focal point and non-key data field(s) are needed for the analysis. Transaction testing of non-key data fields under this exception is limited to those fields needed to evaluate an identified fair lending focal point. Examination staff will validate any needed non-key data fields prior to conducting a comparative file review or requesting a regression analysis. Typically this validation will occur after the HMDA validation, once examination staff has selected a focal point and

identified non-key data fields that are necessary for the review based on information provided by an institution during the criteria interview.

2. *Census tract errors*–Examination staff will identify errors in the key data field census tract. Examination staff generally will use property address information from a source document (such as a note) to validate the census tract data field. To determine the root cause of errors in the census tract data field, examination staff may need to review the non-key data fields related to the property address data point (street address city, state, or zip code).[25] Even if the non-key data fields related to the property address data point are incorrect, only errors in the census tract key data field are counted as errors when applying the applicable error threshold.

Upon completing a review of non-key data fields, if examination staff determines the data to be unreliable, examination staff will then assess the extent to which the impact of the errors is significant. Examination staff will direct an institution to correct errors in non-key data fields that would affect a consumer compliance examination, including fair lending reviews, or the accuracy of a CRA performance evaluation. Also, in consultation with FDIC field territory management, examination staff may direct an institution to resubmit its HMDA LAR to ensure accurate aggregate data is maintained.

Treatment of Data Fields for Non-Covered Loan Applications

HMDA and Regulation C require a financial institution to submit data about covered loans for which the institution receives an application or that it purchases. If, during the accuracy review of key data fields, examination staff identifies transactions reported on the LAR that do not meet the regulatory definition of a covered transaction and were reported in error, those transactions are considered over-reported transactions. Examination staff will not include data fields from over-reported transactions when counting the number of key data field errors. Rather, examination staff will remove over-reported transactions from the sample universe and replace them with reportable transactions.

Nevertheless, examination staff will attempt to determine the root cause of over-reported transactions identified during transaction testing, such as a misunderstanding of the provisions of Regulation C related to business-purpose transactions. Examination staff will address over-reporting errors identified during transaction testing following the procedures to address systemic errors identified before transaction testing. (See the section entitled *Systemic Errors Identified Prior to Transaction Testing*).

I. Data Fields Reviewed During the Second Stage of Transaction Testing

Paragraph 5 in the FFIEC Testing Guidelines discusses the data fields to be reviewed during the two stages of HMDA transaction testing. In relevant part, Paragraph 5 provides flexibility for supervisory agencies to allow examiners to review data fields in Stage 2 that were found to have no errors in Stage 1. FDIC examination staff will limit review in Stage 2 to data fields in which one or more errors were found in Stage 1.

J. LAR Completeness and Identifying Omissions

Paragraph 8 of the FFIEC Testing Guidelines states that a financial institution may be directed to resubmit its HMDA LAR to include omitted reportable applications or loans. Ensuring that all reportable covered transactions are included on the LAR helps assess HMDA compliance and supports the use of HMDA data in fair lending reviews and CRA performance evaluations.

Identifying Omissions Universe and Sample Request

Loans and applications that are HMDA-reportable but omitted from a LAR generally fall into two categories: originated or purchased loans and non-originated loan applications (declined, withdrawn, closed for incompleteness, or approved but not accepted) that were not identified as covered transactions. In order to ensure that all reportable covered originated or purchased loans and non-originated loan applications are included on the LAR, examination staff develops an omissions universe of potentially reportable covered transactions (the omissions universe) as follows:

- Identify departments that take applications for covered loans;
- Identify departments, if any, that purchase covered loans;
- Identify software systems and tracking reports used within these departments to capture loan application, origination, and purchase data; and
- Using the reports from these systems, compile the omissions universe.

In compiling the omissions universe, examination staff will use reasonable means adapted to reflect the scale, organization, and complexity of the institution's mortgage business and its consumer compliance practices. For example, examination staff may request reports from among the following, if available:

[25] Financial institutions eligible for a partial exemption need not report data fields related to the property address data point.

- An electronic loan trial balance that includes all loans from the commercial, consumer, and mortgage departments;
- Reconciliation or "pipeline" reports showing incoming loan applications;
- A list of non-originated applications (if no report or list of non-originated applications is available, examination staff will have to manually compile the universe of non-originated loans from the review period);
- A list of loans sold, by loan type, if the financial institution sells mortgage loans that are not on the trial balance for the review period; and/or
- A list of any dwelling secured loans purchased, by loan type, during the review period.

Examination staff will request an explanation of the codes used by an institution to identify specific loan level information such as Consolidated Reports of Condition and Income (CALL Report) codes, loan purpose code, and collateral code to accompany any report that is being used to compile the omissions universe. Examination staff will use these codes to create the most likely universe of potentially reportable covered loan applications based on regulatory requirements.

The omissions universe may consist of all potentially reportable covered loan originations or purchases and non-originations combined into one data set or consist of multiple data sets, such as all potentially reportable covered loan originations or purchases in one data set and all non-originations in one data set.
After developing the omissions universe, examination staff will select the omissions sample using one of two methods:

1. Targeted Sampling. This is the preferred method because it is most likely to determine whether any applications were omitted. Examination staff will compare the omission universe to all applications reported on the LAR. The two most likely approaches consist of the following: 1) using an omissions universe that consists of one data set, compare all the data in that set against all applications reported on the LAR, or 2) using an omissions universe that consists of multiple data sets, individually compare each of the sets against all applications reported on the LAR.

   Once examination staff compares the omissions universe to the covered transactions reported on the LAR, any transactions in the omissions universe that are not on the LAR will constitute the targeted omissions universe. Examination staff will use the number of transactions in the targeted omissions universe to determine the omissions sample size using the HMDA Table.

2. Non-Targeted Sampling. If targeted sampling is not feasible, examination staff will perform non-targeted sampling from among the applications reflected in the reports considered. For example, it may not be feasible to conduct targeted sampling when the available data sets used to create the omissions universe have internal record identifiers that do not correlate to the record identifiers on the LAR. When performing non-targeted sampling, the total number of transactions in the reports considered is the omissions universe and is used to determine the sample size from the HMDA Table. Examination staff then will select a random sample from the omissions universe for review. Some transactions in the omission sample will be reported on the LAR and some will not be reported on the LAR, because the sample was created from a random sample of transactions from the omissions universe.

Assessing HMDA LAR Completeness

Examination staff will determine if an application is deemed to have been correctly reported, correctly not reported, or incorrectly reported on the LAR, depending on whether the transaction is for a covered transaction. During the completeness review, examination staff will use the sample sizes and thresholds stated in the HMDA Table.
Examination staff will determine whether a transaction was (or was to be) secured by a dwelling and, if so, whether or not is an excluded transaction.

The LAR is considered complete if the number of omissions is below the thresholds listed in Column C when testing the Initial Sample or Column D when testing the Total Sample listed in the HMDA Table in Paragraph 11 of the FFIEC Testing Guidelines.

K. Revalidation after Correction

Examination staff will consult with FDIC field territory management to establish a timeline for an institution's management to correct, review, and verify corrected data. The timeline will take into consideration the nature and complexity of the required data correction, an institution's resources, and the amount of time required to complete the consumer compliance examination, fair lending review, and/or CRA performance evaluation in a timely manner.

When errors of accuracy or completeness are identified that require correction, examination staff will review the corrections made by an institution once they are completed and before the institution resubmits the data. Examination staff will conduct revalidation by sampling in accordance with the HMDA Table, based on the size of the institution's corrected LAR, adjusted to address any identified omissions or over-reporting. If there were accuracy errors, examination staff will focus re-validation of corrections on the key data fields in which errors were identified during transaction testing or on any non-key data fields reviewed as part of a

fair lending review or CRA performance evaluation. If there were errors of omission, examination staff will consider the documentation provided by an institution of its corrective actions to ensure the LAR is complete.

L. Persistent Issues

If, during the revalidation, examination staff determines that any issues have not been corrected sufficiently and errors remain, examination staff will again instruct an institution to correct the remaining errors. Before revalidating the corrected LAR, examination staff will request that an institution provide monitoring and/or audit reports that document the actions taken to correct the data error(s). In these instances, examination staff will discuss with the institution's management expectations for the scope and documentation of the monitoring and/or audit review. Examination staff will review the monitoring and/or audit findings and revalidate LAR data to test the effectiveness of the data correction.

M. Examination Conclusions

Examination staff will summarize the strengths and weaknesses of an institution's HMDA-related CMS and document any systemic errors of LAR completeness or data inaccuracies in the Report of Examination, if warranted. When applicable, examination staff will describe any proactive steps management has taken to maintain compliance with HMDA and Regulation C.

Examination staff will document the conclusions of the HMDA transaction testing review and their assessment of the strength of the CMS in the Regional Automated Document Distribution and Imaging System (RADD) using the standardized HMDA workpapers. Also, examination staff will ensure that all examination workpapers related to the HMDA transaction testing and CMS review conclusions are maintained in RADD.

If examination staff identifies programmatic deficiencies related to an institution's compliance with HMDA and Regulation C and/or Level 3 or Level 2 HMDA violations, examination staff will isolate the root cause of the error(s) and relate them to specific weakness(es) in an institution's CMS. Whether or not an institution maintained procedures reasonably adapted to avoid errors is relevant to establishing a HMDA violation, as provided in the administrative enforcement provisions of Regulation C. *See* 12 CFR § 1003.6(b).

Examination staff will discuss any LAR completeness or accuracy errors that require LAR corrections or resubmissions with an institution's management during the course of the examination. Examination staff will request that an institution provide FDIC examination staff, field territory management or the Regional Office, whichever is appropriate, an acknowledgement that its management has verified the completeness and accuracy of the data and has resubmitted the corrected LAR. A copy of a summary screen indicating successful submission of HMDA data via the HMDA Platform is acceptable as such an acknowledgement. Examination staff will provide an institution with steps for corrective action to successfully address any problem areas and strengthen an institution's consumer compliance posture for the future. Examination staff will discuss all findings and recommendations at the exit meeting with management and/or the Board of Directors to obtain a commitment for corrective action.

References

12 CFR Part 1003

Official Interpretations, Supplement I to 12 CFR Part 1003

Designated Key HMDA Data Fields

The Federal Deposit Insurance Corporation (FDIC), Board of Governors of the Federal Reserve System (Board), and Office of the Comptroller of the Currency (OCC) have designated key HMDA data fields to support the efficient and effective evaluation of financial institutions' compliance with HMDA's requirements.[26] When evaluating financial institutions' compliance with HMDA requirements, the FDIC, Board, and OCC will focus primary attention on the Designated Key HMDA Data Fields during transaction testing for HMDA data collected on or after January 1, 2018.[27] However, in certain circumstances, consistent with the FFIEC HMDA Examiner Transaction Testing Guidelines, examination staff may determine that it is necessary to review additional HMDA data fields, as appropriate.

Table 1 lists all 110 HMDA data fields established in the FFIEC Filing Instructions Guide and their corresponding HMDA data points and identifies the Designated Key HMDA Data Fields.

Table 2 lists only the 37 Designated Key HMDA Data Fields and identifies the 21 key data fields applicable to financial institutions that are eligible for a partial exemption under the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA).

[26] *See* FIL-51-2017, FDIC Releases Interagency Designated Key HMDA Data Fields List.

[27] Each agency shall operate in accordance with its supervisory authority.

Table 1 lists all 110 HMDA data fields and their corresponding HMDA data points.

The 37 Designated Key HMDA Data Fields applicable to financial institutions not eligible for a HMDA partial exemption under the EGRRCPA are shown in ***italicized bold*** text.

The 21 Designated Key HMDA Data Fields applicable to financial institutions that are eligible for a HMDA partial exemption under the EGRRCPA are identified by an asterisk (*****).

#	Data Field Name	Data Point Name
1	Record Identifier – Value is 2	
2	Legal Entity Identifier (LEI)	Legal Entity Identifier (LEI)
3	***Universal Loan Identifier (ULI)*** or Non-Universal Loan Identifier (NULI)	***Universal Loan Identifier (ULI)*** or Non-Universal Loan Identifier (NULI)
4	***Application Date****	***Application Date****
5	***Loan Type****	***Loan Type****
6	***Loan Purpose****	***Loan Purpose****
7	Preapproval	Preapproval
8	Construction Method	Construction Method
9	***Occupancy Type****	***Occupancy Type****
10	***Loan Amount****	***Loan Amount****
11	***Action Taken****	***Action Taken****
12	***Action Taken Date****	***Action Taken Date****
13	Street Address	Property Address
14	City	Property Address
15	State	Property Location & Property Address
16	ZIP Code	Property Address
17	County	Property Location
18	***Census Tract****	***Property Location****
19	***Ethnicity of Applicant or Borrower: 1****	***Ethnicity****
20	Ethnicity of Applicant or Borrower: 2	Ethnicity
21	Ethnicity of Applicant or Borrower: 3	Ethnicity
22	Ethnicity of Applicant or Borrower: 4	Ethnicity
23	Ethnicity of Applicant or Borrower: 5	Ethnicity
24	Ethnicity of Applicant or Borrower: Free Form Text Field for Other Hispanic or Latino	Ethnicity
25	***Ethnicity of Co-Applicant or Co-Borrower: 1****	***Ethnicity****
26	Ethnicity of Co-Applicant or Co-Borrower: 2	Ethnicity
27	Ethnicity of Co-Applicant or Co-Borrower: 3	Ethnicity
28	Ethnicity of Co-Applicant or Co-Borrower: 4	Ethnicity
29	Ethnicity of Co-Applicant or Co-Borrower: 5	Ethnicity
30	Ethnicity of Co-Applicant or Co-Borrower: Free Form Text Field for Other Hispanic or Latino	Ethnicity

#	Data Field Name	Data Point Name
31	Ethnicity of Applicant or Borrower Collected on the Basis of Visual Observation or Surname	Ethnicity
32	Ethnicity of Co-Applicant or Co-Borrower Collected on the Basis of Visual Observation or Surname	Ethnicity
33	***Race of Applicant or Borrower: 1****	***Race****
34	***Race of Applicant or Borrower: 2****	***Race****
35	Race of Applicant or Borrower: 3	Race
36	Race of Applicant or Borrower: 4	Race
37	Race of Applicant or Borrower: 5	Race
38	Race of Applicant or Borrower: Free Form Text Field for American Indian or Alaska Native Enrolled or Principal Tribe	Race
39	Race of Applicant or Borrower: Free Form Text Field for Other Asian	Race
40	Race of Applicant or Borrower: Free Form Text Field for Other Pacific Islander	Race
41	***Race of Co-Applicant or Co-Borrower: 1****	***Race****
42	***Race of Co-Applicant or Co-Borrower: 2****	***Race****
43	Race of Co-Applicant or Co-Borrower: 3	Race
44	Race of Co-Applicant or Co-Borrower: 4	Race
45	Race of Co-Applicant or Co-Borrower: 5	Race
46	Race of Co-Applicant or Co-Borrower: Free Form Text Field for American Indian or Alaska Native Enrolled or Principal Tribe	Race
47	Race of Co-Applicant or Co-Borrower: Free Form Text Field for Other Asian	Race
48	Race of Co-Applicant or Co-Borrower: Free Form Text Field for Other Pacific Islander	Race
49	Race of Applicant or Borrower Collected on the Basis of Visual Observation or Surname	Race
50	Race of Co-Applicant or Co-Borrower Collected on the Basis of Visual Observation or Surname	Race
51	***Sex of Applicant or Borrower****	***Sex****
52	***Sex of Co-Applicant or Co-Borrower****	***Sex****
53	Sex of Applicant or Borrower Collected on the Basis of Visual Observation or Surname	Sex
54	Sex of Co-Applicant or Co-Borrower Collected on the Basis of Visual Observation or Surname	Sex
55	***Age of Applicant or Borrower****	***Age****
56	***Age of Co-Applicant or Co-Borrower****	***Age****
57	***Income****	***Income****
58	Type of Purchaser	Type of Purchaser

#	Data Field Name	Data Point Name
59	Rate Spread	Rate Spread
60	HOEPA Status	HOEPA Status
61	***Lien Status****	***Lien Status****
62	***Credit Score of Applicant or Borrower***	***Credit Score***
63	***Credit Score of Co-Applicant or Co-Borrower***	***Credit Score***
64	Applicant or Borrower, Name and Version of Credit Scoring Model	Credit Score
65	Applicant or Borrower, Name and Version of Credit Scoring Model: Conditional Free Form Text Field For Code 8	Credit Score
66	Co-Applicant or Co-Borrower, Name and Version of Credit Scoring Model	Credit Score
67	Co-Applicant or Co-Borrower, Name and Version of Credit Scoring Model: Conditional Free Form Text Field For Code 8	Credit Score
68	Reason for Denial: 1	Reason for Denial
69	Reason for Denial: 2	Reason for Denial
70	Reason for Denial: 3	Reason for Denial
71	Reason for Denial: 4	Reason for Denial
72	Reason for Denial: Conditional Free Form Text Field for Code 9	Reason for Denial
73	Total Loan Costs	Total Loan Costs or Total Points and Fees
74	Total Points and Fees	Total Loan Costs or Total Points and Fees
75	***Origination Charges***	***Origination Charges***
76	***Discount Points***	***Discount Points***
77	***Lender Credits***	***Lender Credits***
78	***Interest Rate***	***Interest Rate***
79	Prepayment Penalty Term	Prepayment Penalty Term
80	***Debt-to-Income Ratio***	***Debt-to-Income Ratio***
81	***Combined Loan-To-Value Ratio***	***Combined Loan-To-Value Ratio***
82	***Loan Term***	***Loan Term***
83	Introductory Rate Period	Introductory Rate Period
84	Balloon Payment	Non-Amortizing Features
85	Interest-Only Payments	Non-Amortizing Features
86	Negative Amortization	Non-Amortizing Features
87	Other Non-Amortizing Features	Non-Amortizing Features
88	***Property Value***	***Property Value***
89	***Manufactured Home Secured Property Type***	***Manufactured Home Secured Property Type***

#	Data Field Name	Data Point Name
90	Manufactured Home Land Property Interest	Manufactured Home Land Property Interest
91	***Total Units****	***Total Units****
92	Multifamily Affordable Units	Multifamily Affordable Units
93	Submission of Application	Application Channel
94	Initially Payable to Your Institution	Application Channel
95	Mortgage Loan Originator NMLSR Identifier	Mortgage Loan Originator NMLSR Identifier
96	Automated Underwriting System: 1	Automated Underwriting System
97	Automated Underwriting System: 2	Automated Underwriting System
98	Automated Underwriting System: 3	Automated Underwriting System
99	Automated Underwriting System: 4	Automated Underwriting System
100	Automated Underwriting System: 5	Automated Underwriting System
101	Automated Underwriting System: Conditional Free Form Text Field for Code 5	Automated Underwriting System
102	***Automated Underwriting System Result: 1***	***Automated Underwriting System***
103	Automated Underwriting System Result: 2	Automated Underwriting System
104	Automated Underwriting System Result: 3	Automated Underwriting System
105	Automated Underwriting System Result: 4	Automated Underwriting System
106	Automated Underwriting System Result: 5	Automated Underwriting System
107	Automated Underwriting System Result: Conditional Free Form Text Field for Code 16	Automated Underwriting System
108	***Reverse Mortgage***	***Reverse Mortgage***
109	***Open-End Line of Credit***	***Open-End Line of Credit***
110	***Business or Commercial Purpose***	***Business or Commercial Purpose***

Table 2 lists the 37 Designated Key HMDA Data Fields.

A # **Designated Key HMDA Data Fields for financial institutions not eligible for an EGRRCPA partial exemption**	B **Designated Key HMDA Data Fields for financial institutions that are eligible for an EGRRCPA partial exemption**	C
3	Universal Loan Identifier (ULI)	
4	Application Date	Application Date
5	Loan Type	Loan Type
6	Loan Purpose	Loan Purpose
9	Occupancy Type	Occupancy Type
10	Loan Amount	Loan Amount
11	Action Taken	Action Taken
12	Action Taken Date	Action Taken Date
18	Census Tract	Census Tract
19	Ethnicity of Applicant or Borrower: 1	Ethnicity of Applicant or Borrower: 1
25	Ethnicity of Co-Applicant or Co-Borrower: 1	Ethnicity of Co-Applicant or Co-Borrower: 1
33	Race of Applicant or Borrower: 1	Race of Applicant or Borrower: 1
34	Race of Applicant or Borrower: 2	Race of Applicant or Borrower: 2
41	Race of Co-Applicant or Co-Borrower: 1	Race of Co-Applicant or Co-Borrower: 1
42	Race of Co-Applicant or Co-Borrower: 2	Race of Co-Applicant or Co-Borrower: 2
51	Sex of Applicant or Borrower	Sex of Applicant or Borrower
52	Sex of Co-Applicant or Co-Borrower	Sex of Co-Applicant or Co-Borrower
55	Age of Applicant or Borrower	Age of Applicant or Borrower
56	Age of Co-Applicant or Co-Borrower	Age of Co-Applicant or Co-Borrower
57	Income	Income
61	Lien Status	Lien Status
62	Credit Score of Applicant or Borrower	
63	Credit Score of Co-Applicant or Co-Borrower	
75	Origination Charges	
76	Discount Points	
77	Lender Credits	
78	Interest Rate	
80	Debt-to-Income Ratio	
81	Combined Loan-To-Value Ratio	
82	Loan Term	
88	Property Value	
89	Manufactured Home Secured Property Type	
91	Total Units	Total Units
102	Automated Underwriting System Result: 1	
108	Reverse Mortgage	
109	Open-End Line of Credit	
110	Business or Commercial Purpose	

Consumer Leasing

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.

The Electronic Signatures in Global and National Commerce Act (the E-Sign Act), 15 U.S.C. 7001 et seq., was enacted in 2000 and did not require implementing regulations. On November 9, 2007, amendments to Regulation M and the official staff commentary were issued to simplify the regulation and provide guidance on the electronic delivery of disclosures consistent with the E-Sign Act.[1]

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the Truth in Lending Act and the Consumer Leasing Act to require annual adjustments of the threshold by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers. Transactions at or below the thresholds are subject to the protections of the regulations.

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

The definition of certain terms is necessary to understand the requirements imposed by the CLA. These terms include lease, lessor, lessee, consumer lease, open-end lease, closed-end lease, realized value, residual value, gross capitalized cost, capitalized cost reduction, and adjusted capitalized cost.

"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 $58,300 effective January 1, 2020 (adjusted annually per CPI).

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. §1026.2(a)(16).

A lease meeting all of these criteria is covered by the CLA and the Consumer Financial Protection Bureau's Regulation M. If any one of these criteria is not met, for example, if the leased

1 72 FR 63456, November 9, 2007. These amendments took effect December 10, 2007, with a mandatory compliance date of October 1, 2008.

property is used primarily for business purposes or if the total contractual cost exceeds the threshold listed above, the CLA and Regulation M do not apply. This figure is adjusted every year to match changes in the consumer price index for Urban Wage Earners and Clerical Workers.

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.

"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.

The general disclosures required by Part 1013 may be provided to the lessee in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act. The E-Sign Act does not mandate that institutions or consumers use or accept electronic records or signatures. It permits institutions to satisfy any statutory or regulatory requirements by providing the information electronically after obtaining the consumer's affirmative consent. But before consent can be given, consumers must be provided with the following information:

- any right or option to have the information provided in paper or non-electronic form;
- the right to withdraw the consent to receive information electronically and the consequences, including fees, of doing so;
- the scope of the consent (for example, whether the consent applies only to a particular transaction or to identified categories of records that may be provided during the course of the parties' relationship);
- the procedures to withdraw consent and to update information needed to contact the consumer electronically; and
- the methods by which a consumer may obtain, upon request, a paper copy of an electronic record after consent has been given to receive the information electronically and whether any fee will charged.

The consumer must consent electronically or confirm consent electronically in a manner that "reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent."

After the consent, if an institution changes the hardware or software requirements such that a consumer may be prevented from accessing and retaining information electronically, the institution must notify the consumer of the new requirements and must allow the consumer to withdraw consent without charge.

Disclosures are to be provided in the following circumstances. (Advertisement requirements are discussed in the advertising section.)

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 an advertisement 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; and
- 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. (§ 1013.7(d)(2)).

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.

For an advertisement accessed by the consumer in electronic form, the required disclosures may be provided to the consumer in electronic form in the advertisement, without regard to the consumer consent or other provisions of the E-Sign Act. An electronic advertisement (such as an advertisement on an Internet web site) that provides a table or schedule of the required disclosures is considered a single advertisement if the advertisement clearly refers the consumer to the location where the additional required information begins. For example, in an electronic advertisement, a term triggering additional disclosures may be accompanied by a link that directly connects the consumer to the additional disclosures.

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 that meet the threshold amount are given meaningful and accurate disclosures of lease terms.
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[2]

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?

   a. For disclosures provided electronically, (other than for advertising requirements) are the disclosures in electronic form provided in compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act)?[3]

   b. For an advertisement accessed by the consumer in electronic form, are the disclosures required by 12 CFR 1013.7 provided to the consumer in electronic form in the advertisement? (§1013.3(a))

2. Are the disclosures given in a dated statement and in the prescribed are in the format prescribed? (§1013.3(a)(1))
3. Is the information required by §1013.4(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? (§1013.3(a)(2))
4. Are the disclosures timely? (§1013.3(a)(3))
5. If the lease involves more than one lessee, are the disclosures provided to any lessee who is primarily liable? (§1013.3 (c))
6. If additional information is provided, is it provided in a manner such that it does not mislead or confuse the lessee? (§1013.3(b))
7. Are all estimates clearly identified and reasonable? (§1013.3(d))
8. Are the disclosures accurate and do the disclosures contain the information required by §1013.4 (a) through (t)? (§1013.4)
9. Are disclosures given to lessees when they "renegotiate" or "extend" their leases? (§1013.5)

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? (§1013.4(g)(1))

  2. Are any early termination charges reasonable? (§1013.4(g)(1), 4(q))

- at end of lease term, for wear and use,

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[2] These reflect the interagency examination procedures in their entirety.

[3] The final amendments to Regulation M on the electronic delivery of disclosures, consistent with the requirements of the E-Sign Act, became effective December 10, 2007 and require mandatory compliance by October 1, 2008.

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? (§1013.4(h)(3))

2. Are standards for wear and use reasonable? (§1013.4(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? (§1013.4(m)(2))

2. Are the lessee and lessor permitted to make a mutually agreeable final adjustment regarding excess liability? (§1013.4(m)(3))

- in delinquency, default or late payment.

1. Does the lessor disclose penalties or other charges for delinquency, default or late payments? (§1013.4(q))

2. Are the penalties or other charges reasonable? (§1013.4(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? (§1013.7(a))

2. Are the disclosures contained in the advertisements clear and conspicuous? (§1013.7(b))

3. Do catalog/multiple page advertisements comply with the page reference requirements? (§1013.7(c))

4. When triggering terms are used, do the advertisements contain the additional required information? (§1013.7(d))

5. Do merchandise tags which use triggering terms refer to a sign or display that contains the additional required disclosures? (§1013.7(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)? (§1013.7(f))

Miscellaneous

A. Are records and other evidence of compliance (other than for advertising requirements under §1013.7) retained for a period of no less than two years? (§1013.8)

References

12 CFR 1013 - Regulation M—Consumer Leasing (CFPB's regulation and official staff interpretation (commentary))

Consumer Credit Protection Act: Title 1, Chapter 5—Consumer Leases

15 USC 1667 et seq: Consumer Leasing Act

15 USC 7001 et seq: Electronic Signatures in Global and National Commerce Act

Examination Checklist – Consumer Leasing		
	Yes	**No**
1. Does the Bank engage in consumer leasing or purchase consumer leases from lessors? (§1013.2(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? (§1013.3(a)(3))		
3. Are the disclosures clear and conspicuous and provided in writing in a form the consumer may keep? (§1013.3(a))		
4. Are disclosures in electronic form provided in compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act)? (§1013.3(a))		
5. For an advertisement accessed by the consumer in electronic form, are the disclosures required by 12 CFR 1013.7 provided to the consumer in electronic form in the advertisement? (§1013.3(a))		
6. 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? (§1013.3(a)(1))		
7. Is the information required by §1013.4(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? (§1013.3(a)(2))		
8. If the lease involves more than one lessee, are the disclosures provided to any lessee who is primarily liable? (§1013.3(c))		
9. If additional information is provided, is it provided in a manner such that it does not mislead or confuse the lessee? (§1013.3(b))		
10. Are disclosures provided to at least one lessee where there are multiple lessees and by at least one lessor when there are multiple lessors? (§1013.3(c))		
11. Are all estimates clearly identified and reasonable? (§1013.3(d))		
12. Are the following disclosures made in the lease?		
A. Description of property (§1013.4(a))		
B. Amount due at lease signing or delivery (§1013.4(b))		
C. Payment schedule and total amount of periodic payments (§1013.4(c))		
D. Other charges(§1013.4(d))		
E. Total of payments(§1013.4(e))		
F. Regarding payment calculations:		
i. Gross capitalized cost (§1013.4(f)(1)))		
ii. Capitalized cost reduction (§1013.4(f)(2)		
iii. Adjusted capitalized cost (§1013.4(f)(3))		

Examination Checklist – Consumer Leasing		
	Yes	**No**
iv. Residual value (§1013.4(f)(4))		
v. Depreciation and any amortized amounts (§1013.4(f)(5))		
vi. Rent charge (§1013.4(f)(6))		
vii. Total of base periodic payments (§1013.4(f)(7))		
viii. Lease payments (§1013.4(f)(8))		
ix. Basic periodic payment (§1013.4(f)(9))		
x. Itemization of other charges (§1013.4(f)(10))		
xi. Total periodic payment (§1013.4(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 (§1013.4(g)(1))		
ii. The amount or description of the method for determining the amount of any penalty or other charges for early termination (§1013.4(g)(1))		
iii. In a form substantially similar to the sample (§1013.4(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 (§1013.4(h)(1))		
ii. A statement of the lessor's standards for wear and use, which must be reasonable (§1013.4(h)(2))		
iii. In a form substantially similar to the sample (§1013.4(h)(3))		
I. Purchase option (§1013.4(i))		
J. Statement referencing other nonsegregated disclosures (§1013.4(j))		
K. Liability between residual and realized values (§1013.4(k))		
L. Right of appraisal (§1013.4(l))		
M. For open-end leases:		
i. The rent and other charges paid by lessee (§1013.4(m)(1))		
ii. Liability at end of lease term based on residual value and any excess liability (§1013.4(m) and (m)(2))		
iii. Mutually agreeable final adjustment (§1013.4(m)(3)		

Examination Checklist – Consumer Leasing		
	Yes	**No**
N. Fees and taxes (§1013.4(n))		
O. Regarding insurance:		
i. Are the types and amounts of insurance that the lessee is required to have disclosed?(§1013.4(o))		
ii. If the lessor provides insurance, are the types, amounts, and cost also disclosed? (§1013.4(o)(1))		
P. Warranties or guarantees (§1013.4 (p))		
Q. Penalties and other charges for late payments, delinquency, or default (§1013.4(q))		
R. Security interest other than a security deposit (§1013.4(r))		
S. Regarding any information on rate:		
i. Does the lessor provide a percentage rate in an advertisement or in documents evidencing the lease transaction? (§1013.4(s))		
ii. If so, does the lessor refrain from using the term "annual percentage rate," "annual lease rate," or any equivalent term in the lease disclosure? (§1013.4(s))		
iii. Does a statement that "this percent may not measure the overall cost of financing this lease" accompany the rate? (§1013.4(s))		
13. Are disclosures given to lessees when they "renegotiate" or "extend" their leases? (§1013.5)		
14. If the institution provides disclosures via electronic communication does it do the following: (§1013.6(b))		
A. Obtain a consumer's affirmative consent when providing disclosures related to a transaction? (§1013.6(c))		
B. Provide disclosures either by: (§1013.6(d))		
i. Sending to consumer's electronic address? (§1013.6(d)(1)) OR		
ii. Making the disclosures available at another location (such as a website)? (§1013.6(d)(2))		
C. If making the disclosure available at another location, does the institution: (§1013.6(d)(2))		
i. Alert the consumer of the availability of disclosures by sending a notice to their electronic address or postal address? (§1013.6(d)(2)(i))		
ii. Reference the account involved (if applicable) and the address of location where the disclosure is available? (§1013.6(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? ((§1013.6(d)(2)(ii))		

Examination Checklist – Consumer Leasing		
	Yes	**No**
D. If the electronic communication is returned, takes reasonable steps to attempt redelivery of disclosures returned undelivered? (§1013.6(e)		
15. Does the bank advertise its leasing program? If so,		
A. Do the advertisements advertise terms that are usually and customarily available? (§1013.7(a))		
B. Are the advertisements clear and conspicuous? §1013.7(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? (§1013.7(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)? (§1013.7(b)(2))		
C. Do catalog and multiple page advertisements comply with the page reference requirements? (§1013.7(c))		
D. If any triggering terms are used, are all the following disclosures made? (§1013.7(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.		
16. Do merchandise tags which use triggering terms refer to a sign or display that contains the additional required disclosures (§1013.7(e))		
17. 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? (§1013.7)		
A. Is the toll free number listed along with a reference that the number may be used by a consumer to obtain the information? (§1013.7(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? (§1013.7(f)(1)(ii))		
C. Has the toll-free telephone number been available for no fewer than ten days, beginning on the date of broadcast? (§1013.7(f)(2)(i))		

Examination Checklist – Consumer Leasing		
	Yes	**No**
D. Does the lessor provide the information required by paragraph (d)(2) over the toll-free number, orally or in writing upon request? (§1013.7(f)(2)(ii))		
18. Are records and other evidence of compliance retained for a period of no less than two (2) years as required by the CLA? (§1013.8)		

Servicemembers Civil Relief Act of 2003

Introduction

The Servicemembers Civil Relief Act of 2003 (SCRA) was signed into law on December 19, 2003, amending and replacing the Soldiers' and Sailors' Civil Relief Act of 1940, and is codified at 50 U.S.C. 3901 et seq.[1] It was further amended December 10, 2004, by the Veterans Benefits Improvement Act of 2004. The law protects members of the Army, Navy, Air Force, Marine Corps and Coast Guard, including members of the National Guard, as they enter military service (active duty[2]), as well as commissioned officers of the Public Health Service and the National Oceanic and Atmospheric Administration engaged in active service. Some of the benefits accorded servicemembers by the SCRA also extend to servicemembers' spouses, dependents, and other persons subject to the obligations of servicemembers. Periodically, various laws have extended the availability of certain protections. Major relief provisions of the SCRA include:

Maximum Rate of Interest on Loans, Including Mortgages

Upon receiving a written notice and a copy of a servicemember's military orders, creditors must, for the duration of the servicemember's military service, reduce the interest[3] rate on debts[4] incurred by the servicemember, or a servicemember and spouse jointly, before entry into military service to no more than 6 percent per year. (This applies to the individual servicemember's debt or joint debt with a spouse.)

Creditors shall not condition the granting of benefits upon the use of a specific form or require that a written notice explicitly request benefits. Creditors shall accept copies of borrowers' military orders as written notice of eligibility for reduced interest rates pursuant to the SCRA via email facsimile, mail, or overnight delivery. Creditors shall also accept borrowers' requests for any form of military deferment or forbearance as written notice of eligibility for reduced interest rates pursuant to the SCRA.

Upon receipt of notice, creditors must retroactively reduce the interest rate on servicemember's debts as of the date on which the servicemember was called to military service, in the case of a reservist or inductee, the day on which the servicemember received his or her orders.[5] Creditors must maintain the interest rate reduction for the duration of the servicemember's period of military service.[6] Additionally, in the case of a mortgage, trust deed, or other security in the nature of a mortgage, creditors must extend this interest rate reduction for one year after the end of the servicemember's military service.[7]

Creditors who reduce the interest rate on the obligations of a servicemember must forgive interest in excess of 6 percent.

The reduced interest rate provision applies unless a court finds the ability of the servicemember to pay interest on the debt at a higher interest rate is not materially affected by his or her military service. In such cases, the court may grant a creditor relief from the interest rate limitations of the Act.

Residential and Motor Vehicle Purchases and Leases

Contracts for the purchase of real or personal property, for which the servicemember has paid a deposit or made a payment before the servicemember enters military service, may not be rescinded or terminated after the servicemember's entry into military service for a breach of the terms of the

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1 The SCRA was previously codified and cited as 50 U.S.C. App. 501 et seq.

2 In the case of servicemembers who are members of the Army, Navy, Marine Corps, or Coast Guard, active duty is defined as "full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty." 10 U.S.C. § 101(d). Note the term "military service" under the SCRA also includes National Guard members under a call of duty authorized by the President or the Secretary of Defense for more than 30 consecutive days and servicemembers who are commissioned officers of the Public Health Service and the National Oceanic and Atmospheric Administration engaged in "active service." 50 U.S.C. § 3911(2).

3 "Interest" is defined in the SCRA to include service and renewal charges or any other fees or charges, except for charges for bona fide insurance. 50 U.S.C. § 3937(d).

4 Section 207 of the SCRA, 50 U.S.C. § 3927, applies to "an obligation or liability . . . incurred by the servicemember, or the servicemember and the servicemember's spouse jointly, before the service member enters military service."

5 50 U.S.C. §§ 3917 and 3937

6 Creditors cannot schedule these benefits to terminate automatically at any point prior to the date on which the servicemember leaves the service, nor can creditors require servicemembers to periodically reapply or recertify their eligibility to maintain benefits.

7 The extension of the interest rate reduction for mortgages for an additional one-year period after the end of military service was added by section 2203(b) of Housing and Economic Recovery Act of 2008 (HERA), which was signed into law on July 30, 2008. Pub. L. 110-289.

contract occurring before or during their military service, or the property repossessed because of the breach without a court order.

Termination of certain residential or motor vehicle leases may be made at the option of the lessee servicemember if the servicemember provides to the lessor or the lessor's agent written notice of the request for termination along with a copy of the military orders.

Automobiles leased for personal or business use by the servicemember or his dependent may be terminated by the servicemember, if after the lease is executed, the servicemember enters military service for a period of 180 days or more.

Additionally, an automobile lease entered into while the servicemember is on active duty may be terminated by the servicemember if he or she receives military orders for a permanent change of station (PCS) outside the continental United States (this would include a PCS to Hawaii or Alaska) or deployment for a period of 180 days or more.

Termination of an automobile lease also includes the return of the automobile to the lessor within 15 days after delivery of the written notice of termination.

Termination is permitted of pre-service "residential, professional, agricultural, or similar" leases occupied or intended to be occupied by a servicemember or a dependent as well as those leases executed during military service where the servicemember subsequently receives orders for a PCS or a deployment for a period of 90 days or more.

Foreclosure, Eviction from Bank-Owned Property

Real or personal property owned by a servicemember before the servicemember's military service that secures a mortgage, trust deed, or similar security interest cannot be sold, foreclosed upon, or seized based on a breach of such a secured obligation during the period of military service or one year thereafter without a court order.[8] Additionally, in an action filed during or within one year after a servicemember's military service, a court may, after a hearing on its own, or shall, upon application by a servicemember, stay a proceeding to enforce an obligation as described above or adjust the debt, when the member's ability to comply with the obligation is materially affected by reason of the member's military service.[9]

A landlord may not evict a servicemember or his or her dependents from certain residences[10] occupied primarily as a residence during a period of military service except by court order.

A creditor must notify the homeowner by a statement or notice, written in plain English by the Secretary of Housing and Urban Development, in consultation with the Secretary of Defense and the Secretary of Treasury, explaining the mortgage and foreclosure rights of servicemembers, and the dependents of such servicemembers, under the Servicemembers Civil Relief Act (50 U.S.C. 3901 et seq.),

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[8] Any sale or foreclosure made in violation of this provision shall be void. *See* section 303(c) of the SCRA, 50 U.S.C. 3953(c). Originally, this provision applied only to sales, foreclosures, or seizures of property which occurred during or within 90 days after a servicemember's period of service. In 2008, this protection was temporarily extended from 90 days to 9 months pursuant to section 2203 of HERA. In 2012, this provision was further amended to temporarily extend the protections from 9 months to one year by the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012. Pub. L. No. 112-154 (Aug. 12, 2012). In 2014, the temporary extension of these protections for one year was renewed once more, pursuant to the Foreclosure Relief and Extension for Servicemembers Act of 2014. Pub. L. No. 113-286 (Dec. 18, 2014). In 2015, this temporary extension was once again renewed, pursuant to the Foreclosure Relief and Extension for Servicemembers Act of 2015. Pub L. No. 114-142 (Mar. 31, 2016). In 2017, this temporary extension was renewed by the National Defense Authorization Act for Fiscal Year 2018. Pub. L. No. 115-91 (Dec. 12, 2017). In the absence of further legislation, these extensions will expire on December 31, 2019, and on January 1, 2020, section 303(c) of the SCRA will once again only apply to sales, foreclosures, or seizures of property occurring during or within 90 days after a servicemember's period of service.

[9] Section 303(b) of the SCRA, 50 U.S.C. § 3953(b). As with section 303(c) of the SCRA, discussed above, this provision originally only applied to proceedings filed during or within 90 days after a servicemember's period of service. This period repeatedly has been temporarily extended to be up to one year after service, most recently by Pub. L. No. 115-91 (Dec. 12, 2017). In the absence of further legislation, this extension will expire on December 31, 2019, and on January 1, 2020, section 303(b) of the SCRA will once again only apply to proceedings occurring during or within 90 days after a servicemember's period of service.

[10] The law as originally passed by Congress applied to dwellings with monthly rents of $2,400 or less. Accordingly, evictions involving residences with monthly rents of $2,400 or less needed a court order. This amount is adjusted yearly and is published in the Federal Register by the Department of Defense. The rent ceiling is adjusted annually for inflation and in 2018 the amount is $3,716.73 . This annual adjustment is generally announced in February.

including the toll-free military one source number to call if servicemembers, or the dependents of such servicemembers, require further assistance.

Life Insurance Assigned as Security

If a life insurance policy on the life of a servicemember is assigned before military service to secure the payment of an obligation, the assignee of the policy (except the insurer in connection with a policy loan) may not exercise, during the period of the servicemember's military service or within one year thereafter, any right or option obtained under the assignment, absent compliance with a court order or other specified requirement.

Adverse Action

The fact that a servicemember applies for, or receives a stay, postponement, or suspension of his or her obligations or liabilities pursuant to the SCRA may not in itself provide the basis for the following:

A determination by a lender or other person that the servicemember is unable to pay the obligation or liability in accordance with its terms;

A creditor's denial or revocation of credit, change in terms of an existing credit arrangement, or refusal to grant credit to the servicemember in substantially the amount or on substantially the terms requested;

An adverse report relating to the creditworthiness of the servicemember by or to a consumer reporting agency;

A refusal by an insurer to insure the servicemember;

An annotation in a servicemember's record by a creditor or a person engaged in the practice of assembling or evaluating consumer credit information identifying the servicemember as a member of the National Guard or a reserve component; or

A change in the terms offered or conditions required for the issuance of insurance.

Relief for Other Obligors

Whenever a court grants a stay, postponement, or suspension to a servicemember on an obligation, it may similarly grant a person primarily or secondarily liable such a stay, postponement, or suspension.

Examination Objectives

1. Determine the institution's compliance with the provisions of the SCRA, as applicable, to the institution's product offering and operations, including management of other real estate owned where a servicemember or his/her dependents may be tenants.

2. Assess the quality of the institution's compliance risk management systems and its policies and procedures for implementing the provisions.

3. Determine the reliance that can be placed on the institution's internal controls and procedures for monitoring the institution's compliance with the provisions.

4. Determine corrective action when violations of law are identified or when the institution's policies or internal controls are deficient.

Examination Procedures[11]

General

1. Through discussions with management and review of available information, determine whether the institution's internal controls are adequate to ensure compliance with the SCRA. Consider:

   - policies and procedures
   - account documentation
   - checklists
   - computer program documentation, including any computer program testing and validation.

2. Determine the extent and adequacy of the training received by individuals whose responsibilities relate to compliance with the regulation. Review any training materials pertaining to the Act and determine if the training is comprehensive and covers the various aspects of the provisions that apply to the creditor's offerings and operations.

3. Review compliance reviews or audit materials, including work papers and reports, to determine if:

[11] These reflect the interagency examination procedures in their entirety, with adjustments to reflect intervening statutory changes and threshold adjustments. See, for example, footnotes 8 through 10 .

- The scope of any audits address all provisions of the SCRA, as applicable;
- Transaction testing includes samples covering relevant product types and decision centers (for example, mortgage and credit card processing centers);
- The work performed is accurate;
- Significant deficiencies and their causes are included in reports to management or to the Board of Directors;
- Management has taken corrective actions to follow-up on previously identified deficiencies; and,
- The frequency of review/audit is appropriate.

4. If any complaints based on the SCRA have been filed against the institution, determine:
   - Why were they filed, and
   - How they were resolved.
5. If the institution has received any actual requests for relief under the SCRA, determine whether appropriately trained staff reviewed the requests and if appropriate records are maintained.

Interest Rate Reduction for Loans, Including Mortgages

6. Determine how the institution handles requests for interest rate reductions under the SCRA on an obligation incurred by a servicemember or by a servicemember and spouse jointly, before the servicemember entered military service.

7 Determine how the institution calculates the reduced interest rate. Does the institution include all service and renewal charges, as well as other fees and charges, with the exception of charges for bona fide insurance?

8. Determine whether the institution applies the interest rate reduction effective as of the date the servicemember was called to military service.

9. Determine whether the institution applies the interest rate reduction throughout the term of the servicemember's military service for all credit products. In the case of a mortgage, the institution must continue to apply the interest rate reduction for a one- year period following the termination of military service.

Residential and Motor Vehicle Leases

10. Determine, in the case of a residential lease entered into before the servicemember entered into military service or executed by the servicemember while in military service but who subsequently receives orders for a permanent change of station or for a deployment of at least 90 days, that the institution permits the servicemember to terminate the lease.

11. Determine if the institution permits the servicemember to terminate a motor vehicle lease where:
    - The motor vehicle lease is for personal or business use by the servicemember or his/her dependent; and,
    - The lease is executed by the servicemember before he/she enters military service for a period of 180 days or more, or
    - The servicemember, while in military service, executes the lease and subsequently receives military orders for a PCS outside of the continental United States (this include a PCS to Hawaii or Alaska), or deployment with a military unit for a period of 180 days or more.

Foreclosure, Eviction from Bank-Owned Property

12. Determine, in the case of an institution acting as a landlord, that the institution does not evict a servicemember or his/her dependents[12] from a residence covered by the Act occupied primarily as a residence during a period of military service except by court order.

13. Determine whether, in the case of real or personal property owned by a servicemember before the servicemember's military service and is secured by a mortgage, trust deed, or similar security interest, the institution obtains a court order before initiating the sale, foreclosure, or seizure based on a breach of such a secured obligation during the period of military service or one year thereafter.

Installment Contracts

14. Determine, in the case of an institution that finances or purchases installment contracts for the purchase of real or personal property, that where a servicemember has paid a

[12] Dependents are defined in the SCRA as (a) the servicemember's spouse, (b) the servicemember's child, or (c) an individual for whom the servicemember provided more than one-half the individual's support for 180 days preceding an application for relief under the SCRA.

deposit or made a payment before entering military service, that the contract was not rescinded or terminated by the institution after the servicemember's entry into service, absent a court order for a breach of the terms of the contract occurring before or during the military service, or the property repossessed because of the breach.

Insurance Assigned as Security for a Loan

15. Determine, in the case of an insurance policy on the life of a servicemember that is assigned before the servicemember's military service as security for an obligation, that the institution does not exercise, during a period of military service or within one year thereafter, any right or option obtained under the assignment, absent a court order. This prohibition does not apply—

- if the assignee has written consent of the insured servicemember, obtained during his/her military service;
- when the premiums on the policy are due and unpaid; or
- upon the death of the insured.

Adverse Action

16. Determine, in the case of an application from or receipt by a servicemember of a stay, postponement, or suspension of an obligation, that the institution does not use such action as a basis of:

- a determination that the lender is unable to pay the obligation or liability in accordance with its terms;
- denial or revocation of credit; change in terms of an existing credit; or refusal by the creditor to grant credit to the servicemember in substantially the same amount or terms; or
- an adverse credit report or reference.

Examination Conclusions

17. Conclude the examination after taking the following actions:

- Fully address identified deficiencies and violations, if any
- Attach appropriate supporting workpaper documentation
- Discuss findings with management and board of directors
- Write comments, as applicable, in the Report of Examination
- Include appropriate violation write-ups
- Discuss proposed enforcement action, if needed

References:

Servicemember Civil Relief Act, Pub. L. 108-189 (codified at 50 U.S.C. 3901 et seq.)

Veterans Benefits Improvement Act of 2004, Pub. L. 108-454

Housing Benefits Improvement Act of 2004, Pub. L. 110-289

Helping Heroes Keep their Homes Act of 2010, Pub. L. 111–346

Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012, Pub. L. No. 112-154

Foreclosure Relief and Extension for Servicemembers Act of 2014, Pub. L. 113-286

Foreclosure Relief and Extension for Servicemembers Act of 2015, Pub. L. 114-142

Regulations implementing 20 U.S.C. § 1078(d), Federal payments to reduce student interest costs

National Defense Authorization Act for Fiscal Year 2018. Pub. L. No. 115-91

Examination Checklist – Servicemembers Civil Relief Act		
	Yes	**No**
Section 3919 Exercise of Rights Under Act Not to Affect Certain Future Financial Transactions		
1. Does the creditor refrain from taking adverse action against a servicemember solely because the servicemember exercised rights under the Act? (50 U.S.C. § 3919) **(If No, cite a violation of Section 3919.)**		
Section 3937 Maximum Rate of Interest in Debts Incurred Before Military Service		
1. Did the creditor reduce the interest rate on obligations of a servicemember or of a servicemember jointly with the servicemember's spouse, incurred before military service, to no more than 6 percent during the period of military service upon receipt of written notice and a copy of the servicemember's military orders? (3937(a)(1)) Note that in the case of a mortgage, the 6 percent cap extends to one year following the end of military service. Interest under the SCRA includes all service, renewal, or other charges and fees with the exception of bona fide insurance charges. **(If No, cite a violation of Section 3937(a)(1).)**		
2. Did the creditor forgive interest in excess of 6 percent? (3937(a)(2)) **(If No, cite a violation of Section 3937(a)(2).)**		
3. Did the creditor reduce any periodic payment due by the servicemember by the amount of the interest forgiven? (3937(a)(3)) **(If No, cite a violation of Section 3937(a)(3).)**		
4. Upon receipt of the written notice from the servicemember and a copy of the military orders, did the creditor apply the interest rate reduction retroactively to the date on which the servicemember is called to military service? (3937(b)(2)) **(If No, cite a violation of Section 3937(b)(2).)**		
Section 3952 Protection under Installment Contracts for Purchase or Lease		
1. Did the creditor obtain a court order before rescinding or terminating contracts by a servicemember for the purchase, lease, or bailment of real or personal property (including a motor vehicle) for any breach of terms occurring before or during military service, provided a deposit or installment had been paid before entry into military service? Similarly, did the creditor obtain a court order before repossessing property due to breach of terms? (3952(a)) **(If No, cite a violation of Section 3952(a).)**		
Section 3953 Mortgages and Trust Deeds		
1. Did the creditor obtain a court order before selling, foreclosing, or seizing real or personal property due to a breach of an obligation by a servicemember during the period of military service or within one year after without a court order? (3953(c)) Note that HERA and subsequent amendments to HERA sunset the one year extension on December 31, 2019, and the SCRA reverts to the original statutory provision of 90 days on January 1, 2020. **(If No, cite a violation of Section 3953(c).)**		
Section 3955 Termination of Residential or Motor Vehicle Lease		
1. Did the creditor terminate the lease within the stipulated time once the requirements for termination were met by the servicemember lessee? (3955(d)) **(If No, cite a violation of Section 3955(d).)**		

Examination Checklist – Servicemembers Civil Relief Act		
	Yes	**No**
2. Did the creditor refund the lease amounts paid in advance for a period after the effective date of termination within 30 days of the effective date of the termination of the lease? (3955(e) **(If No, cite a violation of Section 3955(e).)**		
Section 3957 Protection of Life Insurance Policy		
1. Did the creditor obtain a court order before exercising any right or option obtained under an assignment of the servicemember's life insurance policy made before the servicemember's military service during the period of military service or within one year thereafter? (3957(a)) (**If No, cite a violation of Section 3957(a).)**		

Talent Amendment: Limitations on Terms of Consumer Credit Extended to Service Members and Dependents

Background

Examiners should reference the Military Lending Act examination procedures (Chapter V-13.1 in the Compliance Examination Manual) for consumer credit transactions occurring on or after October 3, 2016, as relevant. For consumer credit transactions occurring prior to these dates, examiners should reference the Talent Amendment examination procedures (Chapter V-12.1 in the Compliance Examination Manual).

Department of Defense (DoD) regulations implementing the consumer protection provisions of the John Warner National Defense Authorization Act for Fiscal Year 2007[1] contain limitations and requirements for certain types of consumer credit extended to active duty service members and their spouses, children, and other dependents ("covered borrowers"). The regulation covers "payday loans," "vehicle title loans," and "tax refund anticipation loans," as defined by the DoD rule ("covered transactions"), and applies to all persons that meet the definition of creditor in Regulation Z[2] who are engaged in the business of extending such credit and their assignees.

For covered transactions, the DoD rule limits the amount that a creditor can charge, including interest, fees and charges imposed for credit insurance, debt cancellation and suspension, and other credit-related ancillary products sold in connection with the transaction. The total charges must be expressed as a total dollar amount and as an annualized rate referred to as the "Military Annual Percentage Rate," or "MAPR," which may not exceed 36 percent. The MAPR includes charges that are not included in the finance charge or APR disclosed under the Truth in Lending Act (TILA), and must be separately disclosed for covered transactions. Among other provisions, the DoD rule

- provides a safe harbor and model form for creditors to use in connection with identifying covered borrowers;
- requires creditors to provide written and oral disclosures in addition to those required by TILA;
- prohibits certain loan terms, such as prepayment penalties, mandatory arbitration clauses and unreasonable legal notice requirements; and
- restricts loan rollovers and refinancings.

Creditors that knowingly violate the rule may be subject to criminal penalties, and a credit agreement that is prohibited under the rule is void from inception. The final rule took effect on October 1, 2007, and applies to covered transactions that are consummated on or after that date.

Definitions (§232.3)

"Consumer Credit"

Consumer Credit means closed-end credit offered or extended to a covered borrower primarily for personal, family, or household purposes for payday loans, vehicle title loans, and tax refund anticipation loans, as defined below.

a. Payday loans – Closed-end credit

- with a term of 91 days or fewer;
- in which the amount financed does not exceed $2,000; and
- in which the covered borrower receives funds from and incurs interest and/or is charged a fee by a creditor, and contemporaneously with the receipt of funds
  - provides a check or other payment instrument to the creditor, who agrees not to deposit or present it for more than one day; or
  - authorizes the creditor to initiate a debit to the borrower's deposit account by electronic fund transfer or remotely created check after one or more days.

b. Motor vehicle title loans – Closed-end credit

- with a term of 181 days or fewer; and
- secured by the title to a motor vehicle that has been registered for use on public roads and is owned by the covered borrower (other than a purchase money transaction).

c. Tax refund anticipation loans – Closed-end credit in which the covered borrower expressly

1 Public Law 109–364, § 670, 120 Stat. 2266 (2006) (codified at 10 U.S.C. § 987).

2 15 U.S.C. § 1602(f). Among other things, Regulation Z, 12 C.F.R. Part 226, which implements the Truth in Lending Act (TILA), states that a creditor is one who "regularly" extends credit to consumers that is subject to a finance charge or is payable by written agreement in more than four installments and to whom the obligation is initially payable. A creditor making loans not secured by dwellings extends credit regularly if it makes more than 25 loans a year. 12 C.F.R. § 226.2(a)(17).

- grants the creditor the right to receive all or part of the covered borrower's income tax refund; or
- agrees to repay the loan with the proceeds of the covered borrower's refund.

"Covered Borrower"

A covered borrower is a person with the following status at the time he or she becomes obligated on a covered transaction.

- A regular or reserve member of the
  - Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty or under a call or order that does not specify a period of 30 days or fewer, or such a member serving on Active Guard and Reserve Duty as that term is defined in 10 U.S.C. § 101(d)(6); or
  - the member's
    - spouse;
    - child, as defined in 38 U.S.C. § 101(4); or
    - an individual for whom the member provided more than one-half of the individual's support for 180 days immediately preceding an extension of a covered transaction.

"Creditor"

A Creditor means all persons that meet the definition of creditor under Regulation Z who are engaged in the business of extending consumer credit covered by the rule.

NOTE: Instead of including assignees in the definition of "creditor," the rule specifically refers to assignees in each section of the rule that would apply to an assignee.

"Military Annual Percentage Rate"

Military annual percentage rate, or "MAPR," is the cost of the consumer credit transaction expressed as an annual rate. The MAPR for covered transactions may not exceed 36 percent, unless a lower limit applies.[3]

- Calculation of the MAPR. The MAPR shall be calculated based on the costs in this definition but, in all other respects, it shall be calculated and disclosed following the rules used for calculating the APR for closed-end credit under Regulation Z (Truth in Lending, 12 C.F.R. Part 226).

  Cost Elements. The MAPR includes the following cost elements associated with the extension of a covered transaction if they are financed, deducted from the proceeds of the covered transaction, or otherwise required to be paid as a condition of the credit:

  - interest, fees, credit service charges, and credit renewal charges;
  - credit insurance premiums, including charges for single-premium credit insurance, or fees for debt cancellation or debt-suspension agreements; and
  - fees for credit-related ancillary products sold in connection with and either at or before consummation of the credit transaction.

  The MAPR does not include

  - fees or charges imposed for actual unanticipated late payments, default, delinquency, or similar occurrence;
  - taxes or fees prescribed by law that actually are or will be paid to public officials for determining the existence of, or for perfecting, releasing, or satisfying a security interest;
  - any tax levied on security instruments or documents evidencing indebtedness if the payment of such taxes is a requirement for recording the instrument securing the evidence of indebtedness; and
  - tax return preparation fees associated with a tax refund anticipation loan, whether the fees are deducted from the loan proceeds

  NOTE: The DoD's intent is to ensure the credit products covered by the regulation cannot evade the 36 percent limit by combining low interest rates with high fees associated with origination, membership, administration, or other costs that may not be captured in the TILA definition of the APR. The MAPR includes charges that are not included in the finance charge or APR disclosed under TILA. As a result, the MAPR is required to be separately disclosed and is in addition to the APR disclosures required under TILA for covered transactions.

3 DOD rules also prohibit an institution from imposing an MAPR except as authorized by applicable State or Federal law. Depending on the type of institution, different State or Federal laws may govern the maximum rates and fees that the institution may impose for consumer credit transactions covered by the DOD rules. However, in no instance may such rates and fees exceed the 36 percent MAPR cap specified in the DOD rules.

Examination Objectives

1. Determine the institution's compliance with the provisions of 32 C.F.R. Part 232, as applicable.

2. Assess the quality of the institution's compliance risk management systems and its policies and procedures for implementing the provisions.

3. Determine the reliance that can be placed on the institution's internal controls and procedures for monitoring the institution's compliance with the provisions.

4. Determine corrective action when violations of law are identified, or when the institution's policies or internal controls are deficient.

Examination Procedures[4]

Determine Applicability of DoD Regulations and Evaluate Policies and Procedures

1. Determine if the creditor offers or purchases[5] any consumer credit products covered by 32 C.F.R. Part 232 (payday loans, motor vehicle title loans, and tax refund anticipation loans as defined in § 232.3(b)(1)).

   - If the creditor does not offer or purchase consumer credit products as described above, the regulation does not apply and no further review is necessary.

   - If the creditor offers or purchases any consumer credit products covered by 32 C.F.R. Part 232, use the procedures below to determine whether the creditor complies with the regulation.

2. Determine the extent and adequacy of the institution's policies, procedures, and practices for ensuring and monitoring compliance with the regulation.

3. Determine the extent and adequacy of the training received by individuals whose responsibilities relate to compliance with the regulation. Review any training materials pertaining to the regulation and determine whether the training is comprehensive and covers the various aspects of the provisions that apply to the creditor's offerings and operations.

4. Determine if the institution has policies or procedures in place to

   - provide account disclosure information to covered borrowers within the appropriate time frames in accordance with § 232.6; and

   - correctly calculate and limit the MAPR as defined in § 232.3(h).

5. Review compliance reviews or audit materials, including work papers and reports, to determine if

   - the scope of any audits address all provisions of the regulation, as applicable;

   - transaction testing includes samples covering relevant product types and decision centers;

   - the work performed is accurate;

   - significant deficiencies and their causes are included in reports to management or to the Board of Directors;

   - management has taken corrective actions to follow-up on previously identified deficiencies; and

   - the frequency of review/audit is appropriate.

6. Through discussions with management and review of available information, determine whether the institution's internal controls are adequate to ensure compliance. Consider:

   - organization charts

   - process flowcharts

   - policies and procedures

   - account documentation

   - checklists

   - computer program documentation, including any computer program testing and validation

Transaction-Related Procedures

When transaction testing is applicable, determine the adequacy of the institution's policies and procedures to its practices. The sample size should be sufficient to cover all aspects of the institution's activities and policies subject to the regulation.

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4 These reflect the interagency examination procedures in their entirety.

5 32 C.F.R. Part 232 applies to creditors and assignees.

Identification of Covered Borrowers (§232.5)

1. For covered transactions, determine if the creditor provides the following "covered borrower identification statement" (or a substantially similar alternate form) to identify covered borrowers.[6]

   Covered Borrower Identification Statement:

   Federal law provides important protections to active duty members of the Armed Forces and their dependents. To ensure that these protections are provided to eligible applicants, we require you to sign one of the following statements as applicable:

   I AM a regular or reserve member of the Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty under a call or order that does not specify a period of 30 days or fewer.

   I AM a dependent of a member of the Armed Forces on active duty as described above because I am the member's spouse, the member's child under the age of eighteen years old, or I am an individual for whom the member provided more than one-half of my financial support for 180 days immediately preceding today's date.

   OR

   I AM NOT a regular or reserve member of the Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty under a call or order that does not specify a period of 30 days or fewer (or a dependent of such a member).

   Warning: It is important to fill out this form accurately. Knowingly making a false statement on a credit application is a crime.

   Optional Verification – The rule provides suggestions for optional verification of the status of a covered borrower. Since these procedures are optional, examiners do not have to assess compliance with them. However, examiners should be aware that although the additional verification procedures are optional, if a creditor does use these optional procedures and determines that the borrower is a covered borrower, the creditor is subject to the rule (even if the borrower indicated on the covered borrower form that he or she was not a covered borrower).

   The creditor may, but is not required to, verify the status of an applicant as a covered borrower by requesting the applicant to provide

   - a current military leave and earning statement; or
   - a military identification card (available both to service personnel and their dependents).
   - Additionally, in the case of National Guard Members or Reservists, a copy of the military orders and any extensions.

   Alternatively, the creditor may, but is not required to, verify the status of an applicant as a covered borrower by accessing the information available through the Internet at http://www.dmdc.osd.mil/mla/owa/home and entering the service member's full name, social security number, and date of birth.

2. If the creditor does not use the above Covered Borrower Identification Statement or similar form, describe the method that the creditor uses to determine compliance with the rule so that the creditor does not make covered loans to covered borrowers on prohibited terms.

Notice and Disclosure Requirements (§ 232.6)

1. Determine whether covered transaction disclosures are made clearly and conspicuously in writing and in a form the covered borrower may keep.

2. If the covered transaction disclosures are combined with other account disclosures, determine whether it is clear which disclosures are applicable to the covered borrower's account, including those disclosures:

   - Related to the MAPR and the total dollar amount of all charges included in the MAPR; and
   - Required by Regulation Z

3. Determine if the disclosures reflect a clear description of the payment obligation of the covered borrower as applicable. A payment schedule provided pursuant to Regula-

6 Limitations exist on the use of the identification form prescribed by the regulation as a safe harbor. According to the preamble to 32 C.F.R. Part 232, if the loan applicant signs a declaration of denial about being a covered borrower, but the creditor obtains information as part of the credit transaction reflecting that the applicant is a covered borrower (such as a current military leave and earning statement as proof of employment), the applicant's declaration would not create a safe harbor for the creditor. In such cases, the creditors should seek to resolve the inconsistency. However, if they are unable to do so, they may only avoid any risk of noncompliance by treating the applicant as a covered borrower based on the documentation or by declining to extend the credit due to the inability to verify the information provided in the borrower's signed declaration. This caveat prevents creditors from using the declaration to allow covered borrowers to waive their right to the protections provided by the regulation. Refer to 32 C.F.R. Part 232, 72 Fed. Reg. 50580, 50588 (August 31, 2007).

tion Z disclosure requirements will satisfy this requirement.

4. Verify that the following required statement (federal notice) is provided:

   "Federal law provides important protections to regular or reserve members of the Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty under a call or order that does not specify a period of 30 days or fewer, and their dependents. Members of the Armed Forces and their dependents may be able to obtain financial assistance from Army Emergency Relief, Navy and Marine Corps Relief Society, the Air Force Aid Society, or Coast Guard Mutual Aid. Members of the Armed Forces and their dependents may request free legal advice regarding an application for credit from a service legal assistance office or financial counseling from a consumer credit counselor."

5. For oral disclosure, determine whether the creditor provides oral disclosure of the MAPR, the payment obligation, and required federal notice (as discussed above) before consummation.

6. In the case of mail and Internet transactions, determine whether the creditor provides

   - a toll-free telephone number on or with the written disclosures that consumers may use to obtain oral disclosure and
   - oral disclosures when the covered borrower contacts the creditor for this purpose.

7. For renewal and refinancing of covered transactions, determine if new disclosures are provided when the transaction would be considered a new transaction that would require disclosures under Regulation Z. (Refer to 12 C.F.R. § 226.20)

   NOTE: Creditors need not provide new disclosures unless the transaction is considered a new transaction under Regulation Z (Refer to 12 C.F.R. § 226.20). However, regardless of whether new disclosures are required in a particular transaction, when a creditor refinances or renews an extension of consumer credit to a covered borrower, the limitations on rates and terms apply in the same manner as they would for the original transaction.

Prohibitions and Restrictions (§ 232.4 and § 232.8)

1. Determine whether the creditor, as part of any covered transaction

   - imposed an MAPR that is not authorized by applicable State or Federal law;
   - imposed an MAPR greater than 36 percent;
   - rolled over, renewed, repaid, refinanced, or consolidated any covered transaction with the proceeds of a covered transaction to the same covered borrower unless the new transaction results in more favorable terms to the covered borrower, such as a lower MAPR;
   - required the covered borrower to waive his or her right to legal recourse under any applicable provision of State or Federal law, including any provision of the Servicemembers Civil Relief Act (50 U.S.C. App. § 527 et seq.);
   - required the covered borrower to submit to arbitration or imposed any other onerous legal notice provision in the case of a dispute;
   - demanded unreasonable notice from the covered borrower as a condition for legal action;
   - required use of a check or other method of access to a deposit, savings, or other financial account maintained by the covered borrower;
     - EXCEPT THAT, in a transaction with an MAPR consistent with the rule (that is, not greater than 36 percent), the creditor may
   - require an electronic fund transfer to repay the obligation, unless prohibited by Regulation E (Electronic Fund Transfers), 12 C.F.R. Part 205;
   - require direct deposit of the consumer's salary as a condition of eligibility, unless otherwise prohibited by law; or
   - if not otherwise prohibited by law, take a security interest in funds deposited after the extension of the covered transaction in an account established in connection with the covered transaction;
   - required the covered borrower to establish an allotment to repay the obligation; or
   - prohibited the covered borrower from prepaying the credit or being charged a penalty fee for prepaying all or part of the credit.

Examination Conclusions

Conclude the examination after the following actions have been taken:

- Fully address identified deficiencies and violations, if any
- Attach appropriate supporting work-paper documentation
- Discuss findings with management and board of directors
- Write comments, as applicable, in the Report of Examination
- Include appropriate violation write-ups
- Discuss proposed enforcement action, if needed

References

32 C.F.R. Part 232 - Limitations on Terms of Consumer Credit Extended to Service Members and Dependents.

12 C.F.R. Part 226 - Truth in Lending

12 C.F.R. Part 205 - Electronic Fund Transfers

Examination Checklist – Talent Amendment Checklist			
	Yes	**No**	**NA**
Section 232.3 Defined Consumer Credit			
1. Does the creditor offer or extend or purchase closed-end credit primarily for personal, family, or household purposes in the following categories: a. Payday loans, b. Vehicle title loans, or c. Tax refund anticipation loans. **If Yes, determine if the loans meet the definitions found in (§ 232.3(b) (1)). If Yes, proceed. If No or NA, conclu**de the review.			
Section 232.4 Account Terms			
1. Did the creditor impose a military annual percentage rate (MAPR) that is not authorized by applicable State or Federal law? (§ 232.4(a))?			
2. Did the creditor impose an MAPR greater than 36 percent in connection with extensions of consumer credit to covered borrowers? (§ 232.4(b)). **If the answer to either question is Yes, cite a violation of § 232.4.**			
Section 232.5 Covered Borrower Identification Statement			
1. Prior to consummation of the consumer credit transaction, a. did the creditor provide each applicant a clear and conspicuous "covered borrower identification statement" or an alternate identification form that was substantially similar? b. did each applicant sign the statement indicating that he or she is or is not a covered borrower? (§ 232.5(a)(1)) c. If the creditor did not use the "covered borrower identification statement" or similar form, did the creditor use procedures that comply with the rule so that the creditor did not make covered loans to covered borrowers on prohibited terms? (§ 232.4)			
Section 232.6 Loan Disclosures			
Delivery of Account Disclosures			
1. Does the creditor provide to a covered borrower clearly and conspicuously the initial disclosures before consummation? (§ 232.6(a))			
2. Does the creditor provide the disclosures in writing in a form the covered borrower can keep? (§ 232.6(b)(1))			
3. Does the creditor provide the initial disclosures orally before consummation (other than in mail or Internet transactions)? (§ 232.6(b)(2))			
4. For mail or Internet transactions, does the creditor provide a toll-free number on or with the written disclosures? (§ 232.6(b)(2))			
5. For refinancing or renewal of a covered loan, does the creditor provide new disclosures when the transaction would be considered a new transaction that requires disclosures under the Truth in Lending Act? (§ 232.6(c))			

Examination Checklist – Talent Amendment Checklist			
	Yes	**No**	**NA**
Content of Disclosures			
6. Do the disclosures include a. the "military annual percentage rate" (MAPR) applicable to the extension of consumer credit, and the total dollar amount of all charges included in the MAPR? (§ 232.6(a)(1)) b. any disclosures required by Regulation Z (Truth in Lending)? (§ 232.6(a)(2)) c. a clear description of the payment obligation of the covered borrower, as applicable, such as a payment schedule? (§ 232.6(a)(3)) d. the required federal notice? (§ 232.6(a)(4))			
Section 232.8 Limitations			
1. Does the creditor, as part of any covered transaction, a. roll over, renew, repay, refinance, or consolidate any covered transaction with the proceeds of a covered transaction to the same covered borrower on the same or less favorable terms to the covered borrower, unless the new transaction results in more favorable terms to the covered borrower? (§ 232.8(a) (1)). b. require the covered borrower to waive his or her right to legal recourse under any applicable provision of State or Federal law, including any provision of the Servicemembers Civil Relief Act (50 U.S.C. §527 et seq.)? (§ 232.8(a) (2)) c. require the covered borrower to submit to arbitration or impose any other onerous legal notice provision in the case of a dispute? (§ 232.8(a) (3)). d. demand unreasonable notice from the covered borrower as a condition for legal action? (§ 232.8(a) (4)). e. require use of a check or other method of access to a deposit, savings, or other financial account maintained by the covered borrower, except that, in connection with a transaction with an MAPR consistent with the rule (that is, not greater than 36 percent), the creditor may: 1. require an electronic fund transfer to repay the obligation, unless prohibited by Regulation E, 12 C.F.R. Part 205; 2. require direct deposit of the consumer's salary as a condition of eligibility, unless otherwise prohibited by law; or 3. if not otherwise prohibited by law, take a security interest in funds deposited after the extension of the covered transaction in an account established in connection with the covered transaction. (§ 232.8(a)(5)) f. require the covered borrower to establish an allotment to repay the obligation? (§ 232.8(a)(6)) g. prohibit the covered borrower from prepaying the credit charges or charge the covered borrower a penalty fee for prepaying all or part of the credit? (§ 232.8(a)(7))			

Military Lending Act

Background

Examiners should reference the Military Lending Act examination procedures (Chapter V-13.1 in the Compliance Examination Manual) for consumer credit transactions occurring on or after October 3, 2016, as relevant. For consumer credit transactions occurring prior to these dates, examiners should reference the Talent Amendment examination procedures (Chapter V-12.1 in the Compliance Examination Manual).

The Military Lending Act[1] (MLA), enacted in 2006 and implemented by the Department of Defense (DoD), protects active duty members of the military, their spouses, and their dependents from certain lending practices. These practices could pose risks for service members and their families, and could pose a threat to military readiness and affect service member retention.

The DoD regulation[2] implementing the MLA contains limitations on and requirements for certain types of consumer credit extended to active duty service members and their spouses, children, and certain other dependents ("covered borrowers"). Subject to certain exceptions, the regulation generally applies to persons who meet the definition of a creditor in Regulation Z and are engaged in the business of extending such credit, as well as their assignees.[3]

For covered transactions, the MLA and the implementing regulation limit the amount a creditor may charge, including interest, fees, and charges imposed for credit insurance, debt cancellation and suspension, and other credit-related ancillary products sold in connection with the transaction. The total charge, as expressed through an annualized rate referred to as the Military Annual Percentage Rate (MAPR)[4] may not exceed 36 percent.[5] The MAPR includes charges that are not included in the finance charge or the annual percentage rate (APR) disclosed under the Truth in Lending Act (TILA).[6]

In addition, among other provisions, the MLA, as implemented by DoD:

- Provides an optional safe harbor from liability for certain procedures that creditors may use in connection with identifying covered borrowers;
- Requires creditors to provide written and oral disclosures in addition to those required by TILA;
- Prohibits certain loan terms, such as prepayment penalties, mandatory arbitration clauses, and certain unreasonable notice requirements; and
- Restricts loan rollovers, renewals, and refinancings by some types of creditors.

Statutory amendments to the MLA in 2013 granted enforcement authority for the MLA's requirements to the agencies specified in section 108 of TILA.[7] These agencies include the Board of Governors of the Federal Reserve System, the Consumer Financial Protection Bureau (CFPB), the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Federal Trade Commission. State regulators also supervise state-chartered institutions for MLA requirements pursuant to authority granted by state law.

In July 2015, DoD published revisions to the MLA implementing regulation[8] that:

- Extend the MLA's protections to a broader range of credit products;
- Modify the MAPR to include certain additional fees and charges;
- Alter the provisions of the optional safe harbor available to creditors for identification of covered borrowers;
- Modify the disclosures creditors are required to provide to covered borrowers;
- Modify the prohibition on rolling over, renewing, or refinancing consumer credit; and
- Implement statutory changes, including provisions related to administrative enforcement and civil liability for MLA violations (for knowingly violating the MLA, there is potential for criminal penalties).

[1] 10 U.S.C. 987.
[2] 32 CFR part 232.
[3] 32 CFR 232.3(i).
[4] The MAPR is calculated in accordance with 32 CFR 232.4(c).
[5] 32 CFR 232.4(b).
[6] The MAPR largely parallels the APR, as calculated in accordance with Regulation Z, with some exceptions to ensure that creditors do not have incentives to evade the interest rate cap by shifting fees for the cost of the credit product away from those categories that would be included in the MAPR. Generally, a charge that is excluded as a "finance charge" under Regulation Z also would be excluded from the charges that must be included when calculating the MAPR. Late payment fees and required taxes—i.e., fees that are not directly related to the cost of credit—are examples of items excluded from both the APR and the MAPR. But certain other fees more directly related to the cost of credit are typically included in the MAPR, but not the APR. The most common examples of these fees—application fees and participation fees—have been specifically noted in the regulation as charges that generally must be included in the MAPR, but would not be included in the APR under Regulation Z.
[7] National Defense Authorization Act for Fiscal Year 2013, Pub. L. 112-239, section 662(b), 126 Stat. 1786.
[8] 80 Fed. Reg. 43560.

Previously, the MLA regulation only applied to certain types of credit, namely: narrowly defined payday loans, motor vehicle title loans, and tax refund anticipation loans with particular terms. The current rule defines "consumer credit" subject to the MLA much more broadly, generally paralleling the definition in Regulation Z. Some examples of additional credit products now subject to MLA protections when made to covered borrowers include:

- Credit cards;
- Deposit advance products;
- Overdraft lines of credit (but not traditional overdraft services);[9] and
- Certain installment loans (but not installment loans expressly intended to finance the purchase of a vehicle or personal property when the credit is secured by the vehicle or personal property being purchased).

Credit agreements that violate the MLA are void from inception. For most products, creditors are required to come into compliance with DoD's July 2015 rule on October 3, 2016. For credit card accounts, creditors are not required to come into compliance with the rule until October 3, 2017.[10]

Definitions (§ 232.3)

Consumer Credit

Consumer credit is "credit offered or extended to a covered borrower primarily for personal, family, or household purposes, and that is:

- Subject to a finance charge; or
- Payable by a written agreement in more than four installments."

The MLA regulation's definition of "consumer credit" has been amended to align more closely with the definition of the same term in Regulation Z. It is DoD's intent that the term as used in the MLA regulation should wherever possible be interpreted consistently with Regulation Z. Notably, however, the MLA and the implementing regulation do not apply to certain types of loans extended to covered borrowers that are covered by Regulation Z, including:

- Residential mortgages (any credit transaction secured by an interest in a dwelling), including transactions to finance the purchase or initial construction of a dwelling, any refinance transaction, a home equity loan or line of credit, or a reverse mortgage;
- Credit transactions expressly intended to finance the purchase of a motor vehicle[11] when the credit is secured by the motor vehicle being purchased; and
- Credit transactions expressly intended to finance the purchase of personal property when the credit is secured by the property being purchased.

  Note: A transaction where a creditor simultaneously extends an additional cash advance beyond the purchase price of the securing personal property does not fall under this last exception.

Covered Borrower

A *covered borrower* is a consumer who, at the time the consumer becomes obligated on a consumer credit transaction or establishes an account for consumer credit, is a covered member of the armed forces or a dependent of a covered member (as defined in 32 CFR 232.3(g)(2) and (g)(3)).

Covered members of the armed forces include members of the Army, Navy, Marine Corps, Air Force, or Coast Guard currently serving on active duty pursuant to title 10, title 14, or title 32 of the U.S. Code under a call or order that does not specify a period of 30 days or fewer, or such a member serving on Active Guard and Reserve duty as that term is defined in 10 U.S.C. 101(d)(6).

The term *dependent* refers to a covered member's:

- Spouse;
- Children under age 21;
- Children under age 23 enrolled full-time at an approved institution of higher learning and dependent on a covered member (or dependent at the time of the member's or former member's death) for over one-half of their support; or

[9] An overdraft line of credit with a finance charge is a covered consumer credit product when: it is offered to a covered borrower; the credit extended by the creditor is primarily for personal, family, or household purposes; it is used to pay an item that overdraws an asset account and for which the covered borrower pays any fee or charge; and the extension of credit for the item and the imposition of a fee were previously agreed upon in writing.

[10] For purposes of the extended compliance date, the credit card accounts must be under an open-end (not home-secured) consumer credit plan. DoD may, by order, further extend the expiration of the limited exemption for credit card accounts to a date not later than October 3, 2018. For all other credit products, a creditor must comply with the applicable requirements of the July 2015 rule by October 3, 2016 for all consumer credit transactions or accounts for consumer credit consummated or established on or after October 3, 2016.

[11] For purposes of the MLA, the term "vehicle" includes any self-propelled vehicle primarily used for personal, family, or household purposes for on-road transportation. The term does not include motor homes, recreational vehicles (RVs), golf carts, or motor scooters.

- Children of any age incapable of self-support due to mental or physical incapacity that occurred while a dependent of the covered member under the preceding two bullets and dependent on a covered member (or dependent at the time of the member's or former member's death) for over one-half of their support.

Other relationships may also qualify an individual as a dependent of a covered member. Paragraphs (E) and (I) of 10 U.S.C. 1072(2) reference other relationships that qualify individuals as dependents under the MLA.

Per 32 CFR 232.2(a)(1), the regulation does not apply to a credit transaction or account relating to a consumer who is not a covered borrower at the time that he or she becomes obligated on a credit transaction or establishes an account for credit. Additionally, the regulation does not apply to a credit transaction or account (which would otherwise be consumer credit) relating to a consumer once the consumer no longer is a covered borrower.

Creditor

Except as provided in 32 CFR 232.8(a), (f), and (g), a *creditor* under the MLA is a person who is:

- Engaged in the business of extending consumer credit;[12] or
- An assignee of a person engaged in the business of extending consumer credit with respect to any consumer credit extended.

With respect to 32 CFR 232.8(a) only (relating to limitations on rollovers, renewals, repayments, refinancings, and consolidations), the term *creditor* means a person engaged in the business of extending consumer credit subject to applicable law to engage in deferred presentment transactions or similar payday loan transactions. However, pursuant to 232.8(a), the term does not include a person that is chartered or licensed under Federal or State law as a bank, savings association, or credit union.

With respect to 32 CFR 232.8(f) only (relating to limitations on the use of a vehicle title as security), the term *creditor* does not include a person that is chartered or licensed under Federal or State law as a bank, savings association, or credit union.

With respect to 32 CFR 232.8(g) only (relating to limitations on requiring establishment of an allotment as a condition for extending credit), the term *creditor* does not include a "military welfare society," as defined in 10 U.S.C. 1033(b)(2), or a "service relief society," as defined in 37 U.S.C. 1007(h)(4).

Military Annual Percentage Rate (MAPR)

The *MAPR* is the cost of the consumer credit expressed as an annual rate, calculated in accordance with 32 CFR 232.4(c) (*see* "Terms of Consumer Credit Extended to Covered Borrowers (Calculation of MAPR) (§ 232.4)" for more information about calculating the MAPR). The MAPR for covered transactions must not exceed 36 percent.[13]

Short-Term, Small Amount Loan

Under certain circumstances, an application fee for a *short-term, small amount loan* may be excluded when calculating the MAPR (*see* "Terms of Consumer Credit Extended to Covered Borrowers (Calculation of MAPR) (§ 232.4)" for more information about calculating the MAPR). A short-term, small amount loan is a closed-end loan that is:

- Subject to and made in accordance with a Federal law (other than the MLA) that expressly limits the rate of interest that a Federal credit union or an insured depository institution may charge on an extension of credit, provided that the limitation set forth in that law is comparable to a limitation of an annual percentage rate of interest of 36 percent; and
- Made in accordance with the requirements, terms, and conditions of a rule, prescribed by the appropriate Federal regulatory agency (or jointly by such agencies), that implements the Federal law described in the paragraph above, provided further that such law or rule contains:
    - A fixed numerical limit on the maximum maturity term, which term shall not exceed nine months; and
    - A fixed numerical limit on any application fee that may be charged to a consumer who applies for such closed-end loan.

Terms of Consumer Credit Extended to Covered Borrowers (Calculation of MAPR) (§ 232.4)

Types of Fees to Include in MAPR Calculation

Under the MLA, a creditor may not impose an MAPR greater than 36 percent in connection with an extension of consumer credit that is closed-end credit or in any billing cycle for open-end credit. For credit card accounts, creditors

[12] For the purposes of this definition, a creditor is engaged in the business of extending consumer credit if the creditor considered by itself and together with its affiliates meets the transaction standard for a "creditor" under Regulation Z with respect to extensions of consumer credit to covered borrowers.

[13] The regulation also prohibits an institution from imposing an MAPR except as authorized by applicable Federal or State law. Depending on the type of institution, different Federal or State laws may govern the maximum rates and fees an institution may impose for consumer credit transactions covered by the regulation, but in no instance may such rates and fees exceed the 36-percent MAPR cap contained in the regulation.

are not required to comply with DoD's July 2015 rule until October 3, 2017.

The following charges included in the MAPR ("charges") must be included in the calculation of the MAPR for both closed- and open-end credit, as applicable:

- Any credit insurance premium or fee, any charge for single premium credit insurance, any fee for a debt cancellation contract, or any fee for a debt suspension agreement;
- Any fee for a credit-related ancillary product sold in connection with the credit transaction for closed-end credit or an account for open-end credit; and
- Except for a bona fide fee (other than a periodic rate) charged to a credit card account, which may be excluded if the bona fide fee is reasonable:
    - Finance charges associated with the consumer credit;
    - Any application fee charged to a covered borrower who applies for consumer credit, other than an application fee charged by a Federal credit union or an insured depository institution when making a short-term, small amount loan provided that the application fee is charged to the covered borrower not more than once in any rolling 12-month period (*see* note below); and
    - In general, any fee imposed for participation in any plan or arrangement for consumer credit. (*See* "*No Balance During a Billing Cycle*" section below for more information on the MAPR calculation rules when there is no balance during a billing cycle for open-end credit).

These charges are to be included in the MAPR calculation even if they would be excluded from the calculation of the finance charge under Regulation Z.

Note: One application fee charged by a creditor making a short-term, small amount loan can be excluded from the computation of the MAPR under the conditions noted in the definition of a short-term, small amount loan. However, if a creditor charges a second application fee to a covered borrower who applies for a second short-term, small amount loan within a rolling 12-month period, then that second fee (and any subsequent application fees charged during that period) is not eligible for the exclusion and must be included when computing the MAPR for that loan.

Computing the MAPR for Closed-End Credit

For closed-end credit, the MAPR shall be calculated following the rules for calculating and disclosing the "Annual Percentage Rate (APR)" for credit transactions under Regulation Z based on the MAPR charges listed above. *See* Examination Checklist for the types of fees that would be included or excluded from the MAPR calculation.

Computing the MAPR for Open-End Credit

Generally, the MAPR for open-end credit should be calculated following the rules for calculating the effective annual percentage rate for a billing cycle as set forth in 12 CFR 1026.14(c) and (d) of Regulation Z[14] (as if a creditor must comply with that section) based on the charges listed above.

Even if a fee is otherwise eligible to be excluded under 12 CFR 1026.14(c) and (d), the amount of charges related to opening, renewing, or continuing an account must be included in the calculation of the MAPR to the extent those charges are among those in the above "Types of Fees to Include in MAPR Calculation".

No Balance During a Billing Cycle. For open-end credit, if the MAPR cannot be calculated in a billing cycle because there is no balance in the billing cycle, a creditor may not impose any fee or charge during that billing cycle, except that the creditor may impose a fee for participation in any plan or arrangement for that open-end credit so long as the participation fee does not exceed $100.00 annually, regardless of the billing cycle in which the participation fee is imposed.

Note: the $100.00-per-year limitation on the amount of the participation fee does not apply to a bona fide participation fee charged to a credit card account consistent with 32 CFR 232.4(d).

Creditors may impose fees or charges that are excluded from the calculation of the MAPR during a particular billing cycle where there is no balance during the billing cycle. For example, if a creditor charged a late fee for a late payment in accordance with its credit agreement with the covered borrower and in compliance with Regulation Z, the creditor may charge the fee, regardless of whether there is a balance in the billing cycle, because a late fee is not among the charges that are included in the calculation of the MAPR.

Bona Fide Fees Charged to a Credit Card Account, Generally. For consumer credit extended in a credit card account under an open-end (not home-secured) consumer credit plan, a bona fide fee, other than a periodic rate, is not a charge required to be included in the MAPR calculation,

[14] Sections 1026.14(c) and (d) of Regulation Z provide for the methods of computing the APR under several scenarios, such as: (1) when the finance charge is determined solely by applying one or more periodic rates; (2) when the finance charge during a billing cycle is or includes a fixed or other charge that is not due to application of a periodic rate, other than a charge with respect to a specific transaction; and (3) when the finance charge during a billing cycle is or includes a charge relating to a specific transaction during the billing cycle.

provided the fee is both bona fide and reasonable for the type of fee. There is no exclusion for "bona fide fees" on accounts that are not credit card accounts.

The exclusion for bona fide fees on credit card accounts does not apply to the following fees:

- Any credit insurance premium or fee, including any charge for single premium credit insurance, any fee for a debt cancellation contract, or any fee for a debt suspension agreement; or
- Any fee for a credit-related ancillary product sold in connection with the credit transaction for closed-end credit or an account for open-end credit.

  Note: A minimum interest charge on a credit card account that is generally disclosed in an account-opening table can be a bona fide fee excludable from the MAPR calculation if it meets the conditions for exclusion.

To assess whether a bona fide fee is "reasonable," the fee must be compared to fees typically imposed by other creditors for the same or a substantially similar product or service. This comparison is designed to be an "elementary like-kind standard," as illustrated in the examples below:

Example #1: When assessing a bona fide cash advance fee, that fee must be compared to fees charged by other creditors for transactions in which consumers receive extensions of credit in the form of cash or its equivalent.

Example #2: When assessing a foreign transaction fee, that fee may not be compared to a cash advance fee because the foreign transaction fee involves the service of exchanging the consumer's currency (e.g., a reserve currency) for the local currency demanded by a merchant for a good or service, and does not involve the provision of cash to the consumer.

It is generally permissible to consider benefits provided by credit card rewards programs in determining whether a fee is reasonable overall. For participation fees, the rule gives additional guidance for determining whether a fee is reasonable: if the amount of the fee reasonably corresponds to the credit limit in effect or credit made available when the fee is imposed, to the services offered under the credit card account, or to other factors relating to the credit card account.

Example #3: Even if other creditors typically charge $100.00 annually for participation in credit card accounts, a $400.00 fee nevertheless may be reasonable if (relative to other accounts carrying participation fees) the credit made available to the covered borrower is significantly higher or additional services or other benefits are offered under that account.

Bona Fide Fees Charged to a Credit Card Account, Safe Harbor. The regulation provides a "firm, yet flexibly adaptable" safe harbor standard for a "reasonable" amount of a bona fide fee on a credit card account. A bona fide fee is reasonable if the amount of the fee is less than or equal to an average amount of a fee for the same or a substantially similar product or service charged by five or more creditors each of whose U.S. credit cards in force is at least $3 billion in an outstanding balance (or at least $3 billion in loans on U.S. credit card accounts initially extended by the creditor) at any time during the three-year period preceding the time such average is computed. Creditors may use publicly available information regarding credit cards in force and/or fees charged on those credit cards, such as Securities and Exchange Commission filings, Consolidated Reports of Condition and Income, agreements posted on the CFPB's website (http://www.consumerfinance.gov/credit-cards/agreements/), agreements posted on creditors' own websites, or commercially compiled sources of information. For purposes of choosing creditors for comparison, note that a creditor may meet the $3 billion threshold even if the creditor has sold the credit card loans to a special-purpose vehicle or entered into another arrangement so that securities backed by the loans may be issued.

A bona fide fee that is higher than an average amount calculated using the safe harbor standard also may be reasonable depending on other factors relating to the credit card account. A bona fide fee charged by a creditor is not unreasonable solely because other creditors do not charge a fee for the same or a substantially similar product or service.

Effect of Charging Fees on Bona Fide Fees. If a creditor imposes a fee or fees that cannot be excluded from the MAPR (*see* "Types of Fees to Include in MAPR Calculation") and imposes a finance charge on a covered borrower, the total amount of the fee(s) and finance charge(s) shall be included in the MAPR. This does not affect whether another type of fee may be excluded as a bona fide fee.

However, if a creditor imposes any fee (other than a periodic rate or charges that must be included in the MAPR) that is not a bona fide fee and imposes a finance charge on a covered borrower, the total amount of those fees, including any bona fide fees, and other finance charges shall be included in the MAPR.

Example #1: In a credit card account under an open-end (not home-secured) consumer credit plan during a given billing cycle, Creditor A imposes on a covered borrower a fee for a debt cancellation product, a finance charge, and a reasonable bona fide foreign transaction fee. Only the fee for the debt cancellation product and the finance charge must be included when calculating the MAPR.

Example #2: In a credit card account under an open-end (not home-secured) consumer credit plan during a given billing cycle, Creditor B imposes on a covered borrower a

fee for a debt cancellation product, a finance charge, a reasonable bona fide foreign transaction fee, and a bona fide, but unreasonable cash advance fee. All of the fees—including the foreign transaction fee that otherwise would qualify for the exclusion as a bona fide fee—and the finance charge must be included when calculating the MAPR.

Timing for Computing the MAPR for Open-End Credit

Computing. In general, creditors can be reasonably expected to estimate at the outset of a billing cycle whether charges to a covered borrower can produce an MAPR in excess of the 36-percent limit. This is particularly true because the creditor already would know the periodic rate and whether the non-periodic fees are covered by the exclusion for a bona fide fee under 32 CFR 232.4(d).

Nevertheless, under certain circumstances, creditors might not know at the outset of a billing cycle whether the borrower's use of an open-end line of credit will lead to a finance charge that—through a combination of rates and fees—exceeds the 36-percent limit. However, at the end of a billing cycle the creditor would be able to calculate the MAPR and, in that same billing cycle, waive fees or periodic charges, either in whole or in part, in order to comply with the 36-percent limit.

MAPR Calculation Examples

The following examples may assist reviewers in calculating the MAPR.

Example #1: Closed-End Credit. The MAPR for single advance, single payment transactions, such as some types of deposit advance loans, must be computed in accordance with the rules in Regulation Z, such as by following the instructions described in paragraph (c)(5) of appendix J. Based on the formula provided in paragraph (c)(5) of appendix J, in the case of a single advance, single payment transaction loan extended to a covered borrower for a period of 45 days, and for which the advance is $500.00 and the single payment required consists of the principal amount plus a finance charge of $28.44, for a total payment of $528.44, the MAPR would be 46.14 percent. In this example, the resultant MAPR would exceed the 36-percent rate limit.

Example #2: Open-End Credit (General). Suppose a creditor offers a line of credit to a covered borrower primarily for personal, family, or household purposes (commonly referred to as a "personal line of credit"), and permits the borrower to repay on a monthly basis. Upon establishing the personal line of credit, the covered borrower borrows $500.00. The creditor charges a periodic rate of 0.006875 (which corresponds to an annual rate of 8.25 percent), plus a fee of $25.00, charged when the account is established and annually thereafter. Under these circumstances, pursuant to 12 CFR 1026.14(c)(2), the creditor would calculate the MAPR as follows: "dividing the total amount of the finance charge for the billing cycle"—which is $3.44 (corresponding to (0.006875) x ($500)), plus $25.00—"by the amount of the balance to which it is applicable"—$500—and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year"—12 (since the creditor allows the borrower to repay monthly), which is 68.26 percent. In this example, even though the periodic rate (0.006875) would comply with the interest-rate limit under 32 CFR 232.4(b), the resultant MAPR would be in excess of that limit because the amount borrowed is low at the time the annual fee is imposed.

Example #3: Open-End Credit (Credit Card). In the case of a credit card account, a creditor likewise would be required to calculate the MAPR using the methods prescribed in 12 CFR 1026.14(c) and (d) of Regulation Z. For example, if a creditor extends credit to a covered borrower through a credit card account and the borrower incurs a finance charge relating to a specific transaction, such as a cash advance transaction, during the billing cycle, then the creditor would calculate the MAPR under the instructions set forth in 12 CFR 1026.14(c)(3). However, in the case of a credit card account the creditor may exclude, pursuant to 32 CFR 232.4(c)(1)(iii) and 232.4(d), any bona fide fee from the finance charges that otherwise must be accounted for; thus, if a charge for the cash advance transaction fits within the exclusion for a bona fide fee under 32 CFR 232.4(d), then that charge would not be included when computing the MAPR for that billing cycle.

Identification of Covered Borrowers (§ 232.5)

A creditor is permitted to apply its own method to assess whether a consumer is a covered borrower; however, the regulation provides creditors an optional safe harbor from liability in conclusively determining whether credit is offered or extended to a covered borrower through assessing the status of a consumer by use of either of the following methods:

- Verifying the status of a consumer by using information relating to that consumer, if any, obtained directly or indirectly from the DoD's database, located at https://mla.dmdc.osd.mil/ (or via any URL or direct connection to the database that may be provided by the DoD). Searches require entry of the consumer's last name, date of birth, and Social Security number.

  Note: Historic lookbacks are prohibited under the rule. After a consumer has entered into a transaction or established an account, a creditor (including an assignee) may not, directly or indirectly, obtain any information from the DoD database to determine whether a consumer had been a covered borrower as of the date of a transaction or the date an account was established. However, this

provision does not prevent creditors from adopting a risk management plan that includes periodically screening credit portfolios for other purposes, such as determining whether there are changes to covered borrower status.

OR

- Verifying the status of a consumer by using a statement, code, or similar indicator describing that status, if any, contained in a consumer report obtained from a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, or a reseller of such consumer reports, as those terms are defined in the Fair Credit Reporting Act (FCRA) and any implementing regulations.

  Note: The consumer reporting agency (CRA) must be a nationwide agency or a reseller of reports from such an agency (as both of those terms are defined by the FCRA); many specialty CRAs may not qualify.

A creditor's one-time determination, by using one of the methods provided in 32 CFR 232.5(b)(2), is permitted and deemed to be conclusive with respect to that transaction or account between the creditor and that consumer, so long as the creditor timely creates and maintains a record of the information obtained, solely at the time that:

- The consumer initiates the transaction or 30 days prior to that time;
- The consumer applies to establish the account or 30 days prior to that time; or
- The creditor develops or processes a firm offer of credit that includes the status of the consumer as a covered borrower, so long as the consumer responds to that offer no later than 60 days after the creditor provides the offer to the consumer.

The MLA rule extends the covered borrower check safe harbor to a creditor's assignee provided that the assignee continues to maintain the original record created by the creditor that initially extended the credit. Neither the MLA nor 32 CFR 232 specify how and for how long creditors are to maintain these records, noting only that the records must be created timely and maintained thereafter.

An action by a creditor within an existing account, such as to increase the available credit that a consumer may draw upon, does not alter the status of the creditor's prior determination for that account. However, in order to benefit from the optional safe harbor provisions, a creditor must use one of the safe harbor methods when extending a new consumer credit product or newly establishing an account for consumer credit, including a new line of consumer credit that might be associated with a pre-existing transactional account held by the borrower (for example, when a consumer applies for an overdraft line of credit associated with an existing checking account).

Mandatory Loan Disclosures (§ 232.6)

If a creditor extends consumer credit (including any consumer credit originated or extended through the internet) to a covered borrower, the creditor must provide the covered borrower with certain information before or at the time the borrower becomes obligated on the transaction or establishes an account for the consumer credit:

- A statement of the MAPR applicable to the extension of consumer credit;
- Any disclosure required by Regulation Z, which shall be provided only in accordance with the requirements of Regulation Z that apply to that disclosure; and
- A clear description of the payment obligation of the covered borrower, as applicable. Note that a payment schedule (in the case of closed-end credit) or account-opening disclosure (in the case of open-end credit) provided pursuant to Regulation Z satisfies this requirement.

A creditor may satisfy the requirement to provide a statement of the MAPR by describing the charges the creditor may impose, in accordance with the regulation and subject to the terms and conditions of the agreement, relating to the consumer credit to calculate the MAPR. A creditor is not required to describe the MAPR as a numerical value or to describe the total dollar amount of all charges in the MAPR that apply to the extension of consumer credit. A creditor may include a statement of the MAPR applicable to the consumer credit in the agreement with the covered borrower involving the consumer credit transaction. The regulation does not require a statement of the MAPR to be included in advertisements.

Under 32 CFR 232.6(c)(3), a statement substantially similar to the following model statement may be used to satisfy the requirement to provide a statement of the MAPR:

> Federal law provides important protections to members of the Armed Forces and their dependents relating to extensions of consumer credit. In general, the cost of consumer credit to a member of the Armed Forces and his or her dependent may not exceed an annual percentage rate of 36 percent. This rate must include, as applicable to the credit transaction or account: The costs associated with credit insurance

premiums; fees for ancillary products sold in connection with the credit transaction; any application fee charged (other than certain application fees for specified credit transactions or accounts); and any participation fee charged (other than certain participation fees for a credit card account).

If a transaction involves more than one creditor, then only one of those creditors must provide the required disclosures. The creditors may agree among themselves which creditor will provide the statement of the MAPR and the clear description of the payment obligation.[15]

The statement of the MAPR and the clear description of the payment obligation must be provided in writing in a form the covered borrower can keep. A creditor shall also provide such required information orally.[16] A creditor may satisfy the requirement to provide oral disclosures if the creditor provides:

- The information to the covered borrower in person; or
- A toll-free telephone number in order to deliver the oral disclosures to a covered borrower when the covered borrower contacts the creditor for this purpose.

If a creditor elects to provide a toll-free telephone number in order to deliver the oral disclosures, the toll-free telephone number must be included on:

- A form the creditor directs the consumer to use to apply for the transaction or account involving consumer credit; or
- The written disclosure the creditor provides to the covered borrower.

The oral disclosures provided through the toll-free number need only be available for a duration of time reasonably necessary to allow a covered borrower to contact the creditor for the purpose of listening to the disclosure. A creditor may orally provide a clear description of the payment obligation of the covered borrower by providing a general description of how the payment obligation is calculated or a description of what the borrower's payment obligation would be based on an estimate of the amount the borrower may borrow. For example, a creditor could generally describe how minimum payments are calculated on open-end credit plans issued by the creditor and then refer the covered borrower to the written materials the borrower will receive in connection with opening the plan. Alternatively, a creditor could choose to generally describe borrowers' obligations to make a monthly, bi-monthly, or weekly payment as the case may be under the borrowers' agreements. The requirement of a clear, oral payment obligation disclosure has sufficient breadth that creditors may choose a variety of acceptable oral disclosure compliance strategies. A generic oral description of the payment obligation may be provided, even though the disclosure is the same for borrowers with a variety of consumer credit transactions or accounts.

If Regulation Z would allow a creditor to provide a required disclosure after the borrower has become obligated on a transaction, as in the case of purchase orders or requests for credit made by mail, telephone, or fax under 12 CFR 1026.17(g), the disclosures required by the MLA may be provided at the time prescribed in Regulation Z. A creditor is required to provide new disclosures for the refinancing or renewal of consumer credit only when the transaction for that credit would be considered a new transaction that requires disclosures under Regulation Z.

The statement of the MAPR and the clear description of the payment obligation, as described above, need to be provided to a covered borrower only once for the transaction or the account established for consumer credit with respect to that borrower.

Limitations (§ 232.8)

The MLA imposes a number of limitations upon creditors in connection with consumer credit extended to covered borrowers.

Rollovers and certain other actions. It is unlawful for a creditor to roll over, renew, repay, refinance, or consolidate any consumer credit extended to the covered borrower by the same creditor with the proceeds of other consumer credit extended by that creditor to the same covered borrower.

For the purposes of this paragraph, the term "creditor" means a person engaged in the business of deferred presentment transactions or similar payday loan transactions (as described in the relevant law), provided however, that the term does not include a person that is chartered or licensed under Federal or State law as a bank, savings association, or credit union.

Note: This prohibition does not apply to a transaction when the same creditor extends consumer credit to a covered borrower to refinance or renew an extension of credit that was not covered by this paragraph because the consumer was not a covered borrower at the time of the original transaction.

Terms Relating to Dispute Resolution. A creditor cannot require a covered borrower to:

- Waive the covered borrower's right to legal recourse under any otherwise applicable provision of Federal or

[15] 32 CFR 232.6(b)(2).
[16] 32 CFR 232.6(d)(2).

State law, including any provision of the Servicemembers Civil Relief Act;[17]

- Submit to arbitration or other onerous legal notice provisions in the case of a dispute; or
- Give unreasonable notice as a condition for legal action.

Payment Terms and Conditions – General. A creditor cannot:

- Use the title of a vehicle as security for the obligation involving the consumer credit.

  Note that for the purposes of this paragraph, the term "creditor" does not include a person that is chartered or licensed under Federal or State law as a bank, savings association, or credit union;

- Require as a condition for the extension of consumer credit that the covered borrower establish an allotment to repay the obligation (note that for the purposes of this paragraph only, the term "creditor" shall not include a "military welfare society," as defined in 10 U.S.C. 1033(b)(2), or a "service relief society," as defined in 37 U.S.C. 1007(h)(4)); or
- Prohibit the borrower from prepaying the consumer credit or charge a penalty fee for prepaying all or part of the consumer credit.

Payment Terms and Conditions – Account Access. A creditor cannot use a check or other method of access to a deposit, savings, or other financial account maintained by the covered borrower, except that, in connection with a consumer credit transaction with an MAPR not exceeding the 36-percent limit, a creditor may:

- Require an electronic fund transfer to repay a consumer credit transaction, unless otherwise prohibited by law;
- Require direct deposit of the consumer's salary as a condition of eligibility for consumer credit, unless otherwise prohibited by law; or
- If not otherwise prohibited by applicable law, take a security interest in funds deposited after the extension of credit in an account established in connection with the consumer credit transaction.

This section prohibits a creditor from using the borrower's account information to create a remotely created check or remotely created payment order in order to collect payments on consumer credit from a covered borrower. Similarly, a creditor may not use a post-dated check provided at or around the time credit is extended that deprives the borrower of control over payment decisions, as is common in certain payday lending transactions. However, the prohibition on account access does not in any way prevent covered borrowers from tendering a check or authorizing access to a deposit, savings, or other financial account to repay a creditor. Section 232.8(e) also does not prohibit a covered borrower from authorizing automatically recurring payments, provided that such recurring payments comply with other laws, including the Electronic Fund Transfer Act and its implementing regulations, such as 12 CFR 1005.10, as applicable. The prohibition in 32 CFR 232.8(e) also does not prohibit covered borrowers from granting a security interest to a creditor in the covered borrower's checking, savings, or other financial account, provided that it is not otherwise prohibited by applicable law and the creditor complies with the MLA regulation including the 36-percent limitation on the MAPR.

Savings Clauses. A creditor may include a proscribed term under section 232.8, such as a mandatory arbitration clause, within a standard written credit agreement with a covered borrower, provided that the agreement includes a contractual "savings" clause limiting the application of the proscribed term to only non-covered borrowers, consistent with any other applicable law.

[17] 50 U.S.C. 3901 *et seq.*

Examination Objectives

1. Determine the institution's compliance with the provisions of 32 CFR 232, as applicable.

2. Assess the quality of the institution's compliance risk management systems and its policies and procedures for implementing the provisions.

3. Determine the reliance that can be placed on the institution's internal controls and procedures for monitoring the institution's compliance with the provisions.

4. Determine corrective action when violations of law are identified or when the institution's policies, procedures, or internal controls are deficient.

Examination Procedures[18]

Determine Applicability of the Regulation

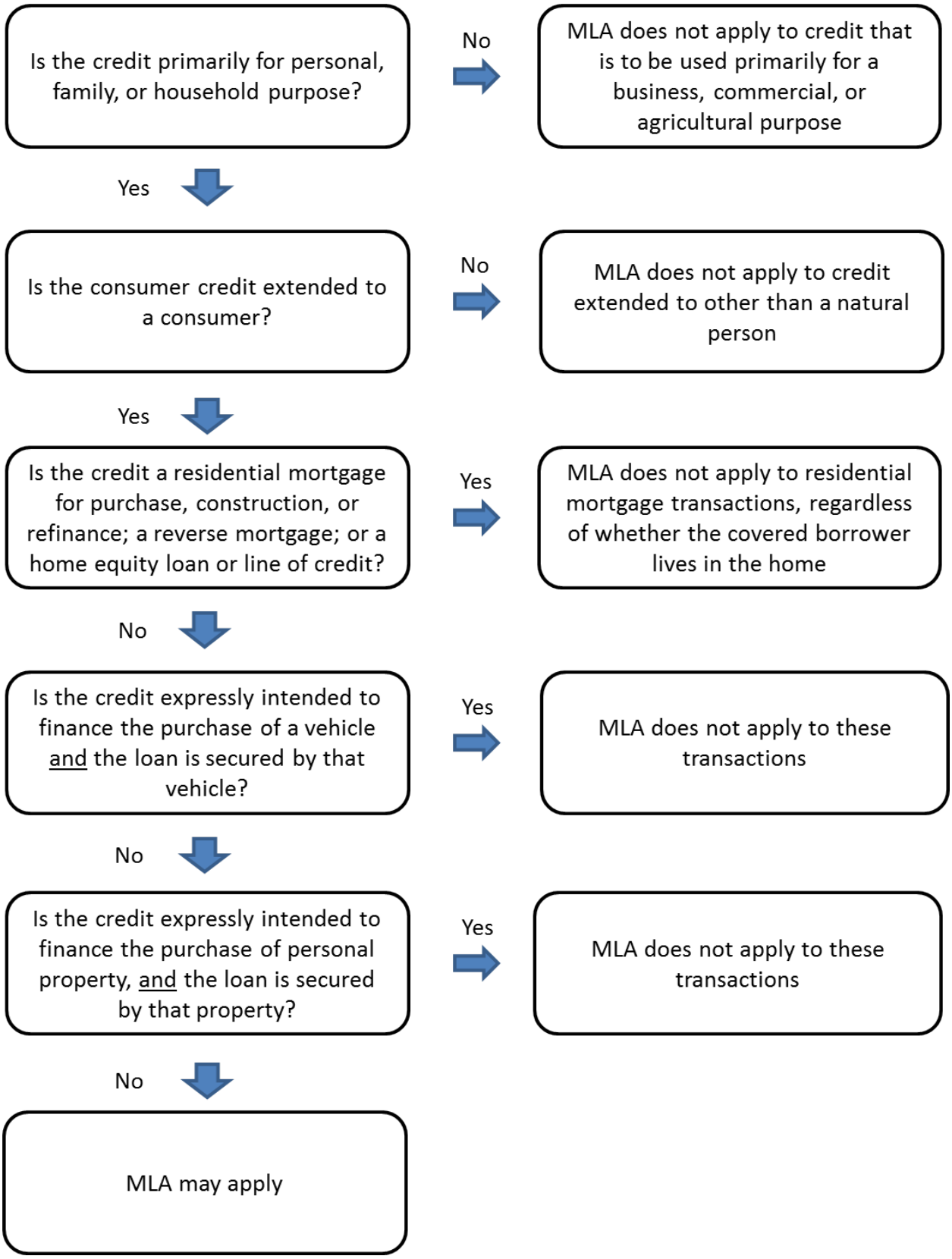
1. Determine if the creditor offers or purchases consumer credit covered by 32 CFR 232.

   - If the creditor does not offer or purchase the types of credit that would be consumer credit within the meaning of the MLA, the regulation does not apply and no further review is necessary;

   - If the creditor offers or purchases any of the types of credit that would be consumer credit within the meaning of the MLA, use the following procedures to determine whether the creditor complies with the MLA.

The following flowchart may be helpful in determining MLA applicability to a particular extension of credit to a covered borrower:

[18] This reflects the interagency examination procedures in their entirety.


Is the credit primarily for personal, family, or household purpose?
No
MLA does not apply to credit that is to be used primarily for a business, commercial, or agricultural purpose
Yes
Is the consumer credit extended to a consumer?
No
MLA does not apply to credit extended to other than a natural person
Yes
Is the credit a residential mortgage for purchase, construction, or refinance; a reverse mortgage; or a home equity loan or line of credit?
Yes
MLA does not apply to residential mortgage transactions, regardless of whether the covered borrower lives in the home
No
Is the credit expressly intended to finance the purchase of a vehicle and the loan is secured by that vehicle?
Yes
MLA does not apply to these transactions
No
Is the credit expressly intended to finance the purchase of personal property, and the loan is secured by that property?
Yes
MLA does not apply to these transactions
No
MLA may apply

Evaluate Compliance Management System

2. Determine the extent and adequacy of the institution's policies, procedures, and practices for ensuring and monitoring compliance with the MLA.

3. Determine the extent and adequacy of the training received by individuals whose responsibilities relate to compliance with the MLA. Review any training materials pertaining to the MLA and determine whether the training is comprehensive and covers the various aspects of the provisions that apply to the creditor's offerings and operations.

4. Determine if the institution has policies or procedures in place to:

   - Provide account disclosure information to covered borrowers in accordance with 32 CFR 232.6;
   - Correctly determine which fees it charges are required to be included in the calculation of the MAPR;
   - Correctly calculate and limit the MAPR (including waiving amounts necessary in order to comply with the limit at the outset of a transaction and at the end of a billing cycle on open-end credit, as applicable) as defined in 32 CFR 232.3(p) and in accordance with 32 CFR 232.4(c); and
   - Properly create and maintain records of covered borrower checks.

5. Obtain compliance reviews and/or audit materials, including workpapers and reports, to determine if:

   - The scope of any audits address all provisions of the regulation, as applicable;
   - Transaction testing includes samples covering all relevant product types and decision centers;
   - The work performed is accurate;
   - Significant deficiencies and their causes are included in reports to management or to the board of directors;
   - Management has taken corrective actions to follow up on previously identified deficiencies; and
   - The frequency of review/audit is appropriate (including review/audit of implemented corrective action related to previously identified deficiencies).

6. Through discussions with management and review of available information, determine whether the institution's internal controls are adequate to ensure compliance. Consider the following:

   - Organization charts;
   - Process flowcharts;
   - Policies and procedures;
   - Account documentation;
   - Checklists; and
   - Computer program documentation, including any computer program testing and validation.

Identification of Covered Borrowers

7. Determine whether the creditor's policies, procedures, and training materials accurately reflect the scope of the "covered borrower" definition.

If creditors elect not to enact company-wide policies and procedures to check for covered borrower status, they may be at higher risk for making non-compliant loans. Examiners may wish to focus any file review activities on the ability of creditors to accurately ascertain covered borrower status on an ad hoc basis.

8. Determine whether the creditor has elected to use one of the optional safe harbor methods provided in 32 CFR 232.5(b). If the creditor does not use one of the optional safe harbor methods, describe the method, if any, that the creditor uses to ensure it does not make covered loans to covered borrowers on prohibited terms.

9. If a creditor elects to use one of the two optional safe harbor methods to check a consumer's status, ascertain whether the creditor timely creates and thereafter maintains a record of the information obtained, in accordance with 32 CFR 232.5(b)(3).

10. If a creditor elects to use a method other than one of the two optional safe harbor methods, determine whether the chosen method is performed prior to a consumer becoming obligated on a credit transaction or establishing an account for credit and whether the creditor maintains a record of the information obtained.

    Note: Section 232.5 contains no specific timing and recordkeeping requirements if the creditor uses an alternative to one of the safe harbors to verify covered borrower status. However, any alternative method selected by the creditor should be evaluated to determine whether it is reasonable and verifiable, and whether it addresses the risk of extending consumer credit that does not comply with the MLA to a covered borrower.

11. Regarding an action by a creditor relating to a covered borrower with an existing account, if a creditor has elected to use one of the two optional safe harbor

methods, determine whether the creditor also uses one of the safe harbor methods when extending a new consumer credit product or newly establishing an account for consumer credit, including a new line of consumer credit that might be associated with a pre-existing transactional account held by the borrower.

Calculation of MAPR

12. Determine whether the creditor includes the following charges in the calculation of the MAPR for both closed- and open-end credit, as applicable:

    - Any credit insurance premium or fee, any charge for single premium credit insurance, any fee for a debt cancellation contract, or any fee for a debt suspension agreement;
    - Any fee for a credit-related ancillary product sold in connection with the credit transaction for closed-end credit or an account for open-end credit; and
    - Except for a bona fide fee (other than a periodic rate) charged to a credit card account, which may be excluded if the bona fide fee is reasonable for that type of fee:
        - Finance charges associated with the consumer credit;
        - Any application fee charged to a covered borrower who applies for consumer credit, other than an application fee charged by a Federal credit union or an insured depository institution when making a short-term, small amount loan provided that the application fee is charged to the covered borrower not more than once in any rolling 12-month period; and
        - Any fee imposed for participation in any plan or arrangement for consumer credit other than as permitted under 32 CFR 232.4(c)(2)(ii)(B).

13. For closed-end credit, determine whether the creditor appropriately calculates the MAPR following the rules for calculating and disclosing the "Annual Percentage Rate (APR)" for credit transactions under Regulation Z based on the "Types of Fees to Include in MAPR Calculation" above.

14. For open-end credit, determine whether the creditor appropriately calculates the MAPR following the rules for calculating the effective annual percentage rate for a billing cycle as set forth in 12 CFR 1026.14(c) and (d) of Regulation Z (as if a creditor must comply with that section) based on the "Types of Fees to Include in MAPR Calculation" above.

Mandatory Loan Disclosures

15. Determine whether the creditor properly provides the covered borrower with required information before or at the time the borrower becomes obligated on the transaction or establishes an account for the consumer credit, including:

    - A statement of the MAPR applicable to the extension of consumer credit;
    - Any disclosure required by Regulation Z, which shall be provided only in accordance with the requirements of Regulation Z that apply to that disclosure; and
    - A clear description of the payment obligation of the covered borrower, as applicable. Note that a payment schedule (in the case of closed-end credit) or account-opening disclosure (in the case of open-end credit) provided pursuant to Regulation Z satisfies this requirement. Also note that for oral disclosures, a generic, clear description of the payment obligation is permissible.

16. Determine whether the creditor provides the statement of the MAPR and the clear description of the payment obligation both in writing in a form the covered borrower can keep and orally.

17. If the creditor elects to provide a toll-free telephone number in order to deliver the oral disclosures to a covered borrower, determine whether the toll-free telephone number is included on either:

    - A form the creditor directs the consumer to use to apply for the transaction or account involving consumer credit; or
    - The written disclosure the creditor provides to the covered borrower.

18. If the creditor elects to provide a toll-free telephone number in order to deliver the oral disclosures to a covered borrower, determine whether the toll-free telephone number is available for a duration of time reasonably necessary to allow a covered borrower to contact the creditor for the purpose of listening to the disclosure.

Other Limitations

19. Determine whether the creditor abides by the prohibition on rolling over, renewing, repaying, refinancing, or consolidating consumer credit. Note that this prohibition does not apply to a creditor that is chartered or licensed under Federal or State law as a bank, savings association, or credit union, or when the credit is being extended by the same creditor to refinance or renew an extension of credit that was not

covered because the consumer was not a covered borrower at the time of the original transaction.

20. Determine whether the creditor abides by the prohibitions against requiring covered borrowers to:

    - Waive their rights to legal recourse under any otherwise applicable law;
    - Submit to arbitration or other onerous legal notice provisions in the case of a dispute; or
    - Provide unreasonable notice as a condition for legal action.

21. Confirm that the creditor does not:

    - Require that a covered borrower repay the obligation by military allotment (note that for purposes of this provision of the regulation, the term "creditor" does not include "military welfare societies" or "service relief societies");
    - Prohibit a covered borrower from prepaying the consumer credit; or
    - Charge a covered borrower a penalty fee for prepaying all or part of the consumer credit.

22. Determine whether the creditor abides by the prohibition on using the title of a vehicle as security for the obligation involving the consumer credit. Note that this prohibition does not apply when the transaction is expressly intended to finance the purchase of a vehicle and the credit is secured by the vehicle or when the creditor is chartered under Federal or State law as a bank, savings association, or credit union.

23. Determine whether the creditor improperly requires access to a deposit, savings, or other financial account maintained by the covered borrower for repayment by:

    - Obtaining payment through a remotely created check or remotely created payment order; or
    - Obtaining a post-dated check provided at or around the time credit is extended.

Examination Checklist – Military Lending Act	Yes	No	NA
Applicability of the Regulation			
1. Does the creditor or assignee offer, extend, or purchase credit primarily for personal, family, or household purposes? If the answer is Yes, proceed. If the answer is No or N/A, conclude the review.			
Evaluate Compliance Management System			
2. Does the institution have adequate policies, procedures, and practices for ensuring and monitoring compliance with the MLA?			
3. Does the institution provide adequate training for individuals whose responsibilities relate to compliance with the MLA?			
4. Does the institution have policies or procedures in place to: • Provide account disclosure information to covered borrowers in accordance with 32 CFR 232.6; • Correctly determine which fees the creditor charges are required to be included in the calculation of the MAPR; • Correctly calculate and limit the MAPR (including waiving amounts necessary in order to comply with the limit at the outset of a transaction and at the end of a billing cycle on open-end credit, as applicable) as defined in 32 CFR 232.3(p) and in accordance with 32 CFR 232.4(c); and • Properly create and maintain records of covered borrower checks?			
5. Based on a review of the institution's compliance reviews and/or audit materials, including workpapers and reports: • Does the scope of any audits address all provisions of the regulation, as applicable? • Does transaction testing include samples covering all relevant product types and decision centers? • Is the work performed accurate? • Are significant deficiencies and their causes included in reports to management or to the board of directors? • Has management taken corrective actions to follow up on previously identified deficiencies? • Is the frequency of review/audit appropriate (including review/audit of implemented corrective action related to previously identified deficiencies)?			
6. Are the institution's internal controls adequate to ensure compliance?			
Identification of Covered Borrowers			
7. Do the creditor's policies, procedures, and training materials accurately reflect the scope of the "covered borrower" definition?			
8. Has the creditor elected to use one of the optional safe harbor methods provided in 32 CFR 232.5(b)?			
9. If a creditor elects to use one of the two optional safe harbor methods to check a consumer's status: • Does the creditor timely create a record of the information obtained, in accordance with 32 CFR 232.5(b)(3)? • Does the creditor thereafter maintain a record of the information obtained, in accordance with 32 CFR 232.5(b)(3)?			

Examination Checklist – Military Lending Act	Yes	No	NA
• Regarding an action by a creditor relating to a covered borrower with an existing account, does the creditor also use one of the safe harbor methods when extending a new consumer credit product or newly establishing an account for consumer credit, including a new line of consumer credit that might be associated with a pre-existing transactional account held by the borrower?			
10. If a creditor elects to use a method other than one of the two optional safe harbor methods: • Is the chosen method performed prior to a consumer becoming obligated on a credit transaction or establishing an account for credit? • Does the creditor maintain a record of the information obtained?			
Calculation of MAPR			
11. Does the creditor include the following charges in the calculation of the MAPR for both closed- and open-end credit, as applicable: • Any credit insurance premium or fee, any charge for single premium credit insurance, any fee for a debt cancellation contract, or any fee for a debt suspension agreement; • Any fee for a credit-related ancillary product sold in connection with the credit transaction for closed-end credit or an account for open-end credit; and • Except for a bona fide fee (other than a periodic rate) charged to a credit card account, which may be excluded if the bona fide fee is reasonable for that type of fee: o Finance charges associated with the consumer credit; o Any application fee charged to a covered borrower who applies for consumer credit, other than an application fee charged by a Federal credit union or an insured depository institution when making a short-term, small amount loan provided that the application fee is charged to the covered borrower not more than once in any rolling 12-month period; and o In general, any fee imposed for participation in any plan or arrangement for consumer credit.			
12. For closed-end credit, does the creditor appropriately calculate the MAPR following the rules for calculating and disclosing the "Annual Percentage Rate (APR)" for credit transactions under Regulation Z based on the MAPR charges?			
13. For open-end credit, does the creditor appropriately calculate the MAPR following the rules for calculating the effective annual percentage rate for a billing cycle as set forth in 12 CFR 1026.14(c) and (d) of Regulation Z (as if a creditor must comply with that section) based on the MAPR charges?			
Mandatory Loan Disclosures			
14. Does the creditor properly provide each covered borrower with required information before or at the time the borrower becomes obligated on the transaction or establishes an account for the consumer credit, (or at a later time provided for in Regulation Z, if any), including: • A statement of the MAPR applicable to the extension of consumer credit; • Any disclosure required by Regulation Z, which shall be provided only in accordance with the requirements of Regulation Z that apply to that disclosure; and • A clear description of the payment obligation of the covered borrower, as applicable. Note that a payment schedule (in the case of closed-end credit) or account-opening disclosure (in the case of open-end credit) provided pursuant to Regulation Z satisfies this requirement.			
15. Does the creditor provide the statement of the MAPR and the clear description of the payment			

Examination Checklist – Military Lending Act	Yes	No	NA
obligation both in writing in a form the covered borrower can keep and orally?			
16. If the creditor elects to provide a toll-free telephone number in order to deliver the oral disclosures to a covered borrower, does the creditor include the toll-free telephone number on either: • A form the creditor directs the consumer to use to apply for the transaction or account involving consumer credit; or • The written disclosure the creditor provides to the covered borrower?			
17. If the creditor elects to provide a toll-free telephone number in order to deliver the oral disclosures to a covered borrower, is the toll-free telephone number available for a duration of time reasonably necessary to allow a covered borrower to contact the creditor for the purpose of listening to the disclosure?			
Other Limitations			
18. Does the creditor abide by the prohibition on rolling over, renewing, repaying, refinancing, or consolidating consumer credit? Note that this prohibition does not apply to a creditor that is chartered or licensed under Federal or State law as a bank, savings association, or credit union, or when the credit is being extended by the same creditor to refinance or renew an extension of credit that was not covered because the consumer was not a covered borrower at the time of the original transaction.			
19. Does the creditor abide by the prohibitions against requiring covered borrowers to: • Waive their rights to legal recourse under any otherwise applicable law; • Submit to arbitration or other onerous legal notice provisions in the case of a dispute; or • Provide unreasonable notice as a condition for legal action?			
20. Does the creditor refrain from: • Requiring that a covered borrower repay the obligation by military allotment (note that for purposes of this provision of the regulation, the term “creditor” does not include “military welfare societies” or “service relief societies”); • Prohibiting a covered borrower from prepaying the consumer credit; or • Charging a covered borrower a penalty fee for prepaying all or part of the consumer credit?			
21. Does the creditor refrain from using the title of a vehicle as security for the obligation involving the consumer credit? Note that this prohibition does not apply when the transaction is expressly intended to finance the purchase of a vehicle and the credit is secured by the vehicle or when the creditor is chartered under Federal or State law as a bank, savings association, or credit union.			
22. Does the creditor refrain from improperly requiring access to a deposit, savings, or other financial account maintained by the covered borrower for repayment by: • Obtaining payment through a remotely created check or remotely created payment order; or • Obtaining a post-dated check provided at or around the time credit is extended?			

Overdraft Payment Programs

Introduction

Prior to the 1990s, overdraft programs were not common among financial institutions. Since that time, however, institutions have added and/or expanded the types of overdraft payment programs provided to customers. Some of these programs impose substantial fees and interest and rely on third-party vendors to develop systems to maximize the amount of fee income generated. Customer complaints have increased, along with reported legal and enforcement actions. In many cases, fees are repeatedly charged and are often disproportionate to the amount originally intended to be funded. Some institutions manipulate their transaction processing order to maximize fee income. Customers have complained that they were not made aware of the existence or potential negative consequences of, or alternatives to, various types of overdraft coverage. Some customers' financial difficulties have been exacerbated by institutions' overdraft payment practices and programs, even though the institutions maintain alternative programs more suitable for those customers. These circumstances can have an adverse impact on bank customers and present a potential risk of consumer harm.

In an effort to assist FDIC-supervised institutions in identifying, managing, and mitigating risks regarding overdraft payment programs, the FDIC issued its November 24, 2010, *Overdraft Payment Supervisory Guidance* ("*2010 Supervisory Guidance*") (FIL-81-2010). The *2010 Supervisory Guidance*, which particularly focuses on the risks associated with excessive or chronic use of automated overdraft programs, is intended to serve as a comprehensive, up-to-date source of information about concerns and risks, as well as a summary of existing guidance and recent regulatory developments. In addition, the *2010 Supervisory Guidance* encourages FDIC-supervised institutions to promote responsible use of overdraft payment programs through a series of specifically recommended actions institutions can take to help minimize the potential for consumer harm and regulatory or other risks. These overdraft payment program examination procedures:

- Incorporate recent changes to applicable laws and regulations;
- Integrate the supervisory expectations stated in the *2010 Supervisory Guidance*; and
- Reaffirm principles contained in the *2005 Interagency Joint Guidance on Overdraft Protection Programs* ("*Joint Guidance*") (FIL-11-2005) and the *2008 Guidance for Managing Third-Party Risk* ("*Third-Party Guidance*")[1] (FIL-44-2008).

The *2010 Supervisory Guidance* reaffirms existing laws, regulations, and guidance and addresses concerns regarding the risks posed by automated programs and excessive use. The specific supervisory expectations set out in the *2010 Supervisory Guidance* with respect to excessive or chronic users of automated overdraft programs do not apply to ad hoc overdraft practices. In April 2011, the FDIC published a set of Frequently Asked Questions to clarify the 2010 guidance and to respond to questions received from supervised institutions and third-party vendors.[2]

The *Joint Guidance*,[3] *Third-Party Guidance*, and range of applicable laws and regulations potentially apply to any method of covering overdrafts, including automated programs, linked accounts and lines of credit.

Examination Approach and Applicable Laws and Regulations

The FDIC's risk-scoping examination approach requires compliance examiners to focus their attention to operational areas that present the greatest potential risk of consumer harm, as appropriate, including consideration of overdraft programs. Examiners should continue to reference appropriate chapters in the Compliance Examination Manual governing laws and regulations applicable to overdraft payment programs. The scope of potentially applicable statutes and regulations that may apply to overdraft payment programs includes:

- The Truth in Lending Act (TILA) and Regulation Z;
- The Truth in Savings Act (TISA) and Regulation DD;
- The Electronic Fund Transfer Act (EFTA) and Regulation E;
- Section 5 of the Federal Trade Commission Act (FTC Act) governing Unfair or Deceptive Acts or Practices (UDAPs);
- The Equal Credit Opportunity Act (ECOA) and Regulation B;
- The Expedited Funds Availability Act and Regulation CC; and
- The Community Reinvestment Act (CRA).

1 *See* Third-Party Risk Compliance Examination Procedures issued June 1, 2010.

2 On April 1, 2011, FDIC staff published a set of Frequently Asked Questions and answers in response to questions received from supervised institutions and third-party vendors about the 2010 Supervisory Guidance, available at https://www.fdic.gov/news/conferences/overdraft/FAQ.pdf

3 Compliance examiners should pay particular attention to the "Best Practices" in the *Joint Guidance*, which cover both Marketing and Communications with Consumers and Program Features and Operation.

Compliance examiners should apply the Overdraft Payment Program Compliance Examination Procedures and relevant laws and regulations, and refer to the *2010 Supervisory Guidance*, the *Joint Guidance*, and the *Third-Party Guidance*, as appropriate, to verify that institutions are adhering to applicable laws and regulations, and implementing appropriate policies, procedures, compliance management systems, and risk mitigation strategies.

Regulation E Changes

Changes to laws and regulations place additional requirements on institutions' overdraft payment programs. Under Regulation E rules that took effect July 1, 2010, institutions must provide notice and a reasonable opportunity for customers to opt-in to the payment of automated teller machine (ATM) and one-time, point-of-sale (POS) overdrafts provided in exchange for a fee. Institutions must also inform the customer if alternatives are available.[4] In complying with these requirements, institutions should not attempt to steer frequent users of fee-based overdraft products to opt-in to these programs while obscuring the availability of alternatives.

Targeting customers who may be least able to afford such products can raise safety-and-soundness concerns about potentially unsustainable customer debt. Overly aggressive marketing, advertising, and other promotional activities require particular vigilance to ensure that they are not unfair or deceptive. Steering activity with respect to credit products raises potential legal issues, including fair lending, equal credit opportunity, and concerns about UDAPs, among others, and will be closely scrutinized. In addition, inconsistent application of waivers of overdraft fees will be evaluated in light of all applicable fair lending statutes and regulations.

Unfair or Deceptive Acts or Practices

Section 5 of the FTC Act prohibits UDAPs in or affecting commerce.[5] The FDIC enforces compliance with this important consumer protection law regarding FDIC-supervised institutions pursuant to its authority in the FTC Act and Section 8 of the Federal Deposit Insurance Act.[6] The prohibition against UDAPs applies to all products and services offered by financial institutions, including overdraft services, and regardless of whether such services are offered directly or indirectly through a third party. Moreover, the prohibition applies to every stage and activity: from product development to the creation and rollout of the marketing campaign; from account maintenance and collections all the way through termination of the customer relationship.[7]

Community Reinvestment Act

Institutions will continue to receive favorable CRA consideration under the service or lending tests (consistent with CRA regulations and FIL-50-2007 providing details on small dollar loans[8]), for offering financial education and positive alternatives to overdrafts that are responsive to the needs of customers, particularly low- and moderate-income individuals, in their local communities. Examples include lower-cost transaction accounts and credit alternatives, such as a linked savings account, a small, reasonably priced line of credit consistent with safe and sound banking practices, or a safe and affordable small dollar loan.

Third-Party Arrangements

With the growth of third-party arrangements for overdraft payment programs, Compliance examiners should ensure that financial institutions are managing these relationships in accordance with the principles outlined in the *Third-Party Guidance*.[9] In addition to general third-party oversight considerations, these third-party overdraft payment programs may raise concerns that differ from potential issues related to in-house programs. For example, some vendors have tended to promote programs that encourage generation of fee income by linking the amount or volume of overdraft fees charged to the percentage of incentive compensation paid to the vendor.[10] This practice is generally inconsistent with promoting the responsible use of these programs.

Where vendor compensation is tied to a percentage of income or fees generated by the product sold, Compliance examiners should evaluate whether the third-party relationship raises the potential for compliance, operational, financial, and reputational risks to the financial institution. For example, where a third-party arrangement provides that the vendor will take a reduced percentage of compensation if the financial institution implements a transaction processing order of largest-to-smallest, this arrangement may rise to the level of a UDAP violation if the institution, at the vendor's encouragement, is manipulating the transaction processing

4 *See* Regulation E (Electronic Fund Transfer Act) Examination Procedures. In addition, as of January 1, 2010, Regulation DD (Truth in Savings) requires institutions to disclose on periodic statements the aggregate dollar amounts charged for overdraft fees and for returned item fees, for the statement period and the year-to-date. It also requires institutions that provide account balance information through an automated system to provide a balance that does not include additional funds that may be made available to cover overdrafts. *See* Regulation DD Examination Procedures.

5 15 U.S.C. § 45(a).

6 *See* 12 U.S.C. § 1818(b).

7 *See* Unfair or Deceptive Acts or Practices Compliance Examination Procedures.

8 *See also* Interagency Questions and Answers Regarding Community Reinvestment, 75 Fed. Reg. 11642 (Mar. 11, 2010), available at http://www.ffiec.gov.

9 *See* footnote 2.

10 *See* FDIC Study of Bank Overdraft Programs (November 2008) at p. 50 (Section VII), available at https://www.fdic.gov/bank/analytical/overdraft.

order solely to generate fees and increase both the institution's fee income and the vendor's compensation. Customers may be harmed if this practice is designed exclusively to increase the amount of overdraft fees assessed without any corresponding and meaningful benefit to the consumer.

The 2010 Supervisory Guidance

The FDIC expects that supervised institutions will review their current automated overdraft payment programs, policies and procedures in light of the *2010 Supervisory Guidance*. For example, as a threshold matter, Compliance examiners should determine if the institution has reviewed its existing program and determined whether the institution is going to:

- Give customers the opportunity to affirmatively choose the credit product most suitable for their financial needs, including overdraft payment products;
- Ensure that customers understand overdraft payment programs and alternative product choices;
- Appropriately monitor accounts and take meaningful and effective action to reach customers frequently using automated overdraft programs to inform them of lower-cost alternatives;
- Structure transaction clearing practices in a neutral manner not intended to maximize overdraft-related fees charged to customers; and
- Establish appropriate daily limits on fees.

Identification of Types of Overdraft Payment Programs Offered

Compliance examiners should first identify overdraft payment practices, programs and products offered and used by the financial institution at each examination, and consider the applicability of existing laws, regulations and guidance, as appropriate. In particular, examiners will need to determine whether overdraft payment decisions and programs are automated or not.

Automated overdraft payment programs typically rely on computerized decision-making and use pre-established criteria to pay or return specific items. There is little to no case-by-case review and decision-making with respect to an individual customer or item. By contrast, ad hoc programs typically involve the exercise of bank employee judgment in making a specific decision about whether to pay or return an item, as an accommodation and based on the employee's knowledge of a particular customer. *See Management and Policy-Related Examination Procedures* of this section for further explanation of automated and ad hoc programs.

Automated overdraft payment programs are the focus of the *2010 Supervisory Guidance.* Ad hoc overdraft payments have been authorized by banks for years as an accommodation based on specific considerations and knowledge of a particular customer, and they have generally not been the subject of the type of product over-use concerns that can be associated with automated overdraft programs. **Consequently, the specific supervisory expectations set out in the Guidance regarding customer contact for excessive or chronic users do not apply to ad hoc overdraft practices.** Compliance examiners should not focus on ad hoc overdraft payments or practices when evaluating appropriate risk mitigation efforts in connection with the *2010 Supervisory Guidance*; however, if significant safety and soundness or compliance risks regarding ad hoc programs and practices are identified, an examiner may consider an expanded review (*See Expanded Review for Ad Hoc Programs or Practices*).

Examiners should focus on identifying and mitigating the significant risks posed by automated overdraft programs, including taking a risk-based approach in scoping examinations to verify that institutions' automated overdraft payment programs comply with applicable laws and regulations, and that such programs are not operating in a manner that is inconsistent with expectations set out in the *2010 Supervisory Guidance*, the *Joint Guidance* and the *Third-Party Guidance*. In examining for appropriate application of the *2010 Supervisory Guidance*, reviews of management activities, policies and procedures, and transaction testing, including document requests, should focus on automated overdraft programs.

Supervisory Action to Mitigate Risks

Overdraft payment programs that are found to pose unacceptable safety and soundness or compliance risks will be factored into examination ratings, and corrective action will be taken where necessary. Violations should be cited on the appropriate Violation pages of the Report of Examination (ROE). Other concerns regarding practices that are inconsistent with the *2010 Supervisory Guidance*, the *Joint Guidance*, and/or the Third-Party Guidance should be discussed in the Examiner's Comments and Conclusions page of the ROE. Additionally, Compliance examiners should make appropriate recommendations to bank management on the Matters Requiring Board Attention page in the ROE, when applicable. These violations and concerns should be taken into consideration when assessing the institution's Compliance Management System (CMS) and determining the overall Compliance Rating.

Appropriate corrective action will be pursued where overdraft payment practices or programs pose unacceptable safety and soundness or compliance management system risks, or result in violations of laws or regulations, including UDAPs. Depending on the circumstances, corrective action may include ratings downgrades, informal agreements, enforcement orders, customer restitution, and/or civil money penalties.

Regional Offices should ensure that appropriate post-examination tracking covers instances where the ROE identifies:

- Inconsistencies with the *2010 Supervisory Guidance*, the *Joint Guidance* and the *Third-Party Guidance* given an institution's overall CMS and risk mitigation approach, and
- Other overdraft-related violations and concerns, to ensure that timely and appropriate corrective action is taken by bank management.

In addition, at the conclusion of each compliance examination, examiners are required to complete the overdraft payment program related questions in the Credit and Consumer Product/Services Survey. Finally, Compliance examiners should consult with Risk Management examiners, as appropriate, where safety and soundness concerns are identified.

Examination Procedures

Examination Objectives

These Overdraft Payment Program Compliance Examination Procedures incorporate existing and updated laws, regulations, and guidance. These procedures demonstrate a new, heightened, and detailed focus on identifying risks resulting from excessive use of automated overdraft payment programs. Specific examination objectives include the following:

1. Assess the quality of the financial institution's compliance risk management systems and its policies and procedures governing overdraft payment practices and programs.
2. Determine the financial institution's compliance with applicable laws and regulations.
3. Assess how and whether institutions are implementing the recommended actions contained in the *2010 Supervisory Guidance*.
4. Determine the effectiveness of the financial institution's management of third-party risks, where applicable, in accordance with the *Third-Party Guidance*.
5. Determine the effectiveness of the financial institution's internal controls and procedures for monitoring overdraft payment practices and programs consistent with the *Joint Guidance* and the *2010 Supervisory Guidance*.
6. Direct corrective action when violations of laws, rules, or unsafe and unsound practices are identified, or when the financial institution's practices, policies or internal controls are found to be deficient.
7. Determine the level of compliance with the 2010 Regulation E opt-in notice requirements and relevant regulatory changes related to overdraft products (*e.g.*, TISA).

Management and Policy-Related Examination Procedures

Compliance examiners should follow the Management and Policy-Related Examination Procedures identified below, as applicable, in each examination involving overdraft payment programs. If after conducting a review of an institution's Management and Policy-Related Examination Procedures, an examiner identifies weaknesses or other areas of concern,[11] examiners should conduct appropriate transaction testing consistent with the Transaction-Related Examination Procedures (*See Transaction-Related Examination Procedures for Automated Programs*) to determine whether the overdraft program poses unacceptable safety and soundness, compliance, or other risks.

1. Determine how the financial institution handles decisions associated with overdraft payment programs and non-sufficient funds items (NSFs), including whether the institution offers overdraft payment programs to customers, and the types and characteristics of these programs.
   - Identify the overdraft practices, payments, and products used by the institution.
   - Identify who in management is responsible for daily oversight of NSFs and overdraft decisions.
   - Determine who in management has the ability to override overdraft policies and limits.
   - Determine to what extent front-line employees who interact with customers on a daily basis have been trained on the institution's overdraft and NSF policies, procedures, and products.
   - Determine the level of discretion and parameters involved in any waivers or refunds.
   - Identify the extent to which the Board of Directors (Board) and management oversee and review the activities associated with overdraft payment programs, decisions, and policies.
2. Determine if the overdraft payment programs qualify as automated programs for purposes of the *2010 Supervisory Guidance*.
   - **Automated overdraft payment programs** typically include the following characteristics:
     - They are partially or fully computerized;
     - They are used by institutions to determine whether NSF transactions qualify for overdraft coverage based on pre-determined criteria; and

11 Consistent with existing examination protocols governing Compliance Management Systems, examiners should follow these procedures (including the Transaction-Related Examination Procedures, if warranted) in the first examination conducted after issuance of the *2010 Supervisory Guidance*. The guidance states that the FDIC expects institutions to have approved, responsive compliance and risk management action plans by July 1, 2011.

  - The decision to pay or return specific items is pre-established and generally does not rely on bank employee decision-making with respect to any individual customer or item.
- By contrast, **ad hoc programs or practices** typically have the following characteristics:
  - A bank employee exercises judgment in making a specific decision about whether to pay or return an item;
  - Decisions are made based on specific considerations and knowledge of a particular customer; and
  - They are provided as an accommodation, not on a pre-determined basis.
- Some overdraft payment programs have elements that are both automated and ad hoc. In these instances, examiners should exercise judgment in making a determination about whether the program is automated or ad hoc based on the aforementioned criteria, and consider appropriate follow-up action.
- If, after completion of the Management and Policy-Related review, examiners identify significant risks and concerns covered in the *2010 Supervisory Guidance* with respect to **automated overdraft payment programs**, examiners should consult the Transaction-Related Examination Procedures (*See Consistency with Recommendations in the 2010 Supervisory Guidance – Expanded Review for Automated Programs*).
- During Management and Policy-Related reviews, the specific supervisory expectations set out in the *2010 Supervisory Guidance* regarding customer contact for excessive or chronic users generally should not be applied to **ad hoc overdraft practices**. However, institutions that authorize overdrafts on an ad hoc basis should manage potential reputational, compliance, and litigation risks regarding certain overdraft payment practices, such as check clearing practices designed to maximize overdraft fees.
- On an exception basis, where unacceptable risks are discovered during an examination regarding ad hoc programs and practices that potentially raise legal, regulatory, or other significant compliance concerns, examiners should consider whether follow-up action should be taken (*See Expanded Review for Ad Hoc Programs or Practices*).

3. Review all written policies and procedures, management's self-monitoring, customer complaints, compliance audit reports including work papers, training materials, and other reports, as appropriate based on the nature of the overdraft program. Determine whether:
   - Policies and procedures are all encompassing and take into consideration, as appropriate, issues covered by the *2010 Supervisory Guidance*, the *Joint Guidance*, and the *Third-Party Guidance.*
   - Customer complaints are captured and handled in a timely manner, with appropriate reimbursements and adjustments.
   - The scope of the audit or self-monitoring addresses, as appropriate, issues covered by the *2010 Supervisory Guidance*, the *Joint Guidance*, and the *Third-Party Guidance*.
   - Management has taken corrective action to follow-up on previously identified deficiencies.
   - Testing includes samples covering overdraft payment practices, programs, and decision centers.
   - Testing includes monitoring for risks identified in the *Joint Guidance*, as appropriate.
   - Testing encompasses monitoring accounts for excessive or chronic customer use; meaningful and effective customer follow-up with respect to automated programs; transaction processing order; establishment of overdraft payment decision parameters that ensure continued applicability and appropriateness; and other expectations, as appropriate, and consistent with the *2010 Supervisory Guidance*.[12]
   - Testing includes review of all third-party arrangements related to overdrafts.
   - The scope of the work performed is appropriate.
   - The work performed is accurate.
   - Significant deficiencies and their causes are included in reports to management and/or the Board.
   - Management and/or the Board follow up to ensure that action is taken to correct any significant deficiencies identified.
   - Review frequency is appropriate.
   - The institution documents instances of accountholder excessive use of automated overdraft payment programs (*e.g.*, more than six occasions where a fee is charged in a rolling twelve-month period).

4. Through discussions with management and review of available information, determine whether the institution's internal controls are adequate to ensure appropriate compliance with the *2010 Supervisory Guidance*, the *Joint Guidance*, and the *Third-Party Guidance* (including managing third-party arrangements related to the practices and programs under review), and applicable laws and regulations.

5. Review the following:
   - Organization charts;
   - Process flowcharts;
   - Policies and procedures;

12 *See* also *Consistency with Recommendations in the 2010 Supervisory Guidance – Expanded Review for Automated Programs* of the Transaction-Related Examination Procedures.

- Account documentation;
- Checklists;
- Computer program documentation;
- Marketing materials;
- Training materials;
- Third-party agreements;
- Reports on the frequency of customer overdraft payment program use, overdraft accommodations, and associated fees; and
- Reports documenting efforts to monitor accountholder excessive use of automated overdraft payment programs (*e.g.*, more than six occasions where a fee is charged in a rolling twelve-month period).

6. Through a review of the financial institution's training materials and procedures, determine whether:
   - The institution provides appropriate training to individuals responsible for compliance with, and operational responsibilities for, the institution's overdraft payment practices and programs, *e.g.*, customer service representatives, tellers, individuals handling complaints, audit and compliance staff, and marketing personnel.
   - The training is comprehensive and covers the various aspects detailed in the *2010 Supervisory Guidance*, the *Third-Party Guidance*, the *Joint Guidance*, and applicable laws and regulations.
   - In addition to knowledge of the institution's overdraft payment programs, practices and policies (including applicable laws, regulations and guidance), the training should specifically cover:
     - Information on alternative and less costly products and options,
     - How customers opt-in or opt-out (if the institution chooses to allow customers to opt-out) of various programs,
     - How to monitor for excessive use,
     - How and when to conduct meaningful and effective follow-up with customers, and
     - How to respond to customer complaints.

7. Determine the extent and adequacy of the institution's policies, procedures, and practices for ensuring compliance with safe and sound operational, financial and reputational risks and consumer protection laws and regulations. In particular, verify that:
   - The institution has developed overdraft payment program policies, procedures and practices that ensure compliance with applicable laws and regulations, including:
     - TILA and Regulation Z;
     - TISA and Regulation DD;
     - EFTA and Regulation E;
     - Section 5 of the FTC Act (governing UDAPs) and Regulation AA;
     - ECOA and Regulation B;
     - EFA and Regulation CC; and
     - CRA.
   - The institution's overdraft payment program policies, procedures and practices address, as appropriate, the supervisory expectations noted in the *2010 Supervisory Guidance*, compliance and risk management principles identified in the *Third-Party Guidance*, and best practices noted in the *Joint Guidance*.

Among other things, Compliance examiners should verify that:

- The institution has adopted appropriate procedures in accordance with Regulation E to eliminate overdraft charges related to ATM and one-time, point-of-sale (POS) transactions unless the customer has opted-in to having such fees charged.[13]
- The institution treats customers the same regarding the payment of other NSF items and such payment is not conditioned upon whether or not the customer has affirmatively agreed to pay overdraft fees on ATM or one-time, point-of-sale (POS) transactions.
- The institution's marketing for an overdraft payment program is consistent with the requirements of applicable laws and regulations.
- The institution has developed practices that treat all customers equally, including ensuring that customers are not steered to more expensive products based on their use of overdraft services.[14]
- The institution has developed procedures and methodologies to monitor the use of overdrafts by its customers and associated fees charged.
- The institution has enacted policies and procedures that address prompt handling of requests to opt-in (and to opt-out if the institution, within its discretion, chooses to permit consumers to opt-out) of overdraft payment programs and transactions.
- The institution has developed a process that facilitates meaningful and effective follow-up with customers who have been identified as chronic or excessive users of automated overdraft payment programs. An institution's program should be structured to provide customers with information regarding alternative credit programs or other products that would be more beneficial to their financial needs, and given a meaningful opportunity to affirmatively choose the

13 *See* footnote 4.

14 *See* FFIEC Interagency Fair Lending Examination Procedures and Regulation E Examination Procedures.

overdraft payment product that overall best meets their needs.

  - According to the *2010 Supervisory Guidance*, potential excessive use can occur if a customer overdraws his or her account on more than six occasions where a fee is charged in a rolling twelve-month period.
  - For ease of examination, institutions should be encouraged to incorporate excessive use monitoring triggers consistent with the *2010 Supervisory Guidance*. If an institution maintains a different standard for excessive use, this standard is expected to be reasonable and designed to implement the supervisory expectation that institutions monitor and take meaningful and effective follow-up action when customers use the overdraft payment program excessively.
- The institution has developed a transaction clearing process method that is fully supported by sound banking business reasons, is neutral in its application, and not designed to maximize the cost to consumers.
- The institution has developed appropriate overdraft payment decision parameters (*e.g.*, daily limits on fees).
- The institution performs adequate due diligence before entering into and during the course of a third-party relationship in connection with an overdraft payment program.[15]
- The institution has developed policies and procedures for monitoring and responding to customer complaints.

Transaction-Related Examination Procedures for Automated Programs

Compliance examiners should conduct transaction testing using the Transaction-Related Examination Procedures if, after completing the Management and Policy-Related Examination Procedures, they discover weaknesses or other risks requiring further investigation. Examiners should use their judgment in deciding the sample size of, *e.g.*, accounts, disclosures and advertisements. Sample sizes should be increased until confidence is achieved in reviewing various aspects of the financial institution's automated overdraft payment programs, practices, policies and procedures.

As noted in *Identification of Types of Overdraft Payment Programs Offered* and *Management and Policy-Related Examination Procedures*, for the vast majority of examinations, Compliance examiners will not conduct transaction-related testing on ad hoc programs and practices.

15 *See* footnote 2.

Further Document Collection and Review

To the extent not already reviewed pursuant to the Management and Policy-Related Examination Procedures, examiners should obtain and review copies of the following documents for consistency with applicable laws, regulations and guidance:

- Descriptions of overdraft payment programs;
- Disclosure forms;
- Account agreements;
- Opt-in and opt-out agreements;
- Excessive use and fee reports;
- Procedures for monitoring excessive or chronic customer use and undertaking meaningful and effective follow-up action;
- Overdraft activity reports and compliance documentation (including any to management or the Board related to monitoring and follow-up, workout loans, charge-offs, fee waivers, daily limits, *de minimis* transactions, etc.);
- Third-party contracts for overdraft payment programs;
- Procedural manuals and written policies;
- Approval guidelines and parameters for all overdraft payment programs, including daily fee limits;
- ATM receipts, periodic statements, and ATM/POS terminal notices;
- Form letters and other correspondence used to notify customers of NSFs or overdraft items;
- Form letters and other correspondence used to notify customers of an overdrawn account status;
- Form letters and other correspondence used in case of errors or questions concerning an account;
- Form letters and other correspondence used to contact customers who are excessive users to inform them of alternative, less expensive products;
- Form letters and other correspondence to opt-in or opt-out of overdraft products, including Regulation E ATM and one-time, POS opt-in related materials;
- All other form letters and correspondence used relating to NSF and overdraft items or programs;
- Any agreements with third-parties allocating compliance responsibilities;
- Marketing materials and scripts, including Regulation E ATM and POS-related materials; and
- Customer complaint files.

Consistency with 2005 Joint Guidance Best Practices – Expanded Review

Further review the financial institution's overdraft payment practices and programs to ensure that they reflect the "Best Practices" outlined in the *Joint Guidance*, and are consistent

with the *2010 Supervisory Guidance*. In addition to the safety and soundness considerations and legal risks identified, Compliance examiners should review efforts to mitigate risk and concerns raised consistent with the following 2005 Best Practices, including:

- Marketing and Communications with Consumers
  1. The institution does not market the program in a manner that encourages routine or intentional overdrafts.
  2. The institution informs customers of other overdraft services and credit products, if any, that are available and the differences in each product (terms and fees), including the consequences of extensively using overdrafts to cover short-term credit needs.
  3. The institution trains staff to explain overdraft payment practices, program features, costs, terms, how to opt-in (or if the institution, within its discretion, chooses to permit consumers to opt-out, how to opt-out), and availability of other products to cover overdrafts.
  4. The institution makes clear when payment of overdrafts is discretionary and does not indicate that payment is guaranteed if the institution retains discretion to not pay an overdraft item.
  5. The institution does not promote "free" accounts and overdraft payment programs in the same advertisement in a manner that would suggest that the program is free of charges (consistent with Regulation DD).
  6. The institution clearly discloses the dollar amount of the fee for each overdraft and any interest rate or other fees that may apply, in communications about overdraft payment programs.
  7. The institution informs customers that the overdraft fees, as well as the amount of the overdraft, will be subtracted from any overdraft limit disclosed (consistent with Regulation DD).
  8. The institution clearly discloses, where applicable, that more than one overdraft fee may be charged against the account per day, depending on the number of checks presented or withdrawals made from the customer's account.
  9. The institution clearly explains to consumers that transactions may not be processed in the order in which they occurred, and that the order in which the transactions are received and processed can affect the total amount of overdraft fees incurred.
  10. The institution clearly discloses the types of transactions that can incur an overdraft fee (*e.g.*, ATM withdrawals, debit card transactions, preauthorized automatic debits, telephone-initiated transfers, or other electronic transfers), to avoid implying that check transactions are the only transactions covered.
- Program Features and Operations
  1. The institution provides a specific notice, where feasible, to inform the customer that completing the withdrawal or fund transfer may trigger an overdraft fee and presents the notice in a manner that permits the customer to cancel the transaction after receiving the notice. If this is not feasible, the institution prominently displays notices explaining that transactions that overdraw accounts may be approved and fees may be incurred.
  2. The institution does not include overdraft payment program funds when providing a single balance for an account by any means (consistent with Regulation DD).
  3. The institution promptly notifies customers each time an overdraft payment program has been accessed. The notice identifies the date of the transaction, type of transaction, item amount, overdraft amount, fee imposed, amount necessary to return the account to a positive balance, amount of time the customer has to return the account to a positive balance, and the consequences of not returning the account to a positive balance within that time period. Additionally, the institution notifies customers if the institution terminates or suspends customer access to the service.
  4. The institution establishes daily limits on the customer's costs from overdraft payment programs, *e.g.*, by limiting the dollar amount of fees or number of transactions per day.
  5. The institution monitors excessive customer use of overdrafts, which would indicate a need for alternative credit arrangements or services, and informs customers of these options.
  6. The institution does not report negative information to consumer reporting agencies when overdrafts are paid under the terms of the institution's overdraft payment program.

Consistency with Recommendations in the 2010 Supervisory Guidance – Expanded Review for Automated Programs

Where transaction testing is warranted, examiners should perform a detailed review of the financial institution's automated overdraft payment practices and programs for appropriate consistency with the "Supervisory Expectations" outlined in the *2010 Supervisory Guidance*, as well as the "Regulation E Requirements" and "Examinations" discussions. Examiners should discuss with institutions which recommendations, expectations, and items are appropriate given the institution's overdraft payment programs and practices, customer base and use patterns, and business model, as well as other efforts by the institution to address excessive use.

In particular, for **automated overdraft payment programs** Compliance examiners should determine whether:

1. The institution gives customers the opportunity to affirmatively choose the overdraft payment product that best meets their needs.
   - This includes, for example, a linked savings account,[16] a more reasonably priced line of credit that is consistent with safe and sound banking practices, or a safe and affordable small-dollar loan.[17]
2. The institution's Board provides appropriate oversight of programs consistent with its ultimate responsibility for overall compliance, and management provides oversight of program features and operations on an ongoing basis, including annual review of an overdraft payment program's key features.
3. The institution reviews its marketing, disclosures, and implementation of such programs to minimize potential customer confusion and promote responsible use.
4. The institution trains staff to explain program features and other choices.
5. The institution prominently distinguishes account balances from any available overdraft coverage amounts (consistent with Regulation DD).
6. The institution monitors programs for excessive or chronic customer use, and undertakes meaningful and effective follow-up action.
   - Meaningful and effective follow-up means that the institution has made reasonable efforts to provide the customer with information on alternatives to automated overdraft payment programs that may be better-suited to the individual's need for short term credit, and a clear mechanism for the customer to avail him or herself of those alternatives.
     - The key goal is to ensure that customers are able to make informed choices among available options to manage recurring needs for short-term credit.
     - An institution should be able to demonstrate it monitors account usage, undertakes programs designed to address excessive or chronic use, and monitors its success in informing frequent users of overdraft payment programs of the high cumulative costs of the program and the availability of less costly or otherwise more appropriate alternatives.
     - Although institutions are encouraged to provide responsible alternatives, and most institutions offer some form of short-term alternative, including lines of credit, fixed-term small dollar loans, and linked savings accounts, they are not required to develop new products in response to the *2010 Supervisory Guidance*.
   - Compliance examiners should weigh the institution's overall approach in addressing excessive or chronic customer use and assess whether a chosen course of action demonstrates meaningful and effective follow-up.
     - Steps should include assessing the institution's level of effort to reach customers, and the ease with which customers are able to select alternative products.

   Key areas of focus regarding meaningful and effective follow-up include:
   - Institutions are encouraged to be proactive in contacting customers, clearly communicating available options and giving a meaningful choice among options.
   - Institutions may employ a variety of techniques, based on individual customer profiles and general business practices, to contact excessive or chronic users of overdraft payment programs.
   - While examples of meaningful and effective follow-up could include contacting a customer via telephone, in person, by mail, or through electronic notifications, a single action may or may not necessarily show appropriate follow-up. When evaluating meaningful and effective follow-up, examiners should consider the institution's overall process for providing notice to excessive use customers and the circumstances at that institution. Factors to consider include whether:
     - The institution has a regular program to inform excessive or chronic users of overdraft usage and cumulative costs in a prominent or conspicuous fashion;
     - The institution highlights availability of alternatives to overdraft payment programs that may be lower-cost or more appropriate;
     - The institution provides a clear and simple manner to contact the institution to discuss available alternatives;
     - Contact with the customer was cursory;
     - The customer and the institution engaged in relevant dialogue or exchanged correspondence; or
     - Other information provided by the institution that documents meaningful and effective follow-up.
   - Although institutions should use their judgment in determining what risk mitigation response is appropriate for their particular institution, two specific examples of ways in which an institution could demonstrate meaningful and effective follow-up regarding excessive or chronic use of automated overdraft programs are: 1) providing enhanced periodic statements; or 2) employing a targeted outreach approach.

16 *See* The FDIC's Model Safe Account Pilot which provides a template for safe, low-cost transactional and savings accounts (http://www.fdic.gov.)

17 *See* A Template for Success: The FDIC's Small-Dollar Loan Pilot Program which provides a template for safe and affordable small dollar loans (http://www.fdic.gov).

1. ***Enhanced Periodic Statement Approach***

   - Under the enhanced periodic statement approach, an institution would augment existing, required disclosures for overdraft fees under Regulation DD (requiring disclosure of the total amounts of fees charged for overdrafts during the statement period and calendar year-to-date), by:
     - Prominently highlighting how excessive or chronic users of automated overdraft programs can contact the institution to discuss available alternatives, and
     - Encouraging meaningful and effective contact.
   - If a customer incurs more than six overdrafts in a rolling twelve-month period, the institution would prominently display on the periodic statement information describing how the customer can contact the institution to discuss alternative options.
     - An effective method is to include the name or names of specific employee(s) who have knowledge of alternative credit products for which the customer might qualify and are able to assist the customer in determining whether he or she qualifies for them.
     - For example, the following statement could be used: *"You have been paying multiple overdraft fees and there may be cheaper alternative products that may be better suited for your needs. Please call [name(s) of employees] at xxx-xxx-xxxx to discuss other options with a customer service representative or visit us at your local branch."*
   - Under this approach, institutions should continue to send enhanced periodic statements to customers for as long as the customer continues to exhibit chronic or excessive usage.

2. ***Targeted Outreach Approach***

   - A targeted outreach approach would involve contacting excessive users in person or by telephone to discuss less costly alternatives to automated overdraft payment programs.
   - An institution would initiate outreach within a reasonable time period (*e.g.*, 30 days) when a customer incurs more than six overdrafts in a rolling twelve-month period to discuss overdraft usage and available alternatives to the overdraft payment program.
   - If a customer decides to remain in the automated overdraft payment program, the institution should also engage the customer to determine the customer's preferences regarding future contact regarding participation in the automated overdraft payment program.
   - Absent an indication of customer preference regarding subsequent contact, a targeted outreach approach would involve contacting a customer whenever there is a cycle of repeated, excessive use (*e.g.*, subsequent occurrences of more than six overdraft occasions where a fee is charged in a rolling twelve-month period).

Additional key areas of focus regarding meaningful and effective follow-up include:

- Institutions should establish a reasonable period of time in which to reach the customer to discuss less costly alternatives (*e.g.*, 30 days).
- Institutions are not expected to suspend the availability of or limit access to overdraft coverage during the period in which they are engaging in good faith efforts to reach customers.
- Once successful contact with the customer occurs, institutions should evaluate the appropriate course of action. Before pursuing a course of action, institutions should consider the overall risks and circumstances, including whether the customer has expressed a desire to pursue alternatives or continue participating in the overdraft payment program.
- An occasion occurs when an overdraft fee is charged (*e.g.*, a per-transaction, sustained daily, or other overdraft fee, but not an NSF fee charged where payment for an item is rejected). If three overdraft fees are charged in one day, that constitutes three occasions. If four overdrafts occur in one day but only three fees are charged for three transactions that day (*e.g.*, if the institution waives fees after a daily limit of three is met), that similarly constitutes three occasions.
- If a financial institution posts a single $105 fee to an account for three, per-transaction overdrafts (*i.e.*, a $35 fee is charged for each overdraft), this would still constitute three overdraft fees and, consequently, three occasions.

Is there documentation or empirical evidence that the institution's follow-up has resulted in customers choosing more affordable alternatives?

- After meaningful and effective contact, and repeated instances of follow-up, a customer may not wish to receive follow-up contact envisioned by the *2010 Supervisory Guidance.*
  - Regardless of customer choice, institutions should continue to monitor account usage.
- At the same time, institutions should not attempt to steer frequent users of fee-based overdraft products towards continuing fee-based overdraft coverage while obscuring the availability of less costly alternatives. In addition, institutions should not employ inappropriate efforts, including overly aggressive advertising or other

promotional activities to coerce consumers to choose to continue with fee-based overdraft coverage.

- As with all customer communications, simple and clear language is preferred. Regardless of customer choice, institutions should continue to monitor accounts for excessive use that may pose safety and soundness risks.

7. The institution has appropriate daily limits on customer costs. For example, the financial institution has done the following:
   - Limited the number of transactions that will be subject to a fee (*e.g.*, no more than three per day), or
   - Provided a dollar limit on total fees that will be imposed per day.

   Daily limits should be reviewed as one element of the institution's overall overdraft payment program. Failure to institute daily limits on customer costs with respect to overdraft payment programs does not in and of itself mean that the institution is not acting in a manner that is consistent with the expectations set out in the *2010 Supervisory Guidance*.
8. The institution has implemented transaction-clearing procedures that operate in a manner so as to avoid maximizing customer overdrafts and related fees through manipulation of the clearing order, and ensures that any third-party vendor has similar procedures in place.
   - Determining clearing order does not in and of itself necessarily indicate whether an institution is or is not acting consistent with the expectations set out in the *2010 Supervisory Guidance*. Examiners should review and consider whether the processes, practices, policies, and procedures of the financial institution and their third-party vendor provide an overall compliance management system or framework that is consistent with those expectations.
   - To the extent that institutions make decisions regarding transaction processing order, transactions should be processed in a neutral order that avoids manipulating or structuring processing order to maximize customer overdraft and related fees.
   - Institutions are discouraged from implementing systems that re-order transactions to clear the highest item first, as this approach will tend to increase the number of overdraft fees. In addition, although processing batches of transactions in a random order or order received is a neutral approach, institutions are discouraged from arranging the order of types of transactions (*i.e.*, batches) cleared in order to increase the number of overdrafts and maximize fees.
   - Compliance examiners should consider the overall risk-profile of the institution and the following factors or characteristics:
     - Is the transaction order neutral (*e.g.*, by order received, check number, serial number sequence, or other potentially equitable approaches)?
     - Has the institution established that their transaction processing order is necessary for sound business reasons and is not manipulated so as to maximize fees?
9. The institution monitors and, where necessary, mitigates credit, litigation, reputational, safety and soundness, and other risks, as appropriate.[18]
10. The institution complies with Regulation E requirements requiring institutions to provide notice and a reasonable opportunity for customers to opt-in to the payment of ATM and one-time POS overdrafts for a fee and does not steer frequent users of fee-based overdraft products to opt-in to these programs while obscuring the availability of alternatives (raising safety and soundness concerns about potentially unsustainable consumer debt, as well as potential fair lending and UDAP concerns).
11. The institution is consistent in its application of overdraft fee waivers, in light of applicable fair lending statutes and regulations.

In addition, an institution in its discretion may choose or elect to implement further risk mitigation efforts. If an institution decides to implement such activities or practices, examiners should weigh these further efforts in evaluating the overall effectiveness of an institution's compliance management system and evaluate whether an institution's overdraft program and practices are consistent with the expectations set out in the *2010 Supervisory Guidance*. Examples of additional efforts that mitigate risks include the following:

1. The institution has an appropriate process in place for eliminating overdraft fees for transactions that overdraw an account by a *de minimis* or very low amount.[19] Examples of possible de minimis limits that could be implemented include: transaction amounts of less than $10, or an institution could decline to charge overdraft fees for transactions that overdraw an account by less than $10.
2. The institution has effectively employed cost effective, existing technology, as appropriate, to alert customers when their account balance is at risk of generating a fee for NSFs.
3. The institution has provided information to customers about how to access free or low-cost financial education workshops or individualized counseling to learn how to more effectively manage personal finances. Small or rural institutions may want to consider using Web-based resources or referrals to reputable, non-profit organizations.

18 Compliance examiners should consult with Risk Management examiners, as appropriate, where safety and soundness concerns are identified.

19 If a fee is charged such a fee should be reasonable and proportional to the amount of the original transaction.

4. The institution has appropriate policies and procedures in place for allowing customers to decline overdraft coverage (*i.e.*, opt-out) for non-electronic transactions (meaning transactions that are not subject to the Regulation E opt-in requirements), such as paper checks, automated clearing house transfers and recurring debits, and honor an opt-out request.[20]
   - It is recommended that institutions consider occasional communications to remind customers of available options to terminate overdraft coverage.
5. The institution has appropriate policies and procedures in place for reminding their customers, especially chronic or excessive users of overdraft programs, that even if they have chosen to opt-in to the payment of ATM and one-time POS overdrafts for a fee, at any time they can still choose to opt-out of ATM and one-time, POS overdraft programs.

Expanded Review for Ad Hoc Programs or Practices

For **ad hoc programs or practices**, if unacceptable risks are identified on an exception basis during the Management and Policy-Related review, examiners should consider whether the institution's ad hoc payment practices require closer review. For example:

- When weaknesses or other risks are discovered that may indicate that ad hoc programs or practices are not in compliance with existing laws and regulations; and/or
- When red flags are raised indicating potential reputation, compliance, and litigation risks regarding certain practices, such as check clearing practices designed to maximize overdraft fees, examiners should consider inquiring about:
  - The nature of the red flag;
  - Why the issue occurred; and
  - How the institution oversees and manages such issues, including a potential review of policies and procedures.

Overdraft Payment Program Supervisory Guidance Frequently Asked Questions

FDIC staff has developed the following Frequently Asked Questions (FAQs) and answers in response to questions from supervised institutions and third-party vendors about the FDIC's Overdraft Payment Supervisory Guidance issued in November 2010 (FIL-81-2010) (Guidance). The responses represent the views and opinions of FDIC staff regarding incorporation of the Guidance into the examination process.

I. Defining Automated and Ad Hoc Programs

1. How does an "automated" overdraft payment program differ from "ad hoc" overdraft payment practices?

Automated overdraft payment programs typically rely on computerized decision-making, and use pre-established criteria to pay or return specific items. There is little to no case-by-case review and decision-making with respect to an individual customer or item.

By contrast, *ad hoc* practices typically involve the exercise of bank employee judgment in making a specific decision about whether to pay or return an item. This is done as an accommodation and based on the employee's knowledge of a particular customer.

2. Do the specific supervisory expectations about customer contact apply to ad hoc overdraft payments?

No. The FDIC's November 2010 Guidance is focused on assisting institutions in identifying, managing, and mitigating the particular risks posed by automated overdraft payment programs. Ad hoc overdraft payments have been authorized by banks for years as an accommodation based on specific considerations and knowledge of a particular customer, and they have generally not been the subject of the type of product over-use concerns that can be associated with automated overdraft programs. Consequently, the specific supervisory expectations set out in the Guidance regarding customer contact for excessive or chronic users of automated overdraft payment programs do not apply to ad hoc overdraft practices.

3. Should institutions monitor and manage risks associated with ad hoc payments of overdrafts?

Yes. While the Guidance's specific supervisory expectations relate only to automated overdraft payment programs, institutions that authorize overdrafts on an ad hoc basis should manage potential reputational, compliance, and litigation risks regarding certain overdraft payment practices, such as check clearing practices designed to maximize overdraft fees. In addition, the Guidance provides updated information on the laws, regulations, and other guidance that apply to all types of overdraft payment practices and programs.

II. Excessive Use and Meaningful Follow-Up

1. The Guidance states that FDIC-supervised institutions should monitor programs for excessive or chronic customer use, and if a customer overdraws his or her account on more than six occasions where a fee is charged in a rolling twelve-month period, undertake meaningful and effective follow-up action. What is an "occasion" where a fee is charged?

20 Revised Regulation E provides consumers with an ongoing right to rescind their prior opt-in to coverage of ATM and one-time POS overdrafts.

An "occasion" occurs each time an overdraft transaction generates a fee. For example, this would include a per-transaction overdraft fee or a daily fee for an outstanding overdraft status. As a result, potentially more than one "occasion" can occur per day. If three overdraft fees are charged as a result of three transactions (even if the fees are aggregated), that would constitute three occasions. If a fee itself triggers an overdraft, that event would count if a further overdraft fee is charged as a result.

By contrast, overdraft items paid where no fee is charged (for example, if a bank pays an item after a daily limit is met on overdraft items paid and the bank waives additional fees) would not be included. Thus, if four overdrafts occur in a day but the bank only charges three fees as a result of a per-day limit on fees charged, this would constitute three occasions.

2. What is meaningful and effective follow-up for chronic or excessive use and how can an institution demonstrate it has made meaningful efforts to reach chronic or excessive users of automated overdraft payment programs?

Meaningful and effective follow-up means that the institution has made reasonable efforts to provide the customer with information on alternatives to overdraft payment programs that may be better-suited to the individual's need for short-term credit, as well as a clear mechanism for the customer to avail himself or herself of those alternatives. The key goal is to ensure that customers are able to make informed choices among available options to manage recurring needs for short-term credit. The FDIC will assess the institution's level of effort to reach customers, the institution's program for providing notice to customers of available alternatives, and the ease with which customers are able to select alternative products.

Institutions may employ a variety of techniques, based on individual customer profiles and general business practices, to contact excessive or chronic users of overdraft payment programs. For example, the institution's overall approach could incorporate contacting a customer via telephone, in person, by mail, or through electronic notifications. Relevant factors include whether the institution:

- Has a regular program to inform excessive or chronic users of overdraft usage and cumulative costs in a prominent or conspicuous fashion;
- Highlights availability of alternatives to overdraft payment programs that may be lower-cost or more appropriate; and
- Provides a clear and simple manner to contact the institution to discuss available alternatives.

The institution should be able to demonstrate that it monitors account usage, undertakes programs designed to address excessive or chronic use, and monitors its success in informing frequent users of overdraft payment programs of the high cumulative costs of the program and the availability of less-costly or otherwise more appropriate alternatives.

Two examples of ways in which an institution could demonstrate meaningful and effective follow-up regarding excessive or chronic users of overdraft programs are to provide enhanced periodic statements or employ a targeted outreach approach. Specific information discussing meaningful and effective follow-up when utilizing these approaches is described in the attached Illustrations. Institutions may employ other approaches for engaging in effective and meaningful follow-up with chronic or excessive users.

III. Fee Limits and Maximizing Fees

1. What is an example of an appropriate daily limit on overdraft fees?

Daily limits can help prevent a customer's individual lapse in financial management from triggering a cascade of overdraft fees, and will be reviewed as one possible element of the institution's overall approach for addressing chronic or excessive use of automated overdraft payment programs. For example, some institutions have implemented limits on the number of transactions that will be subject to a fee (*e.g.*, no more than three per day) or on total allowable fees (*e.g.*, a specific maximum dollar amount of allowable fees per day).

2. What is an example of an appropriate de minimis overdraft amount?

Institutions should consider the use of a de minimis threshold before an overdraft fee is charged in order to reduce reputational risk related to charging fees that are disproportionate to the item being cleared. For example, some institutions have implemented de minimis limits whereby they do not charge overdraft fees for underlying transaction amounts of less than $10, while some have declined to charge overdraft fees for transactions of any amount that overdraw an account by less than $10.

3. What is a reasonable and proportional overdraft fee?

As noted in FAQ # III.2 (*de minimis*), institutions may increase reputational risk when overdraft fees are significantly greater than the amount of the item being cleared. Institutions should review the amount charged for the overdraft payment compared to the amount of the underlying transaction that triggered the overdraft, and assess whether the charge is reasonable and proportionate in comparison. Institutions should consider *de minimis* limits to reduce the reputational risk of overdraft fees that are disproportionate to the cost of the underlying transaction.

4. How can institutions and their third-party vendors work to process transactions in a manner that addresses risks identified in the Guidance?

Transactions should be processed in a neutral order that avoids manipulating or structuring processing order to maximize customer overdraft and related fees. Examples of a neutral order include order received, check number, serial number sequence, or other approaches when necessary based on sound business justification.

Re-ordering transactions to clear the highest item first is not considered neutral because this approach will tend to increase the number of overdraft fees. By contrast, processing batches of transactions in a random order or order received is a neutral approach; however, institutions should not arrange the order of types of transactions (*i.e.*, batches) cleared in order to increase the number of overdrafts and maximize fees.

IV. Other Questions

1. Is an institution required to provide new alternatives to automated overdraft payment programs?

No. Banks are not required to develop new products in response to the Guidance. However, most banks offer some form of short-term alternative, including lines of credit, fixed-term small dollar loans, and linked savings accounts, and the FDIC encourages institutions to provide linked accounts or responsible, short-term credit products (such as those offered under the FDIC's small dollar loan pilot). Banks are expected to inform excessive or chronic users of overdraft payment programs about alternative products that the institution has available for its customers, and to make these programs available to customers that qualify. Such products may qualify for CRA consideration under the service or lending tests.[21]

2. Is an institution required to terminate or suspend a customer's access to the automated overdraft payment program if the customer engages in chronic or excessive use?

No. Institutions are expected to monitor usage and engage in meaningful and effective follow-up to inform excessive users of available alternatives. However, as discussed in the Guidance, a number of risks are associated with chronic or excessive use of automated overdraft programs, including reputational, compliance, safety-and-soundness, and litigation risks. If such risks are identified during the course of an institution's monitoring and oversight of an automated overdraft program, institutions should take appropriate action to mitigate risks, as has been the case in the past.

3. The Guidance states that the FDIC believes institutions should allow customers to decline overdraft coverage (i.e., opt-out) for payment of overdrafts resulting from non-electronic transactions such as paper checks or automated clearing house (ACH) transfers. Can you clarify to which transactions this recommendation applies?

To promote consumer choice and awareness, institutions are encouraged to permit customers to decline overdraft coverage (*i.e.*, opt-out) for transactions that are not subject to the Regulation E opt-in requirements, including checks, ACH transactions and recurring debits. As part of an institution's on-going relationship with its customers, the FDIC recommends that institutions consider occasional communications to remind customers of available options to terminate overdraft coverage.

4. How can small or rural institutions provide information about financial education?

In addition to educational resources identified in the Guidance, institutions may want to consider using Web-based resources or referrals to reputable, non-profit organizations.

5. When are institutions expected to have reviewed and responded to the Guidance?

As stated in the Guidance, the FDIC expects that institutions will have approved, responsive compliance and risk management action plans, policies and procedures by July 1, 2011.

Meaningful and Effective Follow-Up Illustrations

The following information is provided to illustrate two examples of ways in which institutions may demonstrate meaningful and effective follow-up with excessive or chronic users of overdraft payment programs.

An enhanced periodic statement approach would involve augmenting existing, required disclosures for overdraft fees under Regulation DD (Truth in Savings), which requires disclosure of the total amounts of fees charged for overdrafts during the statement period and calendar year-to-date, by prominently highlighting how excessive or chronic users of automated overdraft programs could contact the institution to discuss available alternatives, and encouraging meaningful and effective contact.

A targeted outreach approach would involve contacting excessive users in person or via telephone to discuss less costly alternatives to automated overdraft payment programs.

21 *See* Affordable Small Dollar Loan Guidelines, FIL-50-2007 (June 19, 2007), available at: http://www.fdic.gov/news/news/financial/2007/fil07050.html, and Interagency Questions and Answers Regarding Community Reinvestment, 75 Fed. Reg. 11642 (Mar. 11, 2010), available at: http://www.ffiec.gov.

Approach #1: Enhanced Periodic Statements

If an institution chooses to take an enhanced periodic statement approach that augments the requirements of Regulation DD for overdraft fees charged during the current statement period and calendar year-to-date, and if a customer incurs more than six overdrafts in a rolling twelve-month period, an institution could include a message on the periodic statement that describes how the customer could contact the institution to discuss alternative options. An effective approach could be to include the name or names of specific employee(s) who have knowledge of alternative credit products for which the customer might qualify and are able to assist the customer in determining whether he or she qualifies for them. For example, the following statement could be used: "You have been paying multiple overdraft fees and there may be cheaper alternative products that may be better suited for your needs. Please call [name of employee] at xxx-xxx-xxxx to discuss other options with a customer service representative or visit us at your local branch."

Under this approach, it would be reasonable for an institution to continue to send enhanced periodic statements to a customer for as long as the customer continues chronic or excessive usage.

Approach #2: Targeted Outreach

If an institution chooses to take a targeted outreach approach, an institution would initiate outreach within a reasonable time period (*e.g.*, 30 days) when a customer incurs more than six overdrafts in a rolling twelve-month period, to discuss overdraft usage and available alternatives to the overdraft payment program. If a customer decides to remain in the automated overdraft payment program, the institution should also engage the customer to determine the customer's preferences for future contact regarding participation in the automated overdraft payment program. Absent an indication of customer preference regarding subsequent contact, a targeted outreach approach would involve contacting a customer whenever there is a cycle of repeated, excessive use (*e.g.*, subsequent occurrences of more than six overdraft occasions where a fee is charged in a rolling twelve-month period).

References

FIL-81-2010: Overdraft Payment Programs and Consumer Protection: Final Overdraft Payment Supervisory Guidance

FIL-11-2005 Overdraft Protection Programs Joint Agency Guidance

FIL 44-2008 Third-Party Risk: Guidance for Managing Third-Party Risk

FDIC Industry FAQs (April 1, 2011

Secure and Fair Enforcement for Mortgage Licensing Act Examination Procedures for Covered Financial Institutions

Introduction

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008[1] (SAFE Act) was enacted on July 30, 2008, and mandates a nationwide licensing and registration system for residential mortgage loan originators (MLOs).[2]

The SAFE Act prohibits individuals from engaging in the business of residential mortgage loan origination without first obtaining and maintaining annually:

- For individuals employed by a covered financial institution, registration as a mortgage loan originator and a unique identifier (federal registration); or
- For all other individuals, a state license and registration as a mortgage loan originator, and a unique identifier (state licensing/registration).[3]

The SAFE Act requires that federal registration and state licensing/registration be accomplished through the same online registration system, the Nationwide Mortgage Licensing System and Registry (Registry).

The objectives of the SAFE Act include aggregating and improving the flow of information to and between regulators; providing increased accountability and tracking of MLOs; enhancing consumer protections; supporting anti-fraud measures; and providing consumers with easily accessible information at no charge regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against MLOs.[4]

On July 28, 2010, the OCC, Board, FDIC, OTS, NCUA, and FCA (collectively the Agencies) published substantively similar regulations implementing the SAFE Act federal registration requirements for covered institutions and their MLO employees (SAFE Act regulation).[5]

On July 21, 2011, Title X of the Dodd-Frank Act transferred rulemaking authority for the SAFE Act to the Consumer Financial Protection Bureau (CFPB).[6] The CFPB published an interim final rule, which recodified the Agencies' SAFE Act regulations as a single regulation, Regulation G, at 12 CFR Part 1007, effective December 30, 2011.[7]

These examination procedures lay out the background and requirements of the SAFE Act and the SAFE Act regulation concerning federal registration.

Definitions

"Annual renewal period" means November 1st through December 31st of each year.

"Administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the residential mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

"Covered financial institution" means any national bank, Federal branch and agency of a foreign bank, member bank, insured state nonmember bank (including state-licensed insured branches of foreign banks), savings association, or certain of their subsidiaries; branch or agency of a foreign bank or commercial lending company owned or controlled by a foreign bank; Farm Credit System institution; or federally insured credit union, including certain non-federally insured credit unions.[8]

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1 12 USC § 5101-5116, Title V of the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289, 122 Stat. 2654), as amended by Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (Pub. L. No. 111-203, 124 Stat. 1376).

2 More specifically, the SAFE Act required the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and National Credit Union Administration (NCUA), with the Farm Credit Administration (FCA), and through the Federal Financial Institutions Examination Council (FFIEC), to develop and maintain a federal system for registering MLOs employed by covered financial institutions.

3 The SAFE Act authorized the U.S. Department of Housing and Urban Development (HUD) to monitor and enforce states' compliance with the statute's requirements for state licensing and registration. On June 30, 2011, HUD published a final rule setting minimum standards for state licensing and registration. 76 Fed. Reg. 38464 (June 30, 2011).

4 12 USC § 5101.

5 75 Fed. Reg. 44656 (July 28, 2010). The interagency Federal Register notice may be found at http://edocket.access.gpo.gov/2010/pdf/2010-18148.pdf. See also the revised Federal Register Preamble (Aug. 23, 2010), available at http://edocket.access.gpo.gov/2010/pdf/C1-2010-18148.pdf (revising footnote numbering from the original release).

6 On July 21, 2011, pursuant to the Dodd-Frank Act the CFPB assumed: (1) responsibility for developing and maintaining the federal registration system (including rulemaking authority); (2) supervisory and enforcement authority for SAFE Act compliance for entities under the CFPB's jurisdiction; and (3) HUD's SAFE Act authority to oversee state compliance with SAFE Act requirements that had previously been under HUD's authority. Refer to Dodd-Frank Act Sections 1025, 1061 and 1100. In addition, the Dodd-Frank Act merged functions of the OTS into the OCC, FDIC, and Board.

7 See 76 Fed. Reg. 78483 (Dec. 19, 2011), available at http://www.gpo.gov/fdsys/pkg/FR-2011-12-19/pdf/2011-31730.pdf. In the preamble to the interim final rule, the CFPB stated that "[t]he interim final rule substantially duplicates the Federal registry agencies' largely identical coordinated rules as the Bureau's new Regulation G, 12 CFR part 1007, making only certain nonsubstantive, technical, formatting, and stylistic changes."

8 12 CFR Secs. 1007.101(c), 1007.102.

"Employee" is not defined in the SAFE Act or SAFE Act regulation. However, the original regulation's preamble explains that the meaning of "employee" under the SAFE Act regulation is consistent with the common law right-to-control test. For example, the results of this test generally determine whether an institution files an Internal Revenue Service Form W-2 or Form 1099 for an individual.[9]

"Mortgage loan originator or 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.[10] The term *mortgage loan originator* does not include:

- An individual who performs purely administrative or clerical tasks on behalf of an individual who is an MLO;
- An individual who only performs real estate brokerage activities (as defined in 12 USC Section 5102(3)(D)) and is licensed or registered as a real estate broker in accordance with applicable state law, unless the individual is compensated by a lender, a mortgage broker, or other MLO or by any agent of such lender, mortgage broker, or other MLO, and meets the MLO definition; or
- An individual or entity solely involved in extensions of credit related to timeshare plans, as that term is defined in 11 USC Section 101(53D).

Appendix A to the SAFE Act regulation provides examples of activities of taking a loan application, and offering or negotiating loan terms, that fall within or outside of the definition of MLO for federal registration purposes.

"Registry" means the Nationwide Mortgage Licensing System and Registry, or NMLS, developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the state licensing and registration of state-licensed MLOs, and through which federal MLO registrations must be accomplished.[11]

"Registered mortgage loan originator"* or *"registrant" means any individual who: (1) meets the MLO definition; (2) is an employee of a covered financial institution; (3) is registered pursuant to the regulation with the Registry; and (4) maintains a unique identifier through the Registry.

"Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in Section 103(v) of the Truth in Lending Act, 15 USC Section 1602(v)) or residential real estate upon which is constructed or intended to be constructed a dwelling (including manufactured homes) and includes refinancings, reverse mortgages, home equity lines of credit, and other first and additional lien loans.

"Unique identifier" means a number or other identifier that: (1) permanently identifies a registered MLO; (2) is assigned by protocols established by the Registry and the Bureau to facilitate electronic tracking of MLOs, as well as uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against MLOs; and (3) must not be used for purposes other than those set forth under the SAFE Act.

De Minimis Exception

The SAFE Act regulation provides an exception to the MLO registration requirements for any employee of a covered financial institution who has never been registered or licensed through the Registry as an MLO if during the past 12 months the employee acted as an MLO for five or fewer residential mortgage loans.

When an institution relies on the *de minimis* exception in lieu of registration, the MLO employee must register prior to originating the sixth residential mortgage loan within the past 12 months. Covered financial institutions are prohibited from engaging in any acts or practices to evade the registration requirement.

Mortgage Loan Originator (MLO) Registration Requirements

Each MLO employed by a covered financial institution must register with the Registry;[12] obtain a "unique identifier;" maintain the registration by updating certain information within 30 days of specified changes; and renew the registration each year during the annual renewal period.

Initial Registration

Each employee of a federally regulated institution who is an MLO must submit to the Registry the following:

[9] See 75 Fed. Reg. at 44664 for a discussion of the meaning of "employee" as used in the original SAFE Act regulation.

[10] By contrast, the Model State Law defines an MLO for state licensing and registration purposes as an individual who takes a residential mortgage loan application or offers or negotiates terms for compensation or gain. See, e.g., the Model State Law at: http://mortgage.nationwidelicensingsystem.org/SAFE/NMLS%20Document%20Library/MSL-Final.pdf.

[11] See the Nationwide Mortgage and Licensing System and Registry Web site at: http://mortgage.nationwidelicensingsystem.org/fedreg/Pages/default.aspx. System information on federal registration can be found under the Federal Registration tab at that site.

[12] The SAFE Act rule implementing federal registration took effect on October 1, 2010. It provided a registration period from January 31, 2011, to July 29, 2011, for MLOs who are employees of covered financial institutions to register. After July 29, 2011, those employees must meet the registration requirements before they may originate residential mortgage loans.

- Identifying information, including name, home address, social security number, gender, date of birth, and principal business location;
- Financial-services-related employment history for the prior 10 years;
- Disclosure of specified criminal, civil judicial, or state, federal, or foreign financial authority regulatory actions against the employee; and
- Fingerprints, for purposes of a Federal Bureau of Investigation background check.

The employee must attest to the correctness of the information submitted to the Registry; must authorize the Registry and the institution to obtain information related to any administrative, civil, or criminal action to which the employee is a party; and must authorize the Registry to make certain information available to the public.

Maintaining Registration

Renewal

An MLO must renew his or her registration during the annual renewal period by confirming and updating his or her registration records. This requirement does not apply to an MLO who completed his or her initial registration less than six months prior to the end of the annual renewal period. Any registration that is not renewed during this period will become inactive, and the individual cannot act as an MLO at a covered financial institution until the registration requirements are met. Individuals who fail to update their registrations during this two-month renewal period may renew their registration at any time and need not wait until the start of the next annual renewal period.

Updates to Registration

An MLO must update his or her registration within 30 days for specified significant changes, including name changes, employment termination, and reportable changes to legal or regulatory actions.

Previously Registered Employees – Change of Employment

The regulations provide streamlined registration requirements for an MLO employee previously registered or licensed through the Registry who maintained this registration or license and who changes employment. Such an employee must update certain information, provide the required attestation and authorizations, and submit new fingerprints unless the employee has fingerprints on file with the Registry that are less than three years old. There is no grace period in this situation. An employee must update his or her Registry record before acting as a loan originator for the new employer.

Previously Registered Employees – Mergers, Acquisitions or Reorganizations

A registered or licensed MLO whose employment changes as the result of a merger, acquisition, or reorganization has 60 days from the effective date of a merger, acquisition, or reorganization to update information in the Registry.

Covered Financial Institution Requirements for MLO Registration, Renewal, and Changes to Information

Required Covered Financial Institution Information

In connection with the registration of one or more MLOs, covered financial institutions must submit certain required information to the Registry, including: contact information; Employer Tax Identification Number; Research Statistics Supervision and Discount (RSSD) number issued by the Board; primary Federal regulator; primary point of contact for the Registry; individuals with authority to enter information into the Registry; and, if a subsidiary of a financial institution, indication of that fact and the RSSD number of the parent institution, as applicable. Once registered, the institution will receive an NMLS identification number for the institution to use in attesting to MLO employment and for other Safe Act related purposes.

Attestation

An individual with authority to enter information in the Registry must verify his or her identity and attest that he or she has that authority, that the information is correct, and that the institution will keep the information current.[13]

Registration

A covered financial institution must require an MLO employee to register with the Registry, maintain this registration, and obtain a unique identifier. A covered financial institution must also confirm each MLO's employment status once the MLO submits registration information to the Registry and before the registration is activated.

Within 30 days of the date an MLO ceases to be an employee of the institution, the institution must notify the Registry of that fact along with the date the MLO ceased being an employee, so that consumers searching for an MLO in the publicly available consumer access portal will know that the MLO no longer has a relationship with the institution.

[13] A covered financial institution may designate one or more individuals to serve as the system administrator(s) who may submit required information to the Registry on behalf of employees, and attest to their authority to submit information, the accuracy of information submitted, and that the institution will keep information current and submit updates on a timely basis. System administrators generally may not be MLOs; however, an institution is exempt from this regulatory requirement if it has 10 or fewer full-time employees and is not a subsidiary.

Renewal and Updates

A covered financial institution must update the information it submitted to the Registry during the annual registration renewal period and must confirm the registration information provided by MLO employees during this period.

A covered financial institution must update the required institution information provided to the Registry within 30 days of any change in such information.

Policies and Procedures

Covered financial institutions that employ one or more MLOs must adopt and follow written policies and procedures to carry out their SAFE Act responsibilities.[14] The requirement to adopt and follow policies and procedures applies to all covered financial institutions that employ individual MLOs, where MLOs act within the scope of their employment, and regardless of the application of any *de minimis* exception to their employees. In addition, covered financial institutions must conduct annual independent compliance tests to ensure compliance with the regulation. The policies and procedures must be appropriate to the nature, size, complexity, and scope of the institution's mortgage lending activities, and apply only to those employees acting within the scope of their employment at the institution. The policies and procedures must:

- Establish a process for identifying which employees of covered financial institutions must be registered;
- Require that all employees who are MLOs be informed of the registration requirements of the SAFE Act and SAFE Act regulation, and instructed on how to comply;
- Establish procedures to comply with the SAFE Act regulation's unique identifier requirements;
- Establish reasonable procedures for confirming the adequacy and accuracy of MLO employee registrations, including updates and renewals, by comparisons with its own records;
- Establish reasonable procedures and tracking systems for monitoring compliance with registration and renewal requirements and procedures;
- Provide for annual independent testing for compliance with the SAFE Act regulation by institution personnel or an outside party;
- Provide for appropriate action if an employee fails to comply with the registration requirements of the SAFE Act regulations or the institution's related policies and procedures, including prohibiting such employees from acting as MLOs or other appropriate disciplinary actions;
- Establish a process for reviewing employee criminal history background reports received pursuant to the regulation, taking appropriate action consistent with applicable federal law[15] and implementing regulations with respect to the reports, and maintaining records of the reports and actions taken with respect to applicable employees;[16] and
- Establish procedures designed to ensure that any third party with which the institution has arrangements related to mortgage loan origination has policies and procedures to comply with the SAFE Act and SAFE Act regulation, including appropriate licensing and/or registration of individuals acting as MLOs.[17]

Unique Identifier

When an MLO registers with the Registry, he or she receives a unique identifier – a series of numeric characters assigned for the life of the MLO. The unique identifiers allow MLOs to be tracked if they move between state and federal jurisdictions and/or change employers, and help consumers to find certain information about a particular MLO when they search on the Registry's consumer access portal. The MLO information that is publicly available on the consumer access portal will ultimately include federal and state registrations and licenses held, the MLO's employment history, and publicly adjudicated disciplinary and enforcement actions, if any.

To make sure that consumers have access to an MLO's unique identifier before committing to a mortgage loan transaction, an MLO must provide the unique identifier upon request (orally or in writing), before acting as an MLO (orally or in writing), and in any initial written communication (paper or electronic) from the MLO to the consumer (such as a commitment letter, good faith estimate, or disclosure statement). MLO unique identifiers may be used on written materials or promotional

[14] Neither the Registry nor the CFPB screen or approve registrations received from employees of covered financial institutions.

[15] Including Section 19 of the Federal Deposit Insurance Act (FDI Act); (12 USC 1829); Section 5.65(d) of the Farm Credit Act of 1971 (12 USC 2277a-14(d)); or Section 206 of the Federal Credit Union Act (12 USC 1786(i)).

[16] Section 19 of the FDI Act (12 USC 1829) prohibits, without the prior written consent of the FDIC, insured depository institutions from employing a person who has been convicted of any criminal offense involving dishonesty, breach of trust or money laundering, or has entered into a pretrial diversion or similar program in connection with a prosecution for such offense. See the FDIC Statement of Policy for Section 19 of the FDI Act, 63 Fed. Reg. 66184 (Dec. 1, 1998; amended December 18, 2012), available at: http://www.fdic.gov/regulations/laws/rules/5000-1300.html.

[17] See FFIEC Statement on Risk Management of Outsourced Technology Service (Nov. 28, 2000) for guidance on the assessment, selection, contract review, and monitoring of a third party that provides services to a regulated institution. See also FDIC Guidance for Managing Third-Party Risk (FIL-44-08); OCC Bulletin 2001-47, Third-Party Relationships (Nov. 1, 2001); OTS Thrift Bulletin 82a, Third Party Arrangements (Sept. 1, 2004); NCUA Letter to Credit Unions: 01-CU-20, Due Diligence Over Third Party Service Providers (Nov. 2001), 07-CU-13, Supervisory Letter-Evaluating Third Party Relationships (December 2007), 08-CU-09, Evaluating Third Party Relationships Questionnaire (Apr. 2008).

items distributed by the institution for general use, for example on loan program descriptions, advertisements, business cards, stationery, notepads, and similar materials; the SAFE Act regulation does not prohibit such use.

The regulation also requires covered financial institutions to make MLO unique identifiers available to consumers in a practicable way. This could be achieved, for example by:

- Directing consumers to a listing of registered MLOs and corresponding unique identifiers on the institution's Web site;
- Posting the information prominently in a publicly accessible place, such as a branch office lobby or lending office reception area; and/or
- Establishing a process to ensure that institution personnel provide MLO unique identifiers when requested by consumers from employees other than the MLO.

Relation to Other Laws

TILA, GSE and HUD Requirements

Title XIV, Section 1402 of the Dodd-Frank Act amended the Truth in Lending Act (TILA) to require: (1) MLOs to include on all loan documents any unique identifier of the MLO provided by the NMLS, and (2) the CFPB to issue implementing regulations requiring covered financial institutions to establish and maintain procedures reasonably designed to assure and monitor compliance with the SAFE Act's federal registration requirements.[18]

In 2009, the Federal Housing Finance Agency directed government-sponsored enterprises (GSEs) Fannie Mae and Freddie Mac to require mortgage loan applications to include the MLO's unique identifier.[19] The GSEs announced that for federally regulated institutions, the unique identifier information is required for all applications on or after July 29, 2011.[20]

On January 5, 2011, HUD issued a mortgagee letter requiring the collection of NMLS unique identifiers for all individuals and entities participating in the origination of Federal Housing Administration (FHA) loans.[21] The mortgagee letter also requires all FHA-approved mortgagees and their employees to comply with the NMLS registration requirements and "entities with jurisdiction over their activities" must register in accordance with the guidance set forth by NMLS.

Examination Objectives

- To determine whether the covered financial institution has adopted written policies and procedures designed to assure compliance with the SAFE Act regulation.
- To determine whether the annual independent testing of the institution's policies and procedures for assuring compliance with the SAFE Act regulation has been conducted.
- To determine whether any violations or deficiencies identified during the independent testing have been corrected and that steps have been taken to ensure they do not recur.

Examination Procedures[22]

1. Determine whether the financial institution, or any of its subsidiaries, employs one or more MLOs. For those institutions without any MLO employees, these examination procedures do not need to be completed. (12 CFR 1007.103(a)(2))

2. Determine for covered financial institutions with MLO employees whether the institution has adopted written policies and procedures and conducts annual independent compliance tests to assure compliance with the SAFE Act regulation. If the institution has failed to adopt policies and procedures and to perform annual independent compliance tests, the examiners should address the violation in the examination report and require corrective action. (12 CFR 1007.104)

3. Review the covered financial institution's written policies and procedures and the annual independent compliance tests to determine whether the institution has taken appropriate steps to assure compliance with the SAFE Act that at a minimum:

    a. Establish a process for identifying which employees of the covered financial institution are required to be registered MLOs; (12 CFR 1007.104(a))

    b. Require that all employees of the covered financial institution who are MLOs be informed of the registration requirements of the SAFE Act and the SAFE Act regulation and be instructed on how to comply with such requirements and procedures; (12 CFR 1007.104(b))

[18] See Pub. L. No. 111-203 (July 21, 2010), available at http://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf(p. 2139).

[19] See the FHFA news release at http://www.fhfa.gov/webfiles/400/LoanOrigIDS11509.pdf

[20] See Fannie Mae and Freddie Mac Frequently Asked Questions at https://www.efanniemae.com/sf/guides/ssg/relatedsellinginfo/pdf/mortgageloandelreqsfaqs.pdf and http://www.freddiemac.com/sell/secmktg/loan_level_faq.html.

[21] See Mortgagee Letter 2011-4 at http://portal.hud.gov/hudportal/documents/huddoc?id=11-04ml.pdf.

[22] These reflect the interagency examination procedures in their entirety.

c. Establish procedures to comply with the unique identifier requirements in Section 105 of the SAFE Act regulation; (12 CFR 1007.104(c))

d. Establish reasonable procedures for confirming the adequacy and accuracy of employee registrations, including updates and renewals, by comparisons with its own records; (12 CFR 1007.104(d))

e. Establish procedures and tracking systems for monitoring compliance with registration and renewal requirements and procedures; (12 CFR 1007.104(e))

f. Provide for independent testing for compliance with the SAFE Act regulation conducted annually by institution personnel or by an outside party; (12 CFR 1007.104(f))

g. Provide for appropriate action in the case of an employee who fails to comply with the registration requirements of the SAFE Act, the SAFE Act regulation, or the covered financial institution's policies and procedures, including prohibiting such employees from acting as an MLO or other appropriate disciplinary actions; (12 CFR 1007.104(g))

h. Establish a process for reviewing employee criminal history background reports received pursuant to the SAFE Act regulation, taking appropriate action consistent with applicable federal law, including Section 19 of the Federal Deposit Insurance Act (12 USC Section 1829) and implementing regulations with respect to these reports, and maintaining records of these reports and actions taken with respect to applicable employees; (12 CFR 1007.104(h)) and

i. Establish procedures designed to ensure that any third party with which the institution has arrangements related to mortgage loan origination has policies and procedures to comply with the SAFE Act, including appropriate licensing and/or registration of individuals acting as MLOs. (12 CFR 1007.104(i))

4. Any significant deficiencies in the institution's SAFE Act regulation policies and procedures or independent compliance tests should be documented in the workpapers and discussed in the examination report together with corrective actions taken.

References

12 USC 5101 et seq. Secure and Fair Enforcement for Mortgage Licensing Act of 2008, amended by Dodd-Frank Act Section 1100

12 CFR Part 1007 S.A.F.E. Mortgage Licensing Act (Regulation G)

SAFE Act FAQs for FDIC Compliance Examiners June 30, 2011

FIL 43-2010: Secure and Fair Enforcement for Mortgage Licensing Act of 2008 Notice of Joint Final Rule: Registration of Residential Mortgage Loan Originators

Protecting Tenants at Foreclosure Act of 2009

Introduction

On May 20, 2009, the Helping Families Save Their Homes Act of 2009, Public Law 111-22 was signed into law. Included in the public law is the Protecting Tenants at Foreclosure Act (PTFA) (Division A, Title VII), which provides protections for tenants, including tenants in housing subsidized by Section 8 of the United States Housing Act of 1937, who are living in homes subject to foreclosure. The protections are intended to provide tenants a reasonable amount of notification of the need to find alternative housing. Initially, this title, and any amendments made by this title were to be statutorily repealed on December 31, 2012.

Subsequently, Section 1484 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, signed into law July 21, 2010) amended PTFA and extended the PTFA protections to December 31, 2014. Section 1484 of the Dodd-Frank Wall Street Reform and Consumer Protection Act also defined when "date of notice of foreclosure" occurs. Section 1484 provides in relevant part as follows: "the date of a notice of foreclosure shall be deemed to be the date on which complete title to a property is transferred to a successor entity or person as a result of an order of a court or pursuant to provisions in a mortgage, deed of trust, or security deed." On December 31, 2014, the Act terminated according to the amended sunset date.

On May 24, 2018, the Protecting Tenants at Foreclosure Act of 2009 was reinstated through the signing of the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018. The effective date for compliance was June 23, 2018. The law is self-executing and no agency can issue a regulation or interpretation of the law.

Major provisions of the PTFA include:

Foreclosure Covered Mortgages

The PTFA covers foreclosure on:

a federally-related mortgage loan[1]; or

any dwelling or residential real property after the date of enactment of this title. (June 23, 2018)

The protections of this law apply to tenants under a "bona fide" lease or tenancy. A lease or tenancy is "bona fide" only if:

1. the mortgagor or a child, spouse, or parent of the mortgagor under the contract is not the tenant;
2. the lease or tenancy was the product of an arm's-length transaction; and
3. the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent or the rent is reduced or subsidized due to a federal, state, or local subsidy.

Responsibilities of Successor in Interest

Upon the complete transfer of title to the successor as a result of foreclosure, it is the responsibility of the successor in interest to:

Provide Notice to Vacate – Provide tenant(s) Notice to Vacate 90 days before the effective date of such notice in all instances; and

Adhere to Tenant Protections – Tenants with bona fide lease agreements entered into prior to the date of notice of foreclosure must be allowed to occupy the premises until the end of the remaining term of the lease. However, a successor in interest may terminate a lease upon date of foreclosure and provide the 90-day Notice to Vacate if:

1. successor in interest plans to occupy the property as their primary residence; or
2. a bona fide lease or tenancy agreement is not in place or is allowed to be terminated at will according to State or local law.

[1] A "federally-related mortgage loan has the same meaning as Section 3 of the Real Estate Settlement Procedures Act of 1974 (12 USC 2602). The definition includes any loan secured by a lien on one-to-four family residential real property, including individual units of condominiums and cooperatives.

These provisions do not affect any State or local law that provides longer time periods or other additional protections for tenants.

Examination Objectives

1. Determine the institution's compliance with the provisions of the PTFA, as applicable, based on the institution's product offering and operations, including management of other real estate owned where foreclosures result in tenant eviction(s).
2. Assess the quality of the institution's compliance management systems and its policies and procedures for implementing the provisions.
3. Determine the reliance that can be placed on the institution's internal controls and procedures for monitoring the institution's compliance with the provisions.
4. Determine corrective action when violations of law are identified or when the institution's policies or internal controls are deficient.

Examination Procedures

General

1. Through discussions with management and review of available information, determine whether the institution's internal controls are adequate to ensure compliance with the PTFA. Consider:
   - policies and procedures
   - account documentation
   - checklists
   - computer program documentation, including any computer program testing and validation.
2. Determine the extent and adequacy of the training received by individuals whose responsibilities relate to compliance with the regulation. Review any training materials pertaining to the Act and determine if the training is comprehensive and covers the various aspects of the provisions that apply to the creditor's offerings and operations.
3. Review compliance reviews or audit materials, including work papers and reports, to determine if:
   - The scope of any audits address all provisions of the PTFA, as applicable;
   - Transaction testing includes samples covering relevant product types and decision centers (for example, mortgage and debt collections departments);
   - The work performed is accurate;
   - Significant deficiencies and their causes are included in reports to management or to the Board of Directors;
   - Management has taken corrective actions to follow-up on previously identified deficiencies; and,
   - The frequency of review/audit is appropriate.
4. If any complaints based on the PTFA have been filed against the institution, determine:
   - why were they filed, and
   - how they were resolved.

Disclosure Requirements

5. Determine whether evictions occurred within the requirements of the PTFA.
   - Notice to Vacate provided after the date of the "notice of foreclosure"
   - Notice to Vacate provided 90 days prior to the effective date of the eviction
   - Tenants with bona fide leases were allowed to remain in the property until the original contracted termination of the lease unless an exception (detailed above) was present.

Examination Conclusions

6. Conclude the examination after taking the following actions:
   - Fully address identified deficiencies and violations, if any
   - Attach appropriate supporting workpaper documentation
   - Discuss findings with management and board of directors
   - Write comments, as applicable, in the Report of Examination
   - Include appropriate violation write-ups
   - Discuss proposed enforcement action, if needed

References:

Title VII of the Helping Families Save Their Homes Act of 2009.

Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203)

Economic Growth, Regulatory Relief Consumer Protection Act (Pub. L. 115-174)

Examination Checklist – Protecting Tenants at Foreclosure Act		
	Yes	**No**
Section 702 - EFFECT OF FORECLOSURE ON PREEXISTING TENANCY		
1. Does the financial institution that takes foreclosure action on a federally-related mortgage loan or on any dwelling or residential real property send any bona fide tenants a notice to vacate at least 90 days before the effective date of such notice? **(If No, cite a violation of Section 702(a)(1).)**		
2. Does the financial institution that forecloses on a property and has tenants with a bona fide lease, honor the existing lease for renters until the end of the term of the lease? (An institution may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90-day notice required under Section 702(a)(1).) **(If No, cite a violation of Section 702(a)(2).)**		
3. Does the financial institution that forecloses on a property with tenants, but without a bona fide lease or has a lease terminable at will under State law, provide the tenant the 90-day notice under subsection 702(a)(1), provide a minimum of 90 days for the tenant to vacate, and - if applicable - honor any additional protections for tenants provided for Federal- or State-subsidized tenancy or of any State or local law? **(If No, cite a violation of Section 702(a)(2).)**		

VI. Consumer Compliance Depository Issues

Expedited Funds Availability Act

Introduction

Regulation CC (12 CFR 229), as amended, implements two laws—the Expedited Funds Availability Act (EFA Act), which was enacted in August 1987 and became effective in September 1988, and the Check Clearing for the 21st Century Act (Check 21), which was enacted in October 2003 and became effective on October 28, 2004. The regulation sets forth the requirements that depositary institutions ("banks") make funds deposited into transaction accounts available according to specified time schedules and that they disclose their funds availability policies to their customers. It also establishes rules designed to speed the collection and return of checks and electronic checks and describes requirements that affect banks that create or receive substitute checks, including requirements related to consumer disclosures and expedited recredit procedures.

Regulation CC contains four subparts. The first three implement the EFA Act, and the fourth implements Check 21. Specifically:

- Subpart A—Defines terms and provides for administrative enforcement
- Subpart B—Specifies availability schedules, or timeframes within which banks must make funds available for withdrawal; also includes rules concerning exceptions to the schedules, disclosure of funds availability policies, payment of interest, and bank liability for noncompliance
- Subpart C—Sets forth rules concerning the expeditious return of checks and electronic checks, the responsibilities of paying and returning banks, notice of nonpayment for large-dollar returns by the paying bank, check and electronic check-indorsement standards, and other related changes to the check-collection system
- Subpart D—Contains provisions concerning the 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 appendixes to the regulation provide additional information:

- Appendix A—Routing number guide
- Appendix B - Reserved
- Appendix C—Model forms and clauses that banks may use to meet their disclosure responsibilities under the regulation
- Appendix D – Indorsement, reconversion, and truncation requirements in connection with substitute checks
- Appendix E – Commentary
- Appendix F – Official Federal Reserve Board ("Board") Interpretations; Preemption Determinations

Subpart A – General Definitions—Section 229.2

Account

For purposes of subparts B and C, an *account* is a ''deposit'' (as defined in the Board's Regulation D, in 12 CFR 204.2(a)(1)(i)) that is a ''transaction account'' (as defined in 12 CFR 204.2(e)). ''Account'' encompasses consumer and corporate accounts and includes accounts from which the account holder is permitted to make transfers or withdrawals by any of the following:

- Negotiable instrument
- Payment order of withdrawal
- Telephone transfer
- Electronic payment

For purposes of subpart B, ''account'' does not include accounts for which the account holder is a bank, an office of a bank or foreign bank that is located outside the United States, or the Treasury of the United States.

For purposes 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

The term *bank* refers to Federal Deposit Insurance Corporation insured banks, mutual savings banks, savings banks, and savings associations; federally insured credit unions; non-federally insured banks, credit unions, and thrift institutions; 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 and 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 USPS to the extent that they act as payors.

- The term paying bank applies to 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 the USPS. The term also includes Federal Reserve Banks, FHLBs, state and local governments, and, if the check is not payable by a bank, the bank through which a check is payable.
- A reconverting bank is the bank that creates a substitute check or is the first bank to transfer or present a substitute check to another party.

Check

The term *check* includes both original checks and substitute checks.[1]

- An *original check* is the first paper check issued with respect to a particular payment transaction.
- A *substitute check* is a paper reproduction of an original check that
  - Contains an image of the front and back of the original check,
  - Bears a 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,[2]
  - 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 section 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.''

- A copy of an original check is 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.
- Truncate means 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.
- A local check is a check deposited in a depositary bank that is located in the same Federal Reserve Bank check-processing region as the paying bank.[3]

Electronic Check, Electronic Returned Check, and Electronically-Created Item

An *electronic check* and *electronic returned check* mean an electronic image of, and electronic information derived from, a paper check or paper returned check, respectively, that—

(1) Is sent to a receiving bank pursuant to an agreement between the sender and the receiving bank; and

(2) Conforms with ANS X9.100-187, unless the Board by rule or order determines that a different standard applies or the parties otherwise agree.

Electronic checks and electronic returned checks are subject to subpart C of Regulation CC as if they were checks or returned checks, except where provided in subpart C.

An *electronically-created item* means an electronic image that has all the attributes of an electronic check or electronic returned check, but was created electronically and not derived from a paper check.

Consumers and Customers

- A consumer is a natural person who draws a check on a consumer account or cashes or deposits a returned check against a consumer account.
- A consumer account is an account used primarily for personal, family, or household purposes.
- A customer is a person who has an account with a bank.

[1] The term ''check'' does not include checks drawn in a foreign currency or checks drawn on a bank located outside the United States.

[2] ''MICR (magnetic ink character recognition) line'' refers to the numbers—including routing number, account number, check number, and check amount, and other information—that are printed across the bottom of a check in magnetic ink in accordance with American National Standard (ANS) Specifications for Placement and Location of MICR Printing, X9.13 or an original check and an Image Replacement Document-IRD, X9.100-140, for a substitute check. 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. For purposes of subpart C and D, MICR line also refers to the numbers contained in a record specified for MICR line data in an electronic check or electronic returned check in accordance with ANS Specifications for Electronic Exchange of Check Image Data – Domestic, X9.100-87.

[3] The regulation currently continues to reference non-local checks. See, e.g. 12 CFR 229.2(r). However, in February 2010, the Federal Reserve consolidated all of its check processing operations into a single paper check-processing region. Accordingly, there are no longer nonlocal checks.

Business and Banking Days

- A business day is any day except Saturday, Sunday, and a legal holiday (standard Federal Reserve holiday schedule).
- A banking day is a business day on which a bank is open for substantially all its banking activities.

Even though a bank may be open for regular business on a Saturday, that day is not considered a banking day for purposes of Regulation CC because Saturday is never a ''business day'' under the regulation. The fact that one branch is open to the public for substantially all its banking activities does not necessarily mean that specific day is a banking day for the other branches of the bank.

Indemnifying Bank

Indemnifying bank means –

- For the purposes of §229.34, a bank that provides an indemnity under §229.34 with respect to remote deposit capture or an electronically-created item, or
- For the purposes of §229.53, a bank that provides an indemnity under §229.53 with respect to a substitute check.

Administrative Enforcement – §229.3

Regulation CC is to be enforced for banks through section 8 of the Federal Deposit Insurance Act (12 USC 1818 *et seq*.) and through the Federal Credit Union Act (12 USC 1751 *et seq*.). In addition, a supervisory agency may enforce compliance through any other authority conferred on it by law. The Board is responsible for enforcing the requirements of Regulation CC for banks that are not specifically the responsibility of another government agency.

Subpart B – Availability of Funds and Disclosure of Funds Availability Policies

Next-Day Availability – §229.10

Rules governing next-day availability of funds are set forth in section 229.10.

General Rules (§§ 229.10(a)–229.10(c))

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, USPS money orders, state and local government checks, and checks drawn on a Federal Reserve Bank or an FHLB); 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 both

- Made at a staffed teller station and
- Deposited into an account held by the payee of the check.

Exceptions are U.S. Treasury checks and on-us checks, which must receive next-day availability even if the deposit is not made at a staffed teller station. Cash and other next-day check deposits (such as Postal Service money orders, cashier's checks, certified checks, checks drawn on a state or local government, and checks drawn on a Federal Reserve Bank or a FHLB) that are not made at a staffed teller station must be available for withdrawal on the second business day after the day of deposit. (§§ 229.10(a)(2) and 229.10(c)(2))

Additional Rules

A few additional rules also apply:

- State and local government checks—For state and local government checks to receive next-day availability, the depositary bank must be located in the same state as the governmental unit issuing the check. (§ 229.10(c)(1)(iv))
- Special deposit slips or envelopes—For deposits of state and local government checks, as well as deposits of cashier's, certified, and teller's checks, the depositary bank may require the use of special deposit slips or envelopes. If the depositary bank requires the use of special deposit slips or envelopes, it must either provide the slips or tell customers how they can be obtained. (§ 229.10(c)(3))
- On-us checks—For an on-us check to receive next-day availability, it must be drawn on the same branch or another branch of the bank where it is deposited. In addition, both branches must be located in the same state or check-processing region. (§ 229.10(c)(1)(vi))
- $200 rule—Under a special rule for check deposits not subject to next-day availability, the depositary bank must provide next-day availability for withdrawal of the lesser of $200 or the aggregate amount deposited to all accounts, including individual and joint accounts, held by the same customer on any one banking day. The $200 rule does not apply to deposits received at nonproprietary automated teller machines (ATMs). (§ 229.10(c)(1)(vii) and 12 U.S.C. 4002(a)(2)(D))[4]

[4] Although the current Regulation CC uses $100, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203) amended the EFA Act from $100 to $200.

Availability Schedule – §229.12

General Rules (§§ 229.12(a)–229.12(c) and 229.12(f))

Under the permanent availability schedule, which became effective in September 1990, local check deposits must be made available no later than the second business day following the day on which the funds were deposited (See Figure 1). Funds deposited at nonproprietary ATMs, including cash and all checks, must be made available no later than the fifth business day following the banking day on which they were deposited.

Checks that would normally receive next-day availability are treated as local check deposits if they do not meet all the criteria for next-day availability under section 229.10(c). (As noted in the preceding section, 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 and local government checks and certain on-us checks are subject to additional rules.)

U.S. Treasury checks and USPS money orders that do not meet all the requirements for next-day or second-day availability outlined in section 229.10(c) receive funds availability as if they were *local* checks. Cashier's, certified, teller's, and state and local government checks and checks drawn on a Federal Reserve Bank or FHLB that do not meet all the requirements in section 229.10(c) also receive funds availability as local checks.

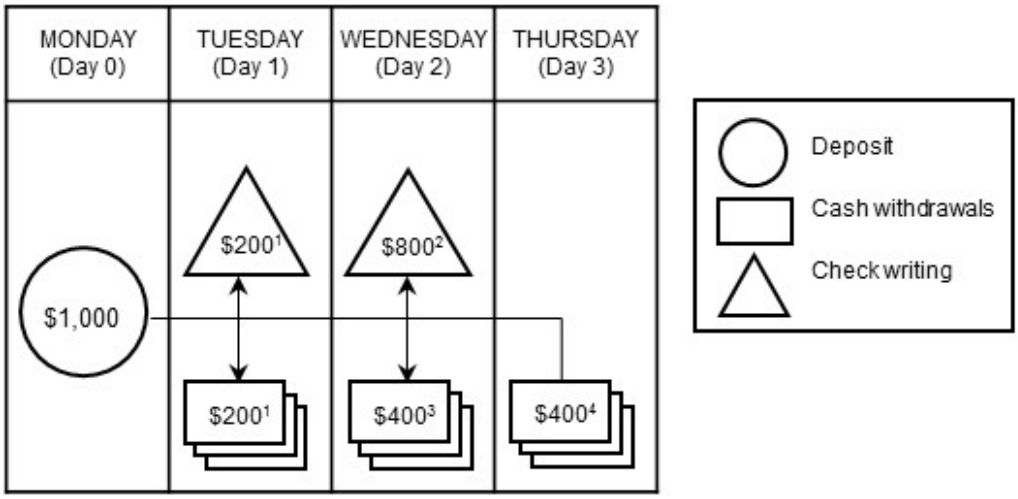
Special Rules for Cash Withdrawals (§ 229.12(d))

Special rules apply to cash withdrawals from local check deposits. The depositary bank is allowed to extend the availability schedule for cash or similar withdrawals by one day. If it does, a customer must also be allowed to withdraw $400 of the deposited funds (or the maximum amount that may be withdrawn from an ATM, but not more than $400) no later than 5:00 p.m. on the day the funds would have ordinarily become available for check withdrawals, that is, the second business day after the deposit. This is in addition to the $200 that must be made available on the business day following deposit. The remainder of the deposited funds would be available for cash withdrawal on the following, third business day.

Extension of the Schedule for Certain Deposits (§ 229.12(e))

Banks in Alaska, Hawaii, Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands that receive checks drawn on or payable through banks located in another state may extend the availability schedules for local checks by one day. The exception does not apply to checks drawn on banks in these states or territories and deposited in banks located in the continental United States.

Figure 1—Availability of Local Checks



1. The first $200 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. Figure 1 assumes that the depositary bank extends the availability schedule for cash or similar withdrawals by one day, as permitted under § 229.12(d). If the depositary bank extends the availability schedule for such withdrawals, $400 of the 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 $200 that must be made available on the business day following deposit. (§ 229.12(d)).
4. The remainder of the deposit must be made available for cash withdrawal by the third business day following deposit. (§ 229.12(d))

Exceptions to the Availability Schedule—Section 229.13

The regulation provides for exceptions that allow banks to exceed the maximum hold periods specified in the availability schedule. The exceptions are considered ''safeguards'' because they offer banks a means of reducing risk based on the size of the deposit, the depositor's past performance, the absence of a record on the depositor's past performance, or a belief that the deposit may not be collectible.

Categories of Exception (§§ 229.13(a)–229.13(f))

The regulation provides for exceptions in six situations:

- 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 reasonable cause to believe the check being deposited is uncollectible
- Emergency conditions

Although banks may exceed the timeframes for availability in these situations, the exceptions generally may not be invoked if the deposit would ordinarily receive next-day availability.

New Accounts (§ 229.13(a))

An account is considered a ''new'' account, under section 229.13(a), for the first 30 calendar days it is open, beginning on the date the account is established. An account is not considered ''new'' if ''each customer on the account has had, within 30 calendar days before the account is established, another account at the bank for at least thirty calendar days.''

The new-account exception does not cover all deposits made to the account. New accounts are exempted from the availability schedules for deposits of local checks, but next-day availability is required for deposits of cash and for electronic payments. Also, 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 generally must be made in person to an employee of the depositary bank. If the deposits are not made in person to an employee of the depositary bank—for instance, if they are made at an ATM—availability may be provided on the second business day after the day of deposit. Treasury check deposits, however, must be given next-day availability regardless of whether they are made at staffed teller stations or ATMs. Banks are not required to make the first $200 of a day's deposits of local checks, or the funds from on-us checks, available on the next business day.

Large Deposits (Deposits over $5,000) (§ 229.13(b))

A depositary 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 depositary 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 Checks (§ 229.13(c))

A depositary bank may delay making the funds from a check available if the check had previously been deposited and returned unpaid. The 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 Overdrafts (§ 229.13(d))

If a customer's account, or accounts, have been repeatedly overdrawn during the preceding six months, the bank may delay making the funds from a check available. A customer's account may be considered repeatedly overdrawn in two ways. First, the exception may be applied if the account was overdrawn, or would have been overdrawn had check 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 incurred overdrafts on two banking days within the preceding six-month period if the negative balance in the account(s) at that time was $5,000 or more. The exception may also apply if the account would have been overdrawn by $5,000 or more had the check or other charges been paid.

Reasonable Cause to Doubt Collectibility (§ 229.13(e))

This exception may be applied to all types of checks. To trigger the exception, the depositary 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. The basis for reasonable cause may include, for example, communication with the paying bank indicating that

- A stop-payment order has been placed on the check
- There are insufficient funds in the drawer's account to cover the check
- The check will be returned unpaid

The reasonable-cause exception may also be invoked in cases in which

- The check was deposited six months after the date of the check (stale date)
- The check was postdated (future date)
- The depositary bank believes that the depositor may be engaged in check kiting
- The depositary bank has other confidential information, such as the insolvency or pending insolvency of the customer

The reasonable-cause exception may not be invoked based on the fact that the check is of a particular class or is deposited by a particular class of persons. For example, this exception may not be invoked because of:

- The race or national origin of the depositor
- The fact that the paying bank is located in a rural area and the depositary 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
- The fact that the check is a cashier's check (without any additional information about the particular check that would provide reasonable cause to doubt collectability)

If the depositary bank intends to use this exception, it 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 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 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 bank need only disclose to the customer that the hold is based on confidential information indicating that the check may not be paid.

If the depositary bank asserts that the hold was based on confidential information, it must note the reason on the notice it retains as a record of compliance. The bank must maintain a record of each exception notice, including documents and a brief description of the facts supporting the reasonable-cause exception, for two years.

Overdraft and returned-check fees (§ 229.13(e)(2))

If a depositary bank invokes the reasonable-cause exception and does not inform the customer in writing at the time of the deposit, it 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 would not have occurred or the check would not have been returned had the depositary bank not imposed the reasonable-cause hold.

However, the depositary bank may assess overdraft or returned-check fees if the exception hold notice states that the customer may be entitled to a refund of any overdraft or returned-check fees imposed and describes how the customer can obtain the refund. The bank must then refund the fees upon request.

Emergency Conditions (§ 229.13(f))

Banks may suspend the availability schedule under the following emergency conditions:

- An interruption of communications or computer or other equipment facilities
- Suspension of payments by another bank
- War
- Any emergency condition beyond the control of the depositary bank

Notices of Exception (§ 229.13(g))

Whenever a bank invokes one of the exceptions to the availability schedules (other than the new-account exception), it must notify the customer in writing. The bank may send a notice that complies solely with section 229.13(g)(1) (the ''general exception notice'') or one of the two alternative notices described below.

General Exception Notice (§ 229.13(g)(1))

The general notice of exception must include the following:

- 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
- The time period the funds will be available for withdrawal (unless unknown, as in an emergency situation)

If the deposit is made at a staffed facility, the notice may be given to the person making the deposit, regardless of whether that person 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 the depositary bank discovers a reason to delay the funds subsequent to the time the notice should have been given, the bank must notify the customer about the hold as soon as possible, but no later than the business day after the facts become known. Certain exception holds due to emergency conditions do not require

notification of customers. For example, if the deposited funds that were subject to a hold during an emergency become available for withdrawal before the time the notice must be sent, the depositary bank need not send a notice.

One-Time Exception Notice for Nonconsumer Accounts (§ 229.13(g)(2))

If most of the check deposits into a particular nonconsumer account qualify for either the large-deposit exception or the redeposited-check exception, the bank may send a one-time notice rather than a notice complying with section 229.13(g)(1) each time the exception is invoked. The one-time notice must be sent either the first time the exception is invoked or before that time. It must state both

- The reason the exception may be invoked and
- The time period when the funds will generally be made available.

Exception Notice for Repeated Overdrafts (§ 229.13(g)(3))

If most of the check deposits into a particular account qualify for the repeated-overdraft exception, the bank may send an exception notice that covers a specified period of time rather than a notice complying with section 229.13(g)(1) each time the exception is invoked. The ''specified period'' notice must be sent when the overdraft exception is first invoked. It must state all of the following:

- The customer's account number
- The fact that access to the funds is being delayed because the repeated-overdraft exception is being invoked
- The time period during which the exception will apply
- The time period within which the funds generally will be available for withdrawal

Availability of Deposits Subject to Exceptions (§ 229.13(h))

For deposits subject to exceptions to the availability schedules, other than deposits into new accounts, the depositary bank is permitted to delay availability for a *reasonable* time beyond the schedule. Generally, a reasonable period is considered to be no more than one business day for on-us checks and five business days for local checks. If a depositary bank extends its availability beyond these timeframes, it must be able to prove that the extended delay is reasonable.

Payment of Interest – §229.14

General Rule (§ 229.14(a))

A depositary 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 depositary bank typically receives credit on checks within one or two days following deposit. It receives credit on cash deposits, electronic payments, and checks that are drawn on itself on the day the cash, check, or electronic payment is received. And if a nonproprietary ATM is involved, it usually receives credit on the day the bank that operates the ATM credits the depositary bank for the amount of deposit.

A depositary bank may rely on the availability schedule of its Federal Reserve Bank, FHLB, or correspondent bank when determining when the depositary bank receives credit (section 229.14(a)(1)). If availability is delayed beyond the time specified in that schedule, a bank may charge back to the account any interest erroneously paid or accrued on the basis of that schedule.

A depositary bank may 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 (section 229.14(a)(2)). For example, if a bank receives credit on 20 percent of the funds deposited by check on the business day of deposit (such as via on-us checks), 70 percent on the business day following deposit, and 10 percent on the second business day following deposit, the bank may apply these percentages to determine the day on which interest must begin to accrue for check deposits into all interest-bearing accounts, regardless of when the bank received credit for deposits into any particular account. Consequently, a bank may begin accruing interest uniformly across all interest-bearing accounts rather than having to track the type of check deposited to each account.

Nothing in the general rule limits a depositary bank policy that provides that interest may accrue only 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 bank receives credit for the funds. Nor is there a limit on a policy that provides that interest may accrue sooner than required by the regulation.

Money market deposit accounts, savings deposit accounts, and time deposit accounts 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 (§ 229.14(b))

Credit unions that do not begin to accrue interest or dividends on their members' accounts until a date later than the day the credit union receives credit for those deposits, including cash deposits, are exempt from the general rule for payment of interest (section 229.14(a)) as long as they provide notice of their interest-accrual policies in accordance with section 229.16(d).

Exception for Checks Returned Unpaid (§ 229.14(c))

Banks are not required to pay interest 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 Disclosures (§ 229.15(a))

A bank must disclose its funds availability policy to its customers. The disclosures must be clear and conspicuous and must be in writing. 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 customers can keep. They must be grouped together and must not contain information unrelated to the requirements of Regulation CC. If other account terms are included in the same document, disclosures related to the regulation should be highlighted, for example, by having a separate heading.

Uniform Reference to Day of Availability (§ 229.15(b))

In its disclosure, the bank must describe funds as being available for withdrawal on ''the _____ business day after'' the day of deposit. In this calculation, 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 (§ 229.15(c))

A bank is not required to give multiple disclosures to customers who have more than one account if the accounts are subject to the same availability policies. Nor is a bank required to give separate disclosures to joint account holders. A single disclosure to one of the holders of the joint account is sufficient.

Dormant or Inactive Accounts (§ 229.15(d))

A bank is not required to give disclosures to customers who have dormant or inactive accounts.

Specific Availability Policy Disclosure – §229.16

The disclosure describing its funds availability policy that a bank must provide to its customers must reflect the policy followed by the bank in most cases. If the bank wishes to reserve its right to impose longer delays on a case-by-case basis or by invoking one of the exceptions specified in section 229.13, its policy regarding these situations must be reflected in the disclosure.

Content of Specific Availability Policy Disclosure (§ 229.16(b))

A bank's specific availability policy disclosure 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 checks; how to determine the category to which a particular deposit or check (such as a payable-through draft) 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 specified in section 229.13 that may be invoked by the bank, including the time at which the deposited funds generally will 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 that may result in deposited funds being available for withdrawal later than the time periods stated in the bank's availability policy (specific requirements are laid out in section 229.16(c)(1))

Longer Delays on a Case-by-Case Basis (§ 229.16(c))

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:

- A statement that the time when deposited funds are available for withdrawal may be extended in some cases, and a statement of 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 its availability policy

- A statement that customers should ask if they need to know when a particular deposit will be available for withdrawal

When a depositary 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 must include all of the following information:

- The customer's account number
- The date of the deposit
- The amount of the deposit that is being delayed
- The day the funds will be available for withdrawal

The notice must be provided at the time of the deposit, unless the deposit was not made in person to an employee of the depositary bank or the decision to delay availability was made after the time of the deposit. If notice is not given at the time of the deposit, the depositary bank must mail or deliver the notice to the customer no later than the first business day following the banking day the deposit was made.

A depositary 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 section 229.16(c)(1) of the regulation and
- The deposited check was paid by the paying bank.

However, the depositary 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 section 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 also must state how to obtain a refund.

Credit Union Notice of Interest-Payment Policy (§ 229.16(d))

If a credit union begins to accrue interest or dividends on all deposits made into an interest-bearing account, including cash deposits, at a later time than the day specified in section 229.14(a), the credit union's specific policy disclosures must explain when interest or dividends on deposited funds will begin to accrue.

Initial Disclosures – §229.17

A bank must provide potential customers with the disclosures described in section 229.16 before an account is opened.

Additional Disclosure Requirements – §229.18

Deposit Slips (§ 229.18(a))

All preprinted deposit slips given to customers must include a notice that deposits may not be available for immediate withdrawal.

Locations Where Employees Accept Consumer Deposits (§ 229.18(b))

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 (§ 229.18(c))

At each of its ATM locations, a depositary bank must post or provide a notice that funds deposited in the ATM may not be available for immediate withdrawal. A depositary bank that operates an off-premises ATM from which deposits are removed not more than two times each week, as described in section 229.19(a)(4), must disclose at or on the ATM the days on which deposits made at the ATM will be considered received.

Upon Request (§ 229.18(d))

A bank must provide a copy of its specific availability policy disclosure (described in section 229.16) to any person who requests it.

Changes in Policy (§ 229.18(e))

Thirty days before implementing a change in its availability policy, a bank must send notification of the change to all account holders adversely affected by the change. Changes that result in faster availability may be disclosed no later than thirty days after implementation.

Miscellaneous Provisions – §229.19

When Funds Are Considered Deposited (§ 229.19(a))

For purposes of subpart B of Regulation CC (sections 229.10–229.21), the time at which funds must be made available for withdrawal is measured from the day the funds are considered deposited (or ''received'' by the bank). When funds are considered officially deposited differs according to where, how, and when they are deposited:

- Funds deposited at a staffed teller station or a staffed ATM—Considered deposited when received by the teller or placed in the ATM.
- Funds mailed to the depositary bank— Considered deposited on the banking day they are received by the depositary bank; in this case, funds are

considered ''received'' at the time the mail is delivered to the bank, even if it is initially delivered to a mail room rather than the check-processing area.

- Funds deposited at a night depository— Considered deposited on the banking day the funds are removed from the night depository and are accessible to the depositary 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; others have an agreement with the bank that the deposit bag must be opened under the dual control of the bank and the depositor. In both 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— Considered deposited on the day the funds are removed from the lock box and are accessible to the depositary bank for processing. A lock box is a post office box that is typically used by a corporation for the collection of bill payments or other check receipts.
- Funds deposited at off-premises ATMs that are not serviced more than twice a week— Considered deposited on the day they are removed from the ATM. This special provision is geared toward banks whose practice is to service remote ATMs infrequently. A depositary bank that uses this provision 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 depositary bank is closed or after the bank's cutoff hour—May be considered deposited on the next banking day.

Cutoff Hours

Generally, a bank may establish a cutoff hour of 2:00 p.m. or later for receipt of deposits at its main office or branch offices and a cutoff hour of 12:00 noon or later for deposits made at ATMs, lock boxes, night depositories, or other off-premises facilities. (As specified in the commentary to section 229.19(a), the 12:00 noon cutoff time relates to the local time at the branch or other location of the depositary bank where the account is maintained or the local time at the ATM or off-premises facility.)

Different cutoff hours may be established for different types of deposits—for example, a 2:00 p.m. cutoff 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 cutoff hours; for example, different cutoff hours may be established for ATM deposits and over-the- counter deposits, or for different teller stations at the same branch. With the exception of the 12:00 noon cutoff hour for deposits at ATMs and off-premises facilities, the cutoff hour for receipt of deposits may not be earlier than 2:00 p.m.

Hour of Funds Availability (§ 229.19(b))

Generally, funds must be available for withdrawal by 9:00 a.m. or the time a depositary bank's teller facilities, including ATMs, are available for customer account withdrawals, whichever is later. (Under certain circumstances, there is a special exception for cash withdrawals—see section 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 for ATM withdrawals by 9:00 a.m.

The start of business is determined by the local time at the branch or depositary bank holding the account. 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 depositary 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 Depositary Bank Policies (§ 229.19(c))

Essentially, a depositary bank is permitted to provide availability to its customers in a shorter time than that prescribed in the regulation. The bank may also adopt different funds availability policies for different segments of its customer base, so 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 his or her account.

The regulation does not affect a depositary bank's right to accept or reject a check for deposit, to ''charge back'' the customer's account for the amount of a check based on the return of the check or receipt of a notice of nonpayment of the check, or to claim a refund for any credit provided to the customer.

Nothing in the regulation requires a depositary bank to have its facilities open for customers to make withdrawals at specified times or on specific days. For example, even though the special cash withdrawal rule set forth in section 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 the 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 depositary bank is closed for customer transactions, including ATM transactions, on a day on which 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 a day, the regulation does 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 banks do not keep cash on their premises and do not offer cash withdrawal services to their customers. Others limit the amount of cash on their premises, for reasons related to bonding, and as a result reserve the right to limit the amount of cash a customer may withdraw on a given day or to 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 if the policy is not dependent on the length of time the funds have been in the customer's account, as long as the permissible hold has expired. However, the regulation does not authorize such policies if they are otherwise prohibited by statutory, regulatory, or common law.

Calculated Availability for Nonconsumer Accounts (§ 229.19(d))

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 to or more prompt than the requirements of the regulation.

Holds on Other Funds (§ 229.19(e))

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 if the total amount of funds held are made available for withdrawal within the times required in the regulation. For example, if a customer cashes a check (other than an on-us check) over-the-counter, the depositary 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 cashed.

Employee Training and Compliance (§ 229.19(f))

The EFA Act requires banks to inform each employee who performs duties subject to the act about its requirements. The act and Regulation CC also require banks to establish and maintain procedures designed to ensure and monitor employee compliance with the requirements.

Effects of Mergers (§ 229.19(g))

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 section 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 section 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
- When a check is drawn on a branch of the depositary bank

Relation to State Law – §229.20

General Rule (§ 229.20(a))

If a state has a shorter hold for a certain category of checks than is provided for under federal law, the state requirement supersedes the federal provision.

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 banks in that state, including federally chartered banks. 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 to only those categories of banks, rather than to all federally insured banks in the state.

12 CFR 229.20(a) is applicable to state laws or regulations in effect on or before September 1, 1989.

Preemption of Inconsistent Law (§ 229.20(b))

Provisions of state laws that are inconsistent with federal law, other than those discussed in the preceding section (''General Rule''), are preempted. State laws requiring disclosure of availability policies for transaction accounts are preempted by Regulation CC. Preemption does not require a determination by the Federal Reserve Board to be effective.

Preemption Standards and Determinations (§§ 229.20(c) and (d))

The Federal Reserve Board may issue a preemption determination upon request by an interested party in a state. The determination will relate only to the provisions of subparts A and B of Regulation CC.

Civil Liability – §229.21

Statutory Penalties (§ 229.21(a))

Statutory penalties can be imposed as a result of a successful individual or class action suit brought for violations of subpart B of Regulation CC. Basically, a bank can be held liable for

- Actual damages,
- No less than $100 nor more than $1,000 in the case of an individual action,
- The lesser of $500,000 or 1 percent of the net worth of the bank involved in the case of a class action, and
- 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 the regulation, such as requirements that funds deposited in accounts at banks be made available more promptly than required by the regulation, but they do not apply to other provisions of state law. (See commentary in appendix E, section 229.20.)

Bona Fide Errors (§ 229.21(c))

A bank will not be considered liable for violations of Regulation CC 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 (§ 229.21(e))

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 Board, even if that rule, regulation, form, or interpretation is subsequently determined to be invalid. Banks may rely on the commentary as well as on the regulation itself.

Exclusions (§ 229.21(f))

The liability established by section 229.21 does not apply to violations of subpart C (Collection of Checks) of Regulation CC 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 section 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, notices of non-payment for large-dollar returns by the paying bank, and mandatory check indorsement standards. Electronic checks and electronic returned checks are subject to subpart C as if they were checks or returned checks, except where "paper check" or "paper returned check" is specified. Many of the provisions of subpart C can be varied by agreement.

Sections 229.30 and 229.31 generally require paying and returning banks to return checks expeditiously using a ''two-day'' test. Under the two-day test, a return is considered expeditious if a local check is received by the depositary bank by 2:00 p.m. (local time of the depositary bank) of the second business day after presentment. Pursuant to section 229.33(a), a paying bank and returning bank may be liable to a depositary bank for failing to return a check in an expeditious manner only if the depositary bank has arrangements in place such that the paying bank or returning bank could return a returned check electronically, directly or indirectly, by commercially reasonable means.

Section 229.31(c) also generally requires a paying bank to provide timely notification of nonpayment if it determines not to pay a check of $5,000 or more, regardless of the channel of collection. The regulation addresses the depositary 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 and indemnities 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, supersede any state law, but only to the extent that state law is inconsistent with Regulation CC. (Section 229.41)

The expeditious return requirements and other specified requirements in subpart C do not apply to checks drawn on the U.S. Treasury, USPS 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. (Section 229.42)

Subpart D – Substitute Checks

General Provisions Governing Substitute Checks – §229.51

A substitute check for which a bank has provided the warranties described in section 229.52[5] 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.''[6]

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 is also the first bank to provide the warranties described in section 229.52 and the indemnity described in section 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 (or paper or electronic representation of a substitute check) incurred because of the receipt of a substitute check instead of the original check.

A bank that rejects a check submitted for deposit and returns to its customer a substitute check (or paper or electronic representation of a substitute check) makes these warranties and indemnifications regardless of whether the bank received consideration.

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. 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 section 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 section 229.60 provides that the bank may voluntarily give the consumer more time to submit a claim than the rule allows.

Under section 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 that the claim contain[7]

- 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, at its discretion, may require the consumer to submit the claim in writing. If a consumer makes an oral

[5] 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.

[6] A bank may not vary the language of the legal-equivalence legend.

[7] If a consumer submits an incomplete complaint, the bank must so inform the consumer and must tell the consumer what information is missing.

claim to a bank that requires a written claim, the bank must inform the consumer of the written requirement at that time. Under those circumstances, the bank must receive the written claim by the later of 10 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 10-day window, the claim meets the timing requirements (sections 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.

Bank's Action on Claims

Section 229.54(c) requires a bank to act on a 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 equal 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 it 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 must also 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 section 229.54(d)(2). The safeguard exceptions apply to new accounts and repeatedly overdrawn accounts and also when the bank has reasonable cause to suspect that the claim is fraudulent. A bank may delay availability of a provisionally recredited amount until the start of the earlier of (1) the business day after the banking day on which the bank determines that the consumer's claim is valid or (2) the forty-fifth 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. The 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. The notice must include the original check or a sufficient copy of it (except as provided in section 229.58; see below). Also, it must demonstrate to the consumer why the claim is not valid. Further, the notice 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 the information required in a notice of invalid claim plus the amount (including interest) and date of the reversal (section 229.54(e)(3)(i)).

Appendix C to Regulation CC contains model forms that a bank may use to craft the various notices required in section 229.54(e). The Board published these models to assist banks in complying with section 229.54(e). Appropriate use of the models, however, does not offer banks a statutory safe harbor.

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 section 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 (section 229.55(c)). The provisions of section 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 section 229.56 contains a specific exception that allows for greater recovery as provided in the indemnity section. Thus, a person who has 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 U.S. 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.[8] Section 229.56(d) states that if a person fails to provide notice of a claim for more than thirty 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.

[8] 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.

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 use, but is not required to use, the Board's model form (in appendix C to Regulation CC) to meet the content requirements for this notice. A bank that uses the model form appropriately is deemed compliant with the content requirements for which it uses language from the model form. A bank may provide the notice required by section 229.57 along with other information.

Distribution to Consumer Customers Who Receive Canceled Checks with Periodic Account Statements

Under section 229.57(b)(1), a bank must provide this disclosure to existing consumer customers who routinely receive their canceled 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 will routinely receive canceled checks in periodic statements at the time the customer relationship is established.

Distribution to Consumer Customers Who Receive a Substitute Check Occasionally

Under section 229.57(b)(2), a bank must also 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 and 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 U.S. 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

Note: The examination objectives and examination procedures for this regulation are broken down by regulation subpart: Section I covers subparts A and B, and section II covers subpart D. Subpart C of the regulation, ''Collection of Checks,'' is not covered here, as it addresses payments system issues exclusively and therefore does not present any consumer-related regulatory compliance issues to be reviewed during a consumer compliance examination. "Bank" is used as defined by Regulation CC.

Subparts A and B

1. To determine that the bank's funds availability policies are in compliance with Regulation CC
2. To determine that the bank has established internal controls for compliance with Regulation CC
3. To determine that the bank has established a training program for applicable employees concerning their duties with respect to Regulation CC
4. To determine that the bank maintains records of compliance with Regulation CC for a period of two years

Examination Procedures[9]

A financial institution may delay funds availability for some A bank may delay funds availability for some deposits on a case-by-case basis and for other deposits on an automatic basis. In addition, the bank may make decisions concerning holds and maintain records at branches as well as at the main office. Therefore, to check on a bank's compliance with its holds policies, the examiner must determine not only the types of holds policies the bank has, but how decisions are made and where records are maintained. If a branch makes its own decision and maintains its own records, such as in a decentralized structure, sampling may be done at the branch. If decisions to delay availability are 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, section 204.2(e) (demand deposits, negotiable order of withdrawal (NOW) accounts, and ATM accounts), offered by the bank.
2. Obtain copies of the forms used by the bank for transaction accounts, as applicable:
   - 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 bank's specific funds availability policies with regard to deposits.
4. Determine which individuals actually perform the various activities necessary to comply with the provisions of Regulation CC, subpart B, including, 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
   - Determining case-by-case holds or exceptions
5. Review the bank's training manual, internal audit or similar reports for Regulation CC, written procedures given to employees detailing their responsibilities under the regulation, and similar materials.
6. Determine the extent and adequacy of the instruction and training received by those employees to enable them to carry out their assigned responsibilities in conformance with Regulation CC.
7. Verify that the bank provides each employee with a written statement regarding the bank's procedures that pertain to that employee's function. (§ 229.19(f))

[9] These reflect the interagency examination procedures in their entirety.

Initial Disclosures and Subsequent Changes

1. Review the bank's specific availability policy disclosures. Determine if the disclosures accurately reflect the bank's funds availability policies and meet the requirements for content under section 229.16.
2. Determine if the bank 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 telephone to open a new account. (§ 229.17)
3. Determine if the bank provides its funds availability policy upon an oral or written request within a reasonable time period. (§ 229.18(d))
4. Determine if the bank has made changes to its availability policies since the last examination. If it has, determine whether depositors were notified in accordance with section 229.18(e).

Automatic (and/or Automated) Hold Policies

1. Review the bank's schedules or other materials relating to its 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))
   - USPS money orders (§§ 229.10(c)(1)(ii), 229.10(c)(2), and 229.12(b)(3))
   - Checks drawn on Federal Reserve Banks and FHLBs (§§ 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 (§§ 229.10(c)(1)(vi) and 229.12(c)(1)(ii))
   - Local checks (§ 229.12(b)(1))
   - Credit union share draft accounts (commentary to § 229.16(b))
2. Determine that the bank's policy for providing funds availability is in accordance with regulatory requirements.
3. Determine the bank's procedures for placing holds.
4. Selectively sample each of the types of deposits listed in item 1 and verify the funds availability timeframes. Determine, for each deposit category, whether the bank's procedures provide funds availability within the required time periods. Determine that the procedures and disclosed policy are the same.

Deposits at Nonproprietary ATMs— Section 229.12(f)

(See also sections 229.19(a)(4) and 229.19(a)(5)(ii) and commentary to sections 229.19(a) and 229.19(b) for off-premises ATMs.)

1. Determine that the bank 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—$200 and $400— Sections 229.10(c)(1)(vii) and 229.12(d)

1. Determine the bank's procedures for complying with the $200 availability rule and, if applicable, the $400 cash withdrawal rule.
2. Review records that detail holds placed on accounts. Determine if holds are in accordance with the regulation.
3. Sample deposit accounts with deposits subject to the $200 availability rule and the $400 cash withdrawal rule and verify the bank's compliance with the rules. Verify that actual practices and policies match.

Extended Holds

Case-by-Case Holds

1. Determine if the bank places holds on a case-by-case basis. If it does, review the bank's procedures for placing case-by- case holds.
2. Review the bank's specific availability policy disclosures to determine whether the case-by-case hold policy has been disclosed.
3. Review any physical records or reports generated from holds placed. (Sample should include records from the main office as well as branch offices, depending on the type of branch system operated.)
4. Sample a few of the case-by-case holds and determine whether the bank makes the funds available for withdrawal within the required timeframes.
5. Determine whether the bank provides the customer with a notice of the case-by-case hold as required by section 229.16(c)(2). Determine if the notices meet the timing and content requirements.
6. If the bank 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 section 229.16(c)(3) are met.

Exception Holds (§ 229.13)

1. Determine whether the bank places holds on an exception basis. If it does, review its procedures for placing exception holds.
2. Review the bank's specific availability policy disclosures to determine whether it has disclosed its exception-holds policy.
3. Review any physical records or reports generated from holds placed. (Sample should include records from the main office as well as branch offices, depending on the type of branch system operated.)
4. Sample a few of the exception holds and determine when the bank makes the funds available for withdrawal. Determine that the bank does not add more than one business day for on-us checks and five business days for local 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 bank provides the customer with an exception-hold notice as required by section 229.13(g).
6. Review hold notices. Determine if the notices meet the timing and content requirements for each type of exception hold. (Note: Banks are required to retain copies of reasonable-cause hold notices.)

New Accounts (§ 229.13(a))

1. Review bank policies for new accounts.
2. Determine how the bank defines a new-account relationship. Determine if the bank's definition is in compliance with Regulation CC.
3. Review the bank's specific availability policy disclosure to determine whether the bank 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 deposit accounts, and ask the bank to provide documentation concerning the composition of the opening deposit or the most recent deposit.
6. Review holds placed and determine if they are within regulatory limits with respect to time and amount (see section 229.13(a)(1)). (Note: No regulatory time limits are set forth for funds availability for local check deposits into new accounts.)

Large Deposits (§ 229.13(b))

1. Determine whether the bank has procedures and a special hold policy for large deposits. If it does, determine whether the bank 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 bank 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 determine if the hold was placed only on the amount by which a day's deposits of checks exceeded $5,000.
4. Determine if the bank provided the customer with a written exception notice that meets the requirements of section 229.13(g)(1) or 229.13(g)(2).
5. Determine if the notice was provided within the timeframes prescribed in section 229.13(g)(1) or 229.13(g)(2).

Redeposited Checks (§ 229.13(c))

1. Determine if the bank has procedures and a special hold policy for redeposited checks.
2. If it does, determine if the bank refrains from imposing this exception solely because of a missing indorsement or because the check was postdated.
3. Determine if the bank provided the customer with a written exception notice that meets the requirements of section 229.13(g)(1) or 229.13(g)(2).
4. Determine if the notice was provided within the timeframes prescribed in section 229.13(g)(1) or 229.13(g)(2).

Repeated Overdrafts (§ 229.13(d))

1. Determine whether the bank has procedures or a special hold policy for customers with repeated overdrafts.
2. If it does, review the bank's definition of accounts ''repeatedly overdrawn'' and determine whether it meets the regulatory definition in section 229.13(d).
3. Determine that the bank returns the account to the bank'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 bank's list of customers whose accounts are repeatedly overdrawn. (Note: This list may or may not be the same overdraft list maintained in the ordinary course of business. The bank may maintain a list of recent overdrafts as well as a list of customers whose accounts are repeatedly overdrawn.)
5. Review an account classified as repeatedly overdrawn. Determine if the bank properly classified the account and followed the regulatory procedures outlined in section 229.13(d).
6. Determine the date the account was placed in ''repeated overdraft'' exception status. Review account statements for

the six months before the account was identified as an overdraft exception.

7. Determine whether the bank provided the customer with an exception notice when an exception hold was placed on the account. If it did, review the content of the notice and determine if it meets the requirements of section 229.13(g)(1) or 229.13(g)(3).
8. Determine if notice was given within the required timeframes. (§ 229.12(g)(1) or 229.12(g)(3))

Reasonable Cause to Doubt Collectibility (§ 229.13(e))

1. Determine if the bank has procedures or a special policy for placing reasonable-cause holds.
2. If it does, determine who initiates reasonable-cause holds.
3. Obtain a list of accounts or checks to which 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 section 229.13(g)(1).
6. Determine if notice was given within the required timeframes. (§ 229.13(g)(1))
7. If the bank 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 section 229.13(e)(2) are met.

Emergency Conditions (§ 229.13(f))

1. Determine if the bank has procedures or a special policy for placing emergency-condition holds. If it does, review the bank's procedures for placing these holds.
2. Determine whether the institution invokes this exception only under the conditions specified in section 229.13(f).
3. Determine whether the bank makes the funds available for withdrawal within a reasonable time after either the termination of the emergency or the time at which the deposit would normally be available for withdrawal, whichever is later. (Note: A reasonable period for on-us checks is one business day; and for local checks, five business days. (§§ 229.13(h)(3) and 229.13(h)(4))

Miscellaneous Provisions

Special Deposit Slips (§ 229.10(c)(3))

1. Determine if the bank requires a special deposit slip for state or local government, 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 bank requires a special deposit slip, determine that it does one of the following: (§ 229.10(c)(3)(ii))
   - Provides the deposit slip to its customers
   - Informs its customers of how to obtain and prepare the slips
   - Makes the special deposit slips ''reasonably available''

Additional Disclosure Requirements (§ 229.18)

1. Determine if the bank displays a notice of its availability policy in a conspicuous place at locations where employees receive consumer deposits. (§ 229.18(b)) (Note: The notice is not required at drive-up windows and night depositories. See commentary to section 229.18(b).)
2. Determine if the bank 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 bank has off-premises ATMs from which funds are not collected more than twice a week, determine if the bank discloses on or at the ATM the days on which the deposits made at the ATM will be considered ''received.'' (§ 229.18(c)(2))
4. Determine if the bank 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 bank pays interest as of the date of the deposit or as of the date provisional credit is granted.
2. If the bank pays interest as of the date provisional credit is granted, review the bank'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 a NOW account statement and ask the bank to give a detailed explanation of how the interest was calculated.
3. Review the bank's method for calculating interest on deposits reviewed. Select another NOW account and, using the bank's procedures for calculating interest, verify that the bank accrues interest as of the date provisional credit is received.

Calculated Availability Non-consumer Transaction Accounts [§229.19(d)]

1. Determine if the bank uses a formula for calculating funds

availability for nonconsumer transaction accounts.

2. If it does, review a copy of the bank's formula.
3. Select a large corporate account subject to the formula. Ask the bank 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 percent of its deposits made up of local check deposits. Therefore, a formula providing a deposit mix of at least 90 percent availability within two days may be reasonable.)

Record Retention [§229.21(g) and 229.13(g)(4)]

Determine that the bank retains for two years the notices required when a ''reasonable cause'' exception is invoked.

Examination Objectives – Part II

Subpart D

1. Determine the bank'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 bank complies with timing requirements for acting on a substitute-check expedited recredit claim.

Examination Procedures[10]

The Check 21 Act provides that a properly prepared substitute check is the ''legal equivalent of the original check for all purposes.'' Accordingly, all banks were required to *accept* a substitute check in place of the original after the act's effective date of October 28, 2004.

Banks must apprise consumer customers who receive canceled checks with their periodic account statements or who otherwise occasionally receive substitute checks of their rights under the law through a consumer-awareness disclosure. A bank that provides a substitute check to a consumer must also comply with the Check 21 Act's expedited recredit procedure for addressing errors relating to substitute checks. The regulation specifies the appropriate timing for the distribution of the consumer-awareness disclosure and also provides model language.

General

1. Obtain copies of the documents associated with the bank'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, and the like, 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. Identify the individuals within the bank who may have responsibilities associated with Check 21. The following is a non-exhaustive list of such individuals:
   - New-accounts personnel
   - Employee training department
   - Internal auditors, reviewers
   - Deposit operations, bookkeeping
3. Review the bank's training manual, internal audit or similar reports for Regulation CC, written procedures given to employees detailing their responsibilities under the regulation, and similar materials.
4. Determine the training methods used by the bank 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 maintains variations of the disclosure to be used depending on the circumstances giving rise to distribution. 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

[10] These reflect the interagency examination procedures in their entirety.

substitute check.

- For those who receive canceled checks with periodic statements:
  - 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 canceled checks with periodic statements and who will receive substitute checks only occasionally:
  - Upon customer request for an original check or a copy of a check—Determine that the bank provides 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 provides 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 bank customer has raised a Check 21-related claim of loss since the last examination. If yes, review for the following. (At banks at which 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 preconditions (consumer must allege *all* of these)—(§§ 229.54(a)(1)– 229.54(a)(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 the 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 bank? Did the bank compute the time for action accurately? (§ 229.54(b)(3))
4. Procedural steps for bank response—If the bank concluded that (1) all necessary prerequisites to the filing of a consumer claim existed and (2) 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 and (2) the date on which funds will be available for withdrawal, and (§§ 229.54(e)(1)(i) and 229.54(e)(1)(ii))
   - Send the notice no later than the business day after the banking day on which the bank recredit occurred? (§ 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 included 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 was 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 ten days, pending further investigation:

If the bank could not resolve the claim before the end of the tenth 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 and (2) the date on which the funds would be available for withdrawal, (§§ 229.54(e)(1)(i) and 229.54(e)(1)(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 forty-fifth 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 occurred. (§ 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)) and
- 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 was 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, and (§ 229.54(e)(3)(i))
  - 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, when the bank 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 forty-fifth 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

Part 229: Availability of Funds and Collection of Checks (FRB Regulation CC)

FIL 116-2004: Final Amendments to the Federal Reserve Board's Regulation CC

FIL 67-96: Delayed Availability of Funds

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: https://www.ffiec.gov/exam/check21/Check21FoundationDoc.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:

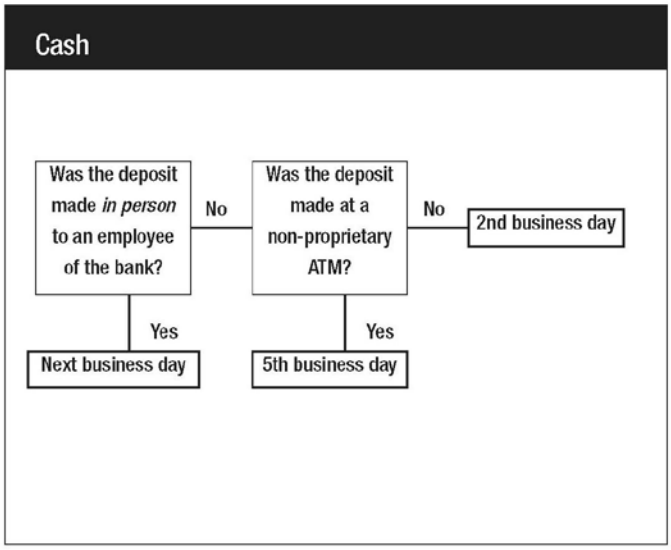
1. The account number
2. The date of the deposit
3. The amount of the deposit that is being delayed; and
4. The day the funds will be available for withdrawal

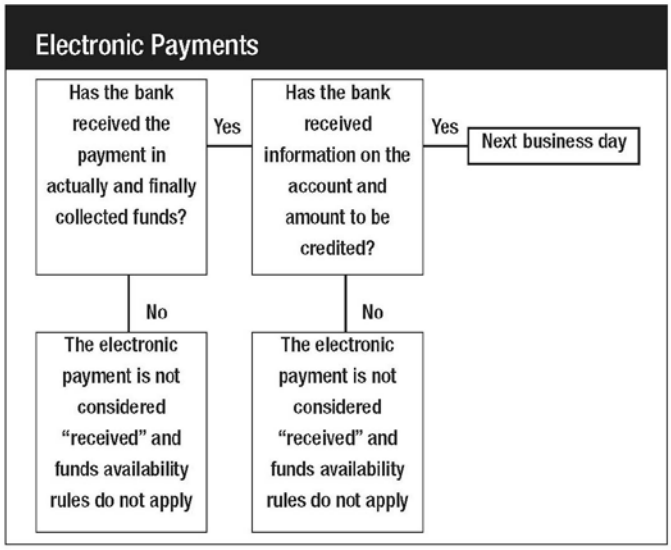
Exception Hold – Another type of hold that may be placed is an exception hold. Section 229.13 discusses the types of exceptions that are allowed. When a bank places an exception hold, a written notice must be provided to the depositor (the notice is not required for the New Account Exception). The exception 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.

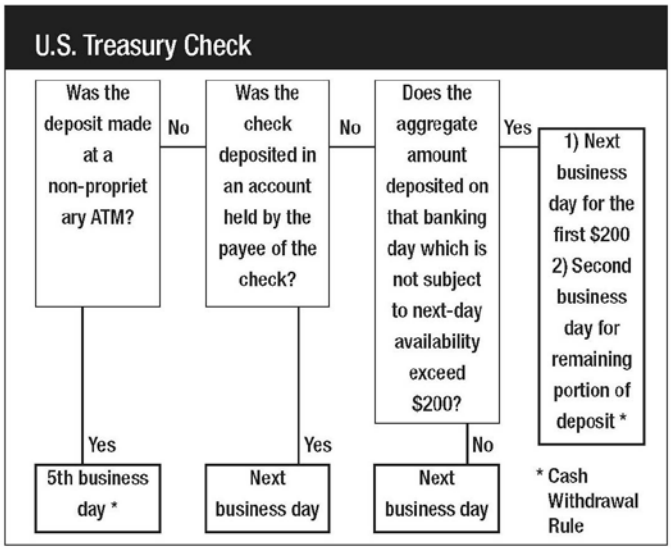
NOTE: Exception holds do not apply to cash deposits and electronic payments.

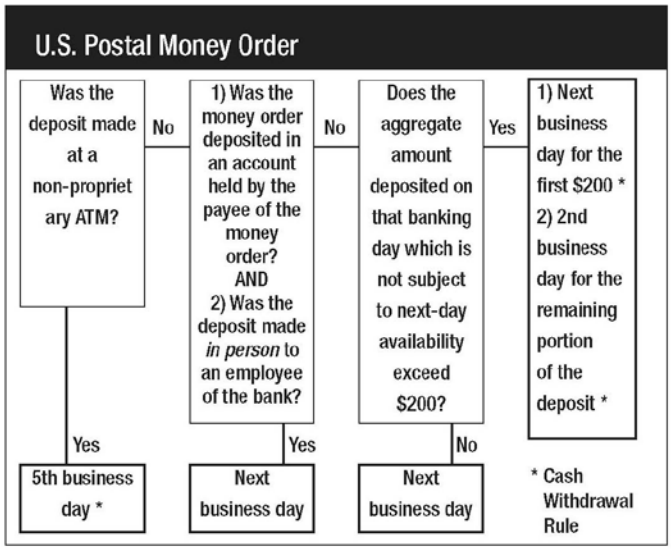
Cash Withdrawal Rule – The bank may extend by one business day the time that funds deposited in an account by certain checks are available for withdrawal by cash or similar means (including electronic payment, issuance of a cashier's or teller's check, etc.). The bank shall, however, make $400 of these 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 $200 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 $200 rule. The instances where the cash withdrawal rule applies are denoted with an * on the flow charts.

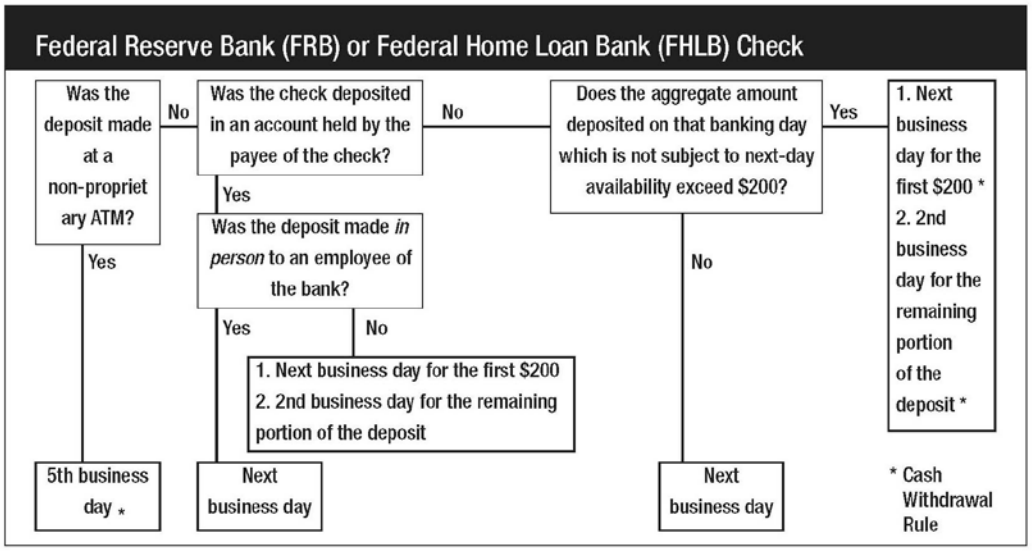
TIP: If a branch makes its decision for holds and maintains its own records, such as in a decentralized structure, sampling may be done at the branch. If the decision to delay availability is either centralized or made at a regional processing center and records are maintained there, sampling for compliance may be made at that location.


Cash
Was the deposit made *in person* to an employee of the bank?
No
Was the deposit made at a non-proprietary ATM?
No
2nd business day
Yes
Next business day
Yes
5th business day

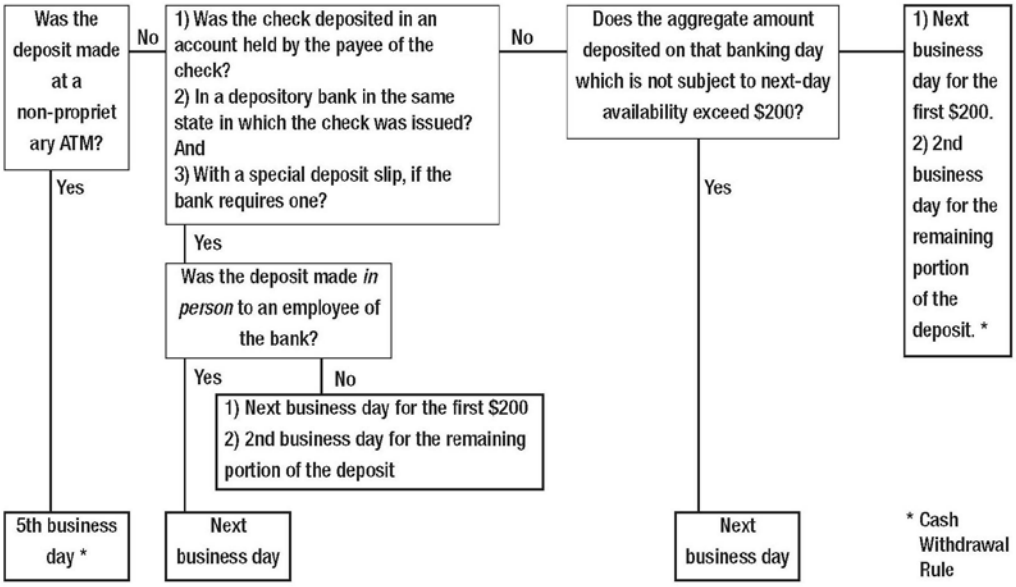

Electronic Payments
Has the bank received the payment in actually and finally collected funds?
Yes
Has the bank received information on the account and amount to be credited?
Yes
Next business day
No
The electronic payment is not considered "received" and funds availability rules do not apply
No
The electronic payment is not considered "received" and funds availability rules do not apply


U.S. Treasury Check
Was the deposit made at a non-proprietary ATM?
No
Was the check deposited in an account held by the payee of the check?
No
Does the aggregate amount deposited on that banking day which is not subject to next-day availability exceed $200?
Yes
1) Next business day for the first $200
2) Second business day for remaining portion of deposit *
Yes
5th business day *
Yes
Next business day
No
Next business day
* Cash Withdrawal Rule

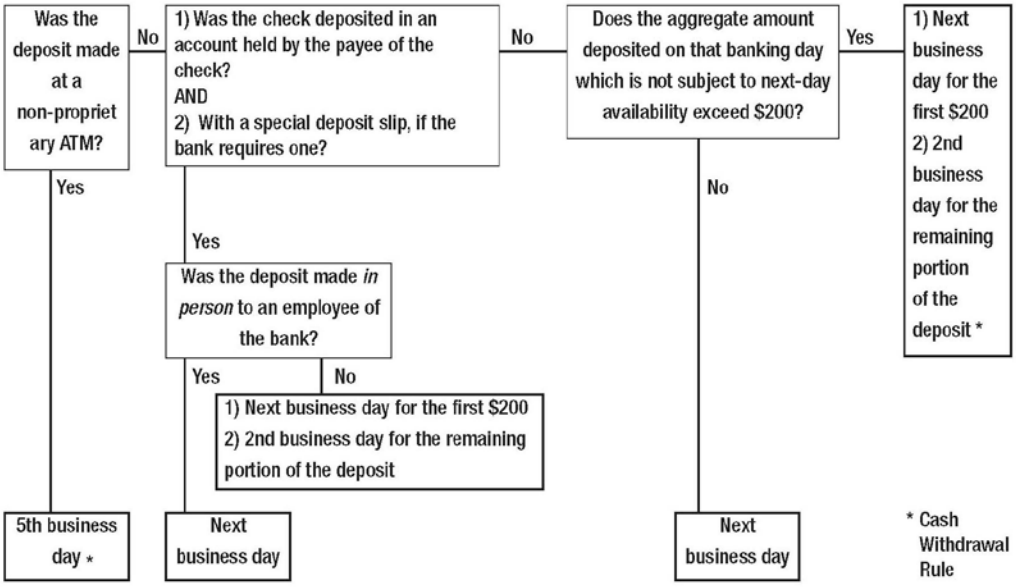

U.S. Postal Money Order
Was the deposit made at a non-proprietary ATM?
No
1) Was the money order deposited in an account held by the payee of the money order?
AND
2) Was the deposit made *in person* to an employee of the bank?
No
Does the aggregate amount deposited on that banking day which is not subject to next-day availability exceed $200?
Yes
1) Next business day for the first $200 *
2) 2nd business day for the remaining portion of the deposit *
Yes
5th business day *
Yes
Next business day
No
Next business day
* Cash Withdrawal Rule


Federal Reserve Bank (FRB) or Federal Home Loan Bank (FHLB) Check
Was the deposit made at a non-proprietary ATM?
No
Was the check deposited in an account held by the payee of the check?
No
Does the aggregate amount deposited on that banking day which is not subject to next-day availability exceed $200?
Yes
1. Next business day for the first $200 *
2. 2nd business day for the remaining portion of the deposit *
Yes
Was the deposit made *in person* to an employee of the bank?
Yes
No
1. Next business day for the first $200
2. 2nd business day for the remaining portion of the deposit
Yes
5th business day *
Next business day
No
Next business day
* Cash Withdrawal Rule

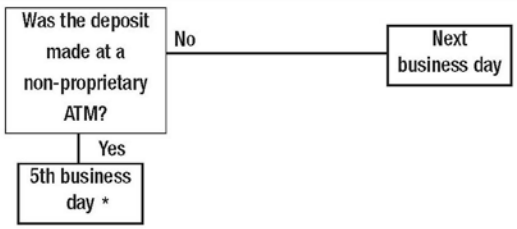
State or Local Government Check

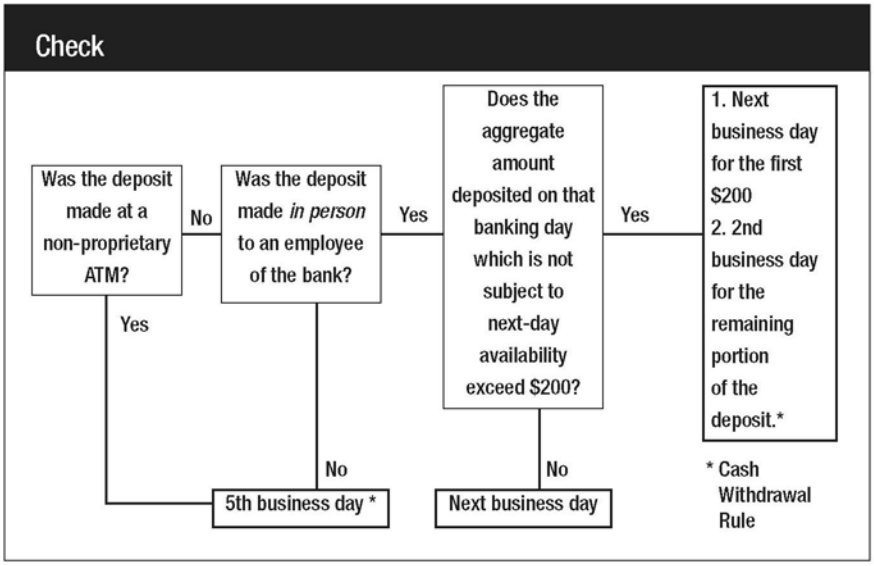


Cashier's, Certified, or Teller's Check

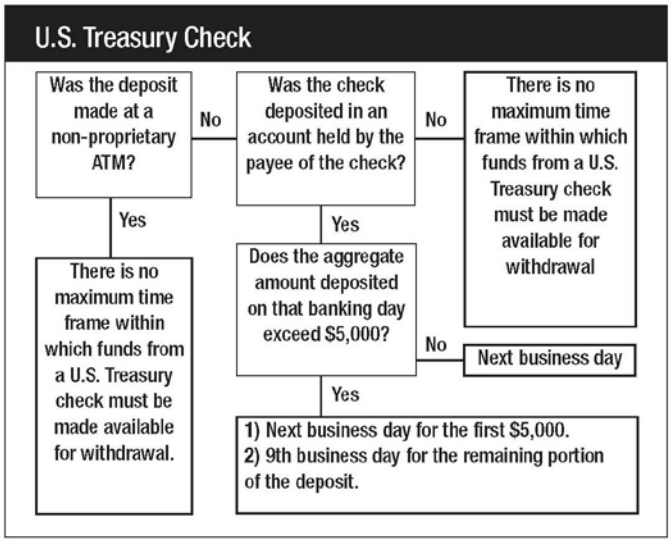


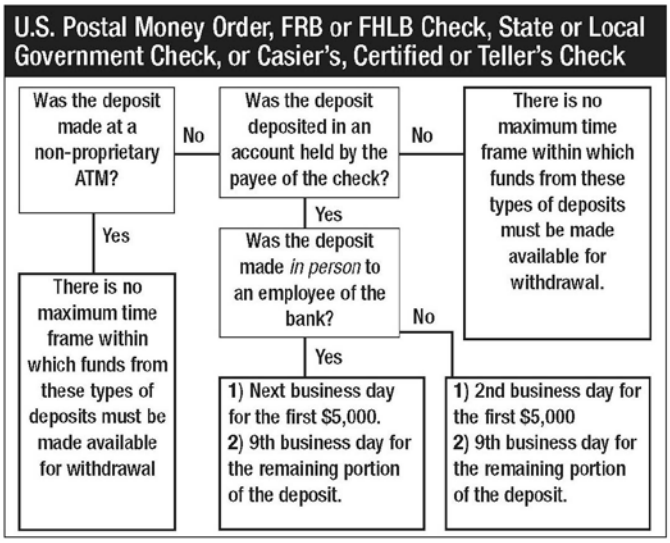
"On Us" Check



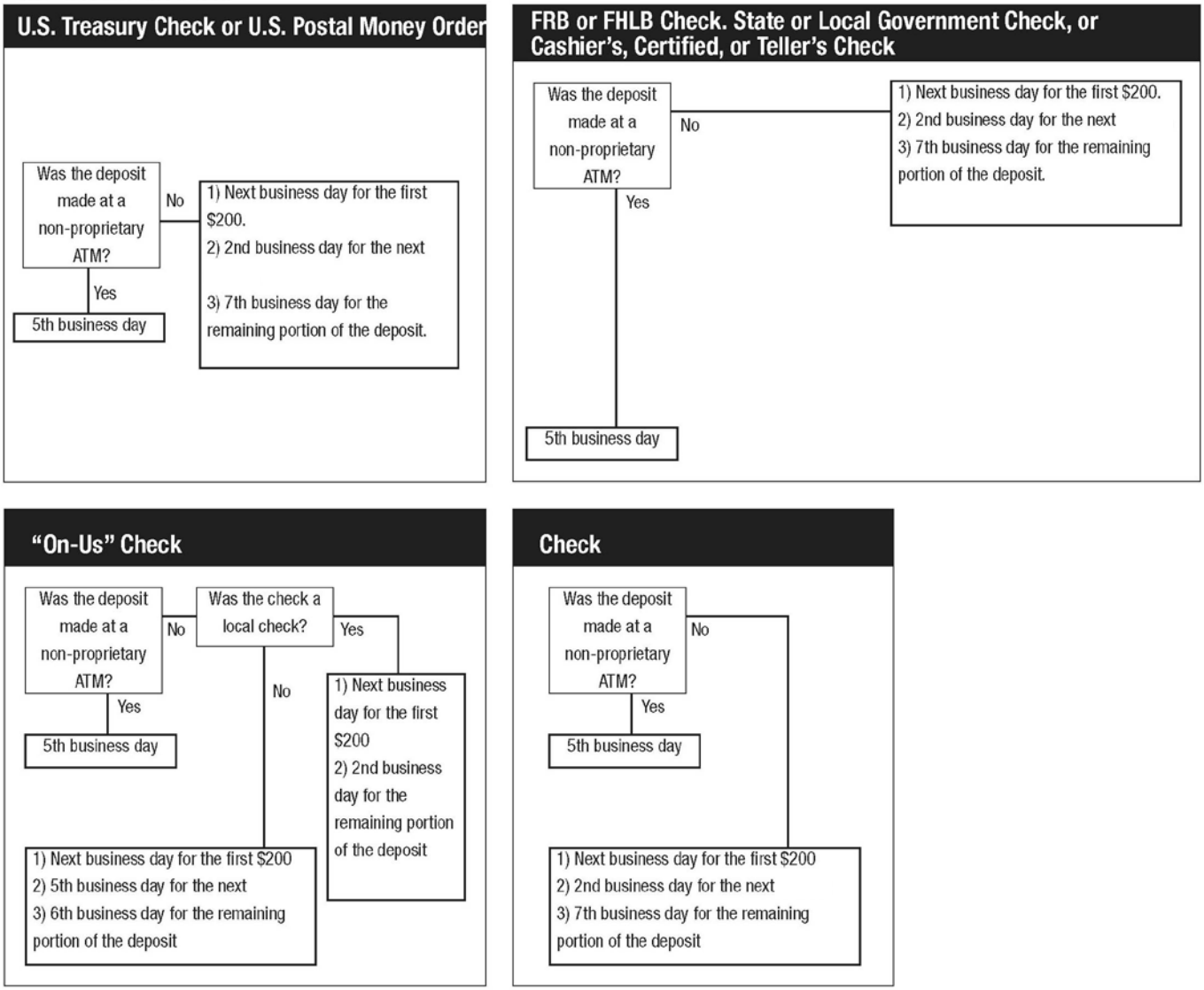


NEW ACCOUNT EXCEPTION





LARGE DEPOSIT EXCEPTION



Regulation CC—Examination Checklist

General Operations		
Date of Deposit		
1. Does the bank consider every day except Saturday, Sunday, and federal holidays a ‘‘business day’’? (§ 229.2(g))	Yes	No
2. Does the bank consider ‘‘banking days’’ those business days on which an office of the bank is open for substantially all of its business? (§ 229.2(f))	Yes	No
3. Does the bank have a cutoff for receipt of deposits of 2:00 p.m. or later for bank offices and 12:00 noon or later for ATMs? (§ 229.19(a)(5)(ii))	Yes	No
4. Does the bank comply with the following rules in determining when funds are considered to have been deposited?		
A. Deposits over the counter or at ATMs are considered deposited when ‘‘received.’’ (§ 229.19(a)(1))	Yes	No
B. Mail deposits are considered deposited when they are received by the mail room of the bank. (§ 229.19(a)(2))	Yes	No
C. Deposits in a night depository, lock box, or similar facility are considered received when the deposits are removed from the facility and are available for processing. (§ 229.19(a)(3))	Yes	No
D. Deposits at an off-premises ATM (not within 50 feet of the bank) that is not serviced more than twice a week are considered received as of the date the deposits are removed from the ATM by the bank. (§ 229.19(a)(4))	Yes	No
5. Does the bank consider deposits made on a nonbanking day to have been received no later than the next banking day? (§ 229.19(a)(5)(i))	Yes	No
6. When funds must be available on a given ‘‘business day,’’ does the bank make the funds available at the later of 9:00 a.m. or the time the bank’s teller facilities (including ATMs) are available for account withdrawals? (§ 229.19(b))	Yes	No
7. If the bank limits cash withdrawals, does it make $400 available for cash withdrawals no later than 5:00 p.m. on the appropriate business day (second day for local checks) following the day of deposit? (§ 229.12(d))	Yes	No
Required Next Day Availability		
8. Does the bank make funds from the following types of deposits available for withdrawal no later than the first business day following the date of deposit?		
A. Electronic payments (§ 229.10(b))	Yes	No
B. Checks drawn on the U.S. Treasury and deposited to the payee’s account (§ 229.10(c)(1)(i))	Yes	No
C. On-us checks and checks that are drawn on and deposited in branches of the same bank in the same state or check-processing region (§ 229.10(c)(1)(vi))	Yes	No
9. Does the bank make funds from the following deposits available no later than the first business day after the day of deposit if the deposit is made in person to a bank employee or no later than the second business day if the deposit is not made in person to a bank employee?		
A. Cash deposits (§§ 229.10(a)(1) and 229.10(a)(2))	Yes	No
B. USPS money orders deposited in an account held by the payee of the check (§§ 229.10(c)(1)(ii) and 229.10(c)(2))	Yes	No
C. Checks drawn on a Federal Reserve Bank or FHLB deposited in an account held by the payee of the check (§§ 229.10(c)(1)(iii) and 229.10(c)(2))	Yes	No

D. Checks drawn by a state or local governmental unit and: -- Deposited in an account held by the payee of the check, (§§ 229.10(c)(1)(iv)(A) and 229.10(c)(2)) and -- Deposited in a depositary bank located in the same state as the governmental unit issuing the check, and (§§ 229.10(c)(1)(iv)(B) and -- Accompanied by a special deposit slip (if required by the bank to make the funds available on the next business day). (§§ 229.10(c)(1)(iv)(D) and 229.10(c)(3))	Yes	No
E. Cashier's, certified, and teller's checks (as defined in section 229.2) deposited in an account held by the payee of the check when the check is accompanied by a special deposit slip (if required by the bank to make the funds available on the next business day) (§§ 229.10(c)(1)(v)(C) and 229.10(c)(3))	Yes	No
10. If the bank requires the special deposit slips, for the checks covered in checklist items 9(D) and 9(E), does it provide the slip to its customers or tell its customers how to prepare or obtain the slips? (§ 229.10(c)(3)(ii))	Yes	No
A. Are the special deposit slips reasonably available? (§ 229.10(c)(3)(ii))	Yes	No
11. Is the first $200 of a customer's daily aggregate deposits of checks not subject to the next-day availability rules available on the next business day? (§ 229.10(c)(1)(vii))	Yes	No
12. Is the $200 in addition to other deposited amounts that must be afforded next-day availability? (§229.10(c)(1)(vii))	Yes	No
Local Checks and Certain Other Deposits		
13. Are funds from local checks generally available no later than the second business day after the day of deposit? (§ 229.12(b)(1))	Yes	No
14. If a bank limits cash withdrawals, (§ 229.12(d))		
A. Is the $200 available on the next business day after the day of deposit for withdrawal in cash or by check?	Yes	No
B. Is the $400 available for cash withdrawal sometime before 5:00 p.m. on the second business day after the day of deposit?	Yes	No
C. Are any remaining funds available for withdrawal the business day after the $400 was made available?	Yes	No
15. For Treasury checks and USPS money orders that do not meet the criteria for next-day (or second-day) availability, does the bank make funds available no later than the second business day after the date of deposit? (§§ 229.12(b)(2) and 229.12(b)(3))	Yes	No
16. Are funds deposited by cash or check at a nonproprietary ATM available no later than the fifth business day after the banking day of deposit? (§ 229.12(f))	Yes	No
Extended Holds		
Case-by-Case Holds		
17. Does the bank's specific availability policy disclosure indicate that case-by-case holds may be placed? (§ 229.16(c)(1))	Yes	No
18. If it does, does the disclosure do the following?		

A. State that the bank may extend the time period when deposited funds are available for withdrawal (§ 229.16(c)(1)(i))	Yes	No
B. State the latest time a deposit will be available for withdrawal, if the availability time frame is extended (§ 229.16(c)(1)(i))	Yes	No
C. State that the bank will notify the customer if funds from a particular deposit will not be available for withdrawal until after the time period stated in the bank's funds availability policy (§ 229.16(c)(1)(ii))	Yes	No
D. Encourage customers to ask when particular deposits will be made available for withdrawal (§ 229.16(c)(1)(iii))	Yes	No
19. When case-by-case holds are placed, does the bank provide the customer with a written notice of the hold? (§ 229.16(c)(2))	Yes	No
20. Does the notice include the following?		
A. The customer's account number (§ 229.16(c)(2)(i)(A))	Yes	No
B. The date and amount of the deposit (§ 229.16(c)(2)(i)(B))	Yes	No
C. The amount of the deposit that is being delayed (§ 229.16(c)(2)(i)(C))	Yes	No
D. The day the funds will be available for withdrawal (§ 229.16(c)(2)(i)(D))	Yes	No
21. Does the bank provide the notice at the time the deposit is made, if the deposit is made to an employee of the depositary bank? (§ 229.16(c)(2)(ii))	Yes	No
22. If the notice is not given at the time of deposit, does the depositary bank mail or deliver the notice to the customer not later than the first business day after the day of the deposit? (§ 229.16(c)(2)(ii))	Yes	No
23. If the bank does not provide the notice at the time of deposit, does it refrain from charging the customer overdraft or return check fees if		
A. The overdraft or other fee would not have occurred if the deposited check had not been delayed and	Yes	No
B. The deposited check was paid by the paying bank (§ 229.16(c)(3))	Yes	No
24. If the bank does not provide the notice at the time of deposit and charges overdraft fees, does it notify the customer of the right to a refund of such fees and how to obtain the refund? (§ 229.16(c)(3))	Yes	No
25. Does the bank refund the fees if the conditions listed in checklist item 23 above are met and the customer requests a refund? (§ 229.16.(c)(3))	Yes	No
Exception Based Holds		
26. When invoking an exception hold for accounts other than new accounts, does the bank provide the customer with a written notice that includes the following?		
A. The customer's account number (§ 229.13(g)(1)(i)(A))	Yes	No
B. The date and amount of the deposit (§ 229.13(g)(1)(i)(B))	Yes	No
C. The amount of the deposit that is being delayed (§ 229.13(g)(1)(i)(C))	Yes	No
D. The reason the exception was invoked (§ 229.13(g)(1)(i)(D))	Yes	No
E. The day the funds will be available for withdrawal (unless the emergency-conditions exception is invoked and the bank does not know when the funds will become available) (§ 229.13(g)(1)(i)(E))	Yes	No

27. Does the bank refrain from delaying funds availability beyond a reasonable time period? (Note: Five days for local checks is considered reasonable.) (§ 229.13(h)(4))	Yes	No
Exceptions		
New Accounts (§ 229.13(a))		
28. Does the bank's definition of a new account comply with the definition under section 229.13(a)(2)? (Note: If a customer has had another transaction account at the bank within the 30 days prior to opening an account, the customer does not qualify for the new-account exception.)	Yes	No
29. If the bank's definition is different, does it delay availability to new-account holders beyond the limits set forth in the regulation?	Yes	No
30. Do bank disclosures accurately reflect the bank's practice for making deposited funds available for new accounts?	Yes	No
31. Do cash deposits made in person to a bank employee become available for withdrawal on the first business day following the day of deposit? (§§ 229.13(a)(1)(i) and 229.10(a)(1))	Yes	No
32. Are cash deposits not made in person to a bank employee available for withdrawal on the second business day following the day of deposit? (§§ 229.13(a)(1)(i) and 229.10(a)(2))	Yes	No
33. Are electronic transfers into new accounts available for withdrawal on the business day following the day the transfer is received? (§§ 229.13(a)(1)(i) and 229.10(b))	Yes	No
34. Is the first $5,000 from any of the following types of check deposits available for withdrawal from a new account not later than the first business day after the day of the deposit, if the deposits meet the requirements of section 229.10(c)? (§ 229.13(a)(1)(ii)) (For more information, see checklist section ''Required Next-Day Availability.'')		
A. Treasury checks (§ 229.10(c)(1)(i))	Yes	No
B. USPS money orders (§ 29.10(c)(1)(ii))	Yes	No
C. C. Federal Reserve and FHLB checks (§ 229.10(c)(1)(iii))	Yes	No
D. State or local government checks (§ 229.10(c)(1)(iv))	Yes	No
E. Cashier's, certified, and teller's checks (§ 229.10(c)(1)(v))	Yes	No
F. Traveler's checks (§ 229.10(c)(1)(v))	Yes	No
35. Is the amount of any deposit of the types listed in checklist item 38 exceeding $5,000 available for withdrawal no later than the ninth business day following the day of deposit? (§ 229.13(a)(1)(ii))	Yes	No
Large Deposits (§ 229.13(b))		
36. If the bank invokes the large-deposit rule, does it do so for only that portion of the aggregate local check deposits that exceed $5,000 on any one banking day? (§ 229.13(b))	Yes	No
37. Does the bank refrain from applying this exception to deposits made in cash, to deposits made by electronic payment, or to checks that must receive next-day availability under section 229.10(c)? (See commentary to § 229.13(b).)	Yes	No
38. Does the bank provide customers with a written notice of the longer delay? (§ 229.13(g)(1))	Yes	No

Is the notice (§ 229.13(g)(2))		
A. Provided at the time of the deposit, when the deposit is received in person by an employee of the bank or	Yes	No
B. Mailed on or before the first business day after the day the bank learns of the facts giving rise to the exception?	Yes	No
Redeposited Checks (§ 229.13(c))		
39. Does the bank refrain from applying the redeposited exception to the following?		
A. Checks that are returned because an indorsement is missing and are subsequently indorsed and redeposited (§ 229.13(c)(1))	Yes	No
B. Checks that were returned because they were postdated but are not postdated when redeposited (§ 229.13(c)(2))	Yes	No
40. Does the bank consider the day the check was redeposited to be the day of deposit when determining when funds must be made available for withdrawal? (commentary to section 229.13(c))	Yes	No
Repeated Overdrafts (§ 229.13(d))		
41. Does the bank impose longer holds for depositors who have a history of overdrafts?	Yes	No
42. Does the bank invoke the repeated-overdraft exception only when the account balance has been negative (or would have been negative had checks or other charges been paid)		
A. Six or more times during the preceding six months or (§ 229.13(d)(1))	Yes	No
B. Two or more times during the preceding six months, if the amount of any negative balance would have been $5,000 or more (§ 229.13(d)(2))	Yes	No
43. Is this practice articulated in the bank's written policy and initial disclosure statement? (§ 229.16(a))	Yes	No
44. When the bank imposes the longer delay, is the depositor notified of the reason, in writing, at the time of deposit? If not, is a notice mailed on or before the first business day after the day of the deposit or the day the bank learns of the facts giving rise to the exception? (§ 229.13(g))	Yes	No
45. Does the bank return the account to the normal availability schedule when the account is no longer repeatedly overdrawn? (Note: Banks may use this exception for six months after the last overdraft that made the depositor eligible for the repeated-overdraft exception. See checklist item 42.) (§ 229.13(d))	Yes	No
Reasonable Cause to Doubt Collectibility (§ 229.13(e))		
46. Does the bank refrain from applying the reasonable-cause exception to the following? (§ 229.13(e)(1))		
A. U.S. Treasury checks	Yes	No
B. USPS money orders	Yes	No
C. State and local government checks	Yes	No
D. On-us checks	Yes	No

47. When the bank invokes a reasonable-cause exception, does it provide the customer with a written notice of exception at the time the deposit is made, if the deposit is made in person to an employee of the bank? (§ 229.13(g)(1)(ii))	Yes	No
48. If the deposit is not made in person to an employee of the bank, or if the hold is placed because of information learned subsequent to the receipt of the deposit, does the bank mail the exception notice to the customer? (§ 229.13(g)(1)(ii))	Yes	No
49. Does the bank retain a copy of each reasonable-cause exception notice, along with a brief statement of the facts that led to the hold, for a period of two years? (§ 229.13(g)(4))	Yes	No
50. Does the depositary bank refrain from invoking the reasonable-cause exception based on the race or national origin of the depositor or the class of the check? (§ 229.13(e)(1))	Yes	No
51. Does the bank refrain from assessing a fee for any subsequent overdraft, returned check, or other unpaid charge (or advise customers of their right to a refund of such fees, and refund the fees upon request) if all of the following conditions are met?		
A. The depositary bank extended the availability period based on its belief that the check was uncollectible (§ 229.13(e)(1))	Yes	No
B. The depositor was not provided with the written notice required by section 229.13(g)(1) at the time of deposit (§ 229.13(e)(2))	Yes	No
C. The overdraft or return would not have occurred if the availability period had not been extended (§ 229.13(e)(2)(i))	Yes	No
D. The deposited check was finally paid by the paying bank (§ 229.13(e)(2)(ii))	Yes	No
52. Does the exception notice tell the customer where to direct a request for a refund of the overdraft fees? (§ 229.13(e)(2))	Yes	No
Emergency Conditions (§ 229.13(f))		
53. Does the bank refrain from imposing emergency-condition holds on checks subject to next-day availability under section 229.10(c)? (commentary to § 229.13(f))	Yes	No
54. Does the bank invoke the emergency-conditions exception only in the following circumstances and when the bank has exercised necessary diligence as circumstances require?		
A. An interruption of communications or computer or other equipment (§ 229.13(f)(1))	Yes	No
B. Suspension of payments by another bank (§ 229.13(f)(2))	Yes	No
C. War (§ 229.13(f)(3))	Yes	No
D. An emergency condition beyond the control of the bank (§ 229.13(f)(4))	Yes	No
55. Does the bank make funds available for withdrawal no later than a reasonable period after the emergency has ended or within the time period established by the temporary and permanent schedules, whichever is later? (§ 229.13(h)(3)) (As stated in the commentary to section 229.13(h)(4), a reasonable period is five business days for local checks.)	Yes	No
56. Does the bank provide customers with a written notice of the longer delay? (§ 229.13(g)(1))	Yes	No
57. Is the notice provided at the time of the deposit, if the deposit is received in person by an employee of the bank, or is the notice mailed on or before the first business day after the day the bank learns of the facts giving rise to the exception? (§ 229.13(g)(1)(ii))	Yes	No

Miscellaneous		
Calculated Availability—Nonconsumer Transaction Accounts (§ 229.19(d))		
58. Does the bank calculate funds availability for nonconsumer accounts based on a sample of the customer's deposits? If it does, obtain a copy of the bank's formula for determining its availability schedule. Review a sample of checks similar to that used by the bank to calculate funds availability and answer the following questions:		
A. Is the sample of checks large enough to accurately use the formula?	Yes	No
B. Does the formula accurately represent the average composition of the customer's deposits?	Yes	No
C. Does the specified percentage of available funds appear reasonable? (Is a set percentage available the next business day, with remaining funds available according to the customer's deposit mix?)	Yes	No
59. Based on the sample, are the terms of availability for the account equivalent to or more prompt than the terms outlined in the regulation?	Yes	No
Payment of Interest		
Review a copy of the bank's availability schedule for check deposits credited through the Federal Reserve Bank or its correspondent bank. Determine the time that the bank receives provisional credit for check deposits.		
60. For each interest-bearing transaction account offered by the bank (for example, NOW accounts and ATS accounts), does the bank begin to accrue interest on the funds deposited no later than the business day on which the bank receives provisional credit for the funds? (§ 229.14)	Yes	No

Regulation CC

Appendix for Banks Located Outside the Continental United States

For deposits at offices located outside the continental United States, availability may be extended one day under certain strictly defined circumstances and for limited types of deposits. If a check is deposited at a bank office in Alaska, Hawaii, Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, or the U.S. Virgin Islands and the paying bank is not located in the same jurisdiction, a one-day extension is permitted for deposits other than those that must be available on the next business day. (Note: This extension applies only to check deposits at bank offices located outside the continental United States. Check deposits received at a bank inside the continental United States but drawn on a bank located outside the continental United States, such as one in Alaska or Hawaii, are not granted an extension.)

1. For offices located in Alaska, Hawaii, Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands, does the bank extend availability for check deposits drawn on banks in other states? (§ 229.12(e)(1)) Yes No

2. If yes,

   A. Is the extension limited to checks drawn on banks in a different state? (A Hawaiian bank, for example, could receive a ‘‘local’’ check drawn on a bank in Honolulu or a bank in San Francisco. Only the San Francisco check may be delayed.) (§ 229.12(e)(2)) Yes No

   B. Is the extension limited to one day? (§ 229.12(e)) Yes No

Electronic Fund Transfer Act

The Electronic Fund Transfer Act (EFTA) (15 U.S.C. 1693 et seq.) of 1978 is intended to protect individual consumers engaging in electronic fund transfers (EFTs) and remittance transfers. These services include:

- transfers through automated teller machines (ATMs);
- point-of-sale (POS) terminals;
- automated clearinghouse (ACH) systems;
- telephone bill-payment plans in which periodic or recurring transfers are contemplated;
- remote banking programs; and
- remittance transfers.

The EFTA is implemented through Regulation E, which includes official interpretations.

In 2009, the Board of Governors of the Federal Reserve System (Board) amended Regulation E to prohibit institutions from charging overdraft fees for ATM and one-time debit card transactions, unless the consumer opts in or affirmatively consents to the institution's overdraft services (74 Fed. Reg. 59033 (Nov. 17, 2009) and 75 Fed. Reg. 31665 (June 4, 2010)). The Board also amended Regulation E to implement provisions in the Credit Card Accountability Responsibility and Disclosure Act of 2009 that restricted fees and expiration dates on gift cards, and to require that gift card terms be stated clearly (75 Fed. Reg. 16580 (April 1, 2010)).[1]

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) generally transferred rule-making authority under the EFTA from the Board to the Consumer Financial Protection Bureau (CFPB or Bureau).[2] [3] The Dodd-Frank Act also amended the EFTA and created a new system of consumer protections for remittance transfers sent by consumers in the United States to individuals and businesses in foreign countries. In December 2011, the CFPB restated the Board's implementing Regulation E at 12 CFR Part 1005 (76 Fed. Reg. 81020) (Dec. 27, 2011). In February 2012, the CFPB added subpart B (Requirements for Remittance Transfers) to Regulation E to implement the new remittance protections set forth in the Dodd-Frank Act (77 Fed. Reg. 6194) (Feb. 7, 2012).[4] Regulation E has since been amended several times to address both substantive and technical issues. See 77 Fed. Reg. 40459 (July 10, 2012); 77 Fed. Reg. 50244 (Aug. 20, 2012); 78 Fed. Reg. 6025 (Jan. 29, 2013); (78 Fed. Reg. 30661) (May 22, 2013); 78 Fed. Reg. 49365 (Aug. 14, 2013); 79 Fed. Reg. 55970 (Sept. 18, 2014); 81 Fed. Reg. 70319 (Oct. 12, 2016); 81 Fed. Reg. 83934 (Nov. 22, 2016); 82 Fed. Reg. 18975 (Apr. 25, 2017); 83 Fed. Reg. 6364 (Feb. 13, 2018).

In March 2013, the CFPB issued a final rule implementing Public Law 112-216, which amended EFTA to remove the requirement, where applicable, for a disclosure "on or at" an ATM where an ATM fee is imposed (78 Fed. Reg. 18221) (March 26, 2013).

In November 2016, the CFPB issued a final rule amending Regulation E as well as Regulation Z, the regulation implementing the Truth in Lending Act (TILA), to extend protections to prepaid accounts. In Regulation E, tailored provisions governing disclosures, limited liability and error resolution, and periodic statements were adopted for prepaid accounts, along with new requirements regarding the posting and submission of prepaid account agreements. In addition, this rulemaking addressed regulation of credit features that may be offered under certain circumstances in conjunction with prepaid accounts. (See TILA discussion for Regulation Z provisions regarding the regulation of credit features offered in conjunction with prepaid accounts.) Together these amendments are known as the Prepaid Accounts Rule (81 Fed. Reg. 83934) (Nov. 22, 2016). Regulation E, along with Regulation Z, was subsequently amended to modify several aspects of the Prepaid Accounts Rule, including error resolution and limited liability protections on unverified prepaid accounts and to establish a new overall effective date of April 1, 2019[5] (83 Fed. Reg. 6364) (Feb. 13, 2018).Information in this narrative is provided for Subpart A and Subpart B in the

[1] The Board also implemented a legislative extension of time for complying with the gift card disclosure requirements until January 31, 2011. 75 Fed. Reg. 50683 (August 17, 2010).

[2] Dodd-Frank Act §§ 1002(12)(C), 1024(b)-(c), and 1025(b)-(c); 12 U.S.C. 5481(12)(C), 5514(b)-(c), and 5515(b)-(c). Section 1029 of the Dodd-Frank Act generally excludes from this transfer of authority, subject to certain exceptions, any rule making authority over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both. The transfer of authority also did not include Section 920 of EFTA, which concerns debit card interchange fees charged to merchants. Section 920 of EFTA is implemented by Board regulations at 12 CFR Part 235. Section 920 is not addressed here or in the accompanying examination procedures and checklist.

[3] The agency responsible for supervising and enforcing compliance with Regulation E will depend on the person subject to the EFTA (e.g., for depository institutions, jurisdiction will depend on the size and charter of the institution).

[4] The amendment designated 12 CFR 1005.1 through 1005.20 as subpart A.

[5] This was the second effective date delay for the Prepaid Accounts Rule. The first had extended the general effective date of the rule to April 1, 2018. 82 Fed. Reg. 18975 (Apr. 25, 2017).

order listed below. Note that the order, particularly as it relates to subpart A, does not strictly follow the order of the regulatory text. For ease of use by the examiner, however, the examination procedures and checklist follow the order of the regulation.

Subpart A - General

I.	Scope and Key Definitions (12 CFR 1005.2, 1005.3, 1005.17, 1005.20)
II.	Disclosures (12 CFR 1005.4, 1005.7, 1005.8, 1005.15, 1005.16, 1005.17, 1005.18, 1005.20)
III.	Electronic Transaction Overdraft Service Opt In (12 CFR 1005.17)
IV.	Issuance of Access Devices (12 CFR 1005.5, 1005.18)
V.	Consumer Liability and Error Resolution (12 CFR 1005.6, 1005.11, 1005.18)
VI.	Receipts and Periodic Statements (12 CFR 1005.9, 1005.15, 1005.18)
VII.	Gift Cards (12 CFR 1005.20)
VIII.	Requirements for Financial Institutions Offering Prepaid Accounts (12 CFR 1005.18)
IX.	Internet Posting of Prepaid Account Agreements (12 CFR 1005.19)
X.	Other Requirements (12 CFR 1005.10, 1005.14, 1005.15)
XI.	Relation to Other Laws (12 CFR 1005.12)

Subpart B - Requirements for remittance transfers

XII.	Remittance Transfer Definitions (12 CFR 1005.30)
XIII.	Disclosures (12 CFR 1005.31)
XIV.	Estimates (12 CFR 1005.32)
XV.	Procedures for Resolving Errors (12 CFR 1005.33)
XVI.	Procedures for Cancellation and Refund of Remittance transfers (12 CFR 1005.34)
XVII.	Acts of Agents (12 CFR 1005.35)
XVIII.	Transfers Scheduled Before the Date of Transfer (12 CFR 1005.36)

Sections Applicable to both subpart A and subpart B

XIX.	Preemption
XX.	Administrative Enforcement and Record Retention (12 CFR 1005.13)
XXI.	Miscellaneous (EFTA provisions not reflected in Regulation E)

I. Subpart A

Scope

Key Definitions (12 CFR 1005.2)

Access device is a card, code, or other means of access to a consumer's account or a combination of these used by the consumer to initiate EFTs. Access devices include debit cards, personal identification numbers (PINs), telephone transfer and telephone bill payment codes, and other means to initiate an EFT to or from a consumer account (12 CFR 1005.2(a)(1) and 12 CFR Part 1005, Supp. I, Comment 2(a)-1).

Access devices do not include either of the following:

- Magnetic tape or other devices used internally by a financial institution to initiate electronic transfers.
- A check or draft used to capture the MICR (Magnetic Ink Character Recognition) encoding or routing, account, and serial numbers to initiate a one-time ACH debit (Comments2(a)-1 and 2(a)-2).

Accepted access device is an access device that a consumer:

- Requests and receives, signs, or uses (or authorizes another to use) to transfer money between accounts or to obtain money, property, or services.
- Requests to be validated even if it was issued on an unsolicited basis.
- Receives as a renewal or substitute for an accepted access device from either the financial institution that initially issued the device or a successor (12 CFR 1005.2(a)(2)).

Account includes the following:

- Checking, savings, or other consumer asset account held by a financial institution (directly or indirectly), including certain club accounts, established primarily for personal, family, or household purposes (12 CFR 1005.2(b)(1));
- A prepaid account (12 CFR 1005.2(b)(2)), including:
  - a payroll card account, which is an account established directly or indirectly through an employer, to which EFTs of the consumer's wages, salary, or other employee compensation (such as commissions), are made on a recurring basis[6];
  - a government benefit account, which is an account established by a government agency for

[6] The payroll card account can be operated or managed by the employer, a third-party payroll processor, a depository institution, or any other person.

distributing government benefits to a consumer electronically[7] (12 CFR 1005.15(a)(2));
- an account that is marketed or labeled as "prepaid" and that is redeemable upon presentation at multiple, unaffiliated merchants for goods or services or usable at ATMs; or
- an account (1) that is issued on a prepaid basis in a specified amount or not issued on a prepaid basis but capable of being loaded with funds thereafter, (2) whose primary function is to conduct transactions with multiple, unaffiliated merchants for goods or services or at ATMs, or to conduct person-to-person transfers, and (3) that is not a checking account, share draft account, or negotiable order of withdrawal account.

An ***account*** does not include, for example:

- An account held by a financial institution under a bona fide trust agreement.
- An occasional or incidental credit balance in a credit plan.
- Profit-sharing and pension accounts established under a bona fide trust agreement.
- Escrow accounts such as for payments of real estate taxes, insurance premiums, or completion of repairs or improvements.
- Accounts for purchasing U.S. savings bonds (12 CFR 1005.2(b)(2) and Comment 2(b)-2).

A ***prepaid account*** does not include, for purposes of 12 CFR 1005.2(b)(3)(i)(C) and (D):

- An account that is loaded only with funds from a health savings account, flexible spending arrangement, medical savings account, health reimbursement arrangement, dependent care assistance program, or transit or parking reimbursement arrangement;
- An account that is directly or indirectly established through a third party and loaded only with qualified disaster relief payments;
- The person-to-person functionality of an account established by or through the United States government whose primary function is to conduct closed-loop transactions on U.S. military installations or vessels, or similar government facilities;
- A gift certificate as defined in 12 CFR 1005.20(a)(1) and (b); a store gift card as defined in 12 CFR 1005.20(a)(2) and (b); a loyalty, award, or promotional gift card as defined in 12 CFR 1005.20(a)(4), or that satisfies the criteria in 12 CFR 1005.20(a)(4)(i) and (ii) and is excluded from 12 CFR 1005.20 pursuant to 12 CFR 1005.20(b)(4); or a general-use prepaid card as defined in 12 CFR 1005.20(a)(3) and (b) that is both marketed and labeled as a gift card or gift certificate; or
- An account established for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency (12 CFR 1005.2(b)(3)(ii)).

A ***payroll account*** does not include a card used:

- Solely to disburse incentive-based payments (other than commissions when they represent the primary means through which a consumer is paid) that are unlikely to be a consumer's primary source of salary or other compensation;
- Solely to make disbursements unrelated to compensation, such as petty cash reimbursements or travel per diem payments; or
- In isolated instances to which an employer typically does not make recurring payments (Comment 2(b)-2).

Activity means any action that results in an increase or decrease of the funds underlying a certificate or card, other than the imposition of a fee, or an adjustment due to an error or a reversal of a prior transaction (12 CFR 1005.20(a)(7)).

ATM operator is any person that operates an ATM at which a consumer initiates an EFT or a balance inquiry and that does not hold the account to or from which the transfer is made or about which the inquiry is made (12 CFR 1005.16(a)).

Dormancy fee and inactivity fee mean a fee for non-use of or inactivity on a gift certificate, store gift card, or general-use prepaid card (12 CFR 1005.20(a)(5)).

Electronic check conversion (ECK) transactions are transactions where a check, draft, or similar paper instrument is used as a source of information to initiate a one-time electronic fund transfer from a consumer's account. The consumer must authorize the transfer (12 CFR 1005.3(b)(2))

Electronic fund transfer (EFT) is a transfer of funds initiated through an electronic terminal, telephone, computer (including on-line banking) or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer's account. EFTs include, but are not limited to, point-of-sale (POS) transfers; automated teller machine

[7] Electronic delivery can include through ATMs or POS terminals, but does not include an account for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency.

(ATM) transfers; direct deposits or withdrawals of funds; transfers initiated by telephone; and transfers resulting from debit card transactions, whether or not initiated through an electronic terminal (12 CFR 1005.3(b)).

Electronic terminal is an electronic device, other than a telephone call by a consumer, through which a consumer may initiate an EFT. The term includes, but is not limited to, point-of-sale terminals, automated teller machines, and cash-dispensing machines (12 CFR 1005.2(h)).

Exclusions from gift card definition. The following cards, codes, or other devices are excluded and not subject to the substantive restrictions on imposing dormancy, inactivity, or service fees, or on expiration dates if they are: (12 CFR 1005.20(b))

- Useable solely for telephone services;
- Reloadable and not marketed or labeled as a gift card or gift certificate. For purposes of this exception, the term "reloadable" includes a temporary non-reloadable card issued solely in connection with a reloadable card, code, or other device;
- A loyalty, award, or promotional gift card (except that these must disclose on the card or device itself, information such as the date the funds expire, fee information and a toll-free number) (12 CFR 1005.20(a)(4) and (c)(4));
- Not marketed to the general public;
- Issued in paper form only; or
- Redeemable solely for admission to events or venues at a particular location or group of affiliated locations, or to obtain goods or services in conjunction with admission to such events or venues, at the event or venue or at specific locations affiliated with and in geographic proximity to the event or venue.

General-use prepaid card is a card, code, or other device:

- Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and
- That is redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or that may be usable at automated teller machines (12 CFR 1005.20(a)(3)).
  See *"Exclusions from gift card definition."*

Gift certificate is a card, code, or other device issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount that may not be increased or reloaded in exchange for payment and redeemable upon presentation at a single merchant or an affiliated group of merchants for goods or services (12 CFR 1005.20(a)(1)). See "*Exclusions from gift card definition*."

Loyalty, award, or promotional gift card is a card, code, or other device (1) issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in connection with a loyalty, award, or promotional program; (2) that is redeemable upon presentation at one or more merchants for goods or services, or usable at automated teller machines; and (3) that sets forth certain disclosures, including a statement indicating that the card, code, or other device is issued for loyalty, award, or promotional purposes (12 CFR 1005.20(a)(4)). See "*Exclusions from gift card definition*."

Overdraft Services. A financial institution provides an overdraft service if it assesses a fee or charge for paying a transaction (including a check or other item) when the consumer has insufficient or unavailable funds in the account to pay the transaction. However, an overdraft service does not include payments made from the following (12 CFR 1005.17(a)):

- A line of credit subject to Regulation Z, such as a credit card account, a home equity line of credit, or an overdraft line of credit;
- A service that transfers funds from another account held individually or jointly by the consumer, such as a savings account;
- A line of credit or other transaction in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission (SEC) or the Commodity Futures Trading Commission (CFTC). (as provided in 12 CFR 1026.3(d)); or
- A covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61, or credit extended through a negative balance on the asset feature of the prepaid account that meets the conditions of 12 CFR 1026.61(a)(4).

Preauthorized electronic fund transfer is an EFT authorized in advance to recur at substantially regular intervals (12 CFR 1005.2(k)).

Service fee means a periodic fee for holding or use of a gift certificate, store gift card, or general-use prepaid card. A periodic fee includes any fee that may be imposed on a gift certificate, store gift card, or general-use prepaid card from time to time for holding or using the certificate or card (12 CFR 1005.20(a)(6)). For example, a service fee may include a

monthly maintenance fee, a transaction fee, an ATM fee, a reload fee, a foreign currency transaction fee, or a balance inquiry fee, whether or not the fee is waived for a certain period of time or is only imposed after a certain period of time. However, a service fee does not include a one-time fee or a fee that is unlikely to be imposed more than once while the underlying funds are still valid, such as an initial issuance fee, a cash-out fee, a supplemental card fee, or a lost or stolen certificate or card replacement fee (Comment 20(a)(6)-1).

State means any state, territory, or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; or any of their political subdivisions (12 CFR 1005.2(l)).

Store gift card is a card, code, or other device issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment, and redeemable upon presentation at a single merchant or an affiliated group of merchants for goods or services (12 CFR 1005.20(a)(2)). See *"Exclusions from gift card definition."*

Unauthorized electronic fund transfer is an EFT from a consumer's account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit. This does not include an EFT initiated in any of the following ways:

- By a person who was furnished the access device to the consumer's account by the consumer, unless the consumer has notified the financial institution that transfers by that person are no longer authorized;
- With fraudulent intent by the consumer or any person acting in concert with the consumer; or
- By the financial institution or its employee (12 CFR 1005.2(m)).

Coverage - 12 CFR 1005.3

Subpart A of Regulation E applies to any electronic fund transfer (EFT) that authorizes a financial institution to debit or credit a consumer's account. The requirements of subpart A of Regulation E apply only to accounts for which there is an agreement for EFT services to or from the account between (i) the consumer and the financial institution or (ii) the consumer and a third party, when the account-holding financial institution has received notice of the agreement and the fund transfers have begun (Comment 3(a)-1).

Regulation E applies to all persons, including offices of foreign financial institutions in the United States, that offer EFT services to residents of any state and it covers any account located in the United States through which EFTs are offered to a resident of a state, no matter where a particular transfer occurs or where the financial institution is chartered (Comment 3(a)-3). Regulation E does not apply to a foreign branch of a U.S. financial institution unless the EFT services are offered in connection with an account in a state, as defined in 12 CFR 1005.2(*l*) (Comment 3(a)-3).

Exclusions from Coverage.

12 CFR 1005.3(c) describes transfers that are not EFTs and are therefore not covered by the EFTA and Regulation E:

- Transfers of funds originated by check, draft, or similar paper instrument;
- 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, e.g., 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 SEC or the CFTC, purchased or sold through a broker-dealer regulated by the SEC or through a futures 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;
- Transfers initiated by telephone between a consumer and a financial institution provided the transfer is not a function of a written plan contemplating periodic or recurring transfers. A written statement available to the public, such as a brochure, that describes a service allowing a consumer to initiate transfers by telephone constitutes a written plan; or
- Preauthorized transfers to or from accounts at financial institutions with assets of less than $100 million on the preceding December 31. Such preauthorized transfers, however, remain subject to the compulsory use prohibition under Section 913 of the EFTA and 12 CFR 1005.10(e), as well as the civil and criminal liability provisions of Sections 915 and 916 of the EFTA. A small financial institution that provides EFT services besides preauthorized transfers must comply with the requirements of subpart A for those *other* services (Comment 3(c)(7)-1). For example, a small financial institution that offers ATM services must comply with subpart A concerning the issuance of debit cards, terminal receipts, periodic statements, and other requirements.

Electronic Check Conversion (ECK) and Collection of Returned-Item Fees.

Subpart A covers electronic check conversion (ECK) transactions. In an ECK transaction, a consumer provides a check to a payee and information from the check is used to initiate a one-time EFT from the consumer's account. Although transfers originated by checks are not covered by subpart A, an ECK is treated as an EFT and not a payment originated by check. Payees must obtain the consumer's authorization for each ECK transaction. A consumer authorizes a one-time EFT for an ECK transaction when the consumer receives notice that the transaction will or may be processed as an EFT and goes forward with the underlying transaction[8] (12 CFR 1005.3(b)(2)(i) and (ii) and Comment 3(b)(2)-3).

If a payee re-presents electronically a check that has been returned unpaid, the transaction is not an EFT, and subpart A does not apply because the transaction originated by check (Comment 3(c)(1)-1).

However, subpart A applies to a fee collected electronically from a consumer's account for a check or EFT returned unpaid. A consumer authorizes a one-time EFT from the consumer's account to pay the fee for the returned item or transfer if the person collecting the fee provides notice to the consumer stating the amount of the fee and that the person may electronically collect the fee, and the consumer goes forward with the underlying transaction[9] (12 CFR 1005.3(b)(3)). These authorization requirements do not apply to fees imposed by the account-holding financial institution for returning the check or EFT or paying the amount of an overdraft (Comment 3(b)(3)-1).

II. Disclosures

Disclosures Generally - 12 CFR 1005.4

Required disclosures must be clear and readily understandable, in writing, and in a form the consumer may keep. The required disclosures may be provided to the consumer in electronic form, if the consumer affirmatively consents after receiving a notice that complies with the E-Sign Act (12 CFR 1005.4(a)(1)).

Disclosures may be made in a language other than English, if the disclosures are made available in English upon the consumer's request (12 CFR 1005.4(a)(2)).

A financial institution has the option of disclosing additional information and combining disclosures required by other laws (for example, Truth in Lending disclosures) with Regulation E disclosures (12 CFR 1005.4(b)).

A financial institution may combine required disclosures into a single statement if a consumer holds two or more accounts at the financial institution. Thus, a single periodic statement or error resolution notice is sufficient for multiple accounts. In addition, it is only necessary for a financial institution to provide one set of disclosures for a joint account (12 CFR 1005.4(c)(l) and (2)).

Two or more financial institutions that jointly provide EFT services may contract among themselves to meet the requirements that the regulation imposes on any or all of them. When making initial disclosures (see 12 CFR 1005.7) and disclosures of a change in terms or an error resolution notice (see 12 CFR 1005.8), a financial institution in a shared system only needs to make disclosures that are within its knowledge and apply to its relationship with the consumer for whom it holds an account (12 CFR 1005.4(d)).

Initial Disclosure of Terms and Conditions - 12 CFR 1005.7

Financial institutions must provide initial disclosures of the terms and conditions of EFT services before the first EFT is made or at the time the consumer contracts for an EFT service. The disclosures must include a summary of various consumer rights under the regulation, including the consumer's liability for unauthorized EFTs, the types of EFTs the consumer may make, limits on the frequency or dollar amount, fees charged by the financial institution, and the error-resolution procedures. Appendix A to Part 1005 provides model clauses that financial institutions may use to provide the disclosures (12 CFR 1005.7(a) and (b)).

Timing of Disclosures

Financial institutions must make the required disclosures at the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving the consumer's account (12 CFR 1005.7(a)).

Disclosures given by a financial institution earlier than the regulation requires (for example, when the consumer opens a checking account) need not be repeated when the consumer later authorizes an electronic check conversion or agrees with a third party to initiate preauthorized transfers to or from the consumer's account, unless the terms and conditions differ from the previously disclosed term. This interpretation also applies to any notice provided about one-time EFTs from a

[8] For POS transactions, the notice must be posted in a prominent and conspicuous location and a copy of the notice must be provided to the consumer at the time of the transaction (12 CFR 1005.3(b)(2)(i) and (ii) and Comment 3(b)(2)-3).

[9] For POS transactions, the notice must be posted in a prominent and conspicuous location and a copy of the notice must either be provided to the consumer at the time of the transaction or mailed to the consumer's address as soon as reasonably practicable after the person initiates the EFT to collect the fee (12 CFR 1005.3(b)(3)).

consumer's account initiated using information from the consumer's check. On the other hand, if an agreement for EFT services to be provided by an account-holding financial institution is directly between the consumer and the account-holding financial institution, disclosures must be given in close proximity to the event requiring disclosure, for example, when the consumer contracts for a new service (Comment 7(a)-1).

Where a consumer authorizes a third party to debit or credit the consumer's account, an account-holding financial institution that has not received advance notice of the transfer or transfers must provide the required disclosures as soon as reasonably possible after the first debit or credit is made, unless the financial institution has previously given the disclosures (Comment 7(a)-2).

If a consumer opens a new account permitting EFTs at a financial institution, and the consumer has already received subpart A disclosures for another account at that financial institution, the financial institution need only disclose terms and conditions that differ from those previously given (Comment 7(a)-3).

If a financial institution joins an interchange or shared network system (which provides access to terminals operated by other financial institutions), disclosures are required for additional EFT services not previously available to consumers if the terms and conditions differ from those previously disclosed (Comment 7(a)-4).

A financial institution may provide disclosures covering all EFT services that it offers, even if some consumers have not arranged to use all services (Comment 7(a)-5).

Addition of EFT Services

A financial institution must make disclosures for any new EFT service added to a consumer's account if the terms and conditions are different from those described in the initial disclosures. ECK transactions may be a new type of transfer requiring new disclosures (See Appendix A-2 and Comment 7(c)-1).

Content of Disclosures

12 CFR 1005.7(b) requires a financial institution to provide the following disclosures as they apply:

- ***Liability of consumers for unauthorized electronic fund transfers.*** The financial institution must include a summary of the consumer's liability (under 12 CFR 1005.6, state law, or other applicable law or agreement) for unauthorized transfers (12 CFR 1005.7(b)(1)). A financial institution does not need to provide the liability disclosures if it imposes no liability. If it later decides to impose liability, it must first provide the disclosures (Comment 7(b)(1)-1). The financial institution can choose to include advice on promptly reporting unauthorized transfers or the loss or theft of the access device (Comment 7(b)(1)-3).

- ***Telephone number and address.*** A financial institution must provide a specific telephone number and address, on or with the disclosure statement, for reporting a lost or stolen access device or a possible unauthorized transfer (Comment 7(b)(2)-2). Except for the telephone number and address for reporting a lost or stolen access device or a possible unauthorized transfer, the disclosure may insert a reference to a telephone number that is readily available to the consumer, such as "Call your branch office. The number is shown on your periodic statement" (Comment 7(b)(2)-2).

- ***Business days.*** The financial institution's business days (12 CFR 1005.7(b)(3)).

  NOTE: The term "day" as used in Regulation E refers to calendar days unless specified as a "business day" (12 CFR 1005.2(d)).

- ***Types of transfers; limitations on frequency or dollar amount.*** Limitations on the frequency and dollar amount of transfers generally must be disclosed in detail (12 CFR 1005.7(b)(4)). If the confidentiality of certain details is essential to the security of an account or system, these details may be withheld (but the fact that limitations exist must still be disclosed).[10] A limitation on account activity that restricts the consumer's ability to make EFTs must be disclosed even if the restriction also applies to transfers made by non-electronic means.[11] Financial institutions are not required to list preauthorized transfers among the types of transfers that a consumer can make (Comment 7(b)(4)-3). Financial institutions must disclose the fact that one-time EFTs initiated using information from a consumer's check are among the types of transfers that a consumer can make (See Appendix A-2 and Comment 7(b)(4)-4).

- ***Fees.*** A financial institution must disclose all fees for EFTs or for the right to make EFTs (12 CFR 1005.7(b)(5)). Other fees, for example, minimum-balance fees, stop-payment fees, account overdrafts, or ATM inquiry fees, may, but need not, be disclosed under Regulation E (see Regulation DD, 12 CFR Part 1030) and (Comment 7(b)(5)-1). A per-item fee for EFTs must be

[10] For example, if a financial institution limits cash ATM withdrawals to $100 per day, the financial institution may disclose that daily withdrawal limitations apply and need not disclose that the limitations may not always be in force (such as during periods when its ATMs are off-line) (Comment 7(b)(4)-1).

[11] For example, Regulation D (12 CFR 1004) restricts the number of payments to third parties that may be made from a money market deposit account; a financial institution that does not execute fund transfers in excess of those limits must disclose the restriction as a limitation on the frequency of EFTs (Comment 7(b)(4)-2).

disclosed even if the same fee is imposed on non-electronic transfers. If a per-item fee is imposed only under certain conditions, such as when the transactions in the cycle exceed a certain number, those conditions must be disclosed. Itemization of the various fees may be on the disclosure statement or on an accompanying document referenced in the statement (Comment 7(b)(5)-2).

A financial institution must disclose that networks used to complete the EFT as well as an ATM operator, may charge a fee for an EFT or for balance inquiries (12 CFR 1005.7(b)(11)).

- ***Documentation.*** A summary of the consumer's right to receipts and periodic statements, as provided in 12 CFR 1005.9, and notices regarding preauthorized transfers as provided in 12 CFR 1005.10(a) and 1005.10(d) (12 CFR 1005.7(b)(6)).
- ***Stop payment.*** A summary of the consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure for placing a stop-payment order, as provided in 12 CFR 1005.10(c) and 12 CFR 1005.7(b)(7).
- ***Liability of institution.*** A summary of the financial institution's liability to the consumer under Section 910 of the EFTA for failure to make or to stop certain transfers (12 CFR 1005.7(b)(8)).
- ***Confidentiality.*** The circumstances under which, in the ordinary course of business, the financial institution may provide information concerning the consumer's account to third parties (12 CFR 1005.7(b)(9)). A financial institution must describe the circumstances under which any information relating to an account to or from which EFTs are permitted will be made available to third parties, not just information concerning those EFTs. Third parties include other subsidiaries of the same holding company (Comment 7(b)(9)-1).
- ***Error Resolution.*** The error-resolution notice must be substantially similar to Model Form A-3 in Appendix A of Part 1005. A financial institution may use different wording so long as the substance of the notice remains the same, may delete inapplicable provisions (for example, the requirement for written confirmation of an oral notification), and may substitute substantive state law requirements affording greater consumer protection than Regulation E (Comment 7(b)(10)-1). To take advantage of the longer time periods for resolving errors under 12 CFR 1005.11(c)(3) (for new accounts as defined in Regulation CC, transfers initiated outside the United States, or transfers resulting from POS debit card transactions), a financial institution must have disclosed these longer time periods. Similarly, a financial institution relying on the exception from provisional crediting in 12 CFR 1005.11(c)(2) for accounts relating to extensions of credit by securities brokers and dealers (Regulation T, 12 CFR Part 220) must disclose accordingly (Comment 7(b)(10)-2).
- ***ATM Fees.*** A notice that a fee may be imposed by an automated teller machine operator as defined in 12 CFR 1005.16(a), when the consumer initiates an electronic fund transfer or makes a balance inquiry, and by any network used to complete the transaction (12 CFR 1005.7(b)(11)).

Change in Terms; Error Resolution Notice - 12 CFR 1005.8

If a financial institution contemplates a change in terms, it must mail or deliver a written or electronic 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 12 CFR 1005.7(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 (12 CFR 1005.8(a)(1)).

If an immediate change in terms or conditions is necessary to maintain or restore the security of an EFT system or account, the financial institution does not need to give prior notice. However, if the change is to be permanent, the financial institution must provide notice in writing 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 (12 CFR 1005.8(a)(2)).

For accounts to or from which EFTs can be made, the financial institution must mail, deliver, or provide electronically to the consumer at least once each calendar year, the error resolution notice in 12 CFR 1005 Appendix A–Model Form A-3, or one substantially similar. Alternatively, the financial institution may include an abbreviated error resolution notice substantially similar to the notice set out in Appendix A (Model Form A-3) with each periodic statement (12 CFR 1005.8(b)).

Disclosures at Automated Teller Machines - 12 CFR 1005.16

An ATM operator that charges a fee is required to provide notice that a fee will be imposed and disclose the amount of the fee. The notice must be provided either by showing it on the screen of the automated teller machine or on paper before

the consumer is committed to paying a fee (12 CFR 1005.16(b) and (c)).

The "clear and readily understandable standard" under 12 CFR 1005.4(a) applies to the content of the notice. The requirement that the notice be in a retainable format only applies to printed notices (not those on the ATM screen) (12 CFR 1005.16(c)).

The fee may be imposed by the ATM operator only if: (1) the consumer is provided the required notice, and (2) the consumer elects to continue the transaction or inquiry after receiving such notice (12 CFR 1005.16(d)).

These fee disclosures are not required where a network owner is not charging a fee directly to the consumer (i.e., some network owners charge an interchange fee to financial institutions whose customers use the network) (Comment 7(b)(5)-3). If the network practices change such that the network charges the consumer directly, these fee disclosure requirements would apply to the network (12 CFR 1005.7(c)).

Overdraft Service Disclosures - 12 CFR 1005.17

Disclosure requirements for overdraft services are addressed in Section III of this document.

Prepaid Account Disclosures - 12 CFR 1005.15 and 12 CFR 1005.18

Disclosure requirements specific to prepaid accounts are addressed in Section VIII of this document.

Gift Card Disclosures - 12 CFR 1005.20(c)

Disclosures must be clear and conspicuous and generally in a written or electronic form (except for certain pre-purchase disclosures, which may be given orally) that the consumer may retain. The fees and terms and conditions of expiration that are required to be disclosed prior to purchase may not be changed after purchase.

A number of disclosures must be made on the actual card. Making such disclosures in an accompanying terms and conditions document, on packaging surrounding a certificate or card, or on a sticker or other label affixed to the certificate or card does not constitute a disclosure on the certificate or card (12 CFR 1005.20(c)(4)). Those disclosures include the following:

- The existence, amount, and frequency of any dormancy, inactivity, or service fee;
- The expiration date for the underlying funds (or the fact that the funds do not expire);
- A toll-free telephone number and (if any) a website that the consumer may use to obtain a replacement certificate or card if the certificate or card expires while underlying funds are still available;
- A statement that the certificate or card expires, but the underlying funds do not expire or expire later than the certificate or card, as well as a statement that the consumer may contact the issuer for a replacement card;[12] and
- A toll-free telephone number and (if any) a website that the consumer may use to obtain information about fees (12 CFR 1005.20(e)(3)).

Additional Disclosure Requirements Regarding Fees

In addition to the disclosure requirements related to dormancy, inactivity, or service fees, all other fees must be disclosed as well. These disclosures must be provided on or with the certificate or card and disclosed prior to purchase. The certificate or card must also disclose a toll-free telephone number and website, if one is maintained, that a consumer may use to obtain fee information or replacement certificates or cards (12 CFR 1005.20(f)).

Disclosure Requirements for Loyalty, Award, or Promotional Gift Cards (12 CFR 1005.20(a)(4))

To qualify for the exclusion for loyalty, award, or promotional gift cards, the following must be disclosed:

- A statement indicating that the card, code, or other device is issued for loyalty, award, or promotional purposes, which must be included on the front of the card, code, or other device;
- The expiration date for the underlying funds, which must be included on the front of the card, code, or other device;
- The amount of any fees that may be imposed in connection with the card, code, or other device, and the conditions under which they may be imposed, which must be provided on or with the card, code, or other device; and
- A toll-free telephone number and, if one is maintained, a website, that a consumer may use to obtain fee information, which must be included on the card, code, or other device.

Amendments to Regulation E were issued on August 11, 2010. The amendments implemented legislation that modified the effective date of certain disclosure and card expiration requirements in the gift card provisions of the Credit Card

[12] This requirement does not apply to non-reloadable certificates or cards that expire seven years or more after the date of manufacture.

Accountability Responsibility and Disclosure Act of 2009 for cards produced prior to April 1, 2010.

The disclosures and card expiration requirements are:

1. Disclosures required to be made prior to purchase (see 12 CFR 1005.20(c)(3));

2. Disclosures that must be stated on the certificate or card regarding the fees and expiration dates (see 12 CFR 1005.20(d)(2), (e)(1) & (e)(3)); and

3. Disclosures that may be provided on or with the certificate or card (see 12 CFR 1005.20(f)).

Gift cards must comply with all other provisions of the gift card rule.

Issuers must make the following disclosures on in-store signs, messages during customer service calls, websites, and general advertising:

- The funds underlying the gift card do not expire;

- Consumers have the right to receive a free replacement card, along with the packaging and materials that typically accompany the gift card; and

- The issuer will charge dormancy, inactivity, or service fees only if the fee is permitted by the gift card rule.

The issuer was required to make the disclosures via customer service call center and website until January 31, 2013. See 12 CFR 1005.20(h).

III. Electronic Transaction Overdraft Services Opt In - 12 CFR 1005.17

In recent years overdraft protection services have been extended to cover overdrafts resulting from non-check transactions, including ATM withdrawals, debit card transactions at point of sale, on-line transactions, preauthorized transfers, and ACH transactions. Generally, institutions charge a flat fee each time an overdraft is paid, although some institutions have a tiered fee structure and charge higher fees based on the amount of the negative balance at the end of the day or as the number of overdrafts increases. Institutions commonly charge the same amount for paying check and ACH overdrafts as they would if they returned the item unpaid. Some institutions also impose a fee for each day the account remains overdrawn. For debit card overdrafts, the dollar amount of the fee and multiple assessments can exceed the dollar amount of the overdrafts.

In 2005, the agencies[13] issued guidance concerning the marketing, disclosure, and implementation of overdraft programs. The guidance also covers safety and soundness considerations, and establishes a number of best practices financial institutions should incorporate into their overdraft programs. The 2009 revisions to Regulation E supersede portions of the guidance related to ATM and one-time debit card overdraft transactions. However, in addition to the revised Regulation E requirements, institutions should incorporate their agency's overdraft guidance into their overdraft protection programs.

12 CFR 1005.17 was added in the 2009 revision to Regulation E.[14] It provides consumers with a choice to opt into their institution's overdraft protection program and be charged a fee for overdrafts for ATM and one-time debit card transactions. It also requires disclosure of the fees and terms associated with the institution's overdraft service. Before an institution may assess overdraft fees, the consumer must opt in, or affirmatively consent, to the overdraft service for ATM and one-time debit card transactions, and the consumer has an ongoing right to revoke consent. Institutions may not require an opt in for ATM and one-time debit transactions as a condition to the payment of overdrafts for checks and other transactions. The account terms, conditions and features must be the same for consumers who opt in and for those who do not.

Opt-In Requirement for Overdraft Services

The financial institution may assess a fee for paying an ATM or one-time debit card transaction pursuant to an overdraft service only if it has met the following requirements:

- The financial institution has provided the consumer with a written (or, if the consumer agrees, electronic) notice, segregated from all other information, describing the overdraft service;

- The financial institution has provided a reasonable opportunity for the consumer to affirmatively consent (opt in) to the overdraft service for ATM and one-time debit card transactions;

[13] The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and National Credit Union Administration, collectively issued joint guidance concerning a service offered by insured depository institutions commonly referred to as "bounced-check protection" or "overdraft protection." This credit service is sometimes offered on both consumer and small business transaction accounts as an alternative to traditional means of covering overdrafts. Joint Guidance on Overdraft Protection Programs (February 18, 2005).

[14] 74 Fed. Reg. 59033, Nov. 17, 2009; 75 Fed. Reg. 31665, June 4, 2010.

- The financial institution has obtained the consumer's affirmative consent (opt in) for ATM and one-time debit card transactions; and
- The financial institution has mailed or delivered written (or, if the consumer agrees, electronic) confirmation of the consent, including a statement informing the consumer of the right to revoke consent. An institution complies if it adopts reasonable procedures to ensure that it assesses overdraft fees only for transactions paid after mailing or delivering the confirmation to the consumer (12 CFR 1005.17(b)(1); Comment 17(b)-7).

Fee Prohibitions

As a general rule, an institution may not charge overdraft fees for paying an ATM or one-time debit card transaction unless the consumer has opted in. The fee prohibition also applies to an institution that has a policy and practice of not paying an ATM or one-time debit card overdraft when it reasonably believes at the time of the authorization request that the consumer does not have sufficient funds available to pay the transaction, although the institution does not have to comply with the notice and opt-in requirements (Comment 17(b)-1(iv)).

Lack of consent does not prohibit the financial institution from paying ATM or one-time debit card overdrafts. However, the financial institution may charge a fee only if the consumer has consented to the institution's overdraft service for ATM and one-time debit card transactions (Comment 17(b)-2). Conversely, the financial institution is not required to pay an ATM or one-time debit card overdraft even if the consumer has consented to pay a fee (Comment 17(b)-3).

For a consumer who has not opted in, if a fee or charge is based on the amount of the outstanding negative balance, an institution may not charge a fee for a negative balance that is solely attributable to an ATM or one-time debit card transaction. However, an institution may assess a fee if the negative balance is attributable in whole or in part to a check, ACH transaction or other type of transaction not subject to the prohibition on assessing overdraft fees (Comment 17(b)-8).

For a consumer who has not opted in, the institution may not assess daily or sustained negative balance, overdraft, or similar fees for a negative balance, based solely on ATM or one-time debit card transactions. However, if the negative balance is attributable in part to a check, ACH transaction or other type of transaction not subject to the prohibition on assessing overdraft fees, the institution may charge a daily or sustained overdraft or similar fee, even if the consumer has not opted in. The date the fee may be charged is based on the date on which the check, ACH, or other type of transaction is paid into overdraft (Comment17(b)-9).

Content and Format of Notice.

The notice describing the overdraft service must be substantially similar to Model Form A-9. The notice must include all of the following items, and may not contain any other information not expressly specified or otherwise permitted:

- A brief description of the overdraft service and the types of transactions for which the financial institution may charge a fee;
- The dollar amount of any fee that may be charged for an ATM or one-time debit card transaction, including any daily or other overdraft fees;[15]
- The maximum number of fees that may be charged per day, or, if applicable, that there is no limit;
- An explanation of the right to affirmatively consent to the overdraft service, including the methods by which the consumer may consent;[16] and
- The availability of a line of credit or a service that transfers funds from another account to cover overdrafts, if the financial institution offers those alternatives[17] (12 CFR 1005.17(d)(1) through (d)(5)).

The financial institution also may (but is not required to) include the following information, to the extent applicable:

- Disclosure of the right to opt into, or out of, the payment of overdrafts for other types of transactions (e.g., checks, ACH transactions, or automatic bill payments) and a means for the consumer to exercise such choices;
- Disclosure of the financial institution's returned item fee, as well as the fact that merchants may charge additional fees; and
- Disclosure of the right to revoke consent (12 CFR 1005.17(d)(6)).

[15] If the amount of the fee may vary based on the number of times the consumer has overdrawn the account, the amount of the overdraft, or other factors, the financial institution must disclose the maximum fee.

[16] Institutions may tailor the response portion of Model Form A-9 to the methods offered. For example, a tear-off portion of Model Form A-9 is not necessary if consumers may only opt-in by telephone or electronically (Comment 17(d)-3).

[17] If the institution offers both a line of credit subject to Regulation Z (12 CFR Part 1026) and a service that transfers funds from another account of the consumer held at the institution to cover overdrafts, the institution must state in its opt-in notice that both alternative plans are offered. If the institution offers one, but not the other, it must state in its opt-in notice the alternative plan that it offers. If the institution does not offer either plan, it should omit the reference to the alternative plans (Comment 17(d)-5). If the financial institution offers additional alternatives for paying overdrafts, it may (but is not required to) disclose those alternatives 12 CFR 1005.17(d)(5).

Reasonable opportunity to consent.

The financial institution must provide a reasonable opportunity to consent. Reasonable methods of consent include mail - if the financial institution provides a form for the consumer to fill out and mail, telephone - if the financial institution provides a readily-available telephone line that the consumer may call, electronic means - if the financial institution provides a form that can be accessed and processed at its website, where the consumer may click on a box to consent and click on a button to affirm consent, or in person - if the financial institution provides a form for the consumer to complete and present at a branch or office (Comment17(b)-4). The financial institution may provide the opportunity to consent and require the consumer to make a choice as a step to opening an account (Comment 17(b)-5).

Affirmative consent is necessary

An important component of the opt-in feature is that the consumer's affirmative consent is necessary before the institution may charge overdraft fees for paying an ATM or one-time debit card transaction (12 CFR 1005.17(b)(1)(iii)). The consent must be separate from other consents or acknowledgments (including a consent to receive disclosures electronically). Check boxes are allowed, but the check box and the consumer's signature may only apply to the consumer's consent to opt in. Preprinted disclosures about the overdraft service provided with a signature card or contract do not constitute affirmative consent (Comment 17(b)-6).

Confirmation and consumer's right to revoke

Not only must the consumer affirmatively consent, but the institution must mail or deliver to the consumer a written confirmation (or electronic, if the consumer agrees) that the consumer has consented, along with a statement informing the consumer of the right to revoke the consent at any time (12 CFR 1005.17(b)(1)(iv) and Comment 17(b)-7). An institution complies with the confirmation requirement if it has adopted reasonable procedures to ensure that overdraft fees are assessed only on transactions paid after the confirmation is mailed or delivered to the consumer (Comment 17(b)-7)).

Assessing fees

For consumers who have not opted in, institutions are prohibited from charging overdraft fees for paying those transactions. This prohibition applies to daily or sustained overdraft, negative balance, or similar fees. However, the rule does not prohibit an institution from assessing these fees if the negative balance is attributable, in whole or part, to a check, ACH or other transaction not subject to the fee prohibition. However, if the negative balance is attributable in part to an ATM transaction, for example, and in part to a check, a fee may be assessed based on the date when the check is paid into overdraft, not the date of the ATM or one-time debit transaction (Comment 17(b)-9).

Conditioning payment of other overdrafts

The financial institution may not condition the payment of other types of overdraft transactions on the consumer's affirmative consent, and the financial institution may not decline to pay other types of overdraft transactions because the consumer has not affirmatively consented to the payment of ATM and one-time debit card overdrafts (12 CFR 1005.17(b)(2)). In other words, the financial institution may not use different criteria for paying other types of overdraft transactions for consumers who have consented and for consumers who have not consented (Comment 17(b)(2)-1).

Same account terms, conditions, and features

In addition, the financial institution must provide to consumers who do not affirmatively consent the same account terms, conditions, and features (except the payment of ATM and one-time debit overdrafts) that are available to consumers who do affirmatively consent (12 CFR 1005.17(b)(3)). That requirement includes, but is not limited to:

- Interest rates paid;
- Fees assessed;
- The type of ATM or debit card provided to the depositor;[18]
- Minimum balance requirements; and
- On-line bill payment services (Comment 17(b)(3)-1).

Joint Accounts

Any one account holder may consent, or revoke consent, for payment of ATM or one-time debit card transactions from a joint account (12 CFR 1005.17(e)).

Continuing Right to Consent or Revoke

A consumer may consent to the payment of ATM and one-time debit card overdrafts at any time. A consumer may also revoke consent at any time. The financial institution must implement a revocation as soon as reasonably practicable (12 CFR 1005.17(f)). The financial institution need not waive overdraft fees assessed before it implements the consumer's revocation (Comment 17(f)-1).

[18] For example, the financial institution may not provide a PIN-only debit card to consumers who do not opt in, and a debit card with both PIN and signature-debit features to consumers who do opt in.

Duration of Consent

Consent remains effective until the consumer revokes it, unless the financial institution terminates the overdraft service (12 CFR 1005.17(g)). The financial institution may terminate the overdraft service, for example, if the consumer makes excessive use of the service (Comment 17(g)-1).

Effective Date

The overdraft services rule became effective on January 19, 2010, and compliance became mandatory on July 1, 2010. For accounts opened on or after July 1, 2010, the financial institution must obtain consent before charging a fee for payment of any ATM or one-time debit overdraft. However, for accounts opened before July 1, 2010, the financial institution may not charge a fee for paying any ATM or one-time debit overdraft on or after August 15, 2010, unless it has obtained consent (See 12 CFR 1005.17(c)).

IV. Issuance of Access Devices — 12 CFR 1005.5 and 1005.18

In general, a financial institution may issue an access device to a consumer only in the following cases:

- The consumer requested it in writing or orally.[19]
- It is a renewal of, or a substitute for, an accepted access device (as defined in 12 CFR 1005.2(a)). See12 CFR 1005.5(a).

Only one renewal or substitute device may replace a previously issued device. A financial institution may provide additional devices at the time it issues the renewal or substitute access device provided the institution complies with the requirements for issuing unsolicited access devices for the additional devices (Comments 5(a)(2)-1and 5(b)-5).

A financial institution may issue an unsolicited access device only if the access device meets all of the following criteria. The access device is:

- Not validated - that is, it cannot be used to initiate an EFT.
- Accompanied by the explanation that it is not validated and instructions on how the consumer may dispose of it if the consumer does not wish to validate it.
- Accompanied by a complete disclosure, in accordance with 12 CFR 1005.7, of the consumer's rights and liabilities that will apply if the access device is validated.
- Validated only upon oral or written request from the consumer and after a verification of the consumer's identity by some reasonable means (12 CFR 1005.5(b)).

The financial institution may use any reasonable means of verifying the consumer's identity, but the consumer is not liable for any unauthorized transfers if an imposter succeeds in validating the access device (Comment 5(b)-4).

Prepaid Account Access Devices

Consistent with 12 CFR 1005.5(a), and except as provided, as applicable, in 12 CFR 1005.5(b), a financial institution may issue an access device only in response to an oral or written request for the device or as a renewal or substitute for an accepted access device. A consumer is deemed to request an access device for a payroll card account when the consumer chooses to receive salary or other compensation through a payroll card account, or for a government benefit account when the consumer applies for government benefits that an agency disburses or will disburse by means of an EFT. A consumer is deemed to request an access device for a prepaid account when, for example, the consumer acquires a prepaid account offered for sale at a retail location or applies for a prepaid account by telephone or online. If an access device for a prepaid account is provided on an unsolicited basis where the prepaid account is used for disbursing funds to a consumer, and the financial institution or third party making the disbursement does not offer any alternative means for the consumer to receive those funds in lieu of accepting the prepaid account, in order to satisfy 12 CFR 1005.5(b)(2), the financial institution must inform the consumer that the consumer has no other means by which to initially receive the funds in the prepaid account other than by accepting the access device, as well as the consequences of disposing of the access device (12 CFR 1005.15(b) and Comment 18(a)-1).

EFT added to credit card

The EFTA and Regulation E apply when the capability to initiate EFTs is added to an accepted credit card (as defined under Regulation Z). The EFTA and Regulation E also apply to the issuance of an access device (other than an access device for a prepaid account) that permits credit extensions under a preexisting agreement between the consumer and a financial institution to extend credit only to cover overdrafts (or to maintain a specified minimum balance). The Truth in Lending Act and Regulation Z govern the addition of a credit feature to an accepted access device, and except as discussed above, the issuance of a credit card that is also an access device. For information on the relationship of Regulation E to

[19] For a joint account, a financial institution may issue an access device to each account holder for whom the requesting holder specifically requests an access device (Comment 5(a)(1)-1).

other laws, including Truth in Lending, see Section XI of this document, and 12 CFR 1005.12.

V. Consumer Liability and Error Resolution

Liability of Consumers for Unauthorized Transfers - 12 CFR 1005.6

A consumer may be liable for an unauthorized EFT (defined in 12 CFR 1005.2(m)) depending on when the consumer notifies the financial institution and whether an access device was used to conduct the transaction. Under the EFTA, there is no bright-line time limit within which consumers must report unauthorized EFTs (71 Fed. Reg. 1638, 1653 (Jan. 10, 2006)).

The extent of the consumer's liability is determined solely by the consumer's promptness in notifying the financial institution (Comment 6(b)-3). Other factors **may not** be used as a basis to hold consumers liable. 12 CFR 1005.6 expressly prohibits the following factors as the basis for imposing greater liability than is permissible: the consumer was negligent (e.g., wrote a PIN on an ATM card); an agreement between the consumer and the financial institution provides for greater liability; or the consumer is liable for a greater amount under state law (Comments 6(b)-2 and 6(b)-3).

A consumer may only be held liable for an unauthorized transaction, within the limitations set forth in 12 CFR 1005.6(b), if:

- The financial institution has provided all of 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.
  - The financial institution's business days.
- Any access device used to initiate the EFT was an accepted access device (as defined in 12 CFR 1005.2(a)).
- The financial institution has provided a means to identify the consumer to whom the access device was issued (12 CFR 1005.6(a)).

For prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution is not required to comply with the liability limits and error resolution requirements in 12 CFR 1005.6 and 1005.11 for any prepaid account for which it has not successfully completed its consumer identification and verification process, provided certain disclosures are given (12 CFR 1005.18(e)(3)).

12 CFR 1005.6 allows, but does not require, the financial institution to provide a separate means to identify each consumer of a multiple-user account (Comment 6(a)-2).

The limitations on the amount of consumer liability for unauthorized EFTs, the time limits within which consumers must report unauthorized EFTs, and the liability for failing to adhere to those time limits, are listed in the chart below (12 CFR 1005.6(b)). The financial institution may impose <u>less</u> consumer liability than is provided by 12 CFR 1005.6 based on state law or the deposit agreement (12 CFR 1005.6(b)(6)).

Consumer Liability for Unauthorized Transfers

Event	Timing of Consumer Notice to Financial Institution	Maximum liability
Loss or theft of access device[20]	Within two business days after learning of loss or theft	Lesser of $50, OR total amount of unauthorized transfers that occur before notice to the financial institution.

[20] Includes a personal identification number (PIN) if used without a card in a telephone transaction, for example.

Loss or theft of access device	More than two business days after learning of loss or theft up to 60 days after transmittal of statement showing first unauthorized transfer made with access device.	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 financial institution.[21]
Loss or theft of access device	More than 60 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 financial institution is notified)[22]
Unauthorized transfer(s) not involving loss or theft of an access device	Within 60 days after transmittal of the periodic statement on which the unauthorized transfer first appears.	No liability.
Unauthorized transfer(s) not involving loss or theft of an access device	More than 60 days after transmittal of the periodic statement on which the unauthorized transfer first appears.	Unlimited liability for unauthorized transfers occurring 60 days after the periodic statement and before notice to the financial institution.

[21] Provided the financial institution demonstrates that these transfers would not have occurred had notice been given within the two-business-day period.

[22] Provided the financial institution demonstrates that these transfers would not have occurred had notice been given within the 60-day period.

Knowledge of Loss or Theft

The fact that a consumer has received a periodic statement reflecting an unauthorized transaction is a factor, but not conclusive evidence, in determining whether the consumer had knowledge of a loss or theft of the access device (Comment 6(b)(1)-2).

Timing of Notice

If a consumer's delay in notifying a financial institution was due to extenuating circumstances, such as extended travel or hospitalization, the time periods for notification specified above must be extended to a reasonable time (12 CFR 1005.6(b)(4); Comment 6(b)(4)-1).

Notice to the Financial Institution

A consumer gives notice to a financial institution about unauthorized use when the consumer takes reasonable steps to provide the financial institution with the pertinent information, whether or not a particular employee actually receives the information (12 CFR 1005.6(b)(5)(i)). Even if the consumer is unable to provide the account number or the card number, the notice effectively limits the consumer's liability if the consumer sufficiently identifies the account in question, for example, by giving the name on the account and the type of account (Comment 6(b)(5)-3). At the consumer's option, notice may be given in person, by telephone, or in writing (12 CFR 1005.6(b)(5)(ii)). Notice in writing is considered given at the time the consumer mails the notice or delivers the notice for transmission by any other usual means to the financial institution. Notice may also be considered given when the financial institution becomes aware of circumstances leading to the reasonable belief that an unauthorized transfer has been or may be made (12 CFR 1005.6(b)(5)(iii)).

Procedures for Resolving Errors — 12 CFR 1005.11

This section defines the term ***error*** and describes the steps the consumer must take when asserting an error in order to receive the protection of the EFTA and 12 CFR 1005.11, and the procedures that a financial institution must follow to resolve an alleged error under this section.

An ***error*** includes any of the following:

- 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 financial 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 12 CFR 1005.9 or 1005.10(a).
- A consumer's request for any documentation required by 12 CFR 1005.9 or 1005.10(a) or for additional information or clarification concerning an EFT (12 CFR 1005.11(a)(1)).

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 (12 CFR 1005.11(a)(2)(i), (ii), and (iii)).
- The fact that a financial institution does not make a terminal receipt available for a transfer of $15 or less in accordance with 12 CFR 1005.9(e) (Comment 11(a)-6).
- A financial institution must comply with the error resolution procedures in 12 CFR 1005.11 with respect to any oral or written notice of error from the consumer that:
- The financial institution receives not later than 60 days after sending a periodic statement or other documentation first reflecting the alleged error (see 12 CFR 1005.14 and 1005.18).
- Enables the financial institution to identify the consumer's name and account number.
- Indicates why the consumer believes the error exists and, to the extent possible, the type, date, and amount of the error (12 CFR 1005.11(b)(1)).

A financial institution may require a consumer to give written confirmation of an error within 10 business days of giving oral notice. The financial institution must provide the address where confirmation must be sent (12 CFR 1005.11(b)(2)).

Error Resolution Procedures

After receiving a notice of error, the financial institution must do all of the following:

- Promptly investigate the oral or written allegation of error.
- Complete its investigation within 10 business days.

- Report the results of its investigation within three business days after completing its investigation.
- Correct the error within one business day after determining that an error has occurred (12 CFR 1005.11(c)(1)).

The financial institution may take up to 45 days (12 CFR 1005.11(c)(2)) 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 two business days of the provisional crediting.
- Gives the consumer full use of the funds during the investigation.

A financial institution need not provisionally credit the account to take up to 45 days to complete its investigation if the consumer fails to provide the required written confirmation of an oral notice of error within 10 business days, or if the notice of error involves an account subject to the margin requirements or other aspects of Regulation T (Securities Credit by Brokers and Dealers, 12 CFR Part 220) (12 CFR 1005.11(c)(2)(i)).

However, where an error involves an unauthorized EFT, the financial institution must comply with the requirements of the provisions relating to unauthorized EFTs before holding the consumer liable, even if the consumer does not provide a notice of error within the time limits in 12 CFR 1005.11(b) (Comment 11(b)(1)-7).

When investigating a claim of error, the financial institution need only review its own records if the alleged error concerns a transfer to or from a third party, and there is no agreement between the financial institution and the third party for the type of EFT involved (12 CFR 1005.11(c)(4)). However, the financial institution may not limit its investigation solely to the payment instructions where other information within the financial institution's records pertaining to a particular account may help to resolve a consumer's claim (Comment 11(c)(4)-5).

If, after investigating the alleged error, the financial institution determines that an error has occurred, it must promptly (within one business day after such determination) correct the error, including the crediting of interest if applicable. The financial institution must 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 (12 CFR 1005.11(c)(1) and (2)(iii) and (iv)).

If the financial institution determines that no error occurred or that an error occurred in a different manner or amount from that described by the consumer, the financial 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 financial institution relied in making its determination (12 CFR 1005.11(d)).

Upon debiting a provisionally credited amount, the financial institution must notify the consumer of the date and amount of the debit and of the fact that the financial 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 financial institution need honor only items that it would have paid if the provisionally credited funds had not been debited (12 CFR 1005.11(d)(2)). Upon request from the consumer, the financial institution must promptly mail or deliver to the consumer copies of documents upon which it relied in making its determination (12 CFR 1005.11(d)(1)).

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 (12 CFR 1005.11(c)(3)).

If a financial institution has fully complied with the investigation requirements, it generally does not need to reinvestigate if a consumer later reasserts the same error. However, it must investigate a claim of error asserted by a consumer following receipt of information provided pursuant to 12 CFR 1005.11(a)(1)(vii) and 12 CFR 1005.11(e).

VI. Receipts and Periodic Statements

Documentation of Transfers - 12 CFR 1005.9

Electronic terminal receipts

Receipts must be made available at the time a consumer initiates an EFT at an electronic terminal (12 CFR 1005.9(a)). Financial institutions may provide receipts only to consumers who request one (Comment 9(a)-1). The receipt must include, as applicable:

- ***Amount of the transfer*** — a charge for making the transfer may be included in the amount, 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 may be omitted (Comments 9(a)(3)-1; 9(3)-2; 9(3)-4; and 9(3)-5).

- 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.

- ***Location of the terminal*** — the location of the terminal where the transfer is initiated or an identification, such as a code or terminal number. If the location is disclosed, except in limited circumstances where all terminals are located in the same city or state, the receipt must include the city and state or foreign country and one of the following:

  - Street address of the terminal;

  - Generally accepted name for the location of the terminal (such as an airport, shopping center, or branch of a financial institution); or

  - Name of the entity (if other than the financial institution providing the statement) at whose place of business the terminal is located, such as a store, and the city, state, or foreign country (12 CFR 1005.9(a)(5)).

- *Third party* — name of any third party to or from whom funds are transferred — a code may be used to identify the party 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 (12 CFR 1005.9(a)(6) and Comment 9(a)(6)-1).

Receipts are not required for EFTs of $15 or less (12 CFR 1005.9(e)).

Periodic statements

Periodic statements must be sent for each monthly cycle in which an EFT has occurred, and at least quarterly if no EFT has occurred (12 CFR 1005.9(b)). 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 of cash, or a check, draft or similar paper instrument to the consumer's account) initiated at an electronic terminal, the terminal location as required for the receipt under 12 CFR 1005.9(a)(5).

- Name of any third party payee or payor.

- Account number(s).

- 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 (Comment 9(b)(3)).

- Balance in the account at the beginning and close of the statement period.

- Address and telephone number to be used by the consumer for inquiries or notice of errors. If the financial institution has elected to send the abbreviated error notice with every periodic statement, the address and telephone number may appear on that document.

- If the financial 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.

Exceptions to the Periodic Statement Requirement for Certain Accounts

- ***Passbook accounts.*** 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 (12 CFR 1005.9(c)(1)(i)). For other accounts that may be accessed only by preauthorized transfers to the account, the financial institution must send a periodic statement at least quarterly (12 CFR 1005.9(c)(1)(ii)).

- ***Transfers between accounts.*** If a transfer occurs between two accounts of the consumer at the same financial institution, the transfer need only be documented for one of the two accounts (12 CFR 1005.9(c)(2)). A preauthorized transfer between two accounts of the consumer at the same financial institution is subject to the 12 CFR 1005.9(c)(1) rule on preauthorized transfers and

not the 12 CFR 1005.9(c)(2) rule on intra-institutional transfers (12 CFR 1005.9(c)(3)).

- ***Documentation for Foreign-initiated transfers.*** If an EFT is initiated outside the United States, the financial institution need not provide a receipt or a periodic statement reflecting the transfer if it treats an inquiry for clarification or documentation as a notice of error (12 CFR 1005.9(d)).

Alternatives to Periodic Statements for Financial Institutions Offering Prepaid Accounts - 12 CFR 1005.15 and 1005.18

12 CFR 1005.18 provides an alternative to providing periodic statements for prepaid accounts if financial institutions make account information available to consumers by specific means. In addition, 12 CFR 1005.18 clarifies how financial institutions that do not provide periodic statements for prepaid accounts can comply with the subpart A requirements relating to initial disclosures, the annual error resolution notice, liability limits, and error resolution procedures.

Typically, employers and third-party service providers do not meet the definition of a "financial institution" subject to the regulation because they neither (i) hold prepaid accounts (including payroll card accounts) nor (ii) issue prepaid cards and agree with consumers to provide EFT services in connection with prepaid accounts. However, to the extent an employer or a service provider undertakes either of these functions, it would be deemed a "financial institution" under the regulation (Comment 18(a)-2).

12 CFR 1005.15 contains similar provisions for government benefit accounts, as defined in 12 CFR 1005.15(a)(2). A government agency is deemed to be a "financial institution" 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, other than needs-tested benefits in a program established under state or local law or administered by a state or local agency (12 CFR 1005.15(a)(1)).

Alternative to Periodic Statements

A financial institution (which may include government agencies as defined by 12 CFR 1005.15(a)(1)) need not furnish periodic statements required by 12 CFR 1005.9(b) if the financial institution makes available to the consumer the following[23]:

The account balance, through a readily available telephone line, and for government benefit accounts only, also at a terminal.

An electronic history of account transactions, such as through a website, covering at least 12 months preceding the date the consumer electronically accesses the account; and

A written history of account transactions provided promptly in response to an oral or written request and covering at least 24 months preceding the date the financial institution receives the consumer's request (12 CFR 1005.15(d)(1) and 1005.18(c)(1)).

The For prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution is not required to provide a written history of the consumer's account transactions pursuant to 12 CFR 1005.18(c)(1)(iii) for any such account for which the financial institution has not completed its consumer identification and verification process (12 CFR 1005.18(c)(2)).

The electronic and written histories of account transactions must include the same information required on periodic statements under 12 CFR 1005.9(b) (12 CFR 1005.15(d)(2) and 1005.18(c)(3)).

Modifications to Other Regulation E Requirements

If a financial institution provides an alternative to periodic statements under 12 CFR 1005.18(c)(1) (or government agency provides an alternative to periodic statements under 12 CFR 1005.15(d)(1)), it must comply with the following pursuant to 12 CFR 1005.18(d) and 1005.15(e):

- Modify the initial disclosures under 12 CFR 1005.7(b) by disclosing:
    - A telephone number that the consumer may call to obtain the account balance; the means by which the consumer can obtain an electronic account history, such as the address of a website; and a summary of the consumer's right to receive a written account transaction history upon request (in place of the summary of the right to receive a periodic statement required by 12 CFR 1005.7(b)(6)), including a telephone number to call to request a history. This disclosure may be made by providing a notice substantially similar to the notice contained in paragraph A-7(a) in Appendix A. For government

[23] If, on April 1, 2019, a financial institution does not have readily accessible the data necessary to make available 12 months of electronic account transaction history or to provide 24 months of written account transaction history upon request, the financial institution may make available or provide such histories using the data for the time period it has until the financial institution has accumulated the data necessary to comply in full with those requirements (12 CFR 1005.18(h)(3)(i)).

benefit accounts, the disclosure required by 12 CFR 1005.15(e)(1)(i) may be made by providing a notice substantially similar to the notice contained in paragraph A-5(a) in Appendix A.

- A notice concerning error resolution that is substantially similar to the notice contained in paragraph A-7(b) in Appendix A, or paragraph A-5(b) in Appendix A for government benefit accounts, in place of the notice required by 12 CFR 1005.7(b)(10). Alternatively, for prepaid account programs for which the financial institution does not have a consumer identification and verification process, a description of the financial institution's error resolution process and limitations on consumers' liability for unauthorized transfers or, if none, a statement that there are no such protections (12 CFR 1005.18(d)(1)(ii)).

- Provide an annual error resolution notice that is substantially similar to the notice contained in paragraph A-7(b) in Appendix A, in place of the notice required by 12 CFR 1005.8(b). Alternatively, a financial institution (which may include government agencies as defined by 12 CFR 1005.15(a)(1)) may include on or with each electronic and written account transaction history provided in accordance with 12 CFR 1005.18(c)(1), or 12 CFR 1005.15(d)(1) for government benefit accounts, a notice substantially similar to the abbreviated notice for periodic statements contained in paragraph A-3(b) in Appendix A, modified as necessary to reflect the error resolution provisions set forth in 12 CFR 1005.18(e) or 1005.15(e)(3).

  - Comply with modified timing provisions for limited liability requirements as follows:

  - For purposes of 12 CFR 1005.6(b)(3), the 60-day period for reporting any unauthorized transfer begins on the earlier of (12 CFR 1005.18(e)(1)(i) and 1005.15(e)(3)(i)):

  - The date the consumer electronically accesses the consumer's account under 12 CFR 1005.18(c)(1)(ii), or under 12 CFR 1005.15(d)(1)(ii) for a government benefit account, provided that the electronic account transaction history made available to the consumer reflects the unauthorized transfer; or

  - The date the financial institution (including an agency) sends a written history of the consumer's account transactions requested by the consumer under 12 CFR 1005.18(c)(1)(iii), or under 12 CFR 1005.15(d)(1)(iii) for a government benefit account, in which the unauthorized transfer is first reflected.

  - Alternatively, a financial institution (including an agency)may limit the consumer's liability for an unauthorized transfer as provided under 12 CFR 1005.6(b)(3) for transfers reported by the consumer within 120 days after the transfer was credited or debited to the consumer's account (12 CFR 1005.15(e)(3)(ii) and 1005.18(e)(1)(ii)).

- Comply with modified timing provisions for error resolution requirements as follows:

  - A written or oral error notice is considered timely, and the financial institution (including an agency) must comply with the requirements of 12 CFR 1005.11, if the financial institution receives notice from the consumer by the earlier of (12 CFR 1005.18(e)(2)(i) and 1005.15(e)(4)(i)):

    - 60 days after the date the consumer electronically accesses the consumer's account under 12 CFR 1005.18(c)(1)(ii), or 12 CFR 1005.15(d)(1)(ii) for a government benefit account, provided that the electronic history made available to the consumer reflects the alleged error; or

    - 60 days after the date the financial institution (including an agency) sends a written history of the consumer's account transactions requested by the consumer under 12 CFR 1005.18(c)(1)(iii), or under 12 CFR 1005.15(d)(1)(iii) for a government benefit account, in which the alleged error is first reflected.

Alternatively, a financial institution (including an agency) complies with the error resolution requirements in 12 CFR 1005.11 if it investigates any oral or written notice of an error from the consumer that is received by the financial institution within 120 days after the transfer allegedly in error was credited or debited to the consumer's account (12 CFR 1005.15(e)(4)(ii) and 1005.18(e)(2)(ii)).

- Regardless of whether periodic statements are provided or the alternative followed: once a financial institution successfully completes its consumer identification and verification process with respect to a prepaid account (other than payroll card accounts or government benefit accounts), the financial institution must limit the consumer's liability for unauthorized transfers and resolve errors that occur following verification in accordance with 12 CFR 1005.6 or 1005.11, or the modified timing requirements in 12 CFR 1005.18(e), as applicable (12 CFR 1005.18(e)(3)(iii)).

Summary Totals of Fees - 12 CFR 1005.15 and 1005.18

A financial institution (including an agency) must disclose the amount of any fees assessed against the account, whether for EFTs or otherwise, on any periodic statement provided pursuant to 12 CFR 1005.9(b) and on any history of account transactions provided or made available by the financial institution (12 CFR 1005.15(d)(2) and 1005.18(c)(4)).

A financial institution (including an agency) must display a summary total of the amount of all fees assessed by the financial institution against the consumer's prepaid account for the prior calendar month and for the calendar year to date on any periodic statement provided pursuant to 12 CFR 1005.9(b) and on any history of account transactions provided or made available by the financial institution (12 CFR 1005.15(d)(2) and 1005.18(c)(5)).[24]

VII. Gift Cards — 12 CFR 1005.20

A gift card is a type of prepaid card that is designed to be purchased by one consumer and given to another consumer as a present or expression of appreciation or recognition. When provided in the form of a plastic card, a user of a gift card is able to access and spend the value associated with the device by swiping the card at a POS terminal, much as a person would use a debit card.

Scope of the gift card rule

The rule is generally limited to gift certificates, store gift cards, or general-use prepaid cards sold or issued to consumers primarily for personal, family, or household purposes. It generally does not apply to cards, codes, or other devices that are reloadable and not marketed or labeled as a gift card or gift certificate and loyalty, award, and promotional gift cards. See also the exclusions from the gift card definitions, described above.

Restrictions on Dormancy, Inactivity, or Service Fees - 12 CFR 1005.20(d)

No person may impose a dormancy, inactivity, or service fee with respect to a gift certificate, store gift card, or general-use prepaid card, unless three conditions are satisfied:

- There has been no activity with respect to the certificate or card within the one-year period prior to the imposition of the fee;
- Only one such fee is assessed in a given calendar month; and
- Disclosures regarding dormancy, inactivity, or service fees are clearly and conspicuously stated on the certificate or card, and the person issuing or selling the certificate or card has provided these disclosures to the purchaser before the certificate or card is purchased. See the disclosure section, above, for additional information.

Expiration Date Restrictions - 12 CFR 1005.20(e)

A gift certificate, store gift card, or general-use prepaid card may not be sold or issued unless the expiration date of the funds underlying the certificate or card is no less than five years after the date of issuance (in the case of a gift certificate) or five years after the date of last load of funds (in the case of a store gift card or general-use prepaid card). In addition, information regarding whether funds underlying a certificate or card may expire must be clearly and conspicuously stated on the certificate or card and disclosed prior to purchase.

No person may sell or issue a certificate or card with an expiration date unless the person has established policies and procedures to provide consumers with a reasonable opportunity to purchase a certificate or card that has an expiration date that is at least five years from the date of purchase. A person who has established policies and procedures to prevent the sale of a certificate or card with less than five years from the date of purchase satisfies this requirement (Comment 20(e)-1).

A certificate or card generally must include a disclosure alerting consumers to the difference between the certificate or card expiration date and the funds expiration date, if any, and that the consumer may contact the issuer for a replacement card. This disclosure must be stated with equal prominence and in close proximity to the certificate or card expiration date. Non-reloadable certificates or cards that bear an expiration date on the certificate or card that is at least seven years from the date of manufacture need not include this disclosure. See the disclosure section, above, for additional information.

To ensure that consumers are able to access the underlying funds for the full five-year period, fees may not be imposed for replacing an expired certificate or card if the underlying funds remain valid (unless the card has been lost or stolen). In lieu of sending a replacement certificate or card, issuers may remit, without charge, the remaining balance of funds to the consumer.

VIII. Requirements for Financial Institutions Offering Prepaid Accounts - 12 CFR 1005.18

[24] If the financial institution on April 1, 2019, does not have readily accessible the data necessary to calculate the summary totals of the amount of all fees assessed by the financial institution on the consumer's prepaid account for the prior calendar month and for the calendar year pursuant to 12 CFR 1005.18(c)(5), the financial institution may display the summary totals using the data it has until the financial institution has accumulated the data necessary to display the summary totals as required by 12 CFR 1005.18(c)(5). See 12 CFR 1005.18(h)(3)(ii).

Prepaid accounts (as defined in 12 CFR 1005.2(b)(3)(i)) include several types of products: payroll card accounts and government benefit accounts that were subject to Regulation E prior to the Prepaid Accounts Rule; accounts that are marketed or labeled as "prepaid" that are redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or that are usable at ATMs; and other accounts (other than checking accounts, share draft accounts, and negotiable order of withdrawal accounts) that are issued on a prepaid basis in a specified amount or not issued on a prepaid basis but capable of being loaded with funds thereafter, and whose primary function is to conduct transactions with multiple, unaffiliated merchants for goods or services, or at ATMs, or to conduct person-to-person transfers. For exclusions from the term "prepaid account," see 12 CFR 1005.2(b)(3)(ii).

Financial institutions must comply with all applicable requirements of the EFTA and Regulation E with respect to prepaid accounts, except as modified by 12 CFR 1005.18 (12 CFR 1005.18(a)). This section of the manual discusses certain provisions specifically applicable to prepaid accounts; other provisions are addressed elsewhere in this manual.

Scope

12 CFR 1005.18 applies to prepaid accounts other than government benefit accounts. Although government benefit cards are defined as prepaid accounts, slightly different rules apply in certain circumstances, which can be found in 12 CFR 1005.15.

Pre-Acquisition Disclosure Requirements - 12 CFR 1005.18(b)

Timing of Disclosures

Generally, a financial institution must provide the required short and long form disclosures before a consumer acquires a prepaid account.

However, a financial institution need not provide the long form disclosures prior to acquisition at a retail location or orally by telephone, if certain conditions are met. See 12 CFR 1005.18(b)(1)(ii) and (b)(1)(iii). Further, when a prepaid account is used for disbursing funds to a consumer and the financial institution or third party making the disbursement does not offer any alternative means for the consumer to receive those funds in lieu of accepting the prepaid account, those disclosures may be provided at the time the consumer receives the prepaid account (12 CFR 1005.18(b)(1)(i)).

Content of Short Form Disclosures

12 CFR 1005.18(b)(2) requires a financial institution to disclose the following fees and information on its short form disclosure:

- ***Periodic fee.*** The periodic fee charged for holding the prepaid account, assessed on a monthly or other periodic basis, using the term "Monthly fee," "Annual fee," or a substantially similar term.
- ***Per purchase fee.*** The fee for making a purchase using the prepaid account, using the term "Per purchase" or a substantially similar term.
- ***ATM withdrawal fees.*** Two fees for using an ATM to initiate a withdrawal of cash in the United States from the prepaid account, both within and outside of the financial institution's network or a network affiliated with the financial institution, using the term "ATM withdrawal" or a substantially similar term, and "in-network" or "out-of-network," respectively, or substantially similar terms.
- ***Cash reload fee.*** The fee for reloading cash into the prepaid account using the term "Cash reload" or a substantially similar term. The fee disclosed must be the total of all charges from the financial institution and any third parties for a cash reload.
- ***ATM balance inquiry fees.*** Two fees for using an ATM to check the balance of the prepaid account in the United States, both within and outside of the financial institution's network or a network affiliated with the financial institution, using the term "ATM balance inquiry" or a substantially similar term, and "in-network" or "out-of-network," respectively, or substantially similar terms.
- ***Customer service fees.*** Two fees for calling the financial institution about the prepaid account, both for calling an interactive voice response system and a live customer service agent, using the term "Customer service" or a substantially similar term, and "automated" or "live agent," or substantially similar terms, respectively, and "per call" or a substantially similar term. When providing a short form disclosure for multiple service plans pursuant to 12 CFR 1005.18(b)(6)(iii)(B)(*2*), the financial institution must disclose only the fee for calling the live agent customer service about the prepaid account, using the term "Live customer service" or a substantially similar term and "per call" or a substantially similar term.
- ***Inactivity fee.*** The fee for non-use, dormancy, or inactivity of the prepaid account, using the term "Inactivity" or a substantially similar term, as well as the conditions that trigger the financial institution to impose that fee.
- ***Additional fee types.*** A statement disclosing the number of additional fee types (AFTs) the financial institution

may charge consumers with respect to the prepaid account, a statement directing consumers to the disclosure of the AFTs, and, if applicable, disclosure of up to two AFTs. A financial institution must use the language provided in the rule or substantially similar language in making these statements, and must follow specific guidelines in determining which AFTs to disclose, including (with certain exceptions) the disclosure of the two fee types that generate the highest revenue from consumers, over a specified time period, for the prepaid account program or across prepaid account programs that share the same fee schedule. See 12 CFR 1005.18(b)(2)(viii) and (ix).

NOTE: A financial institution must reassess its AFTs disclosure periodically, and, under certain circumstances, when the institution changes its fee schedule. See 12 CFR 1005.18(b)(2)(ix)(E)(*2*) and (*3*) for specific requirements.

- ***Overdraft credit features.*** A statement that no overdraft credit feature is offered, or, if such a feature may be offered at any point, language about the feature and applicable fees. A financial institution must use the language provided in the rule or substantially similar language in making this statement. See 12 CFR 1005.18(b)(2)(x).

- ***Registration and insurance.*** A statement regarding the prepaid account program's eligibility for FDIC deposit insurance or NCUA share insurance, as appropriate, and directing the consumer to register the prepaid account for insurance and other account protections, where applicable. A financial institution must use the language provided in the rule or substantially similar language in making this statement. See 12 CFR 1005.18(b)(2)(xi).

- ***Bureau website.*** A statement directing the consumer to the Bureau's website for general information about prepaid accounts. A financial institution must use the language provided in the rule or substantially similar language in making this statement. See 12 CFR 1005.18(b)(2)(xii).

- ***Information on all fees and services.*** A statement directing the consumer to the location of the long form disclosure to find details and conditions for all fees and services. In certain circumstances, this statement must include a telephone number and a website URL that the consumer may use to directly access the long form disclosure. A financial institution must use the language provided in the rule or substantially similar language in making this statement. See 12 CFR 1005.18(b)(2)(xiii).

Additional content for payroll card accounts

The short form disclosure must contain a statement that the consumer does not have to accept the payroll card account, and directing the consumer to ask about other ways to receive wages or salary. Alternatively, a financial institution or agency may provide a statement that the consumer has several options to receive wages or salary, followed by a list of the options available to the consumer, and directing the consumer to tell the employer which option the consumer chooses. A financial institution or agency must use the language provided in the rule or substantially similar language in making this statement. See 12 CFR 1005.18(b)(2)(xiv).

A financial institution or agency may, but is not required to, include a statement in one additional line of text in the short form disclosure for information on ways the consumer may access government benefit account funds and balance information for free or for a reduced fee. 12 CFR 1005.15(c)(2)(ii).

Variable fees, including periodic fees

Additional disclosure requirements apply when a disclosed fee can vary; there are two alternatives if the periodic fee can vary. See 12 CFR 1005.18(b)(3)(i) and (b)(3)(ii).

Single disclosure for like fees

Where the rule requires disclosure of two fees (12 CFR 1005.18(b)(2)(iii), (v), (vi), and (ix)), a financial institution may disclose a single fee amount when the amount is the same for both fees. See 12 CFR 1005.18(b)(3)(iii).

Third-party fees

A financial institution may not include any third-party fees in the required short form disclosure, except for the cash reload fee, which must be the total of all charges from the financial institution and any third parties. See 12 CFR 1005.18(b)(3)(iv) and (v) and (b)(2)(iv).

Prohibition on disclosure of finance charges

A financial institution may not include any finance charges imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card (*i.e.*, an overdraft credit feature) in its disclosures pursuant to 12 CFR 1005.18(b)(2)(i) through (xi). See 12 CFR 1005.18(b)(3)(vi).

Additional information outside the short form

At the time a financial institution provides the short form disclosure, it must also disclose the following information outside of the short form disclosure: the name of the financial institution; the name of the prepaid account program; the purchase price for the prepaid account, if any; and the fee for activating the prepaid account, if any. In a setting other than a retail location, this information must be disclosed in close proximity to the short form. In a retail location, this information, other than the purchase price, must be disclosed on the exterior of the access device's packaging material. In a retail location, the purchase price must be disclosed either on the exterior of or in

close proximity to the prepaid account access device's packaging material. See 12 CFR 1005.18(b)(5).

Content of Long Form Disclosures

12 CFR 1005.18(b)(4) requires that a financial institution disclose the following fees and information on its long form disclosure:

- ***Title.*** A heading stating the name of the prepaid account program and that the long form disclosure contains a list of all fees for that particular prepaid account program.
- ***Fees.*** All fees that may be imposed in connection with a prepaid account. For each fee, the financial institution must disclose the amount of the fee and the conditions, if any, under which the fee may be imposed, waived, or reduced. See 12 CFR 1005.18(b)(4)(ii) for specific requirements.
- ***Statement regarding registration and FDIC or NCUA insurance.*** The statement regarding the prepaid account program's eligibility for deposit or share insurance and directing the consumer to register the prepaid account for insurance and other protections that is required on the short-form disclosure, together with an explanation of FDIC or NCUA insurance coverage and the benefit of such coverage or the consequence of the lack of such coverage, as applicable. See 12 CFR 1005.18(b)(2)(xi) and 12 CFR 1005.18(b)(4)(iii).
- ***Statement regarding overdraft credit features.*** The statement required on the short-form disclosures by 12 CFR 1005.18(b)(2)(x).
- ***Statement regarding financial institution contact information.*** See 12 CFR 1005.18(b)(4)(v).
- ***Statement regarding Bureau website and telephone number.*** See 12 CFR 1005.18(b)(4)(vi).
- ***Regulation Z disclosures for overdraft credit features.*** See 12 CFR 1005.18(b)(4)(vii).

Disclosures for Prepaid Accounts Acquired in Retail Location

A financial institution is not required to provide the long form disclosure required by 12 CFR 1005.18(b)(4) before a consumer acquires a prepaid account in person at a retail location or orally by telephone, if certain conditions are met. See 12 CFR 1005.18(b)(1)(ii) and (iii) for the specific conditions.

Form of Pre-Acquisition Disclosures

Disclosures generally must be in writing (12 CFR 1005.18(b)(6)(i)(A)). For exceptions regarding where disclosures may be made electronically or orally, see 12 CFR 1005.18(b)(6)(i)(B) and (C).

- ***Retainable form.*** Disclosures must generally be made in a form that a consumer may keep, except as provided in 12 CFR 1005.18(b)(6)(ii).
- ***Tabular format.*** When provided in writing or electronically, fee and certain other information required in the short form disclosures and fee information required in long form disclosures must be provided in the form of a table. See 12 CFR 1005.18(b)(6)(iii) and Model Forms A-10(A) through (F).

Other requirements for pre-acquisition disclosures

- ***Specific formatting requirements.*** Requirements regarding the grouping and ordering of information, prominence and size of the text, and segregation of the disclosures from other information. See 12 CFR 1005.18(b)(7).
- ***Terminology.*** Fee names and other terms must be used consistently within and across disclosures. See 12 CFR 1005.18(b)(8).
- ***Prepaid accounts acquired in foreign languages***. Generally, a financial institution must provide the required pre-acquisition disclosures in a foreign language if the financial institution uses that same foreign language in connection with the acquisition of a prepaid account in certain circumstances. For exceptions, See 12 CFR 1005.18 (b)(9).

Other Disclosure Requirements - 12 CFR 1005.18(f)

Initial disclosure of fees and other information

A financial institution must include, as part of the initial disclosures given pursuant to 12 CFR 1005.7, all of the information required to be disclosed in its pre-acquisition long form disclosure. See 12 CFR 1005.18(f)(1).

Change-in-terms notice

The change-in-terms notice provisions in 12 CFR 1005.8(a) apply to changes in terms and conditions that are required to be disclosed pursuant to 12 CFR 1005.7 or 12 CFR 1005.18(f)(1) in most circumstances, with some exceptions. See 12 CFR 1005.18(f)(2).

Disclosures on prepaid account access devices

The name of the financial institution and the website URL and a telephone number a consumer can use to contact the financial institution about the prepaid account must be disclosed on the prepaid account access device (with specific rules when

physical access devices are not provided in connection with prepaid accounts). See 12 CFR 1005.18(f)(3).

Prepaid Accounts Accessible by Hybrid Prepaid-Credit Cards - 12 CFR 1005.18(g)

The following rules apply to a prepaid account program where consumers may be offered a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by Regulation Z, 12 CFR 1026.61:

- A financial institution must provide to any prepaid account without a covered separate credit feature the same account terms, conditions, and features that it provides on prepaid accounts in the same prepaid account program that have such a credit feature (12 CFR 1005.18(g)(1)).
- A financial institution is not prohibited from imposing a higher fee or charge on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee or charge that it imposes on any prepaid account in the same prepaid account program that does not have such a credit feature (12 CFR 1005.18(g)(2)).

IX. Internet Posting of Prepaid Account Agreements - 12 CFR 1005.19

Definitions

12 CFR 1005.19(a) provides the following supplemental definitions for purposes of 12 CFR 1005.19:

- ***Agreement.*** means the written document or documents evidencing the terms of the legal obligation, or the prospective legal obligation, between a prepaid account issuer and a consumer for a prepaid account. It also includes "fee information" as defined below.
- ***Amends.*** An issuer "amends" an agreement if it makes a substantive change ("amendment") to the agreement. A change is substantive if it alters the rights or obligations of the issuer or the consumer under the agreement. Any change in the fee information, as defined below, is substantive.
- ***Fee information.*** The short form disclosure for the prepaid account (see 12 CFR 1005.18(b)(2)) and the fee information and statements required to be disclosed in the pre-acquisition long form disclosure for the prepaid account pursuant to 12 CFR 1005.18(b)(4).
- ***Issuer***. The entity to which a consumer is legally obligated, or would be legally obligated, under the terms of a prepaid account agreement.
- ***Offers.*** An issuer "offers" an agreement if the issuer markets, solicits applications for, or otherwise makes available a prepaid account that would be subject to that agreement, regardless of whether the issuer offers the prepaid account to the general public.
- ***Offers to the general public.*** An agreement if the issuer markets, solicits applications for, or otherwise makes available to the general public a prepaid account that would be subject to that agreement.
- ***Open account.*** A prepaid account is an "open account" or "open prepaid account" if: (i) there is an outstanding balance in the account; (ii) the consumer can load funds to the account even if the account does not currently hold a balance; or (iii) the consumer can access credit from a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61, in connection with the account. A prepaid account that has been suspended temporarily (for example, due to a report by the consumer of unauthorized use of the card) is considered an "open account" or "open prepaid account."
- ***Prepaid account.*** A prepaid account as defined in 12 CFR 1005.2(b)(3).

Submission of Agreements to the Bureau

An issuer must make submissions of prepaid account agreements to the CFPB on a rolling basis, in the form and manner specified by the CFPB, no later than 30 days after the issuer offers, amends, or ceases to offer any prepaid account agreement. See 12 CFR 1005.19(b)(1) regarding the content of each submission.

Amended agreements

If a prepaid account agreement previously submitted to the CFPB is amended, the issuer must submit the entire amended agreement to the CFPB, in the form and manner specified by the CFPB, no later than 30 days after the change becomes effective. Additionally, if other previously submitted identifying information about the issuer and its agreements changes, the issuer must submit an update no later than 30 days after the change becomes effective. However, the issuer can delay submitting changes to the list of names of other relevant parties to a particular agreement until the earlier of (i) when it submits an amended agreement or changes to other identifying information about the issuer and its submitted agreements, or (ii) May 1 of each year. See 12 CFR 1005.19(b)(2)(ii) for more specific requirements.

Withdrawal of agreements no longer offered

If an issuer no longer offers a prepaid account agreement that was previously submitted to the CFPB, the issuer must notify the Bureau, in the form and manner specified by the CFPB, no later than 30 days after the issuer ceases to offer the agreement, that it is withdrawing the agreement (12 CFR 1005.19(b)(3)).

De minimis exception

An issuer need not make submissions of prepaid account agreements to the CFPB if the issuer has fewer than 3,000 open prepaid accounts as of the last day of the calendar quarter (12 CFR 1005.19(b)(4)).

Product testing exception

An issuer need not submit a particular prepaid account agreement if the issuer offers the agreement as part of a product test to a limited group of consumers for a limited period of time, the agreement is used for fewer than 3,000 open prepaid accounts, and the agreement is not offered other than in connection with the product test (12 CFR 1005.19(b)(5)).

Form and content of agreements submitted to the Bureau

Agreements must contain the provisions of the agreement and the fee information currently in effect. Agreements must not contain any personally identifiable information relating to any consumer and must be presented in a clear and legible font. See 12 CFR 1005.19(b)(6)(i), (ii), and (iii) for more specific requirements.

Posting of Agreements Offered to the General Public

An issuer must post and maintain on its publicly available website any prepaid account agreements offered to the general public that the issuer is required to submit to the CFPB. Posted agreements must conform to the form and content requirements for agreements submitted to the CFPB. Agreements must be updated as frequently as the issuer is required to submit new or amended agreements to the Bureau. Agreements must be placed in a location that is prominent and readily accessible to the public, and must also be accessible without submission of personally identifiable information. See 12 CFR 1005.19(c) for more specific requirements.

Agreements for all open accounts

With respect to any open prepaid account, an issuer must either:

- Post and maintain the consumer's agreement on its website; or
- Promptly provide a copy of the consumer's agreement to the consumer upon the consumer's request. If the issuer makes an agreement available upon request, the issuer must provide the consumer with the ability to request a copy of the agreement by telephone. The issuer must send to the consumer a copy of the consumer's prepaid account agreement no later than five business days after the issuer receives the consumer's request (12 CFR 1005.19(d)(1)).

Except as otherwise provided, agreements for open accounts that are posted on the issuer's website or sent to the consumer upon the consumer's request must conform to the form and content requirements for agreements submitted to the CFPB (12 CFR 1005.19(d)(2)).

Except as otherwise provided, issuers may provide prepaid account agreements for this purpose electronically without regard to the consumer notice and consent requirements of section 101(c) of the E-Sign Act. See 12 CFR 1005.19(e).

X. Other Requirements

Preauthorized Transfers - 12 CFR 1005.10

A preauthorized transfer may be either a credit to, or a debit from, an account.

Preauthorized transfers to a consumer's account

When an account is scheduled to be credited by a preauthorized EFT from the same payor at least once every 60 days, the financial institution must provide some form of notice to the consumer so that the consumer can find out whether or not the transfer occurred (12 CFR 1005.10(a)). The notice requirement will be satisfied if the payor provides notice to the consumer that the transfer has been initiated. If the payor does not provide notice, the financial institution must adopt one of three alternative procedures for giving notice.

- The financial institution may give the consumer oral or written notice within two business days after a preauthorized transfer occurs.
- The financial institution may give the consumer oral or written notice, within two business days after the preauthorized transfer was scheduled to occur, that the transfer did not occur.
- The financial institution may establish a readily available telephone line[25] that the consumer may call to find out

[25] The telephone line must be "readily available" so that consumers calling to inquire about transfers are able to have their calls answered reasonably promptly during normal business hours. During the initial call in most cases and within two business days after the initial call in all cases, the financial institution should be able to verify whether the transfer was received (Comment 10(a)(1)-5). Within its primary service area, a financial institution must provide a local or toll-free telephone number (Comment 10(a)(1)-7).

whether a preauthorized transfer has occurred. If the financial institution selects this option, the telephone number must be disclosed on the initial disclosures and on each periodic statement (12 CFR 1005.10(a)(1)).

The financial institution need not use any specific language to give notice but may not simply provide the current account balance (Comment 10(a)(1)-1). The financial institution may use different methods of notice for different types of preauthorized transfers and need not offer consumers a choice of notice methods (Comment 10(a)(1)-2).

The financial institution that receives a preauthorized transfer must credit the consumer's account as of the day the funds are received (12 CFR 1005.10(a)(3)).

Preauthorized transfers from a customer's account

Preauthorized transfers from a consumer's account may only be authorized by the consumer in writing and signed or similarly authenticated by the consumer (12 CFR 1005.10(b)). Signed, written authorizations may be provided electronically, subject to the E-Sign Act (Comment 10(b)-5). In all cases, the party that obtains the authorization from the consumer must provide a copy to the consumer. If a third party payee fails to obtain an authorization in writing or fails to provide a copy to the consumer, the third party payee and not the financial institution has violated subpart A (Comment 10(b)-2).

Stop payments

Consumers have the right to stop payment of preauthorized transfers from accounts. The consumer must notify the financial institution orally or in writing at any time up to three business days before the scheduled date of the transfer (12 CFR 1005.10(c)(1)). If the debit item is resubmitted, the institution must continue to honor the stop-payment order. (Comment 10(c)-1) The financial institution may require written confirmation of an oral stop payment order to be made within 14 days of the consumer's oral notification. If the financial institution requires a written confirmation, it must inform the consumer at the time of the oral stop payment order that written confirmation is required and provide the address to which the confirmation should be sent. If the consumer fails to provide written confirmation, the oral stop payment order ceases to be binding after 14 days (12 CFR 1005.10(c)(2)).

Notice of transfers varying in amount

If a preauthorized transfer from a consumer's account varies in amount from the previous transfer under the same authorization or the preauthorized amount, either the financial institution or the designated payee must send to the consumer a written notice, at least 10 days before the scheduled transfer date, of the amount and scheduled date of the transfer (12 CFR 1005.10(d)(1)). The consumer may elect to receive notice only when the amount varies by more than an agreed amount or falls outside a specified range (12 CFR 1005.10(d)(2)). The range must be an acceptable range that the consumer could reasonably anticipate (Comment 10(d)(2)-1). The financial institution does not violate Regulation E if the payee fails to provide sufficient notice (Comment 10(d)-1).

Compulsory use

The financial institution may not make it a condition for an extension of credit that repayment will be 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 (however, this exception does not apply to a covered separate credit feature accessible by a hybrid prepaid-credit card, as defined in Regulation Z, 12 CFR 1026.61) (12 CFR 1005.10(e)(1)). The financial institution may offer a reduced APR or other cost-related incentive for an automatic payment feature as long as the creditor offers other loan programs for the type of credit involved (Comment 10(e)(1)-1).[26]

Services Offered by Provider Not Holding Consumer's Account — 12 CFR 1005.14

A person who provides EFT services to a consumer but does not hold the consumer's account is a service provider subject to 12 CFR 1005.14 if the person issues an access device that the consumer can use to access the account and no agreement exists between the person and the account-holding financial institution. Transfers initiated by a service provider are often cleared through an automated clearinghouse (ACH).

The responsibilities of the service provider are set forth in 12 CFR 1005.14(b)(l) and (2). The duties of the account-holding financial institution with respect to the service provider are found in 12 CFR 1005.14(c)(l) and (2).

Electronic Fund Transfer of Government Benefits — 12 CFR 1005.15

12 CFR 1005.15 contains the rules that apply to accounts established by government agencies for distributing government benefits to consumers electronically. It provides that government agencies must comply with modified rules on the issuance of access devices, periodic statements, initial disclosures, liability for unauthorized use, and error resolution notices. Government agencies must comply with pre-

[26] This section also prohibits anyone from requiring the establishment of an account for receipt of EFTs with a particular financial institution either as a condition of employment or the receipt of a government benefit (12 CFR 1005.10(e)(2)). However, the employer may require direct deposit of salary, as long as the employee may choose the financial institution that will accept the direct deposit, or limit direct deposits to one financial institution as long as the employee may choose to receive salary by other means (e.g., check or cash) (Comment 10(e)(2)-1).

acquisition disclosure requirements as applicable to other prepaid accounts. They must also provide one of two statements: either a statement that the consumer does not have to accept the government benefit account and directing the consumer to ask about other ways to receive their payment, or a statement that the consumer has several options to receive benefit payments, followed by a list of the available options, and directing the consumer to indicate which option the consumer chooses. Government agencies must also comply with other disclosure and change-in-terms requirements applicable to prepaid accounts as set forth in 12 CFR 1005.18(f). For government benefit accounts accessible by hybrid prepaid-credit cards (defined by Section 1026.61 of Regulation Z), a government agency must comply with prohibitions and requirements related to hybrid-prepaid credit cards.

A government agency is deemed to be a "financial institution" subject to the regulation if directly or indirectly it issues an access device to a consumer for use in initiating an EFT of government benefits from an account, other than needs-tested benefits in a program established under state or local law or administered by a state or local agency (12 CFR 1005.15(a)(1)).

XI. Relation to Other Laws — 12 CFR 1005.12

This section describes the relationship between the EFTA and the Truth in Lending Act (TILA) for purposes of subpart A of Regulation E.

Issuance of access devices, and addition of certain EFT services

The EFTA and Regulation E governs the following (12 CFR 1005.12(a)(1)):

- The addition of the capability to initiate EFTs to accepted credit cards, as defined in 12 CFR 1026.12, comment 12-2.
- The issuance of access devices (other than an access device for a prepaid account) that permits credit extensions (under a preexisting agreement between a consumer and financial institution) only when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, or under an overdraft service, as defined in 12 CFR 1005.17(a).
- The addition of an overdraft service, as defined in 12 CFR 1005.17(a), to an accepted access device.
- Generally, a consumer's liability for an unauthorized EFT and investigation of errors. For specifics see 12 CFR 1005.12(a)(1)(iv). The addition of EFT features to credit cards.

The TILA and Regulation Z govern all of the following (12 CFR 1005.12(a)(2)):

- The issuance of credit cards as defined in Regulation Z.
- The addition of a credit feature to a debit card or other access device, including an access device for a prepaid account that would make the access device a credit card.
- The issuance of dual debit/credit cards, except for access devices (other than a prepaid account access device) whose only credit feature is a pre-existing agreement to cover account overdrafts or to maintain a minimum account balance, or that are an overdraft service.

Liability and Error Resolution Provisions

The liability and error resolution provisions in Regulation E (12 CFR 1005.6 and 1005.11) apply to:

- an extension of credit that occurs under an agreement between the consumer and a financial institution to extend credit when the consumer's account is overdrawn, to maintain a specified minimum balance in the consumer's account, or under an overdraft service, except with respect to a prepaid account (12 CFR 1005.12(a)(1)(iv)(A));
- with respect to a transaction that involves a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card, as defined in 12 CFR 1026.61, an extension of credit that is incident to an EFT that occurs when the hybrid prepaid-credit card accesses both funds in the asset feature and a credit extension from the credit feature with respect to a particular transaction (12 CFR 1005.12(a)(1)(iv)(B));
- transactions that involve credit extended through a negative balance to the asset feature of a prepaid account that meets the conditions set forth in 12 CFR 1026.61(a)(4) (12 CFR 1005.12(a)(1)(iv)(C)); and
- with respect to transactions involving a prepaid account and a non-covered separate credit feature, as defined in 12 CFR 1026.61, Regulation E applies to transactions that access the prepaid account, as applicable (12 CFR 1005.12(a)(1)(iv)(D)).

As provided in 12 CFR 1005.12 and related commentary, for transactions involving access devices that also function as credit cards, the liability and error resolution provisions in Regulation E (12 CFR 1005.6 and 1005.11) or Regulation Z will apply depending on the nature of the transaction. See Comment 12(a)-5:

- Assume a combined access device-credit card can access a credit feature that is not an overdraft credit feature (i.e., when the card is used as a credit card, the card does not first access any funds in the asset account but draws only on a separate credit feature subject to Regulation Z). If the card is stolen and used as a credit card, for example, when the card is used to draw cash advances directly from the credit line, only the liability limits and error resolution provisions of Regulation Z will apply. If, however, the card is stolen and is used as an access device for example, for debit card purchases or cash withdrawals at an ATM from a checking account, only the liability limits and error resolution provisions of 12 CFR 1005.6 and 1005.11 will apply.

- Assume a combined access device-credit card that can access an overdraft credit feature (i.e., the credit feature is accessed only when the consumer uses the card to make purchases or other transactions for which there are insufficient or unavailable funds in the asset account). If the card is stolen and unauthorized transactions are made, 12 CFR 1005.6 and 1005.11 will apply to the unauthorized transactions funded entirely from the asset account. If the use of the card results in an extension of credit that is incident to an EFT that is partially funded by funds in the consumer's asset account and partially by credit extended under the overdraft credit feature, the error resolution provisions of Regulation Z, 12 CFR 1026.13(d) and (g) apply in addition to the Regulation E provisions, but the other liability limitations and error resolution provisions of Regulation Z do not. If an unauthorized transaction using the card is funded entirely by credit extended under the overdraft credit feature, the transaction is governed solely by the liability limitations and error resolution requirements of Regulation Z.

Subpart B--Requirements for Remittance Transfers

Generally, consumers in the United States who send money electronically to consumers or business recipients in foreign countries are sending remittance transfers. Under Regulation E subpart B, remittance transfer providers generally must give consumers disclosures at certain stages of the remittance transfer process, and consumers have certain error resolution, cancellation, and refund rights. The requirements of subpart B apply to remittance transfer providers (12 CFR 1005.3(a)).

XII. Remittance transfer definitions 12 CFR 1005.30

The definitions in subpart A (12 CFR 1005.2) also apply to subpart B unless specifically modified or limited by subpart B. The definitions in subpart B (12 CFR 1005.30) are applicable only to subpart B.

Agent is an agent, authorized delegate, or person affiliated with a remittance transfer provider, as defined under state or other applicable law, when that person acts for a remittance transfer provider. A person is not deemed a remittance transfer provider when it performs activities as an agent on behalf of a remittance transfer provider (Comment 30(f)-1).

A business day is any day that the offices of a remittance transfer provider are open to the public for carrying on "substantially all business functions."

Pre-Authorized remittance transfer is a remittance transfer authorized in advance to recur at substantially regular intervals.

Remittance transfer is an electronic transfer of funds requested by a consumer in a state to a designated recipient that is sent by a remittance transfer provider. The term applies whether or not the consumer holds an account and whether or not the transfer is an electronic fund transfer.

An electronic transfer of funds occurs when:

A. A provider makes an electronic book entry between different settlement accounts to make the remittance transfer.

B. A payment is made under a bill-payment service available to a consumer via computer or other electronic means, except in certain circumstances where a check, draft or similar paper instrument drawn on a consumer's account under the bill-payment service is mailed abroad.

An electronic transfer of funds does not occur where a sender mails funds directly to a recipient, or funds are provided to a courier for delivery to a foreign country (Comment 30(e)-1).

Transactions of $15 or less and certain transactions in connection with securities and commodities transfers that are excluded from the definition of an EFT are not remittance transfers (12 CFR 1005.30(e)(2) and 12 CFR 1005.3(c)(4)).

Remittance transfers include:

A. Transfers in cash or by another method conducted through a money transmitter or a financial institution.

B. Consumer wire transfers conducted by a financial institution upon a sender's request to wire money from the sender's account to a designated recipient.

C. An addition of funds to a prepaid card by a participant in a prepaid card program, such as a prepaid card issuer or its agent, that is directly engaged with the sender to add these funds, where the prepaid card is sent or was previously sent by a participant in the prepaid card program to a person in a foreign country, even if a sender retains the ability to withdraw such funds.

D. International ACH transactions sent by the sender's financial institution at the sender's request.

E. Online bill payments and other electronic transfers that a sender schedules in advance, including preauthorized remittance transfers, made by the sender's financial institution at the sender's request to a designated recipient (Comment 30(e)-3).

Sender is a consumer in a state, who requests a remittance transfer primarily for personal, family, or household purposes. For account-based transfers, the location of the consumer's account will determine whether the consumer is located in a state. For transfers not made from an account that are requested by telephone or electronically, the remittance transfer provider may make the determination of whether a consumer is located in a state based on information provided by the consumer and any records associated with the consumer (Comment 30(g)-1). The commentary provides further guidance on the location of senders with respect to transfers from prepaid accounts; transfers from U.S. military installations abroad; when a transfer is for personal, family, or household purposes; and regarding transfers requested from non-consumer accounts (Comments 30(g)-1 through -3).

A designated recipient is any person identified by the name provided by a sender to receive a remittance transfer at a location in a foreign country. A designated recipient can be either a natural person or an organization such as a corporation (Comment 30(c)-1). Similar to the definition of "sender," for transfers to a designated recipient's account, where funds are to be received depends on where the recipient's account is located. The commentary provides further guidance on transfers to prepaid accounts (other than a prepaid account that is a payroll card account or government benefit account) and transfers to U.S. military installations abroad (Comment 30(c)-2).

"Remittance transfer provider" or ***"provider"*** is any person that provides remittance transfers for a consumer in the normal course of business, regardless of whether the consumer holds an account with such person (12 CFR 1005.30(f)(1)).

Whether a person provides remittance transfers in the "normal course of business" depends on the facts and circumstances, including the total number and frequency of remittance transfers sent by the provider. The rule also provides a safe harbor for a person that provided 100 or fewer remittance transfers in the previous calendar year and provides 100 or fewer remittance transfers in the current calendar year (a total via all channels). Such a person is deemed not to be providing remittance transfers in the normal course of business and is therefore not subject to the rule's requirements. In determining whether a person qualifies for the safe harbor, any transfers that are excluded from the definition of "remittance transfer," such as small value transactions or certain securities and commodities transfers are excluded. If a person exceeds the safe harbor criteria and is providing remittance transfers for consumers in the normal course of business, that person has a reasonable period of time, not to exceed six months, to begin complying with subpart B (12 CFR 1005.30(f)(2) and Comment 30(f)-2).

"Covered third-party fees" means any fees that are imposed on the remittance transfer by a person other than the remittance transfer provider that are not non-covered third-party fees. Fees imposed on the remittance transfer include only those fees that are charged to the designated recipient and are specifically related to the remittance transfer (Comment 30(h)-1). Examples include fees imposed on a remittance transfer by intermediary institutions in connection with a wire transfer (sometimes referred to as "lifting fees") and fees imposed on a remittance transfer by an agent of the provider at pick-up for receiving the transfer (Comment 30(h)-2).

"Non-covered third-party fees" means any fees imposed by the designated recipient's institution for receiving a remittance transfer into an account except if the institution acts as an agent of the remittance transfer provider. For example, a fee imposed by the designated recipient's institution for receiving an incoming transfer into an account is a non-covered third-party fee, if the institution is not acting as the agent of the remittance transfer provider. A designated recipient's account does not include a credit card, prepaid card, or a virtual account held by an Internet-based or mobile telephone company that is not a bank, savings association, credit union or equivalent institution (Comment 30(h)-3).

XIII. Disclosures--12 CFR 1005.31

Providers must give senders disclosures at certain stages of the remittance transfer process. The rule requires providers to give senders a pre-payment disclosure when a transfer request is made, but prior to payment for the transfer. Providers must also provide a receipt when payment is made for the transfer. Model disclosure forms are provided in Appendix A.

General form of disclosures --12 CFR 1005.31(a)

Required disclosures or optional disclosures permitted by 12 CFR 1005.31(b)(1)(viii) or 12 CFR 1005.33(h)(3) must be clear and conspicuous and generally be provided to the sender in writing. Disclosures may contain commonly accepted or readily understandable abbreviations or symbols. Disclosures are clear and conspicuous if they are readily understandable and, in the case of written and electronic disclosures, the location and type size are readily noticeable to senders. Oral disclosures are clear and conspicuous when they are given at a volume and speed sufficient for a sender to hear and comprehend them. The commentary provides additional guidance on disclosures to a mobile telephone, by fax, and for transactions conducted partially by telephone (12 CFR

1005.31(a); Comments 31(a)(1)-1 and -2 and 31(a)(2)-1 through -5, and Comment 31(e)-1). The commentary provides additional guidance on disclosures to a mobile telephone, by fax, and for transactions conducted partially by telephone (12 CFR 1005.31(a); Comments 31(a)(1)-1 and -2 and 31(a)(2)-1 through -5, and Comment 31(e)-1). In addition, different foreign language requirements apply to transactions conducted by telephone, which are described in 12 CFR 1005.31(g)(2).-1 and -2 and 31(a)(2)-1 through -5, and Comment 31(e)-1). In addition, different foreign language requirements apply to transactions conducted by telephone, which are described in 12 CFR 1005.31(g)(2).

Pre-payment disclosures may be provided electronically without E-SIGN consent, if the sender electronically requests the provider to send the transfer. However, the receipt for the transaction may be provided electronically only with E-SIGN consent (12 CFR 1005.31(a)(2); Comment 31(a)(2)-1).

Disclosures also generally must be made in writing and in retainable form. For purposes of the disclosures required by 12 CFR 1005.31 and 1005.36 (e.g., pre-payment and receipt disclosures) the rule allows the remittance transfer provided to satisfy the requirement to provide disclosures in writing by providing those disclosures via fax, although it is not permissible to fax disclosures to a sender when that sender is present in the providers' branch or office. The rule permits disclosures to be provided on any size of paper, as long as the disclosures are clear and conspicuous. For example, a disclosure may be provided on a register receipt or on an 8.5" x 11" piece of paper. The rule sets out specific form and retainability requirements with respect to remittance transfer requests received electronically, as well as remittance transfers conducted over the phone, by mobile application, or by text. See 12 CFR 1005.31(a) and Comment 31(a)(2) for more details. For example, prepayment disclosures provided via mobile application or text message (when permitted by the rule) need not be retainable (12 CFR 1005.31(a)(2) and (a)(5)).

Additional requirements apply for certain transfers scheduled at least three days before the date of transfer that are conducted orally over the telephone or by mobile application or text messaging (12 CFR 1005.31(a)(3)(iv) and (a)(5)(iv)).

Disclosure requirements --12 CFR 1005.31(b)

Disclosures provided as applicable

The required disclosures need to be provided only to the extent applicable. A remittance transfer provider may choose to omit an item of information if it is inapplicable to a particular transaction. Alternatively, a provider may disclose a term and state that an amount or item is "not applicable," "N/A," or "None" (Comment 31(b)-1).

Substantially similar terms, language, and notices

Certain disclosures must be described using the terms set forth in 12 CFR 1005.31(b) or substantially similar terms. Terms may be more specific than those provided. For example, a remittance transfer provider sending funds may describe fees imposed by an agent at pick-up as "Pick-up Fees" in lieu of describing them as "Other Fees." Foreign language disclosures must contain accurate translations of the required terms, language, and notices as well as the disclosures permitted by 1005.31(b)(1)(viii) and 1005.33.(h)(3) (Comment 31(b)-2).

Prepayment Disclosures --12 CFR 1005.31(b)(1)

A remittance transfer provider must provide the prepayment disclosure when the sender requests the remittance transfer, but prior to payment for the transfer. Unless an exception applies, the provider must disclose:

1. the amount to be transferred (transfer amount),
2. front-end fees imposed by the provider and any taxes collected on the remittance transfer by the provider (transfer fees and transfer taxes),
3. total amount of the transaction (the sum of the transfer amount and front-end fees and taxes),
4. the exchange rate,
5. any covered- third-party fees (other fees),
6. the total amount to be received by the designated recipient (total amount of the transaction minus covered third-party fees), and
7. a statement that non-covered third-party fees or taxes collected on the remittance transfer by a third person may apply to the remittance transfer and result in the designated recipient receiving less than the amount disclosed. In this statement, a provider also may, but is not required, to disclose in the currency in which the funds will be received, any applicable non-covered third-party fees or taxes collected by a person other than the provider.

Transfer amount

Two transfer amount disclosures are required in the prepayment disclosures.

1. The transfer amount in the currency in which the sender funds the remittance transfer to show the calculation of the total amount of the transaction.

2. The transfer amount in the currency in which the funds will be made available to the designated recipient. This second transfer amount need not be disclosed if covered third-party fees are not imposed on the remittance transfer. The terms used to describe each transfer amount should be the same (Comment 31(b)(1)-2).

Fees and taxes

Fees imposed and taxes collected on the remittance transfer by a provider must be disclosed in the currency in which the transaction is funded, as applicable. Taxes collected on the remittance transfer by the provider include taxes imposed on the remittance transfer by a state or other governmental body (Comment 31(b)(1)-1(i)).

The fees and taxes required to be disclosed by 12 CFR 1005.31(b)(1)(ii) include all fees imposed and all taxes collected on the remittance transfer by the provider, and include only those that are specifically related to the remittance transfer. For example, a provider must disclose any service fees imposed by an agent at the time of the transfer, and any state taxes collected on the remittance transfer (Comment 31(b)(1)-1(ii)).

Applicable exchange rate

If the designated recipient will receive funds in a currency other than the currency in which the remittance transfer is funded, a remittance transfer provider must disclose the exchange rate to be used by the provider for the remittance transfer (Comment 31(b)(1)(iv)-1).

Rounding

The exchange rate disclosed for the remittance transfer is required to be rounded on the disclosure. The provider may round to two, three, or four decimal places, at its option, but this must be done consistently for each currency. (Comment 31(b)(1)(iv)-2). However, the exchange rate used to calculate: (a) the transfer amount, (b) the fees and taxes imposed on the remittance transfer by a person other than the provider, and (c) the amount received by the designated recipient, is prior to any rounding. If an exchange rate need not be rounded, a provider must use that exchange rate to calculate these disclosures (Comment 31(b)(1)-3).

Exchange rate used

The exchange rate used by the provider for the remittance transfer need not have been set by the provider. For example, an exchange rate set by an intermediary institution and applied to the remittance transfer would be the exchange rate used for the remittance transfer and must be disclosed by the provider (Comment 31(b)(1)(iv)-3).

Disclosure of Covered Third-Party Fees

Covered third-party fees must be disclosed in the currency in which the funds will be received by the designated recipient, using the applicable exchange rate, or an estimated exchange rate to the extent permitted, prior to any rounding of the exchange rate. If a provider does not have specific knowledge regarding the currency in which the funds will be received, the provider may rely on a sender's representation as to the currency in which funds will be received. If a sender does not know the currency in which funds will be received, the provider may assume that the currency in which funds will be received is the currency in which the remittance transfer is funded (Comment 31(b)(1)(vi)-1).

Amount Received

The remittance transfer provider is required to disclose the amount that will be received by the designated recipient in the currency in which the funds will be received. The amount received must reflect the exchange rate, all fees imposed and all taxes collected on the remittance transfer by the remittance transfer provider, as well as any covered third-party fees required to be disclosed. The disclosed amount received must be reduced by the amount of any fees or taxes (except non-covered third-party fees or taxes collected on the remittance transfer by a person other than the provider) imposed on the remittance transfer that affect the amount received even if that amount is imposed or itemized separately from the transaction amount. (Comment 31(b)(1)(vii)-1).

Required disclaimer when non-covered third-party fees and taxes collected by a person other than the provider may apply

The provider is required to include a disclaimer that non-covered third-party fees or taxes may apply to the remittance transfer if such taxes and fees apply to a particular transfer or the provider does not know whether they apply. This disclosure may only be provided to the extent applicable. For example, if the designated recipient's institution is an agent of the provider and thus, non-covered third-party fees cannot apply to the transfer, the provider must disclose all fees imposed on the remittance transfer and may not provide the disclaimer regarding non-covered third-party fees (Comment 31(b)(1)(viii)-1).

Optional disclosure of non-covered third-party fees and taxes collected by a person other than the provider

The provider is permitted to disclose any non-covered third-party fees or taxes collected on the remittance transfer by a person other than the provider that will apply to a particular transaction if it knows the amount of such fees and taxes. Additionally, the provider is permitted to disclose an estimate of such fees and taxes, provided any estimates are based on

reasonable source of information (Comment 31(b)(1)(viii)-2; 12 CFR 1005.32(b)(3); and Comment 32(b)(3)-1).

Receipt --12 CFR 1005.31(b)(2)

When payment is made, a remittance transfer provider must provide a receipt to a sender disclosing all applicable information required in the pre-payment disclosure. The receipt must also disclose, as applicable:

A. the date of availability of the funds (date available);

B. the name and, if provided by the sender, the telephone number and/or address of the designated recipient (recipient);

C. a statement about the sender's error resolution and cancellation;

D. specified contact information for the remittance transfer provider; and

E. the transfer date for remittance transfers scheduled at least three business days in advance, or the first transfer in a series of preauthorized transfers.

The provider must also provide a statement that the sender can contact the state agency that licenses or charters the remittance transfer provider with respect to the particular transfer (if there is such a state agency), and the Consumer Financial Protection Bureau (CFPB) for questions or complaints about the remittance transfer provider. The statement must include the name of the agency(ies), telephone number(s), and website address(es).

Date funds will be available

The provider must disclose the date in the foreign country on which the funds will be available to the designated recipient, using the term "Date Available" or a substantially similar term. If a provider does not know the exact date on which funds will be available, the provider may disclose the latest date on which the funds will be available. The provider may also disclose that funds "may be available sooner" or use a substantially similar term to inform senders that funds may be available to the designated recipient on a date earlier than the date disclosed (Comment 31(b)(2)-1).

Agencies required to be disclosed

The provider must disclose information about a state agency that licenses or charters the provider with respect to the particular remittance transfer. If a financial institution is solely regulated by a Federal agency, the institution does not need to disclose information about a state agency. However, information about the CFPB must be provided whether or not the CFPB is the provider's primary Federal regulator. (Comment 31(b)(2)-2). If a provider is licensed in multiple states, and the state agency that licenses the provider with respect to the remittance transfer is determined by the sender's location, a provider may make the determination of the sender's state based on information provided by the sender and on any records associated with the sender. A state-chartered bank must disclose information about the state agency that granted its charter, regardless of the location of the sender (Comment 31(b)(2)-3).

Date of transfer on receipt

For remittance transfers scheduled at least three business days in advance, or the first transfer in a series of preauthorized transfers, the date of transfer for the remittance transfer must be disclosed on the receipt. Additional disclosures apply to subsequent preauthorized remittance transfers, as described below regarding 12 CFR 1005.36(d) (Comments 31(b)(2)-5).

Cancellation Disclosure

The provider may provide the three-business-day right to cancel notice (for transfers scheduled three or more business days before the transfer date) and the 30-minute right to cancel notice (for transfers scheduled fewer than three business days in advance), on the same disclosure, with a checkbox or other method to clearly designate the applicable cancellation period. For transfers scheduled three or more business days before the transfer date, the cancellation disclosure should be phrased and formatted in such a way that it is clear to the sender which cancellation period is applicable to the date of transfer disclosed on the receipt (Comment 31(b)(2)-6).

Combined disclosure --12 CFR 1005.31(b)(3)

As an alternative to providing separate pre-payment and receipt disclosures, a remittance transfer provider may provide the information in the receipt in a single disclosure when the sender requests the remittance transfer, but prior to payment for the transfer. If this combined disclosure is provided and the sender completes the transfer, the remittance transfer provider must provide the sender with proof of payment when payment is made for the remittance transfer. For one-time transfers scheduled at least five business days in advance, or for the first in a series of preauthorized transfers, the provider may provide confirmation that the transaction has been scheduled in lieu of the proof of payment if payment is not processed at the time the remittance transfer is scheduled. No further proof of payment is required when payment is later processed.

Proof of payment/confirmation of scheduling

The proof of payment or confirmation of scheduling must be clear and conspicuous, provided in writing or electronically, and provided in a retainable form. The proof of payment for

the transaction may be provided on the same piece of paper as the combined disclosure or on a separate piece of paper. A provider may also provide this additional information to a sender on a separate piece of paper when payment is made (12 CFR 1005.31(b)(3)(ii) and Comment 31(b)(3)-1).

Long form error resolution and cancellation notice –12 CFR 1005.31(b)(4)

At the sender's request, a remittance transfer provider is required promptly to provide a notice describing the sender's error resolution and cancellation rights, using language set forth in Model Form A-36 of Appendix A or substantially similar language. For any remittance transfer scheduled by the sender at least three business days before the date of the transfer, the description of the rights of the sender regarding cancellation must instead reflect the requirements of 12 CFR 1005.36(c).

Specific format of *d*isclosures --12 CFR 1005.31(c)

Grouping of disclosed information

Disclosures related to transfer amount, transfer fees and taxes imposed by the provider, and the total amount of the transaction generally must be grouped together. Similarly, disclosures related to the transfer amount in the currency to be made available to the designated recipient, covered third-party fees ,taxes collected on the remittance by the provider, the total amount to be received by the designated recipient, and the disclaimer statement generally must be grouped together. Information is grouped together if multiple disclosures are in close proximity to one another and a sender can reasonably calculate the total amount of the transaction and the amount that will be received by the designated recipient (12 CFR 1005.31(c)(1) and Comment 31(c)(1)-1).

Proximity of disclosed information

The exchange rate used for the remittance transfer generally must be disclosed in close proximity to the other information required in the pre-payment disclosure. Disclosures on error resolution and cancellation rights must generally be disclosed in close proximity to the other disclosures required on the receipt (12 CFR 1005.31(c)(2)).

Prominence and size of disclosures

Disclosures required by subpart B or permitted by 12 CFR 1005.31(b)(1)(viii) that are provided in writing or electronically, other than disclosures permitted to be provided via mobile application or text message, must be in a minimum of eight-point font and in equal prominence to each other. They must be provided on the front of the page on which the disclosures are printed (12 CFR 1005.31(c)(3)).

Segregation of disclosures from other information

Disclosures that are provided in writing or electronically, other than disclosures permitted to be provided via mobile application or text message, must be segregated from everything else and must contain only information that is "directly related" to the disclosures (12 CFR 1005.31(c)(4)).

The following is "directly related" information:

A. The date and time of the transaction;

B. The sender's name and contact information;

C. The location at which th e designated recipient may pick up the funds;

D. The confirmation or other identification code;

E. A company name and logo;

F. An indication that a disclosure is or is not a receipt or other indicia of proof of payment;

G. A designated area for signatures or initials;

H. A statement that funds may be available sooner;

I. Instructions regarding the retrieval of funds, such as the number of days the funds will be available to the recipient before they are returned to the sender;

J. A statement that the provider makes money from foreign currency exchange; and

K. Disclosure of any non-covered third-party fees and any taxes collected by a person other than the provider (Comment 31(c)(4)-2).

Terms used in the case of estimated disclosures

A remittance transfer provider may provide estimates of the amounts required to be disclosed in the pre-payment disclosure, receipt, and combined disclosure to the extent permitted by 12 CFR 1005.32. An estimate must be described using the term "Estimated" or a substantially similar term in close proximity to the estimated term or terms. For example, a remittance transfer provider could describe an estimated disclosure as "Estimated Transfer Amount," "Other Estimated Fees and Taxes," or "Total to Recipient (Est.)" (12 CFR 1005.31(d) and Comment 31(d)-1).

Request to send a remittance transfer

Determining whether a consumer has requested a remittance transfer depends on the facts and circumstances. A sender that asks a provider to send a remittance transfer, and provides transaction-specific information to the provider in order to

send funds to a designated recipient, has requested a remittance transfer. On the other hand, a consumer who solely inquires about that day's rates and fees to send to a particular country has not requested the provider to send a remittance transfer (Comment 31(e)-1).

When payment is made

Payment is made when a sender provides cash to the remittance transfer provider or when payment is authorized (Comment 31(e)-2).

Disclosures related to mobile application and text message transactions. If a transaction is conducted entirely by telephone via mobile application or text message, a receipt may be mailed or delivered to the sender pursuant to the timing requirements for transfers conducted entirely by telephone (Comment 31(e)-4).

Accuracy of disclosures -- when payment is made

Disclosures required by Subpart B or permitted by 12 CFR 1005.31(b)(1)(viii) must be accurate when a sender makes payment for the remittance transfer, except to the extent estimates are permitted. A remittance transfer provider is not required to guarantee the terms of the remittance transfer in the pre-payment disclosures for any specific period of time. However, if any of these disclosures are not accurate when a sender makes payment for the remittance transfer, the provider must give new disclosures before accepting payment (12 CFR 1005.31(f) and Comment 31(f)-1).

Foreign Language Disclosures – 12 CFR 1005.31(g)

Written and electronic disclosures required by subpart B or permitted by 12 CFR 1005.31(b)(1)(viii) generally must be provided in English and in each foreign language principally used to advertise, solicit, or market remittance transfer services at the office in which a sender conducts a transaction or asserts an error. Alternatively, written and electronic disclosures can be provided in English and in the foreign language primarily used by the sender with the remittance transfer provider, provided such foreign language is principally used to advertise, solicit, or market remittance transfers at the office in which a sender conducts a transaction or asserts an error. For transfers requested orally, by text message, or mobile application, the disclosures must be in the language primarily used by the sender to communicate with the transfer provider (12 CFR 1005.31(g)).

Number of foreign languages used in written disclosure

There is no limit to the number of languages that may be used on a single document, but such disclosures must be clear and conspicuous. If the remittance transfer provider chooses to provide written and electronic disclosures in English and in the foreign language primarily used by the sender with the remittance transfer provider, it may provide disclosures in a single document with both languages or in two separate documents with one document in English and the other document in the applicable foreign language (Comment 31(g)-1).

Language "primarily used"

The language primarily used by the sender with the remittance transfer provider to conduct the transaction is the primary language used by the sender with the remittance transfer provider to convey the information necessary to complete the transaction. Similarly, the language primarily used by the sender with the remittance transfer provider to assert the error is the primary language used by the sender with the remittance transfer provider to provide the information required to assert an error (Comment 31(g)-2).

Language "principally" used

Whether a foreign language is principally used by the remittance transfer provider to advertise, solicit, or market is determined from all relevant facts and circumstances, including:

A. The frequency with which the foreign language is used in advertising, soliciting, or marketing of remittance transfer services at that office;

B. The prominence of the advertising, soliciting, or marketing of remittance transfer services in that foreign language at that office; and

C. The specific foreign language terms used in the advertising soliciting, or marketing of remittance transfer services at that office (Comment 31(g)(1)-1(i)).

Language used to advertise, solicit, or market

Any commercial message in a foreign language, appearing in any medium, that promotes directly or indirectly the availability of remittance transfer services constitutes advertising, soliciting, or marketing in such foreign language (Comment 31(g)(1)-2).

Office

An office includes any physical location, telephone number, or website of a remittance transfer provider where a sender may conduct a remittance transfer or assert an error for a remittance transfer (Comment 31(g)(1)-3).

At the office

Any advertisement, solicitation, or marketing is considered to be made at the office in which a sender conducts a transaction or asserts an error if it is posted, provided, or made: at a

physical office; on a website of a remittance transfer provider that may be used by senders to conduct remittance transfers or assert errors; during a telephone call with a remittance transfer provider that may be used by senders to conduct remittance transfers or assert errors; or via mobile application or text message if the mobile application or text message may be used by senders to conduct remittance transfers or assert errors (Comment 31(g)(1)-4).

XIV. Estimates --12 CFR 1005.32

Disclosures for which estimates may be used

Estimates may be used in certain circumstances for certain information required in pre-payment disclosures, receipts and combined disclosures.

Temporary exception for insured institutions -- 12 CFR 1005.32(a)

NOTE: The temporary exception is available for insured institutions until July 21, 2020.

Estimates may be provided for certain amounts required to be disclosed in the pre-payment disclosures, receipts and combined disclosures if:

A. the remittance transfer provider cannot determine the exact amounts for reasons beyond its control;

B. the remittance transfer provider is an insured institution; and

C. the remittance transfer is sent from the sender's account with the institution (not including a prepaid account, unless the prepaid account is a payroll card account or government benefit account).

An insured institution means an insured depository institution (including an uninsured U.S branch and agency of a foreign depository institution) and an insured credit union (12 CFR 1005.32(a)(3)).

Control

An insured institution cannot determine exact amounts "for reasons beyond its control" when a person other than the insured institution or with which the insured institution has no correspondent relationship sets the exchange rate or imposes a covered third-party fee required to be disclosed. For example, if an insured institution has a correspondent relationship with an intermediary financial institution in another country and that intermediary institution sets the exchange rate or imposes a fee for remittance transfers sent from the insured institution to the intermediary institution, then this exception is not applicable and the insured institution must determine exact amounts for the disclosures because the determination of those amounts are not beyond the insured institution's control (Comment 32(a)(1)-1).

Covered third-party fees

An insured institution cannot determine the exact covered third-party fees to disclose if, for example, an intermediary institution with which the insured institution does not have a correspondent relationship, imposes a transfer or conversion fee. On the other hand, an insured institution can determine the exact covered third-party fees required to be disclosed if it has agreed upon the specific fees with an intermediary correspondent institution, and this correspondent institution is the only institution in the transmittal route to the designated recipient's institution (Comments 32(a)(1)-2(ii) and -3(ii)).

The temporary exception is available for insured institutions until July 21, 2015.

Permanent exception for transfers to certain countries--12 CFR 1005.32(b)(1)

Estimates may be provided in pre-payment disclosures, receipts or combined disclosures for transfers to certain countries if a remittance transfer provider cannot determine the exact amounts at the time the disclosure is required either because:

A. The laws of the recipient country do not permit such a determination, or

B. The method by which transactions are made in the recipient country does not permit such determination.

Laws of the recipient country

The laws of the recipient country do not permit a remittance transfer provider to determine exact amounts required to be disclosed when a law or regulation of the recipient country (e.g., currency exchange or certain privacy laws) do not allow the person making funds directly available to the designated recipient to determine the exact amounts at the time the disclosure is required. A typical example is where the law requires an exchange rate to be either:

A. Set by the government of the recipient country after the remittance transfer provider sends the remittance transfer; or

B. Set when the designated recipient receives the funds (Comment 32(b)(1)-1).

Method by which transactions are made in the recipient country

The method by which transactions are made in the recipient country does not permit a remittance transfer provider to

determine exact amounts required to be disclosed when transactions are sent via international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is a rate set by the recipient country's central bank or other governmental authority after the provider sends the remittance transfer (Comment 32(b)(1)-3).

Safe harbor list

The CFPB published a list of countries whereby a remittance transfer provider may provide estimates for the exchange rate, the transfer amount, covered third-party fees and total amount to the recipient, unless the provider has information that a country on the list legally permits the provider to determine exact disclosure amounts. If a country does not appear on the CFPB's list, the provider may provide estimates if it determines that the recipient country does not legally permit or the method by which transactions are conducted in that country does not permit the provider to determine exact disclosure amounts (Comments 32(b)(1)-5 and 32(b)(1)-6). The list of countries that became effective February 7, 2013 and remains current as of June 2018 is Aruba, Brazil, China, Ethiopia, and Libya.

Change in laws of recipient country

If the laws of a recipient country change such that a remittance transfer provider can determine exact amounts, the remittance transfer provider must begin providing exact amounts for the required disclosures as soon as reasonably practicable. If the laws of a recipient country change such that the provider cannot determine exact disclosure amounts, the provider may provide estimates even if that country does not appear on the list published by the CFPB (Comment 32(b)(1)-7).

Permanent exception for transfers scheduled before the date of transfer—12 CFR 1005.32(b)(2)

For remittance transfers scheduled five or more business days before the date of the transfer, estimates may be provided for the exchange rate, transfer amount, covered third-party fees (where the exchange rate is also estimated and affects such fees) and the total amount to recipient, if at the time the sender schedules such a transfer, the provider agrees to a sender's request to fix the amount to be transferred in the currency in which the remittance transfer will be received and not the currency in which it is funded. For example, if a sender schedules a wire transfer to be sent from the sender's bank account denominated in U.S. dollars but to be paid to the recipient in Euro, the provider is allowed to estimate the transfer amount, front-end fees or taxes collected by the provider (if based on the amount transferred), and the total amount of the transaction. The provider is also allowed to estimate any covered third-party fees if the exchange rate is also estimated and the estimated exchange rate affects the amount of fees. (12 CFR 1005.32(b)(2) and Comment 32(b)(2)-1).

Permanent Exception for Optional Disclosure of Non-Covered Third-Party Fees and Taxes Collected on the Remittance Transfer by a Person Other Than the Provider--12 CFR 1005.32(b)(3)

The remittance transfer provider may provide estimates (as part of the required disclaimer statement)for applicable non-covered third-party fees and taxes collected on the remittance transfer by a person other than the provider, if such estimates are based on reasonable sources of information. Reasonable sources of information may include, for example: information obtained from recent transfers to the same institution or the same country or region; fee schedules from the recipient institution; fee schedules from the recipient institution's competitors; surveys of recipient institution fees in the same country or region as the recipient institution; information provided or surveys of recipient institutions' regulators or taxing authorities; commercially or publicly available databases, services or sources; and information or resources developed by international nongovernmental organizations or intergovernmental organizations (Comment 32(b)(3)-1).

Bases for estimates --12 CFR 1005.32(c) and (d)

If a remittance transfer provider qualifies for either the temporary or permanent exception, the rule allows two bases for estimating information in the disclosures:

1. The estimates must generally be based on any of the approaches listed in the rule (12 CFR 1005.32 (c)(1)).

2. Alternatively, the estimates may be based on an approach that is not listed, provided that the designated recipient receives the same, or greater, amount of funds than the remittance transfer provider disclosed.

For remittance transfers scheduled five or more business days before the date of the transfer, estimates must be based on the exchange rate or, where applicable, the estimated exchange rate that the provider would have used or did use that day to provide disclosures to a sender requesting such a remittance transfer to be made on the same day.

Approaches listed in the rule

Estimates of the exchange rate

For remittance transfers sent via international ACH, the estimate must be based on the most recent exchange rate set by the recipient country's central bank or other governmental authority and reported by a Federal Reserve Bank. For any remittance transfers for which estimates are permitted, the exchange rate may be estimated based on the most recent publicly available wholesale exchange rate and any applicable

spread that the remittance transfer provider or its correspondent typically applies for remittance transfers for that currency or the most recent exchange rate offered or used by the person making funds available directly to the designated recipient or by the person setting the exchange rate (12 CFR 1005.32(c)(1)).

Where the exchange rate for a remittance transfer sent via international ACH that qualifies for the permanent exception is set the following business day, the most recent exchange rate available for a transfer is the exchange rate set for the day that the disclosure is provided, i.e. the current business day's exchange rate (Comment 32(c)(1)-1).

Publicly available

Examples of publicly available sources of information containing the most recent wholesale exchange rate for a currency include U.S. news services, such as Bloomberg, the Wall Street Journal, and the New York Times; a recipient country's national news services, and a recipient country's central bank or other government agency (Comment 32(c)(1)-2).

Spread applied to the wholesale exchange rate

An estimate for disclosing the exchange rate based on the most recent publicly available wholesale exchange rate must also reflect any spread the remittance transfer provider typically applies to the wholesale exchange rate for remittance transfers for a particular currency (Comment 32(c)(1)-3).

Most recent exchange rate

If the exchange rate with respect to a particular currency is published or provided multiple times throughout the day because the exchange rate fluctuates throughout the day, a remittance transfer provider may use any exchange rate available on that day to determine the most recent exchange rate (Comment 32(c)(1)-4).

Estimates of the transfer amount and covered third-party fees in the currency in which funds will be received by the designated recipient

Estimates of the transfer amount in the currency in which the funds will be received by the designated recipient as well as covered third-party fees imposed as a percentage of the amount transferred must be based on the estimated exchange rate, prior to any rounding (12 CFR 1005.32(c)(2) and (3)(i)).

Estimates of the fees imposed by intermediary or final institution

Estimates for covered third-party fees imposed by intermediary or final institutions that act as intermediaries or by the designated recipient's institution must be based on the remittance transfer provider's most recent remittance transfer to the designated recipient's institution, or a representative transmittal route identified by the remittance transfer provider (12 CFR 1005.32(c)(3)(ii).

Estimates of the amount of currency that will be received by the designated recipient

Estimates for the amount of currency that will be received by the designated recipient must be based on the estimates provided in accordance with 12 CFR 1005.31(c)(1) through (3) as applicable for the transaction (12 CFR 1005.32(c)(4)).

XV. Procedures for resolving errors (12 CFR 1005.33)

Definition of error (12 CFR 1005.33(a))

In connection with an error asserted under 12 CFR 1005.33, the term error means:

A. Generally, an incorrect amount paid by a sender in connection with a remittance transfer;

B. A computational or bookkeeping error made by the remittance transfer provider relating to the remittance transfer;

C. The failure, generally, to make available to a designated recipient the amount of currency required to be disclosed under 12 CFR 1005.31(b)(vii) and stated in the disclosure provided to the sender unless the disclosure stated an estimate of the amount paid and the difference results from application of the actual exchange rate, fees, and taxes, rather than any estimated amount;

D. The failure, generally, to make funds available to a designated recipient by the date of availability stated in the disclosure provided to the sender; or

E. The sender's request for documentation required by 12 CFR 1005.31 or for additional information or clarification concerning a remittance transfer, including a request a sender makes to determine whether an error exists. (see more detailed discussion of errors and exceptions below).

Error due to incorrect amount of currency paid by sender

This type of error covers circumstances in which a sender pays an amount that differs from the total amount of the transaction, including fees imposed in connection with the transfer, stated in the receipt or combined disclosure provided. However, there is no error if the disclosure appropriately stated an estimate of the amount paid by the sender and the difference results from application of the actual exchange rate, fees, and taxes, rather than any estimated amounts (12 CFR 1005.33(a)(1)(i) and Comment 33(a)-1).

Error due to incorrect amount of currency received

This type of error covers circumstances in which the designated recipient receives an amount of currency that differs from the amount of currency identified on the disclosures provided to the sender. It also covers circumstances in which the remittance transfer provider transmits an amount that differs from the amount requested by the sender. There are three general exceptions to this. There is no error if:

A. the disclosure appropriately, under one of the two exceptions under 12 CFR 1005.32, stated an estimate of the amount of currency to be received and the difference results from application of the actual exchange rate, fees, and taxes, rather than any estimated amounts, or

B. the failure was caused by extraordinary circumstances outside the remittance transfer provider's control; or

C. the difference results from the application of non-covered third-party fees or taxes collected on the remittance transfer by a person other than the provider and the provider provided the required disclaimer (12 CFR 1005.33(a)(1)(iii)).

A designated recipient may receive an amount of currency that differs from the amount of currency disclosed and an error has occurred if for example:

1. an exchange rate other than the disclosed rate is applied to the remittance transfer (Comment 33(a)-2), or

2. the provider provides the sender a receipt stating an amount of currency that will be received by the designated recipient, which does not reflect additional covered third-party fees that are imposed by the receiving agent in the destination country (Comment 33(a)-3(iii)). However, if the designated recipient will receive less than the amount of currency disclosed on the receipt due solely to the additional foreign taxes that the provider was not required to disclose, no error has occurred (Comment 33(a)-3(ii)).

Exception for extraordinary circumstances outside the remittance transfer provider's control

If the provider fails to make the amount of currency disclosed available to the designated recipient, such an occurrence is not an error if such failure was caused by extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated (12 CFR 1005.33(a)(1)(iii)(B)). Examples include war or civil unrest, natural disaster, garnishment or attachment of some of the funds after the transfer is sent, and government actions or restrictions that could not have been reasonably anticipated by the remittance transfer provider, such as the imposition of foreign currency controls or foreign taxes unknown at the time the receipt or combined disclosure is provided (Comment 33(a)-4). Note that foreign taxes are not required to be disclosed. However, if a provider, believing that there is no applicable foreign tax, elects not to provide a disclaimer pursuant to 1005.31(b)(1)(viii), no error has occurred if a new tax is imposed that could not have been reasonably anticipated at the time the receipt or combined disclosure was required to be given.

Error due to failure to make funds available by disclosed date of availability

This error generally covers disputes about the failure to make remittance transfer funds available to a designated recipient by the disclosed date of availability. Examples include late or non-delivery of a remittance transfer, delivery of funds to the wrong account, the fraudulent pick-up of a remittance transfer in a foreign country by a person other than the designated recipient, and the recipient agent or institution's retention of the remittance transfer, instead of making the funds available to the designated recipient (Comment 33(a)-5).

There is no error if funds were not made available by the disclosed date due to:

A. extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated;

B. delays related to a necessary investigation or other special action by the remittance transfer provider or a third party as required by the provider's fraud screening procedures or in accordance with the Bank Secrecy Act, Office of Foreign Assets Control requirements, or similar laws or requirements; or

C. the remittance transfer was made with fraudulent intent by the sender or any person acting in concert with the sender (*i.e.*, friendly fraud); or

D. the sender provided the remittance transfer provider an incorrect account number or recipient institution identifier for the designated recipient's account or institution (12 CFR 1005.33(a)(1)(iv)), and:

    1. the remittance provider can demonstrate that the sender provided an incorrect account number or recipient institution identifier to the provider in connection with the remittance transfer;

    2. the provider used reasonable available means prior to or when sending the transfer to verify (for recipient institution identifier errors only) that the recipient institution identifier provided by the sender

corresponded to the recipient institution name provided by the sender;

3. the provider provided notice to the sender (prior to payment for the remittance transfer) that, in the event the sender provided an incorrect account number or recipient institution identifier, the sender could lose the transfer amount.

4. the incorrect account number or recipient institution identifier resulted in the deposit of the remittance transfer into a customer's account that is not the designated recipient's account; and

5. the provider promptly used reasonable efforts to recover the amount that was to be received by the designated recipient (12 CFR 1005.33(h)).

Account number or recipient institution identifier

Account number and recipient institution identifier refer to alphanumerical account or institution identifiers other than names or addresses, such as account numbers, routing numbers, Canadian transit numbers, International Bank Account Numbers, Business Identifier Codes and other similar account or institution identifiers used to route a transaction. Designated recipient's account refers to an asset account but does not include a credit card, prepaid card, or a virtual account held by an Internet-based or mobile telephone company that is not a bank, savings association, credit union or equivalent institution (Comment 33(a)-8).

Reasonable methods of verification

Reasonably available means may include accessing a directory of Business Identifier Codes and verifying that the code provided by the sender matches the provided institution name, and, if possible, the specific branch or location provided by the sender. A provider may also rely on other commercially available databases or directories to check other recipient institution identifiers. The requirement to verify would be met if no reasonably available means exist to verify the accuracy of the recipient institution identifier if the other conditions are satisfied (Comment 33(h)-1).

Reasonable efforts

Whether a provider has used reasonable efforts does not depend on whether the provider is ultimately successful in recovering the amount that was to be received by the designated recipient. If the remittance transfer provider is requested to provide documentation or other supporting information in order for the pertinent institution or authority to obtain the proper authorization for the return of the incorrectly credited amount, reasonable efforts to recover the amount include timely provision of any such documentation to the extent that it is available and permissible under law (Comment 33(h)-2).

Promptness of Reasonable Efforts

Whether a provider acts promptly to use reasonable efforts depends on the facts and circumstances. For example, if, before the disclosed date of availability the sender informs the provider that the sender provided a wrong account number, the provider will have acted promptly if it attempts to contact the recipient's institution before the date of availability (Comment 33(h)-3).

Failure to make funds available by disclosed date of availability due to circumstances outside the remittance transfer provider's control

A remittance transfer provider's failure to deliver or transmit a remittance transfer by the disclosed date of availability is not an error if such failure was caused by extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated. Examples of such circumstances include war or civil unrest, natural disaster, garnishment or attachment of funds after the transfer is sent, and government actions or restrictions that could not have been reasonably anticipated by the remittance transfer provider, such as the imposition of foreign currency controls (Comment 33(a)-6).

Issues that are not considered errors under subpart B

The following are <u>not</u> errors:

A. An inquiry about the status of a remittance transfer except where the funds from the transfer were not made available to a designated recipient by the disclosed date of availability;

B. A request for information for tax or other recordkeeping purposes;

C. A change requested by the designated recipient that the remittance transfer provider or others involved in the remittance transfer decide to accommodate; or

D. A change in the amount or type of currency received by the designated recipient from the amount or type of currency stated in the disclosure provided to the sender if the remittance transfer provider relied on information provided by the sender (12 CFR 1005.33(a)(2) and Comment 33(a)-10)).

Notice of error from sender - 12 CFR 1005.33(b)

Person asserting or discovering error

The error resolution procedures apply only when a notice of error is received from the sender (Comment 33(b)-1).

Timing of error notice

The notice of error must be received by the remittance transfer provider within 180 days of the disclosed date of availability of the remittance transfer. (12 CFR 1005.33(b)(1)). However, if the notice of error is based on documentation, additional information, or clarification provided by the remittance transfer provider, then notice is timely if it is received by the remittance transfer provider the later of:

A. 180 days after the disclosed date of availability of the remittance transfer, or

B. 60 days after the provider sent the documentation, information, or clarification that had been requested (12 CFR 1005.33(b)(2)).

Content of error notice

Errors may be reported orally or in writing. The notice of error is effective so long as the remittance transfer provider is able to identify:

A. The sender's name and telephone number or address (or email address)

B. The recipient's name and if known, telephone number and address;

C. The remittance transfer to which the notice of error applies; and

D. Why the sender believes an error exists and if possible, the type, date, and amount of the error, except for errors involving requests for documentation, additional information or clarification.

For example, the sender could provide the confirmation number or code that would be used by the designated recipient to pick up the transfer, or other identification number or code supplied by the remittance transfer provider in connection with the transfer, if the number or code is sufficient for the remittance transfer provider to identify the sender (and contact information), designated recipient, and the transfer in question (Comment 33(b)-2 and 3).

Effect of late notice

A remittance transfer provider is not required to comply with the error resolution requirements for any notice of error from a sender that is received more than 180 days from the disclosed date of availability of the remittance transfer or, if applicable, more than 60 days after a provider sent documentation, additional information, or clarification requested by the sender (Comment 33(b)-4).

Notice of error provided to agent

A notice of error provided by a sender to an agent of the remittance transfer provider is deemed to be received by the provider when the agent receives it (Comment 33(b)-5).

Consumer notice of error resolution rights

In addition to the requirement to provide an abbreviated notice of the consumer's error resolution rights on the receipt or combined notice, the remittance transfer provider must make available to a sender, upon request, a notice providing a full description of the sender's error resolution rights, using language set forth in Appendix A (Model Form A-36) or substantially similar language (Comment 33(b)-6).

Time Limits and Extent of Investigation - 12 CFR 1005.33(c)

A remittance transfer provider must investigate promptly and determine whether an error occurred within 90 days of receiving a notice of error. The remittance transfer provider must report the results to the sender within three business days after completing its investigation and include notice of any remedies available for correcting any error that the provider determines has occurred. If the remittance transfer provider determines during its investigation that an error occurred as described by the sender, the remittance provider may inform the sender of its findings either orally or in writing. However, if the provider determines that no error or a different error occurred, the provider must provide a written explanation of the findings, and note the sender's right to request the documents on which the provider relied in making its determination (12 CFR 1005.33(d)(1) Comment 33(c)-1).

Remedies

If the remittance transfer provider determines an error (as defined in subpart B) occurred and the error relates to:

A. an incorrect amount paid by the sender,

B. a computational or bookkeeping error made by the remittance transfer provider, or

C. failure to make the amount of currency stated in the disclosures available to the designated recipient,

the provider must either:

A. refund the amount of funds provided by the sender in connection with a remittance transfer which was not properly transmitted, or the amount appropriate to resolve the error; or

B. make available to the designated recipient, the amount appropriate to resolve the error without additional cost to

the sender or the designated recipient (12 CFR 1005.33(c)(2)(i)).

If the error relates to a sender's request for documentation or additional information or clarification to determine whether an error exists, the remittance transfer provider must provide the requested information (12 CFR 1005.33(c)(2)(iv)) .

Remedy in the case of failure to make funds available by the disclosed date of availability

A. Where failure to make funds available by the disclosed date of availability occurred due to incorrect or insufficient information provided by the sender:

The remittance transfer provider is required to refund to the sender the amount of funds that was not properly transmitted, or the amount appropriate to resolve the error, and any fees and taxes paid by the sender in connection with the remittance transfer, within three business days of providing the written explanation of findings. However, the provider may agree to the sender's request, upon receiving the results of the error investigation, to apply the funds towards a new remittance transfer, rather than be refunded, if the provider has not yet processed a refund.

The provider may deduct from the amount refunded or applied towards a new transfer any fees actually deducted by a person other than the provider (except those that will ultimately be refunded to the provider) on or, to the extent not prohibited by law, taxes actually collected on the remittance transfer as part of the first unsuccessful remittance transfer attempt and inform the sender of the deduction and reason. The provider may not deduct its own fees. The agreement to apply the funds towards a new transfer is treated as a new remittance transfer and the provider must provide new disclosures in accordance with 12 CFR 1005.31 and all other applicable provisions of subpart B (12 CFR 1005.33(c)(2)(iii) and Comments 33(c)-11 and -12).

B. All other instances of failure to make funds available by the disclosed date of availability:

As applicable, the remittance transfer provider must either:

1. Refund to the sender, the amount of funds which was not properly transmitted or the amount appropriate to resolve the error; or

2. Make available to the designated recipient the amount appropriate to resolve the error without additional cost to the sender or to the designated recipient; *and*

Refund to the sender any fees imposed and, to the extent not prohibited by law, taxes collected on the remittance transfer (12 CFR 1005.33(c)(2)(ii).

Designation of requested remedy

The provider may request that the sender indicate the preferred remedy when providing the notice of the error. If the provider does so, it should indicate that a resend remedy may be unavailable if the error occurred because the sender provided incorrect or insufficient information. If the sender does not indicate the desired remedy at the time of providing notice of error, the remittance transfer provider must notify the sender of any available remedies in the written explanation of findings (Comment 33(c)-3).

Default remedy (except where the sender provided incorrect or insufficient information)

The provider may set a default remedy that the remittance transfer provider will use if the sender does not designate a remedy within a reasonable time after receiving the written explanation of findings. If a default remedy is provided, the remittance transfer provider must correct the error within one business day or as soon as reasonably practicable, after the reasonable time for the sender to designate the remedy has passed. For purposes of designating a remedy, ten days is deemed a reasonable time (Comment 33(c)-4).

Amount appropriate to resolve the error

The amount appropriate to resolve the error is the specific amount of transferred funds that should have been received if the remittance transfer had taken place without error. It does not include consequential damages. (Comment 33(c)-5).

Form of refund

Where a refund may be issued, a remittance transfer provider may generally, at its discretion, issue a refund either in cash or in the same form of payment that was initially provided by the sender for the remittance transfer (Comment 33(c)-6).

Remedies for incorrect amount paid

If an error relates to the payment of an incorrect amount, the sender may request a refund of the amount necessary to resolve the error or request that the remittance transfer provider make the amount necessary to resolve the error available to the designated recipient at no additional cost (Comment 33(c)-7).

Correction of an error if funds were not not available by disclosed date

If the remittance transfer provider determines an error related to failure to make funds available by the disclosed date

occurred, it must correct the error and refund any fees imposed by the provider or a third party involved in sending the transfer, such as an intermediary bank involved in sending a wire transfer or the institution from which the funds are picked up (unless the sender provided incorrect or insufficient information to the remittance transfer provider in connection with the remittance transfer) (Comment 33(c)-8).

Charges for error resolution

If an error occurred, whether as alleged or in a different amount or manner, the remittance transfer provider may not impose a charge related to any aspect of the error resolution process (including charges for documentation or investigation) (Comment 33(c)-9).

Correction without investigation

A remittance transfer provider may correct an error, without investigation, in the amount or manner alleged by the sender, or otherwise determined, to be in error, but must comply with all other applicable requirements (Comment 33(c)-10).

Procedures if Remittance Transfer Provider Determines No Error or Different Error Occurred - 12 CFR 1005.33(d)

If the remittance transfer provider determines that no error occurred or that an error occurred in a manner or amount different from that described by the sender, its report of the results of the investigation must include a written explanation of the provider's findings and shall note the sender's right to request the documents on which it relied in making its determination. The explanation should also address the specific complaint of the sender. Upon the sender's request, the remittance transfer provider must also promptly provide copies of the documents on which it relied to make its error determination (12 CFR 1005.33(d)).

Error different from that alleged

If a remittance transfer provider determines that an error occurred in a manner or amount different from that described by the sender, it must comply with the requirements of both 12 CFR 1005.33(c) (concerning the investigation) and (d) (procedures if remittance transfer provider determines no error or different error occurred), as applicable. The provider may give the notice of correction and the explanation separately or in a combined form (Comment 33(d)-1).

Reassertion of Error - 12 CFR 1005.33(e)

A remittance transfer provider that has fully complied with the error resolution requirements of this section generally has no further responsibilities should the sender later reassert the same error, except in the case of an error asserted by the sender following receipt of additional information requested from the provider (12 CFR 1005.33(e)).

Withdrawal of error; right to reassert

The remittance transfer provider has no further error resolution responsibilities if the sender voluntarily withdraws the notice alleging an error. A sender who has withdrawn an allegation of error has the right to reassert the allegation unless the remittance transfer provider had already complied with all of the error resolution requirements before the allegation was withdrawn. The sender must do so, however, within the original 180-day period from the disclosed date of availability or, if applicable, the 60-day period for a notice of error based on documentation or clarification that the sender previously requested (Comment 33(e)-1).

Relation to Other Laws - 12 CFR 1005.33(f)

Relation to Regulation E for incorrect EFTs from a sender's account - 12 CFR 1005.11

If an alleged error involves an incorrect electronic fund transfer from a sender's account in connection with a remittance transfer, and the sender provides a notice of error to the account-holding institution, the requirements of 12 CFR 1005.11 governing error resolution apply if the account-holding institution is not also the remittance transfer provider. However, if the remittance transfer provider is also the account holding institution, then the error-resolution provisions of 12 CFR 1005.33 apply when the sender provides such notice of error (12 CFR 1005.33(f)(1)).

Concurrent error obligations

A remittance transfer provider that holds the sender's account may have error obligations under both 12 CFR 1005.11 and 1005.33, depending on the relationship with the sender and the nature of the error. For example, if a sender asserts an error under 12 CFR 1005.11 with a remittance transfer provider that holds the sender's account, and the error is not also an error under 12 CFR 1005.33 (such as the omission of an EFT on a periodic statement), then the error-resolution provisions of 12 CFR 1005.11 exclusively apply to the error. However, if a sender asserts an error under 12 CFR 1005.33 with a remittance transfer provider that holds the sender's account, and the error is also an error under 12 CFR 1005.11 (such as when the amount the sender requested to be deducted from the sender's account and sent for the remittance transfer differs from the amount that was actually deducted from the account and sent), then the error-resolution provisions of 12 CFR 1005.33 exclusively apply to the error Comment 33(f)-1).

Relation to Truth in Lending Act and Regulation Z

If an alleged error involves an incorrect extension of credit in connection with a remittance transfer, an incorrect amount

received by the designated recipient that is an extension of credit for property or services not delivered as agreed, or the failure to make funds available by the disclosed date of availability that is an extension of credit for property or services not delivered as agreed, and the sender provides a notice of error to the creditor extending the credit, the error resolution provisions of Regulation Z, 12 CFR 1026.13 apply to the creditor, rather than the requirements of 12 CFR 1005.33, even if the creditor is the remittance transfer provider. However, if the creditor is the remittance transfer provider, the error resolution requirements of 12 CFR 1005.33(b) will apply instead of 12 CFR 1026.13(b). If the sender instead provides a notice of error to the remittance transfer provider that is not also the creditor, then the error-resolution provisions of 12 CFR 1005.33 apply to the remittance transfer provider (12 CFR 1005.33(f)(2)).

Unauthorized remittance transfers

If an alleged error involves an unauthorized electronic fund transfer for payment in connection with a remittance transfer, 12 CFR 1005.6 and 1005.11 apply with respect to the account-holding institution. If an alleged error involves an unauthorized use of a credit account for payment in connection with a remittance transfer, the provisions of Regulation Z, 12 CFR 1026.12(b), if applicable, and 12 CFR 1026.13, apply with respect to the creditor (12 CFR 1005.33(f)(3)).

Holder in due course

The error resolution provisions in subpart B do not affect a sender's rights to assert claims and defenses against a card issuer concerning property or services purchased with a credit card under Regulation Z, 12 CFR 1026.12(c)(1), as applicable (Comment 33(f)-2).

Assertion of the same error with multiple parties

If a sender receives credit to correct an error of an incorrect amount paid in connection with a remittance transfer from either the remittance transfer provider or account-holding institution (or creditor), and subsequently asserts the same error with another party, that party has no further responsibilities to investigate the error if the error has been corrected. In addition, nothing prevents an account-holding institution or creditor from reversing amounts it has previously credited to correct an error if a sender receives more than one credit to correct the same error (Comment 33(f)-3).

Error Resolution Standards and Recordkeeping Requirements - 12 CFR 1005.33(g)

Compliance program. A remittance transfer provider must develop and maintain written policies and procedures that are designed to ensure compliance with the error resolution requirements applicable to remittance transfers. Policies and procedures must address the retention of records related to error investigations (12 CFR 1005.33(g)(1) and (2)).

Record retention requirements

Remittance transfer providers are subject to the record retention requirements under subpart A (12 CFR 1005.13 and Comment 33(g)-1). See also, section XVIII below.

XVI. Procedures for Cancellation and Refund of Remittance Transfers - 12 CFR 1005.34

Sender's Right of Cancellation and Refund

Except for certain remittance transfers scheduled in advance subject to 12 CFR 1005.36(c), a remittance transfer provider generally must comply with any oral or written request to cancel a remittance transfer from the sender that is received by the provider no later than 30 minutes after the sender makes payment in connection with the remittance transfer if:

A. The request to cancel enables the provider to identify the sender's name and address or telephone number and the particular transfer to be cancelled; and

B. The transferred funds have not been picked up by the designated recipient or deposited into an account of the designated recipient (12 CFR 1005.34(a)).

Content of cancellation request

A request to cancel a remittance transfer is valid so long as the remittance transfer provider is able to identify the remittance transfer in question (Comment 34(a)-1).

Notice of cancellation right

A remittance transfer provider is required to include an abbreviated notice of the sender's right to cancel a remittance transfer on the receipt or combined disclosure provided to the sender. In addition, the remittance transfer provider must make available to a sender upon request, a notice providing a full description of the right to cancel a remittance transfer (Comment 34(a)-2). See also Model Form 36 in Appendix A.

Thirty-minute cancellation right

Except for certain remittance transfers scheduled in advance subject to 12 CFR 1005.36(c), a remittance transfer provider must comply with the cancellation and refund requirements if the cancellation request is received no later than 30 minutes after the sender makes payment (Comment 34(a)-3).

Cancellation request provided to agent

A cancellation request provided by a sender to an agent of the remittance transfer provider is deemed to be received by the provider when received by the agent (Comment 34(a)-4).

Time limits and refund requirements

If a sender provides a timely request to cancel a remittance transfer, a remittance transfer provider must, within three business days of receiving the request, refund all funds provided by the sender in connection with the remittance transfer, including any fees and, to the extent not prohibited by law, taxes that have been imposed for the transfer, whether the fee or tax was assessed by the provider or a third party, such as an intermediary institution, the agent or bank in the recipient country, or a state or other governmental body (12 CFR 1005.34(b) and Comment 34(b)-2).

Form of refund

A remittance transfer provider generally may issue a refund either in cash or in the same form of payment that was initially provided by the sender for the remittance transfer (Comment 34(b)-1).

XVII. Acts of Agents - 12 CFR 1005.35

A remittance transfer provider is strictly liable for a violation by an agent, when such agent acts on its behalf. Remittance transfer providers must comply with the requirements of subpart B, even if an agent or other person performs functions for the remittance transfer provider, and regardless of whether the provider has an agreement with a third party that transfers or otherwise makes funds available to a designated recipient (12 CFR 1005.35 and Comment 35-1).

Agencies responsible for enforcing the requirements of EFTA section 919 and subpart B of Regulation E may consider, in any action or other proceeding against a remittance transfer provider, the extent to which the provider had established and maintained policies or procedures for compliance, including policies, procedures, or other appropriate oversight measures designed to assure compliance by an agent or authorized delegate acting for such provider (EFTA section 919(f)(2)).

XVIII. Transfers Scheduled before the Date of Transfer - 12 CFR 1005.36

Applicability of subpart B. The requirements set forth in subpart B apply to remittance transfers scheduled before the transfer date, unless modified by 12 CFR 1005.36. For example, the foreign language disclosure requirements apply to disclosures provided in connection with transfers scheduled in advance (Comment 36-1).

Timing - 12 CFR 1005.36(a)

For one-time transfers scheduled five or more business days in advance or for the first in a series of transfers authorized in advance to recur at substantially regular intervals (preauthorized remittance transfers), the remittance transfer provider must provide either a pre-payment disclosure and a receipt or a combined disclosure at the time the sender requests the transfer but prior to payment. If any of the disclosures provided contain estimates, the provider must mail or deliver an additional receipt no later than one business day after the date of the transfer. If the transfer involves the transfer of funds from the sender's account held by the provider, this additional receipt may be provided on or with the next periodic statement for that account, or within 30 days after the date of the transfer if a periodic statement is not provided (12 CFR 1005.36(a)(1)).

Subsequent Preauthorized Remittance Transfers

For each subsequent preauthorized remittance transfer, the provider must provide an updated receipt if any of the information (other than temporal disclosures) on the most recent receipt is no longer accurate for reasons other than as permitted in the estimates provisions of 12 CFR 1005.32. The receipt must clearly and conspicuously indicate that it contains updated disclosures and must be mailed or delivered to the sender within a reasonable time prior to the scheduled date of the next subsequent preauthorized remittance transfer. If the disclosure is mailed no later than ten business days or delivered by hand or electronically no later than five business days before the scheduled date of the transfer, the provider is deemed to have provided the disclosure within a reasonable time (12 CFR 1005.36(a)(2)(i) and Comments 36(a)(2)-1, -2, and -3).

For each subsequent preauthorized transfer, the remittance transfer provider must mail or deliver to the sender a receipt no later than one business day after the date of the transfer. This is not required in situations where an updated receipt that contained no estimates was provided prior to the scheduled date of the next subsequent preauthorized remittance transfer. If the remittance transfer involves the transfer of funds from the sender's account held by the provider, the receipt may be provided on or with the next periodic statement for that account, or within 30 days after the date of the transfer if a periodic statement is not provided (12 CFR 1005.36(a)(2)(ii)).

Accuracy - 12 CFR 1005.36(b)

For a one-time transfer scheduled five or more business days in advance or for the first in a series of preauthorized remittance transfers, disclosures provided must be accurate

when a sender makes payment except to the extent estimates are permitted. Unless estimates are permitted, for each subsequent preauthorized remittance transfer, the most recent receipt provided must generally be accurate as of when such transfer is made except to the extent estimates are permitted. Temporal elements in the disclosures like the date of availability and the transfer date must only be accurate if the transfer is the first transfer after the disclosure was provided (12 CFR 1005.36(b)).

Cancellation--12 CFR 1005.36(c)

Cancellation of transfers scheduled at least three days in advance

A remittance transfer provider must comply with any oral or written request to cancel any remittance transfer scheduled by the sender at least three business days before the date of the remittance transfer if the request to cancel:

A. Enables the provider to identify the sender's name and address or telephone number and the particular transfer to be cancelled; and

B. Is received by the provider at least three business days before the scheduled date of the remittance transfer (12 CFR 1005.36(c)).

The right of cancellation applies when a remittance transfer is scheduled by the sender at least three business days before the date of the transfer, regardless of whether the sender schedules a preauthorized remittance transfer or a one-time transfer. For transfers scheduled less than three business days before the date of transfer the 30 minute cancellation deadline in 12 CFR 1005.34 applies (Comment 36(c)-1).

Cancelled preauthorized remittance transfers

For preauthorized remittance transfers, the provider must assume the request to cancel applies to all future preauthorized remittance transfers, unless the sender specifically indicates that it should apply only to the next scheduled transfer (Comment 36(c)-2).

Concurrent cancellation obligations

A financial institution that is also a remittance transfer provider may have both stop payment obligations under 12 CFR 1005.10 and cancellation obligations under 12 CFR 1005.36. If a sender cancels a remittance transfer under 12 CFR 1005.36 with a remittance transfer provider that holds the sender's account, and the transfer is a preauthorized transfer, 12 CFR 1005.36 applies exclusively (Comment 36(c)-3).

Additional Requirements for Subsequent Preauthorized Remittance Transfers - 12 CFR 1005.36(d)

Disclosure requirement

For any subsequent transfer in a series of preauthorized remittance transfers, the remittance transfer provider must disclose:

A. the date of the subsequent transfer using the term "Future Transfer Date" or a substantially similar term;

B. a statement of the sender's cancellation rights; and

C. the name, telephone number(s), and website of the remittance transfer provider (12 CFR 1005.36(d)(1)).

The disclosures must be provided no more than 12 months and no less than five business days prior to the date of the subsequent preauthorized remittance transfer. For any subsequent preauthorized remittance transfer for which the date of transfer is four or fewer business days after the date payment is made, the disclosure must generally be provided on or with the receipt for the initial transfer in that series (12 CFR 1005.36(d)(2)).

A remittance transfer provider has some flexibility in determining how and when the disclosures required by 12 CFR 1005.36(d)(1) may be provided to senders. They may be provided as a separate disclosure, or on or with any other disclosure required by subpart B related to the same series of preauthorized remittance transfers, provided that the disclosure and timing requirements in 12 CFR 1005.36(d)(2) and other applicable provisions in subpart B are satisfied (Comment 36(d)-1).

If any of the information provided in these disclosures change, the provider must provide an updated disclosure with the revised information that is accurate as of when the transfer is made (12 CFR 1005.36(d)(1) and (4) and Comments 36(d)-2, 3 and 4).

For any subsequent preauthorized remittance transfer, the future date of transfer must be provided on any receipt provided for the initial transfer in that series of preauthorized remittance transfers. If the provider discloses the dates of subsequent preauthorized remittance transfers and the applicable cancellation period on either the receipt provided when payment is made or on a second receipt, the disclosure must be phrased and formatted in such a way that it is clear to the sender which cancellation period is applicable to any date of transfer on the receipt (Comment 31(b)(2)-5).

The following sections are applicable to both subpart A and subpart B

XIX. Preemption

The EFTA and Regulation E preempt inconsistent state laws, but only to the extent of the inconsistency. The CFPB is given the authority to determine whether or not a state law is inconsistent. An entity, state, or other interested party may request the CFPB 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 CFPB has the authority to exempt any state from the requirements of the EFTA or the regulation for any class of EFTs within a state, with the exception of the civil liability provision . (EFTA section 922 and 12 CFR 1005.12(b) and (c)).

XX. Administrative Enforcement and Record Retention - 12 CFR 1005.13

Section 918 of the EFTA sets forth the federal agencies responsible for enforcing compliance with the provisions of the law and its implementing regulation.

Record retention

Any person subject to the EFTA and Regulation E must maintain evidence of compliance with the EFTA and Regulation E for at least two years from the date the disclosures are required to be made or action is required to be taken.. The agency supervising the person may extend this period. The period may also be extended if the person is subject to an action filed under Sections 910, 915 or 916(a) of the EFTA, which generally apply to the person'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 (12 CFR 1005.13 and 1005.33(g)).

Records may be stored on microfiche, microfilm, magnetic tape, or in any other manner capable of accurately retaining and reproducing the information.

XXI. Miscellaneous

The EFTA contains several additional provisions that are not directly reflected in the language of Regulation E. Most significantly, 15 U.S.C. 1693*l* provides that the consumer may not waive by agreement any right conferred, or cause of action created, by the EFTA. However, the consumer and another person may provide by agreement greater consumer protections or additional rights or remedies than those provided by the EFTA. In addition, the consumer may sign a waiver in settlement of a dispute.

If a third party payee has agreed to accept payment by EFT, the consumer's obligation to pay is suspended during any period in which a system malfunction prevents an EFT from occurring (15 U.S.C. 1693j). However, the payee may avoid that suspension by making a written request for payment by means other than EFT.

Failure to comply with the requirements of the EFTA can result in civil and criminal liability, as outlined in 15 U.S.C. 1693m and 15 U.S.C. 1693n. Financial institutions may also be liable for damages under 15 U.S.C. 1693h due to failure to complete an EFT or failure to stop a preauthorized transfer when instructed to do so.

Model disclosure clauses and forms — 12 CFR 1005, Appendix A

Appendix A of Regulation E contains model clauses and forms that entities may use to comply with the requirement disclosure requirements of Regulation E. Use of the model forms is optional and an entity may make certain changes to the language or format of the model forms without losing the protection from civil and criminal liability under Sections 915 and 916 of the EFTA. The model forms are:

For subpart A:

A-1 Model Clauses for Unsolicited Issuance (12 CFR 1005.5(b)(2))

A-2 Model Clauses for Initial Disclosures (12 CFR 1005.7(b))

A-3 Model Forms for Error Resolution Notice (12 CFR 1005.7(b)(10) and 1005.8(b))

A-4 Model Form for Service-Providing Institutions (12 CFR 1005.14(b)(1)(ii))

A-5 Model Clauses for Government Agencies (12 CFR 1005.15(e)(1) and(2))

A-6 Model Clauses for Authorizing One-Time Electronic Fund Transfers Using Information from a Check (12 CFR 1005.3(b)(2))

A-7 Model Clauses for Financial Institutions Offering Prepaid Accounts (12 CFR 1005.18(d) and (e)(3))

A-8 Model Clause for Electronic Collection of Returned Item Fees (12 CFR 1005.3(b)(3))

A-9 Model Consent Form for Overdraft Services (12 CFR 1005.17)

A-10(a) Model Form for Short Form Disclosures for Government Benefit Accounts (12 CFR 1005.15(c) and 1005.18(b)(2), (3), (6), and (7))

A-10(b) Model Form for Short Form Disclosures for Payroll Card Accounts (12 CFR 1005.18(b)(2), (3), (6), and (7))

A-10(c) Model Form for Short Form Disclosures for Prepaid Accounts, Example 1 (12 CFR 1005.18(b)(2), (3), (6), and (7))

A-10(d) Model Form for Short Form Disclosures for Prepaid Accounts, Example 2 (12 CFR 1005.18(b)(2), (3), (6), and (7))

A-10(e) Model Form for Short Form Disclosures for Prepaid Accounts with Multiple Service Plans (12 CFR 1005.18(b)(2), (3), (6), and (7))

For subpart B:

A-10(f) Sample Form for Long Form Disclosures for Prepaid Accounts (12 CFR 1005.18(b)(4), (6), and (7))

A-30(a) Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency including a disclaimer where non-covered third-party fees and foreign taxes may apply (12 CFR 1005.31(b)(1))

A-30(b) Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency including a disclaimer with estimate for non-covered third-party fees (12 CFR 1005.31(b)(1) and 12 CFR 1005.32(b)(3))

A-30(c) Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency including a disclaimer with estimate for foreign taxes (12 CFR 1005.31(b)(1) and 12 CFR 1005.32(b)(3))

A-30(d) Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency, including a disclaimer with estimates for non-covered third-party fees and foreign taxes (12 CFR 1005.31(b)(1) and 12 CFR 1005.32(b)(3))

A-31 Model Form for Receipts for Remittance Transfers Exchanged into Local Currency (12 CFR 1005.31(b)(2))

A-32 Model Form for Combined Disclosures for Remittance Transfers Exchanged into Local Currency (12 CFR 1005.31(b)(3))

A-33 Model Form for Pre-Payment Disclosures for Dollar-to-Dollar Remittance Transfers (12 CFR 1005.31(b)(1))

A-34 Model Form for Receipts for Dollar-to-Dollar Remittance Transfers (12 CFR 1005.31(b)(2))

A-35 Model Form for Combined Disclosures for Dollar-to-Dollar Remittance Transfers (12 CFR 1005.31(b)(3))

A-36 Model Form for Error Resolution and Cancellation Disclosures (Long) (12 CFR 1005.31(b)(4))

A-37 Model Form for Error Resolution and Cancellation Disclosures (Short) (12 CFR 1005.31(b)(2)(iv) and (b)(2)(vi))

A-38 Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency – Spanish (12 CFR 1005.31(b)(1))

A-39 Model Form for Receipts for Remittance Transfers Exchanged into Local Currency – Spanish (12 CFR 1005.31(b)(2))

A-40 Model Form for Combined Disclosures for Remittance Transfers Exchanged into Local Currency – Spanish (12 CFR 1005.31(b)(3))

A-41 Model Form for Error Resolution and Cancellation Disclosures (Long) – Spanish (12 CFR 1005.31(b)(4))

Examination Procedures[27]

These examination procedures are divided into three sections:

- Section I covers management and policy related procedures for both financial institutions and other entities that may be remittance transfer providers (referred to herein as "entity").
- Section II covers electronic fund transfers conducted by financial institutions.
- Section III applies to remittance transfer providers (including financial institutions).

Each examination should be risk based and may not require an examiner to complete all three sections. In addition, each agency may have its own supervisory strategy that will dictate which sections of these examination procedures are required to be completed.

[27] These reflect the interagency examination procedures in their entirety.

Examination Objectives

In general, a Regulation E examination is conducted to:

- Determine the entity's compliance with Regulation E.
- Assess the quality of the entity's compliance risk management systems and its policies and procedures for implementing Regulation E.
- Determine the level of reliance that can be placed on the entity's internal controls and procedures for monitoring the entity's compliance with Regulation E.
- As appropriate, direct corrective action when violations of law are identified or when the entity's policies or internal controls are deficient.

Section I - Management and Policy-Related Examination Procedures

1. Through a review of all available information (e.g. board minutes, management reports, monitoring reports, etc.) and discussions with management, determine that the board and management have set clear expectations about compliance with Regulation E, not only within the entity but also concerning key business partners, including agents, correspondent banks, and software providers, to the extent relevant.
2. Through a review of all available information (e.g. written policies and procedures, management's self-assessments, customer complaints, prior examination reports) and any compliance audit material, including work papers and reports, determine whether:
   a. There are any weaknesses or other risks in the business model.
   b. The scope of the audit addresses all provisions of Regulation E as applicable.
   c. The scope of the audit addresses all key business processes and functions, including those carried out by third-party service providers or key business partners, as appropriate.
   d. Management has taken corrective actions to follow up on previously identified deficiencies.
   e. As applicable, testing includes risk-based samples covering product types and decision centers.
   f. There is an audit trail that supports the findings and conclusions of the work performed.
   g. Significant deficiencies and their causes are included in reports to management and/or to the Board of Directors or principal(s).
   h. The frequency of review is appropriate.
3. Through discussions with management and review of available information, determine whether the entity's internal controls are adequate to ensure compliance with respect to the Regulation E area under review. Consider among other things:
   a. Organizational charts;
   b. Process flowcharts;
   c. Policies and procedures;
   d. Account (if applicable) and transaction documentation;
   e. Checklists; and
   f. Computer program documentation.
4. Through a review of the entity's training materials and discussions with management, determine whether:
   a. The entity provides appropriate training to employees and other persons responsible for Regulation E compliance and operational procedures.
   b. The training is comprehensive and covers the sections of Regulation E that apply to the individual entity's product offerings and operations including, to the extent appropriate, those functions carried out by third-party service providers or other business partners, such as agents and correspondent banks.

Section II — Subpart A

Based on the materials reviewed within Section I, complete Section II, as applicable, to determine the financial institution's compliance with Regulation E.

Transaction-Related Examination Procedures

Conduct transaction testing, using the following examination procedures:

1. Obtain and review copies of the following:
   a. Disclosure forms;
   b. Advertising and scripts for overdraft opt-ins;
   c. Account agreements;

d. Procedural manuals and written policies;

e. Merchant agreements;

f. Automated teller machine receipts and periodic statements;

g. Error resolution statements/files;

h. Form letters used in case of errors or questions concerning an account;

i. Any agreements with third parties allocating compliance responsibilities; and

j. Consumer complaint files.

Policies and Procedures

2. Determine the extent and adequacy of the financial institution's policies, procedures, and practices for ensuring compliance with the regulation. In particular, verify that:

   a. Access devices are issued in compliance with the regulation (12 CFR 1005.5(b)).

   b. Required disclosures are given at the time the account is opened or prior to the first electronic funds transfer ("EFT") (12 CFR 1005.4 and 1005.7(c)).

   c. Unauthorized transfer claims are processed in compliance with the regulation (12 CFR 1005.6 and 1005.11).

   d. Liability for unauthorized transfer claims is assessed in compliance with the regulation (12 CFR 1005.6).

   e. Negligence is not a factor in determining customer liability. The deposit agreement may not impose greater liability than Regulation E provides but may provide for less consumer liability (12 CFR 1005.6).

   f. Preauthorized debits and credits comply with the regulation (12 CFR 1005.10).

Disclosures, Notices, Receipts, Periodic Statements, and Preauthorized Transfers

3. If the financial institution has changed the terms or conditions of initial disclosures for EFT services since the last examination that required a written notice to the customer, determine that the institution provided the proper notice in a timely manner (12 CFR 1005.8(a)).

4. Review a sample of periodic statements for each type of account in which electronic fund transfers occur to determine that they contain sufficient information for the consumer to identify transactions adequately and that they otherwise comply with regulatory requirements (12 CFR 1005.9).

5. Verify that the financial institution does not require compulsory use of EFTs, except as authorized (12 CFR 1005.10(e)).

6. For unauthorized transfers, lost or stolen ATM cards, and EFT consumer complaints, and their respective periodic statements, determine whether:

   a. The financial institution is in compliance with its error resolution procedures to isolate any apparent deficiencies in the financial institution's operations to ensure that the institution follows its policies for unauthorized transfers (12 CFR 1005.6 and 1005.11).

   b. The financial institution investigates alleged errors and notifies consumers of the results within allotted time frames and, when appropriate, provisionally re-credits the account (12 CFR 1005.11(c)).

   c. The financial institution follows regulatory procedures after it completes its investigation and determines either that an error occurred (12 CFR 1005.11(c)(1)) or that no error occurred (12 CFR 1005.11(d)).

7. Review ATM and point-of-sale transfer receipts to determine whether they provide a clear description of the transaction (12 CFR 1005.9(a)).

8. 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 taken (12 CFR 1005.13(b)).

9. If the financial institution operates one or more ATMs for which it charges a fee for use, determine that the financial institution provides notice of the fee and the amount of the fee on the screen of the ATM or on paper before the consumer is committed to paying the fee (12 CFR 1005.16).

Overdrafts – 12 CFR 1005.17

10. Determine that the financial institution holding a consumer's account does not assess a fee or charge on a consumer's account for paying an ATM or one-time debit

card transaction pursuant to the institution's overdraft service,[28] unless the institution:

a. Provides the consumer with a notice in writing (or if the consumer agrees, electronically), that is segregated from all other information and describes the institution's overdraft service;

b. Provides a reasonable opportunity for the consumer to affirmatively consent, or opt in, to the service for ATM and one-time debit card transactions;

c. Obtains the consumer's affirmative consent, or opt-in, to the institution's payment of ATM or one-time debit card transactions; and

d. Provides the consumer with confirmation of the consumer's consent in writing (or if the consumer agrees, electronically), which includes a statement informing the consumer of the right to revoke such consent.

(12 CFR 1005.17(b)(1))

NOTE: An institution does not have to meet the notice requirements described above if it does not impose a fee or charge for paying an overdraft transaction for ATM and one-time debit card transactions. For example, an institution that has a policy and practice of declining to authorize and pay any ATM or one-time debit card transactions when it has a reasonable belief at the time of the authorization request that the consumer does not have sufficient funds available to cover the transaction may pay such an overdraft regardless of notice. However, it is still prohibited from charging fees for paying an ATM or one-time debit transaction overdraft (12 CFR 1005, and Comments 1005.17(b)-1(iv) and 17(b)-2).

11. Determine that in assessing overdraft fees for consumers who have not opted in, the institution charges fees only for negative balances, daily, or sustained overdraft, or similar fees, when the negative balance is attributable in whole or in part to checks, automated clearing house (ACH) or other transactions not subject to the fee prohibition, and that the fee is assessed based on the date when the check is paid into overdraft, not the date of the ATM or one-time debit transaction (Comment 1005.17(b)-9).

12. Determine that the financial institution does not:

    a. Condition the payment of any overdrafts for checks, ACH transactions, and other types of transactions on the consumer affirmatively consenting to the institution's payment of ATM and one-time debit card transactions pursuant to the institution's overdraft service; or

    b. Decline to pay checks, ACH transactions, and other types of transactions that overdraw the consumer's account because the consumer has not affirmatively consented to the institution's overdraft service for ATM and one-time debit card transactions.

    (12 CFR 1005.17(b)(2))

13. Determine that the financial institution provides to consumers who do not affirmatively consent to the institution's overdraft service for ATM and one-time debit card transactions the same account terms, conditions, and features that it provides to consumers who affirmatively consent, except for the overdraft service for ATM and one-time debit card transactions (12 CFR 1005.17(b)(3)).

14. Ensure that the notice required by 12 CFR 1005.17(b)(1)(i) is substantially similar to Model Form A–9 (Model Consent Form for Overdraft Services), includes all applicable items in the following list, and does not contain any additional information:

    a. ***Overdraft service.*** A brief description of the financial institution's overdraft service and the types of transactions for which a fee or charge for paying an overdraft may be imposed, including ATM and one-time debit card transactions.

    b. ***Fees imposed.*** The dollar amount of any fees or charges assessed by the financial institution for paying an ATM or one-time debit card transaction pursuant to the institution's overdraft service, including any daily or other overdraft fees. If the amount of the fee is determined on the basis of the number of times the consumer has overdrawn the account, the amount of the overdraft, or other factors, the institution must disclose the maximum fee that may be imposed.

    c. ***Limits on fees charged.*** The maximum number of overdraft fees or charges that may be assessed per day, or, if applicable, that there is no limit.

    d. ***Disclosure of opt-in right.*** An explanation of the consumer's right to affirmatively consent to the financial institution's payment of overdrafts for ATM and one-time debit card transactions pursuant to the financial institution's overdraft service, including the

[28] The term "overdraft service" means a service under which a financial institution assesses a fee or charge on a consumer's account held by the financial institution for paying a transaction (including a check or other item) when the consumer has insufficient or unavailable funds in the account (12 CFR 1005.17(a)). "Overdraft service" does not include a service that transfers funds from another account held by a consumer or a line of credit.

methods by which the consumer may consent to the service; and

e. ***Alternative plans for covering overdrafts.*** If the institution offers both a line of credit subject to Regulation Z (12 CFR Part 1026) and a service that transfers funds from another account of the consumer held at the institution to cover overdrafts, the institution must state in its opt-in notice that both alternative plans are offered. If the institution offers one, but not the other, it must state in its opt-in notice the alternative plan that it offers. If the institution does not offer either plan, it should omit the reference to the alternative plans. If the financial institution offers additional alternatives for paying overdrafts, it may (but is not required to) disclose those alternatives.

(12 CFR 1005.17(d) and Comments 1005.17(d)-1 through 1005.17(d)-5)

NOTE: Permitted modifications and additional content. If applicable, the institution may modify the content required by 12 CFR 1005.17(d) to indicate that the consumer has the right to opt in to, or opt out of, the payment of overdrafts under the institution's overdraft service for other types of transactions, such as checks, ACH transactions, or automatic bill payments; to provide a means for the consumer to exercise this choice; and to disclose the associated returned item fee and that additional merchant fees may apply. The institution may also disclose the consumer's right to revoke consent. The response portion of Model Form A-9 may be tailored to the methods offered for opting in, and may include reasonable methods to identify the account, such as a bar code.

15. Determine that, when two or more consumers jointly hold an account, the financial institution treats the affirmative consent of any of the joint consumers as affirmative consent for that account, and treats a revocation of affirmative consent by any of the joint consumers as revocation of consent for that account (12 CFR 1005.17(e)).

16. Ensure that a consumer may affirmatively consent to the financial institution's overdraft service at any time in the manner described in the institution's (12 CFR 1005.17(b)(1)(i)) notice, and that a consumer may also revoke consent at any time in the manner made available to the consumer for providing consent (12 CFR 1005.17(f)).

17. Determine that the financial institution implements a consumer's revocation of consent as soon as reasonably practicable (12 CFR 1005(17)(f)).

18. Determine that a consumer's affirmative consent to the institution's overdraft service is effective until revoked by the consumer, or until the financial institution terminates the service (12 CFR 1005.17(g)).

19. Determine that the financial institution's overdraft protection program incorporates FDIC guidance as applicable.

Prepaid Accounts – 12 CFR 1005.18 and 1005.15

NOTE: Additional Regulation E procedures outside of the "Prepaid Accounts" section may also apply to prepaid accounts.

20. Verify that the institution meets all pre-acquisition prepaid account disclosure requirements, including the required timing, content, and formatting for short- and long-form disclosures (12 CFR 1005.18(b) and 1005.15(c)).

21. If the financial institution does not provide periodic statements under 12 CFR 1005.9(b) for prepaid accounts, verify that the institution makes available the account balance by telephone, an electronic history of account transactions, and a written history of account transactions upon request (except as not required per 12 CFR 1005.18(c)(2)) (12 CFR 1005.18(c)(1) and (2) and 1005.15(d)(1)).

    If the financial institution provides an electronic history of account transactions and a written history of account transactions upon request, verify it includes the information set forth in 12 CFR 1005.9(b) (12 CFR 1005.18(c)(3); 12 CFR 1005.15(d)(2)).

22. Verify that any periodic statements provided by the institution under 12 CFR 1005.9(b) and any history of account transactions provided or made available by the institution disclose the required fee information (12 CFR 1005.18(c)(4)-(5) and 1005.15(d)(2)).

23. If the financial institution provides information under 12 CFR 1005.18(c)(1) rather than periodic statements under 12 CFR 1005.9(b), verify that the institution complies with the modified requirements with respect to the required initial disclosures, error resolution notices, limitations on liability, and error resolution procedures (12 CFR 1005.18(d) and 1005.18(e)(1) and (2) and 1005.15(e)).

24. Verify that the initial disclosures provided by the institution under 12 CFR 1005.7 include all fees and other information required to be disclosed in its pre-acquisition long form disclosure as set forth in 12 CFR 1005.18(b)(4) (12 CFR 1005.18(f)(1) and 1005.15(f)).

25. If the financial institution maintains prepaid accounts, verify that the institution provides notice for changes in

terms and conditions when required (12 CFR 1005.18(f)(2) and 1005.15(f)).

26. Verify that the institution discloses required information on its prepaid account access devices, or if the institution does not provide an access device, on the website, mobile application, or other entry point a consumer must visit to access the prepaid account electronically (12 CFR 1005.18(f)(3) and 1005.15(f)).

27. Except in the case of higher fees and charges imposed on the asset feature of a prepaid account with a covered separate credit feature, as provided in 12 CFR 1005.18(g), if the financial institution maintains a prepaid account program where consumers may be offered a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by Regulation Z, 12 CFR 1026.61, verify that the institution provides to any prepaid account without a covered separate credit feature the same account terms, conditions, and features it provides on prepaid accounts in the same prepaid account program that have such a credit feature (12 CFR 1005.18(g) and 1005.15(g)).

Internet Posting of Prepaid Account Agreements – 12 CFR 1005.19

28. For prepaid account issuers that are subject to the requirement, verify that the issuer makes submissions of prepaid account agreements to the CFPB on a rolling basis, as applicable, in the form and manner specified by the Bureau (12 CFR 1005.19(b)).

29. Verify that the issuer posts and maintains on its publicly available website any prepaid account agreements offered to the general public that the issuer is required to submit to the CFPB as frequently as the issuer is required to submit new or amended agreements to the Bureau and in conformance to the form and content requirements of 12 CFR 1005.19(b)(6). Also verify that agreements are placed in a location that is prominent and readily accessible to the public, and are accessible without the submission of personally identifiable information (12 CFR 1005.19(c)).

30. Verify that for any open prepaid account, the issuer posts and maintains on its website the consumer's agreement or promptly provides a copy of the consumer's agreement to the consumer upon the consumer's request, in conformance with the form and content requirements of 12 CFR 1005.19(b)(6). If the agreement is posted on its website, verify that it is posted in any electronic format that is readily usable by the general public and placed in a location that is prominently and readily accessible to the consumer. If the agreement is provided upon request from a consumer, ensure the agreement is sent no later than five business days after the issuer receives the request (12 CFR 1005.19(d)).

Gift Card Disclosures – 12 CFR 1005.20

31. Determine that the disclosures required by the sections listed below are made on the certificate or card, or in the case of a loyalty, award, or promotional gift card, on the card, code, or other device :

    a. 12 CFR 1005.20(a)(4)(iii) (loyalty, award, or promotional gift card);

    b. 12 CFR 1005.20(d)(2) (dormancy, inactivity, or service fees);

    c. 12 CFR 1005.20(e)(3) (expiration date or phone and web regarding replacement); and

    d. 12 CFR 1005.20(f)(2) (phone and web regarding fees).

NOTE: A disclosure made in an accompanying terms-and-conditions document, on packaging surrounding a certificate or card, or on a sticker or other label affixed to the certificate or card does not constitute a disclosure on the certificate or card.

If the certificate or card is electronic, determine that disclosures are provided electronically on the certificate or card provided to the consumer.

If an issuer provides a code or confirmation to a consumer orally, determine that the issuer provides to the consumer a written or electronic copy of the code or confirmation promptly, and the applicable disclosures are provided on the written copy of the code or confirmation (12 CFR 1005.20(c)(4)).

32. Determine that the following are stated, as applicable, clearly and conspicuously on the gift certificate, store gift card, or general-use prepaid card:

    a. The amount of any dormancy, inactivity, or service fee that may be charged;

    b. How often such fee may be assessed; and

    c. That such fee may be assessed for inactivity.

    (12 CFR 1005.20(d)(2))

33. Determine that the following disclosures and information are provided in connection with a gift certificate, store gift card, or general-use prepaid card as applicable: For each type of fee that may be imposed in connection with the certificate or card (other than a dormancy, inactivity, or service fee, which are discussed above) the following information must be provided on or with the certificate or card:

a. The type of fee;

b. The amount of the fee (or an explanation of how the fee will be determined); and

c. The conditions under which the fee may be imposed.

d. A toll-free number, and if one is maintained, a website that a consumer may use to obtain information about the fees described in paragraphs 12 CFR 1005.20(d)(2) and 12 CFR 1005.20(f)(1) (described immediately above) of this section must be disclosed on the certificate or card.

(12 CFR 1005.20 (f)

34. If an expiration date applies to a certificate or card, determine that the following disclosures are provided on the certificate or card, as applicable:

a. The expiration date for the underlying funds or, if the underlying funds do not expire, that fact;

b. A toll-free telephone number and, if one is maintained, a website that a consumer may use to obtain a replacement certificate or card after the certificate or card expires if the underlying funds may be available; and

c. Except where a non-reloadable certificate or card bears an expiration date that is at least seven years from the date of manufacture, a statement, disclosed with equal prominence and in close proximity to the certificate or card expiration date, that

i. The certificate or card expires, but the underlying funds either do not expire or expire later than the certificate or card, and

ii. The consumer may contact the issuer for a replacement card.

(12 CFR 1005.20(e)(3))

35. Determine that a loyalty, award, or promotional gift card sold or issued by the examined institution sets forth the following disclosures, as applicable:

a. A statement on the front of the card, code, or other device, indicating that the card, code, or other device is issued for loyalty, award, or promotional purposes;

b. The expiration date for the underlying funds on the front of the card, code, or other device;

c. The amount of any fees that may be imposed in connection with the card, code, or other device, and the conditions under which they may be imposed. This disclosure must be provided on or with the card, code, or other device; and

d. A toll-free telephone number and, if one is maintained, a website that a consumer may use to obtain fee information on the card, code, or other device.

(12 CFR 1005.20(a)(4)(iii))

36. Determine that a person (examined institution) that issues or sells a gift certificate, store gift card, or general-use prepaid card discloses to the consumer, prior to purchase, the information required by 12 CFR 1005.20(d)(2) (dormancy, inactivity, or service fees), 12 CFR 1005.20(e)(3) (expiration date or phone and web regarding replacement), and 12 CFR 1005.20(f)(1) (other fees) (12 CFR 1005.20(c)(3).

37. Determine that the fees, terms, and conditions of expiration that are required to be disclosed prior to purchase are not changed after purchase (12 CFR 1005.20(c)(3)).

38. Determine that no person (examined institution) imposes a dormancy, inactivity, or service fee with respect to a gift certificate, store gift card, or general-use prepaid card, unless:

a. There has been no activity with respect to the certificate or card, in the one year period ending on the date on which the fee is imposed;

b. Required disclosures are provided; and

c. Not more than one dormancy, inactivity, or service fee is imposed in any given calendar month.

(12 CFR 1005.20(d))

39. Determine that the person (examined institution) does not sell or issue a gift certificate, store gift card, or general-use prepaid card with an expiration date unless:

a. Required expiration date disclosures are provided on the certificate or card, as applicable;

b. It has established policies and procedures to provide consumers with a reasonable opportunity to purchase a certificate or card with at least five years remaining until the certificate or card expiration date;

c. The expiration date for the underlying funds is at least the later of:

i. Five years after the date the gift certificate was initially issued, or the date on which funds were last loaded to a store gift card or general-use prepaid card; or

ii. The certificate or card expiration date, if any; and

d. No fee or charge is imposed on the cardholder for replacing the gift certificate, store gift card, or general-use prepaid card or for providing the certificate or card holder with the remaining balance in some other manner prior to the funds expiration date, unless such certificate or card has been lost or stolen.

(12 CFR 1005.20(e))

Section III—Subpart B - Requirements for remittance transfers

If an entity provides remittance transfers in its "normal course of business," it is a remittance transfer provider subject to the rule and should be examined based on the following procedures[29].

Transaction-Related Examination Procedures

As applicable, conduct transaction testing using the following examination procedures:

Obtain and review all available information as it relates to the provider's remittance program. Examples of this include but are not limited to:

A. List of divisions or departments involved in offering or providing remittance transfers (e.g., retail, high net worth, prepaid cards, bill payment, online or mobile banking, foreign exchange and/or treasury departments);

B. Remittance transfer products offered;

C. Disclosure forms in all languages (as applicable);

D. List of foreign countries to which the provider sends remittance transfers, if available;

E. List of all foreign currencies in which remittance transfers sent by the provider may be received where there are limitations on such currencies, and identification of the currencies in which the provider controls the exchange rate;

F. List of all third-party service providers or business partners involved in remittance transfers, including direct correspondent banks, payment networks, payment processors, software providers, foreign currency providers, agents in the United States or abroad, or similar entities;

G. Locations of U.S. and foreign agents;

H. Applicable documentation related to remittance transfer operations (e.g., transaction logs, agent/correspondent agreements, advertising and marketing material including any done in foreign languages, and documentation regarding calculation or estimates of fees, taxes, exchange rates, and dates included on disclosures);

I. Procedural manuals and written policies;

J. Error resolution files;

K. Form letters used in case of errors or questions concerning a remittance transfer (including any provided in foreign languages);

L. Any agreements with third parties allocating compliance responsibilities; and

M. Consumer complaint files.

General form of Disclosures – 12 CFR 1005.31

1. Obtain and review a sample of the provider's disclosure forms for the provider's various remittance transfer products. Include disclosures as provided for various products and through various channels (e.g., in person, through a website, by telephone, through a mobile phone application, text message, online bill pay). Verify that:

   a. Disclosures are in the appropriate form, and are clear and conspicuous;

   b. Written and electronic disclosures are in a retainable form (except where expressly permitted not to be retainable);

   c. Pre-payment disclosures match figures disclosed on receipts and match those actually applied to the transfer;

   d. The provider's policy for providing oral disclosures is appropriate for the related transactions;

[29] Subpart B does provide for a 100-transfer "safe harbor." For an entity to qualify for this "safe harbor" it must have provided 100 or few remittance transfers in the current calendar year and the previous calendar year. If an entity crosses the 100-transfer threshold either in the previous calendar year or the current calendar year, it is deemed to be providing remittance transfers in its "normal course of business" and it must begin complying with the rule within a reasonable period of time (not to exceed six months) unless, under the facts and circumstances, it would not be deemed a provider.

e. Copies of scripts used for oral disclosures comply with the regulation;

f. Disclosures comply with the format requirements regarding grouping of like items, proximity, prominence and size, and segregation from other information; and

g. Disclosure of amounts required to be disclosed under 12 CFR 1005.31(b)(1), (2), and (3), use the appropriate terms (e.g., transfer amount, transfer taxes, currency) or substantially similar terms.

2. If applicable, determine whether the provider complies with the foreign language disclosure requirements as outlined under 12 CFR 1005.31(g).

Pre-payment disclosures – 12 CFR 1005.31(b)(1)

3. Based on a review of the provider's policies and if appropriate, sampled transactions, determine whether it appropriately categorizes third-party fees as covered or non-covered.

4. Based on a review of the provider's policies on pre-payment disclosures and if appropriate, sampled pre-payment disclosures and related documentation, determine whether the provider appropriately calculates and discloses:

   a. In the currency in which the remittance transfer is funded:

      i. The amount that will be transferred to the designated recipient, using the term "Transfer Amount" or a substantially similar term;

      ii. Fees imposed and taxes collected on the remittance transfer by the provider, using the terms "Transfer Fees" and "Transfer Taxes," or substantially similar terms; and

      iii. The total amount of the transaction using the term "Total," or a substantially similar term;

   b. The exchange rate used by the provider for the remittance transfer using the term "Exchange Rate" or a substantially similar term;

   c. In the currency in which the funds will be received by the designated recipient:

      i. The transfer amount in the currency, but only if covered third-party fees are imposed using the term, "Transfer Amount" or a substantially similar term;

      ii. Any covered third-party fees imposed on the remittance transfer using the term, "Other Fees" or a substantially similar term;

      iii. The amount that will be received by the designated recipient (total amount of the transaction minus covered third-party fees) using the term, "Total to Recipient," or a substantially similar term; and

      iv. If applicable, a statement that non-covered third-party fees or taxes collected on the remittance transfer by a third person may apply to the remittance transfer and result in the designated recipient receiving less than the amount disclosed.

   d. If the provider includes in the statement under (c)(iii) above, the optional estimated disclosure of applicable non-covered third-party fees or taxes, determine if the estimates are based on reasonable sources, and are disclosed in the currency in which the transfer is to be received.

NOTE: The exchange rate used to calculate the amounts under (c) is prior to any rounding.

Receipt Disclosures – 12 CFR 1005.31(b)(2)

5. Review policies on receipt disclosures, sample receipts, and related documentation to determine whether the provider appropriately calculates and discloses:

   a. Information disclosed in the pre-payment disclosure:

   b. The date in the foreign country on which funds will be available to the designated recipient, using the term "Date Available" or a substantially similar term;

   c. The name and, if provided by the sender, the telephone number and/or address of the designated recipient, using the term "Recipient" or a substantially similar term;

   d. A statement about the rights of the sender regarding the resolution of errors and cancellation;

   e. The name, telephone number(s), and website of the remittance transfer provider; and

   f. A statement that the sender can contact the Consumer Financial Protection Bureau ("CFPB") and if applicable, the State agency that licenses or charters the remittance transfer provider with respect to the remittance transfer and for questions

or complaints about the remittance transfer provider, as well as their telephone number(s), and website addresses.

NOTE: For any remittance transfer scheduled by the sender at least three business days before the date of the transfer, the statement about the rights of the sender regarding cancellation must state that the sender must request the cancellation, at least three business days before the next scheduled transfer. The statement must also note that the request must enable the provider to identify the sender's contact information and the particular transfer to be cancelled.

Combined disclosures – 12 CFR 1005.31(b)(3)

NOTE: Complete this section only if the provider provides combined disclosures as an alternative to the pre-payment and receipt disclosures.

6. Review policies on combined disclosures, sample disclosures and related documentation to:

    a. Determine that they contain all the information required for the pre-payment disclosure and receipt disclosure as described above;

    b. Determine that the provider provides a proof of payment after payment is made for each transaction; and

    c. Determine that the proof of payment is clear and conspicuous, provided in writing or electronically, and provided in a retainable form.

Accuracy and timing – 12 CFR 1005.31(e) and (f)

7. Review, as appropriate, all available information including transactions or investigation/trace logs/records or similar documents to verify (subject to the disclaimer statement with respect to non-covered third-party fees and third- party taxes) the accuracy of disclosures provided to consumers.

    a. In instances in which pre-payment disclosures and receipts are provided that do not contain estimates, confirm with respect to any transaction for which payment was made, that the information on the most recent pre-payment disclosure for that transaction and the information on the receipt for that transaction are the same.

    b. For amounts that are not estimates, confirm that the disclosed amounts were accurate at the time that payment was made.

    c. For amounts that are estimates, determine whether the estimates were calculated correctly, in accordance with the applicable bases outlined in 12 CFR 1005.32

    d. In the case of estimates pursuant to 1005.32(a), (b)(1) and (b)(2) that are based on an approach that is not one of the listed bases in 1005.32(c), determine that the recipient received the same, or greater, amount of funds than what was disclosed.

8. Review processes and procedures or records, as appropriate, to determine whether the required disclosures are provided in accordance with the timing requirements in 12 CFR 1005.31(e).

    a. Determine whether pre-payment disclosures are provided when the sender requests the remittance transfer, but prior to payment.

    b. Determine whether receipts are provided when payment is made, or in accordance with 1005.31(e)(2) for transactions conducted by telephone.

Long form error resolution and cancellation notice – 12 CFR 1005.31(b)(4)

9. Determine the provider's policy for providing long form error resolution and cancellation notices to senders upon request.

10. Review the provider's records of senders' requests and determine that a long form error resolution and cancellation notice is promptly provided in response to each request.

11. Review sample notices to determine that they use language set forth in Model Form A-36 (Model Form for Error Resolution and Cancellation Disclosures (Long) of Appendix A to subpart B) or substantially similar language.

Estimates – 12 CFR 1005.32

Temporary exception for insured institutions - 12 CFR 1005.32(a)

12. Determine that the remittance transfer provider is an insured institution within the definition of the rule. If it is, review the appropriate information including transaction log/records, etc., to identify remittance transfer transactions that were sent from the sender's account with the institution. From the list, identify transactions for which estimates were used.

NOTE: An insured institution acting as an agent on behalf of another in connection with a remittance transfer is not a remittance transfer provider.

13. Review transactions for which estimates were used, as well as related disclosures, and any other relevant procedures, processes and documentation of information included in disclosures, as appropriate, to:

    a. Assess the adequacy of the provider's policy and procedures for determining that a provider could not determine exact amounts for reasons beyond its control;

    b. Determine that estimates were used only in cases when the provider could not determine the exact amounts for reasons beyond its control;

    c. Determine the bases used for the estimates under 12 CFR 1005.32(c) and consider their appropriateness; and

        i. If estimates were provided in accordance with one of the bases listed in Regulation E (12 CFR 1005.32(c)), review documentation to confirm that inputs to estimates are appropriate.

        ii. If estimates are based on an approach that is not one of the listed bases, determine as appropriate, that the designated recipient received the same, or greater, amount of funds than the remittance transfer provider disclosed.

    d. Determine that the estimated amounts are appropriately labeled with the term "Estimated" or a substantially similar term, placed in close proximity to the term described.

    e. Determine that related calculations were performed appropriately.

NOTE: Unless extended, this exception will not apply after July 21, 2020.

Permanent exception for transfers to certain countries 12 CFR 1005.32(b)(1)

14. Review and assess the adequacy of the provider's policy for determining that:

    a. The laws of the recipient country do not permit a determination of the exact amount; or

    b. The methods by which transactions are made in the recipient country do not permit such determination.

15. Review the provider's transaction log/records to identify remittance transactions that were sent to countries on the list provided by the CFPB for which estimates may be provided on remittance transfer-related disclosures to determine if the provider properly relied on the list in making estimates.

16. Determine whether the provider gave estimates for transactions to a country that is not on the list provided by the CFPB. Review related documentation to confirm that the recipient country does not legally permit, or the method by which transactions are conducted in that country does not permit determination of exact amounts.

17. Review records to determine:

    a. The bases used for the estimates under 12 CFR 1005.32 (c) and their appropriateness:

        i. If estimates were provided in accordance with one of the bases listed in 12 CFR 1005.32(c), review documentation to confirm that inputs to estimates are appropriate; or

        ii. If estimates are based on an approach that is not one of the listed bases, determine as appropriate, that the designated recipient received the same, or greater, amount of funds than the remittance transfer provider disclosed.

    b. That the estimated amounts are appropriately labeled with the term "Estimated" or a substantially similar term, placed in close proximity to the term described.

Permanent exception for transfers scheduled before the date of transfer - 12 CFR 1005.32(b)(2)

18. Review and assess the adequacy of the provider's policy and procedures for using estimates in the case of transfers scheduled five or more business days before the date of transfer.

19. Review and assess transactions for which estimates were used as well as related disclosures (required by 12 CFR 1005.36(a)), and any other relevant documentation, as appropriate, to determine compliance with 12 CFR 1005.32(b)(2).

Procedures for resolving errors - 12 CFR 1005.33

20. Review the provider's policies and procedures on error resolution.

21. Review relevant error resolution statements/files, consumer complaints, form letters, etc., used in

addressing errors or questions concerning remittance transfer transactions.

22. Assess the provider's compliance program to determine whether it has developed and maintains adequate written policies and procedures designed to ensure compliance with the error resolution requirements applicable to remittance transfers. Consider:

    a. The procedures for receiving complaints of error from branches, agents or other locations where a consumer may lodge a complaint;

    b. The procedures for identifying complaints alleging "errors" as identified in 12 CFR 1005.33(a); and

    c. The procedures for investigating, responding to, and resolving complaints.

23. Determine the extent of the provider's compliance with its policies and procedures on error resolution.

24. Determine the provider's compliance with the regulatory requirements regarding investigation of alleged errors, and notification of consumers within the allotted time frames.

25. Determine the timeliness and adequacy of remedies the provider provides to address identified errors.

    a. For errors under 12 CFR 1005.33(a)(1)(iv) *other than* those that occurred because the sender provided incorrect or insufficient information, consider:

        i. If the provider provided the sender notice regarding the error investigation.

        ii. If the sender requested a remedy, determine whether the provider provides the remedy selected by the sender. If a default remedy is provided, determine whether the sender had a reasonable time to designate a remedy after receiving a report of the error.

        iii. If the remedy is delivery of the amount appropriate to correct the error, determine whether the provider corrects the error within one business day, or as soon as reasonably practicable, applying the same exchange rate, fees, and taxes stated in the disclosure provided in connection with the remittance transfer with respect to which the error was made;

        iv. If the remedy is a refund, determine whether the provider refunds the appropriate amount within one business day or as soon as reasonably practicable thereafter;

    b. If the provider determines that an error occurred that relates to:

        i. An incorrect amount paid by the sender;

        ii. A computational or bookkeeping error made by the remittance transfer provider; or

        iii. Failure to make the amount of currency stated in the disclosures available to the designated recipient.

26. Determine whether the provider either:

    a. Refunds the amount of funds provided by the sender (in case of a transaction that was not properly transmitted), or the amount appropriate to resolve the error; or

    b. Makes available to the designated recipient, the amount appropriate to resolve the error without additional cost to the sender or the designated recipient.

    c. If the error relates to the failure to make funds available to the designated recipient by the disclosed date of availability (other than an error resulting from incorrect or insufficient information provided by the sender), determine whether the provider;

        i. Either:

            1. Refunds the amount of funds that was not properly transmitted, or the amount appropriate to resolve the error to the sender; or

            2. Makes available to the designated recipient the amount appropriate to resolve the error; and

        ii. Refunds to the sender any fees and, to the extent not prohibited by law, taxes collected on the remittance transfer.

    d. In the case of errors involving incorrect or insufficient information provided by the sender for the transfer:

        i. Determine whether the provider refunds to the sender the amount of funds that was not properly transmitted, or the amount appropriate to resolve the error, the fees and taxes paid by the

sender in connection with the remittance transfer, and only deducts those fees actually deducted by a person other than the provider and (where not prohibited by law) taxes actually collected for the original unsuccessful transaction, within three business days of providing the written explanation of findings.

ii. Alternatively, if the provider has not yet processed a refund and agrees to the sender's request to apply the funds towards a new remittance transfer, instead of a refund, determine whether the provider treats the request as a new remittance transfer, provides the appropriate disclosures, and only deducts those fees actually deducted by a person other than the provider and (where not prohibited by law) taxes actually collected for the original unsuccessful transaction.

27. Determine that the provider is maintaining records of compliance for a period of not less than two years from the date a notice of error was submitted to the provider or action was required to be taken by the provider.

Procedures for cancellation and refund of remittance transfers - 12 CFR 1005.34 and 12 CFR 1005.36(c)

28. Review and assess the provider's policies and procedures regarding cancellation and refund of remittance transfer transactions, including:

    a. The procedures for receiving requests of cancellation from branches, agents or other locations where a consumer may request cancellation.

    b. The procedures for identifying which transactions are eligible for cancellation.

    c. The procedures for issuing refunds.

29. Determine the extent of the provider's compliance with its own policies and procedures on cancellation and refund.

30. Determine the provider's compliance with the regulatory requirements regarding senders' request for cancellation and refund.

31. Determine whether the provider complies with any oral or written request to cancel any remittance transfer scheduled by the sender at least three business days before the date of the remittance transfer.

Acts of agents - 12 CFR 1005.35

NOTE: Complete this section if the provider uses agent(s) to conduct any element of remittance transfer transactions.

32. Review the provider's agreements with agents used for remittance transfers to determine whether they are appropriate for the activities delegated.

33. Determine whether the provider has established appropriate internal controls and review procedures in relation to the work done by agents on its behalf to ensure compliance with the regulatory requirements. Consider:

    a. The extent to which the provider has established and maintained policies or procedures for compliance, including policies, procedures, or other appropriate oversight measures designed to assure compliance by an agent or authorized delegate acting for such provider including:

        i. The degree of control the agent exercises over the remittance transfer activities performed on the provider's behalf;

        ii. The quality and frequency of training provided to ensure that agents are aware of the regulatory requirements and the provider's internal policy guidelines; and

        iii. The adequacy of the provider's oversight of agents' activities.

34. Select a sample of agents used by the provider and review their records in addition to relevant records held by the provider directly to determine that the activities performed by the agent on the provider's behalf are in compliance with the regulatory requirements.

Transfers scheduled before the date of transfer - 12 CFR 1005.36

35. Review and assess the adequacy of the provider's policies and procedures regarding transfers scheduled before the date of transfer.

36. As appropriate, select a sample of records of transfers scheduled before the date of transfer to determine whether the provider complies with the timing of disclosures, accuracy of disclosures (and estimates pursuant to 1005.32(b)(2)) and the sender's request for cancellation. Use the same methods identified in the sections above, regarding other disclosures. Consider the following:

    a. For one-time transfers scheduled five or more business days before the date of transfer or for the first in a series of preauthorized remittance

transfers, determine whether the provider provides either a pre-payment disclosure and a receipt or a combined disclosure at the time the sender requests the transfer but prior to payment.

NOTE: If any of the disclosures provided contain estimates as permitted by 12 CFR 1005.32(b)(2), the provider must mail or deliver an additional receipt no later than one business day after the date of the transfer. If the transfer involves the transfer of funds from the sender's account held by the provider, this additional receipt may be provided on or with the next periodic statement for that account, or within 30 days after the date of the transfer if a periodic statement is not provided.

b. For each subsequent preauthorized remittance transfer, determine whether the provider provides an updated receipt if any of the information (other than temporal disclosures or disclosures that are permitted to be estimated) on the most recent receipt is no longer accurate.

NOTE: The receipt must clearly and conspicuously indicate that it contains updated disclosures and must be mailed or delivered to the sender within a reasonable time prior to the scheduled date of the next subsequent preauthorized remittance transfer. A disclosure that is mailed no later than ten business days or hand or electronically delivered no later than five business days is deemed to have been provided within a reasonable time.

c. If there is no updated information and the remittance transfer does not involve the transfer of funds from the sender's account held by the provider, determine whether the provider mails or delivers a receipt to the sender no later than one business day after the date of the transfer for each subsequent preauthorized transfer;

d. If there is no updated information and the remittance transfer involves the transfer of funds from the sender's account held by the provider, determine whether the receipt is provided on or with the next periodic statement for that account, or within 30 days after the date of the transfer if a periodic statement is not provided;

e. For any subsequent transfer in a series of preauthorized remittance transfers, determine whether the provider discloses the information required by 12 CFR 1005.36(d)(1)no more than 12 months, and no less than five business days prior to, the date of the subsequent preauthorized remittance transfer.

NOTE: While the rule generally provides flexibility as to when and where future transfer dates may be disclosed, for any subsequent preauthorized remittance transfer for which the date of transfer is four or fewer business days after the date payment is made, the disclosure must generally be provided on or with the receipt for the initial transfer in that series.

References

Laws

15 USC 1693 et. seq., Electronic Fund Transfer Act

15 USC 7001 et. seq., Electronic Signatures in Global and National Commerce

Regulations

12 CFR Part 1005, Electronic Fund Transfers (Regulation E)

FILs

FIL 66-2009: Electronic Fund Transfer Act (Regulation E): Disclosures at Automated Teller Machines

Other

11-17-2009 Federal Register Vol. 74 No. 220 Pages 59033 – 59056 Final Regulation E Rule

4-1-2010 Federal Register Vol. 75 No. 62 Pages 16580 – 16621 Final Gift Card Rule

6-4-2010 Federal Register Vol. 75 No. 107 Pages 31665 – 31673 Clarification to Final Regulation E Rule

8-17-2010 Federal Register Vol. 75 No. 158 Pages 50683 – 50688 Interim Final Rule – Gift Cards

Job Aid

This questionnaire can be used to review audit workpapers, to evaluate financial institution policies, to perform transaction testing, and to train as appropriate. Complete only those aspects of the checklist that specifically relate to the issue being reviewed, evaluated, or tested, and retain those completed sections in the workpapers.

When reviewing audits, evaluating financial institution policies, or performing transaction testing, a “No” answer indicates a possible exception/deficiency, and you should explain it in the workpapers. If a line item is not applicable within the area you are reviewing, indicate by using “NA.”

Examination Checklist — Regulation E – Electronic Fund Transfer Act (EFTA)

	Yes	No	NA
Subpart A			
12 CFR 1005.5 Issuance of Access Devices			
1. Do the financial institution's policies, practices, and procedures allow that validated access devices are issued only: • In response to oral or written requests, (12 CFR 1005.5(a)(1)) or • As a renewal or substitution for an accepted access device? (12 CFR 1005.5(a)(2))			
2. Do the financial institution's policies, practices, and procedures allow that unsolicited access devices are issued only when the devices are: • Not validated? (12 CFR 1005.5(b)(1)) • Accompanied by a clear explanation that they are not validated and how they may be disposed of if validation is not desired? (12 CFR 1005.5(b)(2)) • Accompanied by the initial disclosures required by 12 CFR 1005.7? (12 CFR 1005.5(b)(3)) • Validated only in response to a consumer's request and after the financial institution has verified the consumer's identity by reasonable means (e.g., photograph, fingerprint, personal visit, and signature)? (12 CFR 1005.5(b)(4) and Staff Commentary)			
12 CFR 1005.6 Consumer Liability for Unauthorized Electronic Fund Transfers			
NOTE: For prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution is not required to comply with the liability limits and error resolution requirements in 12 CFR 1005.6 and 1005.11 for any prepaid account for which it has not successfully completed its consumer identification and verification process. (12 CFR 1005.18(e)(3)) 3. Does the financial institution impose liability on the consumer for unauthorized transfers only if: (12 CFR 1005.6(a)): • Any access device that was used was an accepted access device? • The institution has provided a means to identify the consumer to whom it was issued? • The institution has provided the disclosures required by Section 1005.7(b)(l), (2), and (3)?			
4. Does the financial institution NOT rely on consumer negligence or the deposit agreement to impose greater consumer liability for unauthorized EFTs than is permitted under Regulation E? (12 CFR Part 1005, Supp. 1, Comments 1005.6(b)-1 and -2)			
5. If a consumer notifies the financial institution within two business days after learning of the loss or theft of an access device, does the financial institution limit the consumer's liability for unauthorized EFTs to the lesser of $50 or actual loss? (12 CFR 1005.6(b)(1))			
6. If a consumer does not notify the financial institution within two business days after learning of the loss or theft of an access device, does the institution limit the consumer's liability for unauthorized EFTs to the lesser of $500 or the sum of (12 CFR 1005.6(b)(2)): • $50 or the amount of unauthorized EFTs that occurred within the two business days,			

Examination Checklist — Regulation E – Electronic Fund Transfer Act (EFTA)

	Yes	No	NA
whichever is less; PLUS • The amount of unauthorized EFTs that occurred after the close of two business days and before notice to the financial institution (provided the financial institution establishes that these transfers would not have occurred had the consumer notified the financial institution within that two-day period)?			
7. If a consumer notifies the financial institution of an unauthorized EFT within 60 calendar days of transmittal of the periodic statement upon which the unauthorized EFT appears, does the financial institution not hold the consumer liable for the unauthorized transfers that occur after the 60-day period? (12 CFR 1005.6(b)(3))			
8. If a consumer does not notify the financial institution of an unauthorized EFT within 60 calendar days of transmittal of the periodic statement upon which the unauthorized EFT appears, does the financial institution ensure that the consumer's liability does not exceed the amount of the unauthorized transfers that occur after the close of the 60 days and before notice to the financial institution, if the financial institution establishes that the transfers would not have occurred had timely notice been given? (12 CFR 1005.6(b)(3))			
9. If a consumer notifies the financial institution of an unauthorized EFT within the timeframes discussed in questions 7 or 8 and the consumer's access device is involved in the unauthorized transfer, does the financial institution hold the consumer liable for amounts as set forth in 12 CFR 1005.6(b)(1) or (2) (discussed in questions 5 and 6)? (12 CFR 1005.6(b)(3)) *NOTE: The first two tiers of liability (as set forth in 12 CFR 1005.6(b)(1) and (2) and discussed in questions 5 and 6) do not apply to unauthorized transfers from a consumer's account made without an access device.(Comment 1005.6(b)(3)-2)*			
10. Does the financial institution extend the 60-day time period by a reasonable amount if the consumer's delay in notification was due to extenuating circumstance? (12 CFR 1005.6(b)(4))			
11. Does the financial institution consider notice to be made when the consumer takes steps reasonably necessary to provide the institution with pertinent information, whether or not a particular employee or agent of the institution actually received the information? (12 CFR 1005.6(b)(5)(i))			
12 Does the financial institution allow the consumer to provide notice in person, by telephone, or in writing? (12 CFR 1005.6(b)(5)(ii))			
13. Does the financial institution consider written notice to be given at the time the consumer mails or delivers the notice for transmission to the institution by any other usual means? (12 CFR 1005.6(b)(5)(iii))			
14. Does the financial institution consider notice given when it becomes aware of circumstances leading to the reasonable belief that an unauthorized transfer to or from the consumer's account has been or may be made? (12 CFR 1005.6(b)(5)(iii))			
15. Does the financial institution limit the consumer's liability to a lesser amount than provided by 12 CFR 1005.6, when state law or an agreement between the consumer and the financial institution provide for such an amount? (12 CFR 1005.6(b)(6))			

Examination Checklist — Regulation E – Electronic Fund Transfer Act (EFTA)

	Yes	No	NA
12 CFR 1005.7 Initial Disclosures			
16. Does the financial institution provide the initial disclosures at the time a consumer contracts for an EFT service or before the first EFT is made involving the consumer's account? (12 CFR 1005.7(a))			
17. Do the financial institution's initial disclosures provide the following information, as applicable: • A summary of the consumer's liability for unauthorized transfers under 12 CFR 1005.6 or under state or other applicable law or agreement? (12 CFR 1005.7(b)(1)) • 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? (12 CFR 1005.7(b)(2)) • The financial institution's business days? (12 CFR 1005.7(b)(3)) • The type of EFTs the consumer may make and any limits on the frequency and dollar amount of transfers? (If details on the limits on frequency and dollar amount are essential to maintain the security of the system, they need not be disclosed.) (12 CFR 1005.7(b)(4)) • Any fees imposed by the financial institution for EFTs or for the right to make transfers? (12 CFR 1005.7(b)(5)) • A summary of the consumer's right to receive receipts and periodic statements, as provided in 12 CFR 1005.9, and notices regarding preauthorized transfers as provided in 12 CFR 1005.10(a) and 1005.10(d)? (12 CFR 1005.7(b)(6)) • A summary of the consumer's right to stop payment of a preauthorized EFT and the procedure for placing a stop payment order, as provided in 12 CFR 1005.10(c)? (12 CFR 1005.7(b)(7)) • A summary of the financial institution's liability to the consumer for its failure to make or to stop certain transfers under the EFTA? (12 CFR 1005.7(b)(8)) • The circumstances under which the financial institution, in the ordinary course of business, may disclose information to third parties concerning the consumer's account? (12 CFR 1005.7(b)(9)) • An error resolution notice that is substantially similar to the Model Form A-3 in Appendix A? (12 CFR 1005.7(b)(10)) • A notice that a fee may be imposed by an ATM operator (as defined in section 1005.16(a)) when the consumer initiates an EFT or makes a balance inquiry and by any network used to complete the transaction? (12 CFR 1005.7(b)(11))			
18. Does the financial institution provide disclosures at the time a new EFT service is added, if the terms and conditions of the service are different than those initially disclosed? (12 CFR 1005.7(c))			
12 CFR 1005.8 Change in Terms Notice; Error Resolution Notice			
19. If the financial institution made any changes in terms or conditions required to be disclosed under section 1005.7(b) that would result in increased fees, increased liability, fewer types of available EFTs, or stricter limits on the frequency or dollar amount of transfers, does the financial institution provided a written notice to consumers at least 21 days prior to the			

Examination Checklist — Regulation E – Electronic Fund Transfer Act (EFTA)

	Yes	No	NA
effective date of such change? (12 CFR 1005.8(a))			
20. Does the financial 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? (12 CFR 1005.8(b))			

Examination Checklist — Regulation E – Electronic Fund Transfer Act (EFTA)

	Yes	No	NA
12 CFR 1005.9 Receipts at Electronic Terminals; Periodic Statements			
21. Does the financial institution make receipts available to the consumer at the time the consumer initiates an EFT at an electronic terminal? The financial institution is exempt from this requirement for EFTs of $15 or less. (12 CFR 1005.9(a) and (e))			
22. Do the receipts contain the following information, as applicable: • The amount of the transfer? (12 CFR 1005.9(a)(1)) • The date the transfer was initiated? (12 CFR 1005.9(a)(2)) • The type of transfer and the type of account to or from which funds were transferred? (12 CFR 1005.9(a)(3)) • A number or code that identifies the consumer's account or the access device used to initiate the transfer? (12 CFR 1005.9(a)(4)) • The terminal location where the transfer is initiated? (12 CFR 1005.9(a)(5)) • The name or other identifying information of any third party to or from whom funds are transferred? (12 CFR 1005.9(a)(6))			
23. Does the financial institution send a periodic statement for each monthly cycle in which an EFT has occurred? If no EFT occurred, does the financial institution send a periodic statement at least quarterly? (12 CFR 1005.9(b))			
24. Does the periodic statement contain the following information, as applicable: • Transaction information for each EFT occurring during the cycle, including the amount of transfer, date of transfer, type of transfer, terminal location, and name of any third party transferor or transferee? (12 CFR 1005.9(b)(1)) • Account number? (12 CFR 1005.9(b)(2)) • Fees? (12 CFR 1005.9(b)(3)) • Account balances? (12 CFR 1005.9(b)(4)) • Address and telephone number for inquiries? (12 CFR 1005.9(b)(5)) • Telephone number to ascertain preauthorized transfers if the financial institution provides telephone notice under 12 CFR 1005.10(a)(1)(iii)? (12 CFR 1005.9(b)(6))			
12 CFR 1005.10 Preauthorized Transfers			
25. If a consumer's account is to be credited by a preauthorized EFT from the same payor at least once every 60 days (and the payor does not already provide notice to the consumer that the transfer has been initiated) (12 CFR 1005.10(a)(2)), does the financial institution do one of the following: • Provide oral or written notice, within two business days, after the transfer occurs? (12 CFR 1005.10(a)(1)(i)) • Provide oral or written notice, within two business days after the transfer was scheduled to occur, that the transfer did or did not occur? (12 CFR 1005.10(a)(1)(ii)) • Provide a readily available telephone line that the consumer can call to determine if the transfer occurred and that telephone number is disclosed on the initial disclosure of account terms and on each periodic statement? (12 CFR 1005.10(a)(1)(iii))			

Examination Checklist — Regulation E – Electronic Fund Transfer Act (EFTA)

	Yes	No	NA
26. Does the financial institution credit the amount of a preauthorized transfer as of the date the funds for the transfer are received? (12 CFR 1005.10(a)(3))			
27. Does the financial institution ensure that an authorization is obtained for preauthorized transfers from a consumer's account by a written, signed or similarly authenticated authorization, and is a copy of the authorization provided to the consumer? (12 CFR 1005.10(b))			
28. Does the financial institution allow the consumer to stop payment on a preauthorized EFT by oral or written notice at least three business days before the scheduled date of the transfer? (12 CFR 1005.10(c)(1))			
29. If the financial institution requires that the consumer give written confirmation of an oral stop-payment order within 14 days, does the financial institution inform the consumer, at the time they give oral notification, of the requirement and provide the address where they must send the written confirmation? *NOTE: An oral stop-payment order ceases to be binding after 14 days if the consumer fails to provide the required written confirmation. (12 CFR 1005.10(c)(2))*			
30. Does the financial institution inform, or ensure that third party payees inform, the consumer of the right to receive notice of all varying transfers? OR Does the financial institution give the consumer the option of receiving notice only when a transfer falls outside a specified range of amounts or differs from the most recent transfer by an agreed-upon amount? (12 CFR 1005.10(d)(2))			
31. If the financial institution or third party payee is obligated to send the consumer written notice of the EFT of a varying amount, does the financial institution ensure that: • The notice contains the amount and date of transfer? • The notice is sent at least 10 days before the scheduled date of transfer? (12 CFR 1005.10(d)(1))			
32. Does the financial institution not condition an extension of credit to a consumer on the repayment of loans by preauthorized EFT, except for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account? (12 CFR 1005.10(e)(1))			
33. Does the financial institution not require a consumer to establish an account for EFTs with a particular institution as a condition of employment or receipt of government benefits? (12 CFR 1005.10(e)(2))			
12 CFR 1005.11 Procedures for Resolving Errors			
NOTE: For prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution is not required to comply with the liability limits and error resolution requirements in 12 CFR 1005.6 and 1005.11 for any prepaid account for which it has not successfully completed its consumer identification and verification process. (12 CFR 1005.18(e)(3))			

Examination Checklist — Regulation E – Electronic Fund Transfer Act (EFTA)

	Yes	No	NA
34. Does the financial institution have procedures to investigate and resolve all oral or written notices of error received no later than 60 days after the institution sends the periodic statement or provides passbook documentation? (12 CFR 1005.11(b)(2))			
35. If the financial institution requires written confirmation of an error within 10 business days of an oral notice, does the financial institution inform the consumer of this requirement and provide the address where the written confirmation must be sent? (12 CFR 1005.11(b)(2))			
36. Does the financial institution have procedures to investigate and resolve alleged errors within 10 business days, except as otherwise provided in 12 CFR 1005.11(c)? (12 CFR 1005.11(c)(1)) *NOTE: The time period is extended in certain circumstances. (12 CFR 1005.11(c)(3))*			
37. Does the financial institution report investigation results to the consumer within three business days after completing its investigation and correct any error within one business day after determining that an error occurred? (12 CFR 1005.11(c)(1))			
38. If the financial institution is unable to complete its investigation within 10 business days, does the financial institution have procedures to investigate and resolve alleged errors within 45 calendar days of receipt of a notice of error, and: • Does the financial institution provisionally credit the consumer's account in the amount of the alleged error (including interest, if applicable) within 10 business days of receiving the error notice (however, if the financial institution requires, but does not receive, written confirmation within 10 business days or if the alleged error involves an account that is subject to Regulation T of the Board of Governors of the Federal Reserve System, the financial institution is not required to provisionally credit the consumer's account)? • Within two business days after granting any provisional credit, does the financial institution inform the consumer of the amount and date of the provisional credit and give the consumer full use of the funds during the investigation? • Within one business day after determining that an error occurred, does the financial institution correct the error? and • Does the financial institution report the results to the consumer within three business days after completing its investigation, including, if applicable, notice that a provisional credit has been made final? (12 CFR 1005.11(c)) *NOTE: The time period is extended in certain circumstances. (12 CFR 1005.11(c)(3))*			
39. If a billing error occurs, does the financial institution not impose a charge related to any aspect of the error-resolution process? (Comment 1005.11(c)-3)			
40. If the financial institution determines that no error occurred (or that an error occurred in a manner or amount different from that described by the consumer), does the financial institution send a written explanation of its findings to the consumer and note the consumer's right to request the documents the financial institution used in making its determination? (12 CFR 1005.11(d)(1))			
41. When the financial institution determines that no error (or a different error) occurred, does the financial institution notify the consumer of the date and amount of the debiting of the			

Examination Checklist — Regulation E – Electronic Fund Transfer Act (EFTA)

	Yes	No	NA
provisionally credited amount and the fact that the financial institution will continue to honor checks and drafts to third parties and preauthorized transfers for five business days (to the extent that they would have been paid if the provisionally credited funds had not been debited)? (12 CFR 1005.11(d)(2))			
12 CFR 1005.13 Record Retention			
42. Does the financial institution maintain evidence of compliance with the requirements of the EFTA and Regulation E for a period of two years? (12 CFR 1005.13(b))			
12 CFR 1005.16 Disclosures at Automated Teller Machines (ATM)			
43. If the financial institution operates an ATM and imposes a fee on a consumer for initiating an EFT or balance inquiry, does the financial institution provide notice that a fee will be imposed and disclose the amount of the fee? (12 CFR 1005.16(b))			
44. Does the financial institution provide the notice required by section 1005.16(b) either by showing it on the ATM screen or by providing it on paper before the consumer is committed to paying a fee? (12 CFR 1005.16(c))			
12 CFR 1005.17 Requirements for Overdraft Services			
45. Does the financial institution's overdraft payment program incorporate the agency's guidance as applicable?			
46. Does the financial institution's overdraft payment program provide "overdraft services," i.e., charge fees for paying ATM and one-time debit overdrafts? (12 CFR 1005.17(a)) If no, do not complete this section.			
47. If the financial institution assesses a fee or charge (NOTE: fees or charges may generally be assessed only on transactions paid after the confirmation has been mailed or delivered) on the consumer's account for paying an ATM or one-time debit card transaction pursuant to the financial institutions overdraft service, does the financial institution first: • Provide the consumer with a notice in writing, or if the consumer agrees, electronically, that is segregated from all other information and describes the institution's overdraft service? (12 CFR 1005.17(b)(1)(i)) • Provide a reasonable opportunity for the consumer to affirmatively consent, or opt-in, to the institution's payment of ATM and one-time debit card transactions? (12 CFR 1005.17(b)(1)(ii)) • Obtain the consumer's affirmative consent, or opt-in, to the institution's payment of ATM or one-time debit card transactions? (12 CFR 1005.17(b)(1)(iii)) • Provide the consumer with confirmation of the consumer's consent in writing, or if the consumer agrees, electronically, which includes a statement informing the consumer of the right to revoke such consent? (12 CFR 1005.17(b)(1)(iv))			
48. Does the financial institution ensure that it does not condition the payment of any overdrafts for checks, ACH transactions, and other types of transactions on the consumer affirmatively consenting to the institution's payment of ATM and one-time debit card transactions pursuant to the institution's "overdraft services"? (12 CFR 1005.17(b)(2)(i))			

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	Yes	No	NA
49. Does the financial institution pay checks, ACH transactions, and other types of transactions that overdraw the consumer's account regardless of whether the consumer has affirmatively consented to the institution's overdraft payment service for ATM and one-time debit card transactions? (12 CFR 1005.17(b)(2)(ii))			
50. a. For consumers who have not opted-in, and if an overdraft fee or charge is based on the amount of the outstanding negative balance, does the institution only assess fees where the negative balance is attributable "in whole or in part" to a check, ACH, or other type of transaction not subject to the prohibition on assessment of overdraft fees? b. For consumers who have not opted-in, does the financial institution only assess daily or sustained overdraft, negative balance, or similar fees or charges where the negative balance is attributable "in whole or in part" to a check, ACH, or other type of transaction not subject to the prohibition on assessment of overdraft fees? c. Does the institution base the date on which such a daily or sustained overdraft, negative balance, or similar fee or charge is assessed on the date on which the check, ACH, or other type of transaction was paid into overdraft? (Staff Commentary 1005.17(b)-9)			

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	Yes	No	NA
51. Does the financial institution provide consumers who do not affirmatively consent to the institution's overdraft service for ATM and one-time debit card transactions the same account terms, conditions, and features that it provides to consumers who affirmatively consent, except for the overdraft service for ATM and one-time debit card transactions? (12 CFR 1005.17(b)(3))			
52. Is the notice required by (12 CFR 1005.17(b)(1)(i)) substantially similar to Model Form A-9 set forth in Appendix A of 12 CFR 1005.17, including applicable items from the list below, and does it not contain any additional information? (12 CFR 1005.17(d)): • Overdraft Service – Does the notice provide a brief description of the overdraft service and the types of transactions for which a fee or charge-off paying an overdraft may be imposed, including ATM and one-time debit card transactions? (12 CFR 1005.17(d)(1)) • Fees imposed – Does the notice contain the dollar amount of any fees or charges assessed by the financial institution for paying an ATM or one-time debit card transaction pursuant to the financial institution's overdraft service, including any daily or other overdraft fees? *NOTE: If the amount of the fee is determined on the basis of the number of times the consumer has overdrawn the account, the amount of the overdraft, or other factors, the institution must disclose the maximum fee that may be imposed? (12 CFR 1005.17(d)(2))* • Limits on Fees Charged – Does the notice disclose the maximum number of overdraft fees or charges that may be assessed per day, or, if applicable, that there is no limit? (12 CFR 1005.17(d)(3)) • Disclosure of opt-in right – Does the notice explain the consumer's right to affirmatively consent to the financial institution's payment of overdrafts for ATM and one-time debit card transactions pursuant to the institution's overdraft service, including the methods by which the consumer may consent to the service? (12 CFR 1005.17(d)(4)) • Alternative Plans for Covering Overdrafts – As applicable, does the institution's opt-in notice appropriately address the alternative methods for covering overdrafts? • If the institution offers both a line of credit subject to Regulation Z (12 CFR part 1026) and a service that transfers funds from another account of the consumer held at the institution to cover overdrafts, does the notice state that both alternative plans are offered? • If the institution offers one alternative plan, but not the other, does the notice state which of the alternative plans it offers? If the institution does not offer either a line of credit subject to Regulation Z (12 CFR part 1026) or a service that transfers funds from another account of the consumer held at the institution to cover overdrafts, does the notice exclude information regarding either of these plans? • If the financial institution offers additional alternatives for paying overdrafts, at its option the institution may (but is not required to) disclose those alternatives. Does its notice describe those alternatives? • Permitted Modifications and Additional Content – If the institution modifies the notice, are the modifications permitted: To indicate that the consumer has the right to opt-into, or out of, the payment of overdrafts under the institution's overdraft service for other types of transactions, such as checks, ACH transactions, or automatic bill payments; to provide a means for the consumer to exercise this choice; and to disclose the associated returned item fee and that additional merchant fees may apply. *Note: The institution may also disclose the consumer's right to revoke consent. The response portion of Model Form A-9 may be tailored to the methods offered for opting in, and may in-*			

Examination Checklist — Regulation E – Electronic Fund Transfer Act (EFTA)

	Yes	No	NA
clude reasonable methods to identify the account, such as a bar code. (12 CFR 1005.17(d)(6) and Comments 1005.17(d)-1 through -5))			
53. Joint Accounts – When two or more consumers jointly hold an account, does the financial institution treat the affirmative consent of any of the joint consumers as affirmative consent for that account, and treat the revocation of affirmative consent by any of the joint consumers as revocation of consent for that account? (12 CFR 1005.17(e))			

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	Yes	No	NA
54. Continuing Right to Opt-In or to Revoke Opt-In – Does the financial institution allow the consumer to affirmatively consent to the financial institution's overdraft service at any time in the manner described in the notice required (12 CFR 1005.17(b)(1)(i)) and allow a consumer to revoke consent at any time in the manner made available to the consumer for providing consent? (12 CFR 1005.17(f))			
55. Does the financial institution implement a consumer's revocation of consent as soon as reasonably practicable? (12 CFR 1005.17(f))			
56. Is the consumer's affirmative consent to the overdraft service effective until revoked by the consumer, or unless the financial institution terminates the service? (12 CFR 1005.17(g))			
12 CFR 1005.18 and 1005.15 Requirements for Financial Institutions Offering Prepaid Accounts and Electronic Fund Transfer of Government Benefits			
NOTE: This section is not exhaustive of the requirements for financial institutions offering prepaid accounts. Please refer to other sections of the checklist, as applicable. 57. Does the institution offer prepaid accounts? <u>If no, do not complete this section.</u>			
58. Does the financial institution provide the pre-acquisition short and long form disclosures before a consumer acquires a prepaid account? (12 CFR 1005.18(b)(1)(i) and 1005.15(c)(1)) *NOTE: If the prepaid account is used for disbursing funds and the financial institution or third party does not offer any alternative means for the consumer to receive those funds in lieu of accepting the prepaid account, these disclosures may be provided at the time the consumer receives the prepaid account. (12 CFR 1005.18(b)(1)(i))* *NOTE: When a consumer acquires a prepaid account in a retail location or orally by telephone, a financial institution is not required to provide the long form disclosure prior to acquisition if certain requirements are met. (12 CFR 1005.18(b)(1)(ii) and (iii))*			
59. Does the financial institution provide a short form disclosure for a prepaid account that discloses the following fees and information, as applicable? (12 CFR 1005.18(b)(2)(i) through (xiv) and 1005.15(c)(1) and (2)) • The periodic fee, assessed on a monthly or other periodic basis, using the term "Monthly fee," "Annual fee," or a substantially similar term; (12 CFR 1005.18(b)(2)(i)) • The per-purchase fee, using the term "Per purchase," or a substantially similar term; (12 CFR 1005.18(b)(2)(ii)) • The ATM withdrawal fees, for withdrawals in the United States both within and out-side of the financial institution's network or an affiliated network, using the terms "ATM withdrawal" and "in-network" or "out-of-network," or substantially similar terms; (12 CFR 1005.18(b)(2)(iii)) • The cash reload fee (total of all charges from the financial institution and any third parties), using the term "Cash reload" or a substantially similar term; (12 CFR 1005.18(b)(2)(iv))			

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	Yes	No	NA
NOTE: Any third-party fee included in the cash reload fee disclosed in the short form must be the highest fee known by the financial institution at the time it prints, or otherwise prepares, the short form disclosure. (12 CFR 1005.18(b)(3)(v)) • The ATM balance inquiry fees, for balance inquiries in the United States both within and outside of the financial institution's network or an affiliated network, using the terms "ATM balance inquiry" and "in-network" or "out-of-network," or substantially similar terms; (12 CFR 1005.18(b)(2)(v)) • Customer service fees, both for calling an interactive voice response system and a live customer service agent, using the terms (1) "Customer service," (2) "automated" or "live agent," and (3) "per call," or substantially similar terms; (12 CFR 1005.18(b)(2)(vi)) *NOTE: If the short form disclosure is for multiple service plans, disclose only the fee for live agent customer service using the terms "Live customer service" and "per call" or substantially similar terms.* • The inactivity fee, using the term "Inactivity" or a substantially similar term, and the conditions that trigger the financial institution to impose the fee; (12 CFR 1005.18(b)(2)(vii)) • If the institution charges other fees beyond those listed on the short form as required to be disclosed per 12 CFR 1005.18(b)(2)(i)-(vii), a statement disclosing the number of "additional fee types" the financial institution may charge consumers with respect to the prepaid account, using the clause "We charge [x] other types of fees" or a substantially similar clause; (12 CFR 1005.18(b)(2)(viii)(A)) • If any "additional fee types" are on the short form pursuant to 12 CFR 1005.18(b)(2)(ix), a statement directing consumers to that disclosure, located after but on the same line of text as the statement regarding the number of additional fee types in 12 CFR 1005.18(b)(2)(viii)(A) using the clause "Here are some of them:" or a substantially similar clause; (12 CFR 1005.18(b)(2)(viii)(B)) • If applicable, disclosure of the two additional fee types that generated the highest revenue from consumers for the prepaid account program (or across programs that are the same fee schedule) during the required time period; (12 CFR 1005.18(b)(2)(ix)) • If applicable, a statement that overdraft/credit may be offered, the time period after which it may be offered, and that fees would apply, using the clause: "You may be offered overdraft/credit after [x] days. Fees would apply," or a substantially similar clause; (12 CFR 1005.18(b)(2)(x)) • If applicable, a statement that no overdraft credit feature is offered, using the clause "No overdraft/credit feature" or a substantially similar clause; (12 CFR 1005.18(b)(2)(x)) • A statement regarding the prepaid account program's eligibility for FDIC deposit insurance or NCUA share insurance and directing the consumer to register the prepaid			

Examination Checklist — Regulation E – Electronic Fund Transfer Act (EFTA)

	Yes	No	NA
account for insurance eligibility and other account protections, using substantially similar language to the clauses in 12 CFR 1005.18(b)(2)(xi); • A statement directing the consumer to the CFPB's website, using the clause "For general information about prepaid accounts, visit *cfpb.gov/prepaid*" or a substantially similar clause; (12 CFR 1005.18(b)(2)(xii)) • A statement directing the consumer to the location of the long form disclosure required by 12 CFR 1005.18(b)(4), using the clause "Find details and conditions for all fees and services in [location]" or a substantially similar clause. (12 CFR 1005.18(b)(2)(xiii)) *NOTE: Additional requirements apply to prepaid accounts offered at a retail location pursuant to 12 CFR 1005.18(b)(1)(ii) and (b)(2)(xiii).*			
60. If the prepaid account is a payroll card account (or a government benefit account), does the financial institution include a statement in the short form disclosure that the consumer does not have to accept the payroll card account (or the government benefit account) and directing the consumer to ask about other ways to receive wages or salary from the employer (benefit payments from the agency), using clauses with substantially similar language to those in 12 CFR 1005.18(b)(2)(xiv) and 1005.15(c)(2)(i)?			
61. If any fees required to be disclosed in the short form disclosure can vary, including the periodic fee, does the financial institution comply with additional variable fee and variable periodic disclosure requirements in 12 CFR 1005.18(b)(3)(i) and (ii)?			
62. Does the financial institution, in its short form disclosure, refrain from including the following fees: *NOTE: As an alternative to the two-tier fee disclosure, a financial institution may disclose a single fee amount when the amount is the same for both fees.* • Any third-party fees, other than third-party cash reload fees? (12 CFR 1005.18(b)(3)(iv) and (v)) • Any finance charges as described in 12 CFR 1026.4(b)(11), imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card, as defined in 12 CFR 1026.61? (12 CFR 1005.18(b)(3)(vi))			
63. Does the financial institution provide a long form disclosure for a prepaid account that lists the following fees and information, as applicable? (12 CFR 1005.18(b)(4)) • A heading stating the name of the prepaid account program and that the long form disclosure contains a list of all fees for that particular prepaid program; (12 CFR 1005.18(b)(4)(i)) • All fees that may be imposed in connection with a prepaid account, and any conditions under which the fee may be imposed, waived, or reduced, as well as any third-			

Examination Checklist — Regulation E – Electronic Fund Transfer Act (EFTA)

	Yes	No	NA
party fees known to the institutions; (12 CFR 1005.18(b)(4)(ii)) • The statement regarding registration and FDIC insurance required by 12 CFR 1005.18(b)(2)(xi), together with an explanation of FDIC insurance coverage and the benefit of such coverage or the consequence of the lack of such coverage, as applicable; (12 CFR 1005.18(b)(4)(iii)) • The statement regarding overdraft credit features, as required by 12 CFR 1005.18(b)(2)(x); (12 CFR 1005.18(b)(4)(iv)) • A statement directing the consumer to a telephone number, mailing address, and website URL of the person or office that a consumer may contact to learn about the terms and conditions of the prepaid account, to obtain prepaid account balance information, to request a copy of transaction history if the financial institution does not provide periodic statements, or to notify the financial institution when the consumer believes that an unauthorized EFT occurred; (12 CFR 1005.18(b)(4)(v)) • A statement directing the consumer to a website URL of the CFPB for general information about prepaid accounts, and a statement directing the consumer to a CFPB telephone number and website URL to submit a complaint about a prepaid account, using a clause substantially similar to that found in 12 CFR 1005.18(b)(4)(vi); • If, at any point, a covered separate credit feature accessible by a hybrid prepaid-credit card may be offered in connection with the prepaid account, the disclosures described in Regulation Z, 12 CFR 1026.60(e)(1). (12 CFR 1005.18(b)(4)(vii))			
64. At the time that the financial institution provides the short form disclosure, does it disclose the following outside of the short form (12 CFR 1005.18(b)(5)): • The name of the financial institution? • The name of the prepaid account program? • The purchase price for the prepaid account, if any? • The fee for activating the prepaid account, if any? *NOTE: This information must be disclosed in close proximity to the short form. However, if the prepaid account is acquired in a retail location, this information, other than the purchase price, must be disclosed on the exterior of the access device's packaging material, and the purchase price must be disclosed either on the exterior of or in close proximity to the access device's packaging material. Comment 18(b)(5)-2.*			
65. Are all required disclosures provided in writing? (12 CFR 1005.18(b)(6)(i)(A)) Exception: Unless provided in written form prior to acquisition, disclosures must be provided in electronic form (and viewable across all screen sizes) when a consumer acquires a prepaid account through electronic means or orally when a consumer acquires a prepaid account orally by telephone. (12 CFR 1005.18(b)(6)(i)(B) and (C)) *NOTE: Other requirements apply for electronic disclosures. See 12 CFR 1005.18(b)(6)(i)(B).*			

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	Yes	No	NA
66. Are all required disclosures made in a form the consumer can keep, unless an exception applies as provided in 12 CFR 1005.18(b)(6)(ii)?			
67. When a short form disclosure is provided in writing or electronically, is the information required by 12 CFR 1005.18(b)(2)(i) through (b)(2)(ix) provided in the form of a table? (12 CFR 1005.18(b)(6)(iii)) *NOTE: The short form disclosure must also be substantially similar to Model Forms A-10(a) through (d), as applicable (or Model Form A-10(e) for multiple service plans that do not initially enroll the consumer in a default service plan). See 12 CFR 1005.18(b)(6)(iii)(B) for further information on multiple service plans for both the short form and long form disclosures.*			
68. When a long form disclosure is provided in writing or electronically, is the information required by 12 CFR 1005.18(b)(4)(ii) provided in a form of a table? (12 CFR 1005.18(b)(6)(iii)) See Sample Form A-10(f).			
69. Do the short form and long form disclosures comply with specific formatting requirements, such as grouping and ordering of information; prominence and size of the text; and segregation of the disclosures from other information? (12 CFR 1005.18(b)(7))			
70. Are fee names and other terms used consistently within and across the required disclosures? (12 CFR 1005.18(b)(8))			
71. When a financial institution uses a foreign language in connection with the acquisition of a prepaid account, does it provide the pre-acquisition disclosures in that same foreign language? (12 CFR 1005.18(b)(9)) *NOTE: This requirement applies only when a financial institution principally uses a foreign language in connection with the acquisition of a prepaid account in certain circumstances.*			
72. If the financial institution provides the pre-acquisition disclosures in a foreign language pursuant to 12 CFR 1005.18(b)(9), does it provide the long form disclosure in English upon request and on any part of the website where it discloses pre-acquisition disclosures in a foreign language? (12 CFR 1005.18(b)(9)(ii))			
73. Does the financial institution issuing the prepaid account either: • Provide periodic statements as required by 12 CFR 1005.9(b)? **or** make available to the consumer: • The account balance, through a readily available telephone line (and, for government benefit accounts, at a terminal), (12 CFR 1005.18(c)(1)(i) and 1005.15(d)(1)(i) **and** • An electronic history of the consumer's account transactions, such as through a web-site, that covers at least 12 months preceding the date the consumer electronically accesses the account, (12 CFR 1005.18(c)(1)(ii) and 1005.15(d)(1)(ii)) **and**			

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	Yes	No	NA
• A written history of the consumer's account transactions that is provided promptly in response to an oral or written request and that covers at least 24 months preceding the date the financial institution receives the consumer's request? (12 CFR 1005.18(c)(1)(iii) and (2) and 1005.15(d)(1)(iii)) *NOTE: For prepaid accounts that are not payroll card accounts or government benefit accounts, the financial institution is not required to provide a written history of account transactions for any prepaid account for which it has not yet completed its consumer identification and verification process.* *NOTE: The electronic and written history of account transactions must include the information set forth in 12 CFR 1005.9(b). (12 CFR 1005.18(c)(3) and 1005.15(d)(2))*			
74. Do any periodic statement provided pursuant to 12 CFR 1005.9(b) and any history of account transactions provided or made available by the financial institution include: • The amount of any fees assessed against the account, whether for EFTs or otherwise? (12 CFR 1005.18(c)(4) and 1005.15(d)(2)); and • A summary total of the amount of all fees assessed by the financial institution against the consumer's prepaid account for the prior calendar month and for the calendar year to date? (12 CFR 1005.18(c)(5) and 1005.15(d)(2))			
75. If the financial institution follows the periodic statement alternative in 12 CFR 1005.15(d)(1) (for government benefit accounts) or 12 CFR 1005.18(c)(1) (for prepaid accounts), does the institution modify its 12 CFR 1005.7(b) initial disclosures to provide: • A telephone number that the consumer may call to obtain the account balance, the means by which the consumer can obtain an electronic account transaction history, such as the address of a website, and a summary of the consumer's right to receive a written account transaction history upon request (in place of the summary of the right to receive a periodic statement required by 12 CFR 1005.7(b)(6)), including a telephone number to call to request a history (12 CFR 1005.18(d)(1)(i) and 1005.15(e)(1)(i)), **and** • A notice concerning error resolution that is substantially similar to the notice in paragraph (b) of Appendix A-5 (for government benefit accounts) or A-7 (for prepaid accounts), in place of the notice required by 12 CFR 1005.7(b)(10) or, for prepaid account programs for which the financial institution does not have a consumer identification and verification process, either a description of the error resolution process and limitations on consumer's liability for unauthorized transfers or, if none, a statement that there are no such protections? (12 CFR 1005.18(d)(1)(ii) and 1005.15(e)(1)(ii))			
76. If the financial institution follows the periodic statement alternative in 12 CFR 1005.15(d)(1) (for government benefit accounts) or 12 CFR 1005.18(c)(1) (for prepaid accounts), does it provide an appropriate annual notice concerning error resolution that is substantially similar to the notice in paragraph (b) of Appendix A-5 (for government benefit accounts) or A-7 (for prepaid accounts), in place of the notice required by 12 CFR 1005.8(b), or, alternatively, a			

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	Yes	No	NA
notice on *or* with each electronic or written account transaction history (for government benefits account) and on or with each electronic *and* written account transaction history (for prepaid accounts) that are substantially similar to the abbreviated notice in paragraph (b) of Appendix A-3, modified as necessary to reflect the appropriate error resolution provisions? (12 CFR 1005.18(d)(2) and 1005.15(e)(2))			
77. If the financial institution follows the periodic statement alternative in 12 CFR 1005.18(c)(1), does the institution: • Comply with the error resolution requirements of 12 CFR 1005.11 in response to an oral or written notice of an error from the consumer that is received by the earlier of: o 60 days after the date the consumer accesses the consumer's electronic account transaction history, provided that it reflects the alleged error; or o 60 days after the date the financial institution sends a written account transaction history (that is requested by the consumer) in which the alleged error is first reflected? (12 CFR 1005.18(e)(2) and 1005.15(e)(4)(i)) *NOTE: In lieu of following the above, the financial institution complies with the requirements for resolving errors in 12 CFR 1005.11 if it investigates any oral or written notice of an error from the consumer that is received by the institution within 120 days after the transfer allegedly in error was credited or debited to the consumer's account. (12 CFR 1005.18(e)(2)(ii) and 1005.15(e)(4)(ii)) Also, for prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution is not required to comply with the liability limits and error resolution requirements in 12 CFR 1005.6 and 1005.11 for any prepaid account for which it has not successfully completed its consumer identification and verification process. (12 CFR 1005.18(e)(3)(i))*			
78. Does a financial institution, as part of its initial disclosures given pursuant to 12 CFR 1005.7, include all of the information required to be disclosed in its pre-acquisition long form disclosures pursuant to 12 CFR 1005.18(b)(4)? (12 CFR 1005.18(f)(1) and 1005.15(f))			
79. Does a financial institution comply with the change-in-terms notice requirements in 12 CFR 1005.8(a) for any change in a term or condition that is required to be disclosed under 12 CFR 1005.7 or 1005.18(f)(1)? (12 CFR 1005.18(f)(2) and 1005.15(f)) *NOTE: Under certain circumstances, the financial institution may not be required to provide a change-in-terms notice to reflect changes to third-party fee amounts or changes to the fees or other terms disclosed in the Regulation Z disclosures required by 12 CFR 1005.18(b)(4)(vii) for overdraft credit features.*			
80. Does the financial institution disclose on the prepaid account access device the name of the financial institution and the website URL and a telephone number a consumer can use to contact the financial institution about the prepaid account? (12 CFR 1005.18(f)(3) and 1005.15(f))			
81. If a financial institution does not provide a physical access device in connection with a prepaid account, does the financial institution disclose the name of the financial institution and the			

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	Yes	No	NA
website URL and a telephone number a consumer can use to contact the financial institution about the prepaid account on the website, mobile application, or other entry point a consumer must visit to access the prepaid account electronically? (12 CFR 1005.18(f)(3) and 1005.15(f))			
82. Does a financial institution provide to any prepaid account without a covered separate credit feature the same account terms, conditions, and features it provides on prepaid accounts in the same prepaid account program that have such a feature? (12 CFR 1005.18(g)(1)) *NOTE: A financial institution is not prohibited from imposing a higher fee or charge on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee or charge that it imposes on any prepaid account in the same prepaid account program that does not have such a credit feature. (12 CFR 1005.18(g)(2))*			
12 CFR 1005.19 Internet Posting Agreements			
83. Does the institution offer prepaid accounts? <u>If no, do not complete this section.</u>			
84. Is the prepaid account issuer not required to submit any prepaid account agreements to the CFPB because one of the following applies: • The issuer has fewer than 3,000 open prepaid accounts? <u>If yes, do not complete this section.</u> (12 CFR 1005.19(b)(4)(i)) • The agreement is offered as part of a product test offered to only a limited group of consumers for a limited period of time; is used for fewer than 3,000 open prepaid accounts; and is not offered other than in connection with the product test? <u>If yes, do not complete this section for that particular product.</u> (12 CFR 1005.19(b)(5)(i)) *NOTE: If an issuer or agreement that did not previously qualify for either exception subsequently qualifies, the issuer must continue to make submissions to the CFPB on a rolling basis until it notifies the Bureau it is withdrawing the agreement(s). (12 CFR 1005.19(4)(ii) and (5)(ii))*			
85. Does the prepaid account issuer make submissions of prepaid account agreements to the CFPB no later than 30 days after the issuer offers, amends, or ceases to offer a prepaid account agreement? (12 CFR 1005.19(b)(1))			
86. Do the issuer's submissions of prepaid account agreements contain: • Identifying information about the issuer and the agreements submitted, including: the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number); the effective date of the prepaid account agreement; the name of the program manager, if any; and the list of names of other relevant parties, if applicable (such as the employer for a payroll card program or the agency for a government benefit program)? (12 CFR 1005.19(b)(1)(i)) • Any prepaid account agreement offered by the issuer that has not been previously			

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	Yes	No	NA
submitted to the CFPB? (12 CFR 1005.19(b)(1)(ii)) • Any prepaid account agreement previously submitted to the CFPB that has been amended? (12 CFR 1005.19(b)(1)(iii)) • Notification regarding any prepaid account agreement previously submitted to the CFPB that the issuer is withdrawing? (12 CFR 1005.19(b)(1)(iv))			
87. If a prepaid account issuer amends a prepaid account agreement that was previously submitted to the CFPB, does the issuer submit the entire amended agreement to the Bureau no later than 30 days after the change becomes effective? (12 CFR 1005.19(b)(2)(i))			
88. If a prepaid account issuer amends other identifying information about the issuer and its submitted agreements, does the issuer submit the updated information to the CFPB no later than 30 days after the change becomes effective? (12 CFR 1005.19(b)(2)(i)) *NOTE: An issuer may delay submitting a change to the list of names of other relevant parties to a particular agreement until the earlier of: (1) such time as the issuer is otherwise submitting an amended agreement or changes to other identifying information about the issuer and its submitted agreements; or (2) May 1 of each year for any updates to the list of names of other relevant parties for that agreement that occurred between the last submission of relevant party information and April 1 of that year.*			
89. If a prepaid account issuer withdraws a prepaid account agreement that was previously submitted to the CFPB, does the issuer notify the Bureau, no later than 30 days after the issuer ceases to offer the agreement, that it is withdrawing the agreement? (12 CFR 1005.19(b)(3))			
90. Does the issuer submit its prepaid account agreements to the CFPB in accordance with the following form and content requirements? • Each agreement contains the provisions of the agreement and the fee information currently in effect. (12 CFR 1005.19(b)(6)(i)(A)) • Agreements do not include any personally identifiable information relating to any consumer, such as name, address, telephone number, or account number. (12 CFR 1005.19(b)(6)(i)(B)) • Agreements are presented in a clear and legible font. (12 CFR 1005.19(b)(6)(i)(D)) • All fee information, as defined in 12 CFR 1005.19(a)(3), is set forth either in the prepaid account agreement or in addenda to that agreement that attach either or both the short form disclosure under 12 CFR 1005.18(b)(2) and the fee information and statements required to be disclosed in the long form disclosure under 12 CFR 1005.18(b)(4). (12 CFR 1005.19(b)(6)(ii)) • Provisions of the agreement and fee information are not provided to the CFPB in the form of change-in-terms notices or riders, other than the optional fee information addenda. Changes in provisions or fee information are integrated into the text of the agreement, or the optional fee addendum, as appropriate. (12 CFR 1005.19(b)(6)(iii))			

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	Yes	No	NA
91. Does the prepaid account issuer post and maintain on its publicly available website any prepaid account agreements offered to the general public that the issuer is required to submit to the CFPB? (12 CFR 1005.19(c)(1))			
92. Do the posted agreements conform to the form and content requirements for agreements submitted to the CFPB as set forth in 12 CFR 1005.19(b)(6)? (12 CFR 1005.19(c)(2))			
93. Does the prepaid account issuer post and update the agreements on its website as frequently as the issuer is required to submit new and amended agreements to the CFPB? (12 CFR 1005.19(c)(3))			
94. Does the prepaid account issuer post the agreements: (12 CFR 1005.19(c)(4)) • In an electronic format that is readily usable by the general public; • In a location that is prominent and readily accessible to the public; and • In a location that is accessible without submission of personally identifiable information?			
95. For any open prepaid account, does the prepaid account issuer post and maintain the consumer's agreement on its website or promptly provide a copy of the consumer's agreement to the consumer upon the consumer's request? (12 CFR 1005.19(d)(1)(i) and (ii))			
96. If the issuer makes an agreement available upon request, does the issuer: (12 CFR 1005.19(d)(1)(ii)) • Provide the consumer with the ability to request a copy of the agreement by telephone?; and • Send the consumer a copy of the agreement no later than five business days after the issuer receives the consumer's request?			
97. Do the agreements posted on the issuer's website or sent to the consumer upon the consumer's request pursuant to 12 CFR 1005.19(d) conform to the form and content requirements for agreements submitted to the CFPB as set forth in 12 CFR 1005.19(b)(6)? (12 CFR 1005.19(d)(2)(i))			
98. If the issuer posts an agreement on its website pursuant to 12 CFR 1005.19(d)(1)(i), does the issuer post the agreements: (12 CFR 1005.19(d)(2)(ii)) • In an electronic format that is readily usable by the general public; and • In a location that is prominent and readily accessible to the consumer?			
99. If agreements posted or otherwise provided to the consumer pursuant to 12 CFR 1005.19(d) contain personally identifiable information relating to the consumer, such as name, address, telephone number, or account number, does the issuer take appropriate measures to make the agreement accessible only to the consumer or other authorized persons? (12 CFR			

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	Yes	No	NA
1005.19(d)(2)(iii))			
100. Do agreements posted or otherwise provided to the consumer pursuant to 12 CFR 1005.19(d) set forth the specific provisions and fee information applicable to the particular consumer? (12 CFR 1005.19(d)(2)(iv))			
101. Does the issuer update agreements posted to its website pursuant to 12 CFR 1005.19(d) as frequently as the issuer is required to submit amended agreements to the CFPB pursuant to 12 CFR 1005.19(b)(2)? (12 CFR 1005.19(d)(2)(v))			
102. Are agreements provided upon consumer request accurate as of the date the agreement is sent to the consumer? (12 CFR 1005.19(d)(2)(v))			
103. For agreements provided upon consumer request, does the issuer provide the agreement in paper form unless the consumer agrees to receive the agreement electronically? (12 CFR 1005.19(d)(2)(vi))			
12 CFR 1005.20 Requirements for Gift Cards and Gift Certificates			
104. Does the institution offer gift certificates, store gift cards, general-use prepaid cards, loyalty, award, or promotional gift cards? <u>If no, do not complete this section.</u>			
105. Determine if the institution offers consumers, primarily for personal, family, or household purposes, in a specified amount, a card, code, or other device on a prepaid basis, the following: • Gift certificates – which may not be increased or reloaded in exchange for payment; and are redeemable upon presentation at a single merchant or an affiliated group of merchants for goods and services? (12 CFR 1005.20(a)(1)) • Store gift cards – which may be increased or reloaded, in exchange for payment and are redeemable upon presentation at a single merchant or an affiliated group of merchants for goods and services? (12 CFR 1005.20(a)(2)) • General-use prepaid cards – which may be increased or reloaded, in exchange for payment and are redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or useable at automated teller machines? (12 CFR 1005.20(a)(3))			

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	Yes	No	NA
106. Do loyalty, award or promotional gift cards as defined by (12 CFR 1005.20(a)(4)), contain the following disclosures as applicable? • A statement indicating that the card, code, or other device is issued for loyalty, award, or promotional purposes, which must be included on the front of the card, code, or other device? (12 CFR 1005.20(a)(4)(iii)(A)) • The expiration date for the underlying funds, which must be included on the front of the card, code, or other device? (12 CFR 1005.20(a)(4)(iii)(B)) • The amount of fees that may be imposed in connection with the card, code, or other device, and the conditions under which they may be imposed, which must be provided on or with the card, code, or other device? **and** (12 CFR 1005.20(a)(4)(iii)(C)) • A toll-free telephone number and, if one is maintained, a Web site, that a consumer may use to obtain fee information, which must be included on or with the card, code, or other device? (12 CFR 1005.20(a)(4)(iii)(D))			

107. If the terms of the gift certificate, store gift card, or general-use prepaid card impose a dormancy, inactivity, or service fee as defined under (12 CFR 1005.20(a)), please answer the following:
• Has there been activity with respect to the certificate or card, in the one year period ending on the date on which the fee was imposed? (12 CFR 1005.20(d)(1))
• As applicable, are the following clearly and conspicuously stated on the gift certificate, store gift card, or general-use prepaid card:
  ° The amount of any dormancy, inactivity, or service fee that may be charged? (12 CFR 1005.20(d)(2)(i))
  ° How often such a fee may be assessed? (12 CFR 1005.20(d)(2)(ii))
  ° That such fee may be assessed for inactivity? (12 CFR 1005.20(d)(2)(iii))
• Is the dormancy, inactivity, or service fee imposed limited to one in any given calendar month? (12 CFR 1005.20(d)(3))			

108. If the financial institution sells or issues a gift certificate, store gift card, or general-use prepaid card with an expiration date, determine the following: • Has the financial institution established policies and procedures to provide consumers with a reasonable opportunity to purchase a certificate or card with at least five years remaining until the certificate or card expiration date? (12 CFR 1005.20(e)(1)) • Is the expiration date for the underlying funds at least the later of five years after the date the gift certificate was initially issued, or the date on which funds were last loaded to a store gift card or general-use prepaid card; or the certificate or card expiration date, if any? (12 CFR 1005.20(e)(2))			

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	Yes	No	NA
109. If the financial institution sells or issues a gift certificate, store gift card, or general-use prepaid card with an expiration date, then are the following disclosures provided on the certificate or card, as applicable: • The expiration date for the underlying funds, or if the underlying funds do not expire, the fact that the funds do not expire? (12 CFR 1005.20(e)(3)(i)) • A toll-free number and, if one is maintained, a website that a consumer may use to obtain a replacement certificate or card after the certificate or card expires if the underlying funds may be available; **and** (12 CFR 1005.20(e)(3)(ii)) • Except where a non-reloadable certificate or card bears an expiration date that is at least seven years from the date of manufacture, a statement, disclosed with equal prominence and in close proximity to the certificate or card expiration date, that: ° The certificate or card expires, but the underlying funds either do not expire or expire later than the certificate or card; (12 CFR 1005.20(e)(3)(iii)(A)) ° The consumer may contact the issuer for a replacement card; **and** (12 CFR 1005.20(e)(3)(iii)(B)) ° No fee or charge is imposed on the cardholder for replacing the gift certificate, store gift card, or general-use prepaid card or for providing the certificate or card holder with the remaining balance in some manner prior to the funds expiration date unless such certificate or card has been lost or stolen. (12 CFR 1005.20(e)(4))			
110. Are the following disclosures provided in connection with a gift certificate, store gift card, or general-use prepaid card, as applicable: • For each type of fee that may be imposed in connection with the gift certificate or card (other than a dormancy, inactivity, or service fee subject to the disclosure requirements under (12 CFR 1005.20(d)(2)), the following information must be provided on or with the certificate or card: ° The type of fee (12 CFR 1005.20(f)(1)(i)); ° The amount of the fee (or an explanation of how the fee will be determined) (12 CFR 1005.20(f)(1)(ii)); **and** ° The conditions under which the fee may be imposed. (12 CFR 1005.20(f)(1)(iii)) • A toll-free telephone number and, if one is maintained, a Web site, that a consumer may use to obtain information about dormancy, inactivity, service, or each type of fee that may be imposed in connection with the certificate or card (12 CFR 1005.20(f)(2)).			
Subpart B			
Requirements for Remittance Transfers			
1. Does the provider offer remittance transfers in the normal course of business? If the provider deems itself to not offer remittance transfers in the normal course of business as a result of the 100-transfer safe harbor, are the provider's method for counting transactions appropriate? *If the provider offers remittance transfers in the normal course of business and, therefore, is covered by the rule, complete the following checklist.*			

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	Yes	No	NA
2. Does the provider have written policies and operating procedures that govern its remittance transfer operations?			
3. Do these policies and procedures adequately address the requirements of Subpart B?			
4. Are the provider's personnel who are involved in remittance transfer operations knowledgeable about the requirements of Subpart B?			
12 CFR 1005.31 Disclosures			
(Unless otherwise indicated, the disclosure requirements apply to all remittance transfer transactions, including those scheduled before the date of transfer) 5. Does the provider provide pre-payment disclosures and receipts or combined disclosures to its remittance transfer customers? (12 CFR 1005.31(b)(1), (2), and (3)) *NOTE: Specific content of disclosures is addressed below*			
6. Are written disclosures: • in the appropriate form; (12 CFR 1005.31(c)) • clear and conspicuous; (12 CFR 1005.31(a)(1)) • in retainable form? (12 CFR 1005.31(a)(2))			
7. Are written and electronic disclosures provided in compliance with the foreign language requirements of 12 CFR 1005.31(g)?			
8. If the provider uses scripts to provide oral disclosures for remittance transfer transactions and error resolution procedures conducted over the telephone, do the contents of the scripts comply with the requirements of 12 CFR 1005.31(a)(3) and (a)(4)?			
9. Do disclosures related to telephone, mobile application, or text message transactions comply with the disclosure requirements with respect to foreign languages and notice of cancellation rights (12 CFR 1005.31(g)(2) and 12 CFR 1005.31(b)(2)(iv)?			
10. Does information in written or electronic disclosures comply with the grouping requirements of 12 CFR 1005.31(c)(1)?			
11. Is the exchange rate used for the remittance transfer generally disclosed in close proximity to the other information in the pre-payment disclosures? (12 CFR 1005.31(c)(2))			
12. In case of a disclosure that includes the disclaimer statement under 12 CFR 1005.31(b)(1)(viii), is the disclaimer in close proximity to the Total to Recipient (12 CFR 1005.31(c)(2))?			
13. Are disclosures on error resolution and cancellation rights generally disclosed in close proximity to the other disclosures on the receipt (12 CFR 1005.31(c)(2))?			
14. Are disclosures that are provided in writing or electronically provided in a minimum of eight point font, in equal prominence to each other, and on the front of the page on which the			

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	Yes	No	NA
disclosures are printed (12 CFR 1005.31(c)(3))?			
15. For disclosures that are provided in writing or electronically: • do they contain only information directly related to the disclosures, and • are they segregated from everything else (12 CFR 1005.31(c)(4))?			
16. Are estimated amounts in the disclosures appropriately described using the term "estimated" or a substantially similar term in close proximity to the term described (12 CFR 1005.31(d))?			
17. Are disclosures provided in compliance with the timing requirements of 12 CFR 1005.31(e)?			
18. Do disclosures comply with the accuracy requirements of 12 CFR 1005.31(f)? *NOTE: For a one-time transfer scheduled five or more business days in advance or for the first in a series of preauthorized remittance transfers, disclosures must be accurate when a sender makes payment except to the extent estimates are permitted. For any subsequent transfer in a series of preauthorized remittance transfers, disclosures must be accurate as of the date the preauthorized remittance transfer to which it pertains is made.* (12 CFR 1005.36(b).)			
12 CFR 1005.31(b)(1) Pre payment disclosures			
19. Does the provider appropriately distinguish between covered and non-covered third-party fees?			
20. Do the provider's pre-payment disclosures appropriately disclose to the recipient the following information as applicable, using the terms in quotes (or substantially similar terms) listed below: • "Transfer Amount" both in the currency in which transaction is funded and in the currency in which the funds will be made available to the recipient; • "Transfer Fees" and "Transfer Taxes"; • "Other Fees" ; • "Exchange Rate"; • "Total to Recipient", and • If applicable, a disclaimer statement that non-covered third-party fees or taxes collected on the remittance transfer by a third person may apply, resulting in the designated recipient receiving less than the amount disclosed (12 CFR 1005.31(b)(1))? • If the provider includes in the disclaimer statement required by 12 CFR 1005.31(b)(1)(viii), an optional estimated disclosure of applicable non-covered third-party fees or taxes, are the estimates based on reasonable sources of information? (12 CFR 1005.32(b)(3))			
Receipt 12 CFR 1005.31(b)(2)			

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	Yes	No	NA
21. Do the provider's receipts appropriately calculate and disclose to the recipient the following information as applicable, using the terms in quotes (or substantially similar terms) listed below, as applicable: • all the information required to be provided in the pre-payment disclosure; • "Date Available"; • "Recipient"; • a statement about the sender's error resolution and cancellation rights, using language set forth in Model Form A-37 of Appendix A or substantially similar language; *NOTE: If the transfer is scheduled at least three business days before the date of the transfer, the statement about the sender's cancellation rights should reflect the requirements of 12 CFR1005.36(c).* • name, telephone number(s) and, if applicable, the website of the provider; • a statement that the sender can contact the State agency that licenses or charters the remittance transfer provider with respect to the particular transfer (if applicable) and the Consumer Financial Protection Bureau, for questions or complaints about the remittance transfer provider using language set forth in Model Form A-37 of Appendix A or substantially similar language; and *NOTE: The statement must include the name, telephone number(s) and website of the State agency and the name, toll-free telephone number(s) and website of the CFPB.* • The transfer date (only for transfers scheduled at least three business days in advance, or the first transfer in a series of preauthorized remittance transfers)?			
Complete this section if the provider provides combined disclosures as an alternative to prepayment disclosures and receipts. 22. Does the combined disclosure contain all the information required to be provided on the receipt?			
23. Does the provider provide the combined disclosure when the sender requests the remittance transfer, but prior to payment for the transfer; and provide a proof of payment when payment is made for the transfer? *NOTE:* *1. The proof of payment must be clear and conspicuous, provided in writing or electronically, and provided in a retainable form.* *2. For one-time transfers scheduled five or more business days in advance or for the first in a series of preauthorized transfers, the provider may provide confirmation that the transaction has been scheduled in lieu of the proof of payment if payment is not processed at the time the remittance transfer is scheduled. No further proof of payment is required when payment is later processed.*			
24. Does the provider promptly provide, at the sender's request, a notice describing the sender's error resolution and cancellation rights, using language set forth in Model Form A-36 of Appendix A or substantially similar language? (12 CFR 1005.31(b)(4))			

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	Yes	No	NA
NOTE: For a remittance transfer scheduled at least three business days before the date of the transfer, the description of the rights of the sender regarding cancellation must instead reflect the requirements of 12 CFR 1005.36(c).			
12 CFR 1005.32 Estimates 12 CFR 1005.32(a) Temporary exception for insured institutions			
NOTE: This exception expires on July 21, 2020 25. If the remittance transfer provider is an insured institution (as defined by 12 CFR 1005.32(a)(3)), does the institution use estimates in its disclosures for transactions sent from the sender's account (not including a prepaid account, unless the prepaid account is a payroll card account or government benefit account) with the institution?			
26. If so, is the provider only using the temporary exception in situations where it cannot determine the exact amounts for reasons beyond its control because a person other than the institution or with which the institution has no correspondent relationship sets the exchange rate required to be disclosed or imposes a fee required to be disclosed? (12 CFR 1005.32(a) and Comment 32(a)(1)-1)			
12 CFR 1005.32(b)(1) Permanent exception for transfers to certain counties			
27. Does the provider appropriately rely on the most recent list provided by the CFPB when using estimates under the permanent exception set forth under 12 CFR 1005.32(b)(1) for transactions to those countries?			
28. If the provider provides estimates for transactions in a country which does not appear on the safe harbor list published by the CFPB, does the entity appropriately determine that the laws of or the method by which transactions are conducted in the recipient country do not permit the determination of exact amounts. (12 CFR 1005.32(b)(1)(ii) and Comment 32(b)-5)? *NOTE: A provider cannot rely on the CFPB list if it has information that the laws of a country on the list permit exact disclosures.*			
12 CFR 1005.32(b)(2) Permanent exception for transfers scheduled before the date of transfer			
29. For transfers scheduled five or more business days before the date of the transfer for which estimates may be provided, does the provider comply with the requirements of 12 CFR 1005.32(b)(2)?			
12 CFR 1005.32(c) Bases for estimates			
30. Are the bases used to derive the estimates under 12 CFR 1005.32(a), (b)(1), and (b)(2) in compliance with the method for disclosing estimates set forth in 12 CFR 1005.32(c)? *NOTE: For transfers scheduled five or more business days before the date of the transfer for which estimates may be provided, the requirements of 12 CFR 1005.32(d) apply.*			

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	Yes	No	NA
31. Does the provider use the approaches listed in the rule to estimate: • exchange rate; • transfer amount in which funds will be received; • covered third party fees; and • the amount of currency that will be received by the designated recipient?			
32. If estimates are based on an approach that is not one of the listed bases, does the designated recipient receive the same, or greater, amount of funds than the remittance transfer provider disclosed?			
12 CFR 1005.33 Procedures for resolving errors			
33. Does the provider have adequate policies and procedures to address the error resolution requirements applicable to remittance transfers? (12 CFR 1005.33(g))			
34. Do the policies and procedures adequately state what does and does not constitute an error as defined in 12 CFR 1005.33(a)?			
35. Do the policies and procedures specifically address: • timing and content of the sender's notice of error (12 CFR 1005.33(b)(1)); • provider's request for additional information or clarification (12 CFR 1005.33(b)(2)); • time limits for investigation, reporting results, and correcting an error (12 CFR 1005.33(c)); • sender's request for documentation that the provider relied on to make a decision (12 CFR 1005.33(d)); and • the retention of records related to error investigations (12 CFR 1005.33(g)(2) and (12 CFR 1005.13))?			
36. Does the provider complete its investigation of alleged errors and determine whether an error occurred within 90 days of receiving notice of the error (12 CFR 1005.33(c))?			
37. Does the provider report investigation results to the sender within three business days after completing its investigation and include notice of any remedies available for correcting any error determined to have occurred and provide remedy within one business day (12 CFR 1005.33(c))? *NOTE: The provider can ask the sender to designate a preferred remedy at the time the sender provides notice of the error but must indicate that a resend remedy may be unavailable if the error occurred because the sender provided incorrect or insufficient information.*			
38. If the sender provided an incorrect account number or recipient institution identifier, does the provider comply with the requirements of 12 CFR 1005.33(h) before determining that no error occurred?			
39. If the provider determines that no error or a different error occurred, does it provide a written			

Examination Checklist — Regulation E – Electronic Fund Transfer Act (EFTA)

	Yes	No	NA
explanation of the findings, and note the sender's right to request the documents upon which the provider relied in making its determination? (12 CFR 1005.33(d))			
40. If the provider provides a default remedy, does it correct the error within one business day or as soon as reasonably practicable, after the reasonable time (deemed to be ten business days) or the sender to designate the remedy has passed? *NOTE: A default remedy is not applicable where the sender provided incorrect or insufficient information.*			
41. If the sender requests a refund (for errors other than those related to failure to deliver by the disclosed date where the sender provided incorrect or insufficient information), does the provider refund, inclusive of fees, within one business day or as soon as reasonably practicable thereafter (12 CFR 1005.33(c)(2)(A))? *NOTE: The provider may generally, at its discretion, issue a refund either in cash or in the same form of payment that was initially provided by the sender for the remittance transfer.*			
42. If the sender requests delivery of the amount appropriate to correct the error and the error did not occur because the sender provided incorrect or insufficient information, does the provider correct the error within one business day, or as soon as reasonably practicable, applying the same exchange rate, fees, and taxes stated in the disclosure provided in connection with the unsuccessful remittance transfer attempt (Comment 33(c)-3)?			
43. In the case of errors involving incorrect or insufficient information provided by the sender for the transfer, does the provider comply with the requirements of 12 CFR 1005.33(c)(2)(iii)?			
44. If the provider determines that an error occurred that relates to: • an incorrect amount paid by the sender; • a computational or bookkeeping error made by the remittance transfer provider; or • failure to make the amount of currency stated in the disclosures available to the designated recipient, does the provider either: • refund the amount of funds provided by the sender (in case of a transaction that was not properly transmitted), • refund the amount appropriate to resolve the error; or • make available to the designated recipient the amount appropriate to resolve the error without additional cost to the sender or the designated recipient? (12 CFR 1005.33(c)(2)(i))			
45. If the error relates to the failure to make funds available to the designated recipient by the disclosed date of availability (except in cases where the sender provided incorrect or insufficient information), does the provider • either (i) refund the amount of funds that was not properly transmitted, or the amount appropriate to resolve the error to the sender; or (ii) make available to the designated recipient the amount appropriate to resolve the error; and • refund to the sender any fees and, to the extent not prohibited by law, taxes imposed for the remittance transfer (12 CFR 1005.33(c)(2)(ii))?			

Examination Checklist — Regulation E – Electronic Fund Transfer Act (EFTA)

	Yes	No	NA
46. If an error occurred, does the provider impose a charge related to any aspect of the error resolution process (including charges for documentation or investigation)? (Comment 33(c)-9) If so, is the provider in violation of 12 CFR 1005.33(c)?			
47. Does the provider retain policies and procedures and documentation, including those related to error investigations, for a period of not less than two years from the date a notice of error was submitted to the provider or action was required to be taken by the provider (12 CFR 1005. 33(g) and 1005.13)?			
12 CFR 1005.34 Procedures for Cancellation and Refund of Remittance Transfers			
48. Does the provider comply with any oral or written request to cancel a remittance transfer (except for transfers scheduled three or more business days before the date of transfer) from the sender that is received no later than 30 minutes after the sender makes payment in connection with the remittance transfer? (12 CFR 1005.34(a)) *NOTE: The request to cancel must enable the provider to identify the sender's name and address or telephone number and the particular transfer to be cancelled, and the transferred funds must not have been picked up by the designated recipient or deposited into an account of the designated recipient. (12 CFR 1005.34(a)(1) and (2))*			
49. If a sender provides a timely request to cancel a remittance transfer, does the provider refund all funds provided by the sender in connection with the remittance transfer at no additional cost to the sender, within three business days of receiving the request? (12 CFR 1005.34(b)) *NOTE: The funds to be refunded include any fees and, to the extent not prohibited by law, taxes that have been imposed for the transfer, whether the fee or tax was assessed by the provider or a third party, such as an intermediary institution, the agent or bank in the recipient country, or a State or other governmental body (12 CFR 1005.34(b)).*			
12 CFR 1005.35 Acts of agents			
50. Has the provider established and maintained policies or procedures, including policies, procedures for compliance, or other appropriate oversight measures designed to ensure compliance by an agent or authorized delegate acting for such provider? Consider: • The degree of control the agent exercises over the remittance transfer activities performed on the provider's behalf; • The quality and frequency of training provided to ensure that agents are aware of the regulatory requirements and the provider's internal policy guidelines; and • The adequacy of the provider's oversight of agents' activities.			
12 CFR 1005.36 Transfers scheduled before the date of transfer			
51. For one-time transfers scheduled five or more business days in advance or for the first in a series of preauthorized remittance transfers, does the provider provide either a pre-payment disclosure and a receipt or a combined disclosure at the time the sender requests the transfer			

Examination Checklist — Regulation E – Electronic Fund Transfer Act (EFTA)

	Yes	No	NA
but prior to payment? (12 CFR 1005.36(a)(1)(i)) *NOTE: If any of the disclosures provided contain estimates, the provider must mail or deliver an additional receipt no later than one business day after the date of the transfer. If the transfer involves the transfer of funds from the sender's account held by the provider, this additional receipt may be provided on or with the next periodic statement for that account, or within 30 days after the date of the transfer if a periodic statement is not provided. (12 CFR 1005.36(a)(1)(ii))*			
52. For each subsequent preauthorized remittance transfer, does the provider provide an updated receipt if any of the information (other than temporal disclosures or disclosures that are permitted to be estimated) on the most recent receipt is no longer accurate? (12 CFR 1005.36(a)(2)(i)) *NOTE: The receipt must clearly and conspicuously indicate that it contains updated disclosures and must be mailed or delivered to the sender within a reasonable time prior to the scheduled date of the next subsequent preauthorized remittance transfer. A disclosure that is mailed no later than ten business days or hand or electronically delivered no later than five business days is deemed to have been provided within a reasonable time. (12 CFR 1005.36(a)(2)(i) and Comment 36(a)(2)-3)*			
53. If there is no updated information and the remittance transfer does not involve the transfer of funds from the sender's account held by the provider, does the provider mail or deliver to the sender a receipt no later than one business day after the date of the transfer for each subsequent preauthorized transfer? (12 CFR 1005.36(a)(2)(ii))			
54. If there is no updated information and the remittance transfer involves the transfer of funds from the sender's account held by the provider, is the receipt provided on or with the next periodic statement for that account, or within 30 days after the date of the transfer if a periodic statement is not provided? (12 CFR 1005.36(a)(2)(ii))			
55. For any subsequent transfer in a series of preauthorized remittance transfers, does the provider disclose the date of the subsequent transfer using the term "Future Transfer Date" or a substantially similar term, a statement of the sender's cancellation rights, and the name, telephone number(s), and website of the remittance transfer provider no more than 12 months, and no less than 5 business days prior to, the date of the subsequent preauthorized remittance transfer? (12 CFR 1005.36(d)) *NOTE: While the rule generally provides flexibility as to when and where future transfer dates may be disclosed, for any subsequent preauthorized remittance transfer for which the date of transfer is four or fewer business days after the date payment is made, the disclosure must generally be provided on or with the receipt for the initial transfer in that series. (12 CFR 1005.36(d)(2)(ii))*			

Examination Checklist — Regulation E – Electronic Fund Transfer Act (EFTA)

	Yes	No	NA
56. Does the provider comply with any oral or written request to cancel any remittance transfer scheduled by the sender at least three business days before the date of the remittance transfer? (12 CFR 1005.36(c)) *NOTE: The request to cancel must:* • *enable the provider to identify the sender's name and address or telephone number and the particular transfer to be cancelled; and* • *be received by the provider at least three business days before the scheduled date of the remittance transfer. (12 CFR 1005.36(c)).*			
Examiner Conclusions			

Truth in Savings

Introduction

Regulation DD (12 C.F.R. § 1030), which implements the Truth in Savings Act (TISA), became effective in June 1993. An official staff commentary interprets the requirements of Regulation DD (12 C.F.R. § 1030 (Supplement I)). Since then, several amendments have been made to Regulation DD and the Staff Commentary, including changes, effective January 1, 2010, concerning disclosures of aggregate overdraft and returned item fees on periodic statements and balance disclosures provided to consumers through automated systems. In addition, effective July 6, 2010, clarifications were made to the provisions related to overdraft services (NOTE: The effective date for the clarification to section 1030.11(a)(1)(i), requiring the term "Total Overdraft Fees" to be used, is October 1, 2010) (75 FR 31673). Regulation DD, is issued by the CFPB to implement the Truth in Savings Act of 1991, contained in the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C.3201 et seq., Public Law 102-242, 105 Stat.2236), as amended by title X, section 1100B of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111-203, 124 Stat 1376).

The purpose of Regulation DD is to enable consumers to make informed decisions about their accounts at depository institutions through the use of uniform disclosures. The disclosures aid comparison shopping by informing consumers about the fees, annual percentage yield, interest rate, and other terms for deposit accounts. A consumer is entitled to receive disclosures:

- When an account is opened;
- Upon request;
- When the terms of the account are changed;
- When a periodic statement is sent; and
- For most time accounts, before the account matures.

The regulation also includes requirements on the payment of interest, the methods of calculating the balance on which interest is paid, the calculation of the annual-percentage yield, and advertising.

Coverage (§ 1030.1)

Regulation DD applies to all depository institutions, except credit unions, that offer deposit accounts to residents of any state. Branches of foreign institutions located in the United States are subject to Regulation DD if they offer deposit accounts to consumers. Edge Act and agreement corporations, and agencies of foreign institutions, are not depository institutions for purposes of Regulation DD.

In addition, persons who advertise accounts are subject to the advertising rules. For example, if a deposit broker places an advertisement offering consumers an interest in an account at a depository institution, the advertising rules apply to the advertisement, whether the account is to be held by the broker or directly by the consumer.

Definitions (§ 1030.2)

Section 1030.2 defines key terms used in Regulation DD. Among those definitions are the following:

Account (§ 1030.2(a))

An account is 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. Regulation DD covers interest-bearing as well as noninterest-bearing accounts.

Advertisement (§ 1030.2(b))

An advertisement is a commercial message, appearing in any medium, that promotes directly or indirectly (a) the availability or terms of, or a deposit in, a new account, and (b) for purposes of sections 1030.8(a) (misleading or inaccurate advertisements) and 1030.11 (additional disclosure requirements for institutions advertising the payment of overdrafts), the terms of, or a deposit in, a new or existing account. An advertisement includes a commercial message in visual, oral, or print media that invites, offers, or otherwise announces generally to prospective customers the availability or terms of, or a deposit in, a consumer account. Examples of advertisements include telephone solicitations and messages on automated teller machine screens.

Annual percentage yield (§ 1030.2(c))

An annual percentage yield is 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 or 366-day period during leap years and calculated according to the rules in Appendix A of Regulation DD. Interest or other earnings are not to be included in the annual percentage yield if the circumstances for determining the interest and other earnings may or may not occur in the future (see Appendix A, footnote 1).

Average daily balance method (§ 1030.2(d))

The average daily balance method is the application of a periodic rate to the average daily balance in the account for the 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.

Bureau (§ 1030.2(e))

The Bureau means the Consumer Financial Protection Bureau.

Bonus (§ 1030.2(f))

A bonus is 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.

Business day (§ 1030.2(g))

A business day is a calendar day other than a Saturday, a Sunday, or any of the legal public holidays specified in 5 U.S.C. § 6103(a).

Consumer (§ 1030.2(h))

A consumer is 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 accounts held by a natural person on behalf of another in a professional capacity or accounts held by individuals as sole proprietors.

Daily balance method (§ 1030.2(i))

The daily balance method is the application of a daily periodic rate to the full amount of principal in the account each day.

Depository institution (§ 1030.2(j))

A depository institution and an institution are institutions defined in section 19(b)(1)(A)(i)-(vi) of the Federal Reserve Act (12 U.S.C. § 461), except credit unions defined in section 19(b)(1)(A)(iv). Branches of foreign institutions located in the United States are subject to the regulation if they offer deposit accounts to consumers. Edge Act and agreement corporations, and agencies of foreign institutions, are not depository institutions for purposes of this regulation.

Deposit broker (§ 1030.2(k))

A deposit broker is a person who is in the business of placing or facilitating the placement of deposits in an institution, as defined by section 29(g) of the Federal Deposit Insurance Act (12 U.S.C. § 1831f(g)).

Fixed-rate account (§ 1030.2(l))

A fixed-rate account is an account for which the institution contracts to give at least 30 calendar days' advance written notice of decreases in the interest rate.

Grace period (§ 1030.2(m))

A grace period is a period following the maturity of an automatically renewing time account during which the consumer may withdraw funds without being assessed a penalty.

Interest (§ 1030.2(n))

Interest is any payment to a consumer or to an account for the use of funds in an account, calculated by applying a periodic rate to the balance. Interest does not include the payment of a bonus or other consideration worth $10 or less during a year, the waiver or reduction of a fee, or the absorption of expenses.

Interest rate (§ 1030.2(o))

An interest rate is the annual rate of interest paid on an account and does not reflect compounding. For purposes of the account disclosures in section 1030.4(b)(1)(i), the interest rate may, but need not, be referred to as the "annual percentage rate" in addition to being referred to as the "interest rate."

Passbook savings account (§ 1030.2(p))

A passbook savings account is a savings account in which the consumer retains a book or other document in which the institution records transactions on the account. Passbook savings accounts include accounts accessed by preauthorized electronic fund transfers to the account. As defined in Regulation E, a preauthorized electronic fund transfer is an electronic fund transfer authorized in advance to recur at substantially regular intervals. Examples include an account that receives direct deposit of Social Security payments. Accounts permitting access by other electronic means are not passbook savings accounts and must comply with the requirements of section 1030.6 if statements are sent four or more times a year.

Periodic statement (§ 1030.2(q))

A periodic statement is 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.

State (§ 1030.2(r))

A state is a state, the District of Columbia, the commonwealth of Puerto Rico, and any territory or possession of the United States.

Stepped-rate account (§ 1030.2(s))

A stepped-rate account is 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 (§ 1030.2(t))

A tiered-rate account is an account that has two or more interest rates that are applicable to specified balance levels. A requirement to maintain a minimum balance to earn interest does not make an account a tiered-rate account.

Time account (§ 1030.2(u))

A time account is an account with a maturity of at least seven days in which the consumer generally does not have a right to

make withdrawals for six days after the account is opened, unless the deposit is subject to an early withdrawal penalty of at least seven days' interest on the amount withdrawn.

Variable-rate account (§ 1030.2(v))

A variable-rate account is 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.

General disclosure requirements (§ 1030.3)

General requirements (§ 1030.3(a) and (b))

Section 1030.3 outlines the general requirements for account disclosures and periodic-statement disclosures. Such disclosures are required to be:

- Clear and conspicuous;
- In writing;
- In a form the consumer may keep;
- Clearly identifiable for different accounts, if disclosures for different accounts are combined;
- Reflective of the terms of the legal obligation of the account agreement between the consumer and the depository institution;
- Available in English upon request if the disclosures are made in languages other than English; and
- Consistent in terminology when describing terms or features that are required to be disclosed.

Electronic disclosures

The E-Sign Act does not mandate that institutions or consumers use or accept electronic records or signatures. It does, however, permit institutions to satisfy any statutory or regulatory requirements that information, such as Regulation DD disclosures, be provided in writing to a consumer by providing the information electronically after obtaining the consumer's affirmative consent. But before consent can be given, consumers must be provided with a clear and conspicuous statement, informing the consumer of:

- Any right or option to have the information provided in paper or non-electronic form;
- The right to withdraw the consent to receive information electronically and the consequences, including fees, of doing so;
- The scope of the consent (whether the consent applies only to a particular transaction or to identified categories of records that may be provided during the course of the parties' relationship);
- The procedures to withdraw consent and to update information needed to contact the consumer electronically; and
- The methods by which a consumer may obtain, upon request, a paper copy of an electronic record after consent has been given to receive the information electronically and whether any fee will be charged.

After the consent, if an institution changes the hardware or software requirements such that a consumer may be prevented from accessing and retaining information electronically, the institution must notify the consumer of the new requirements and must allow the consumer to withdraw consent without charge.

Prior to consenting, the consumer must be provided with a statement of the hardware and software requirements for access to and retention of the electronic information. The consumer must consent electronically or confirm consent electronically in a manner that "reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent."

Under section 1030.3(a), the disclosures required by sections 1030.4(a)(2) (Disclosures Upon Request) and 1030.8 (Advertising) may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act, as set forth in those sections of Regulation DD. For example, under section 1030.4(a)(2) (Disclosures Upon Request), if a consumer who is not present at the institution makes a request for disclosures, the institution may provide the disclosures electronically if the consumer agrees without regard to the consumer consent or other provisions of the E-Sign Act.

Relation to Regulation E (§ 1030.3(c))

- An institution changes a term that triggers a notice under Regulation E, and uses the timing and disclosure rules of Regulation E for sending change-in-term notices.
- Consumers add an ATM access feature to an account, and the institution provides disclosures pursuant to Regulation E, including disclosure of fees (See 12 C.F.R. § 1005.7).
- An institution, complying with the timing rules of Regulation E, discloses at the same time fees for electronic services (such as for balance inquiry fees at ATMs) required to be disclosed by this regulation but not by Regulation E.
- An institution relies on Regulation E's rules regarding disclosure of limitations on the frequency and amount of electronic fund transfers, including security-related exceptions. But any limitations on intra-institutional transfers to or from the consumer's other accounts during a given time period must be disclosed, even though intra-institutional transfers are exempt from Regulation E.

Other requirements (§ 1030.3(d) – (f))

Other general disclosure requirements include the following:

Multiple consumers (§ 1030.3(d))

If an account is held by more than one consumer, disclosures may be made to any one of the consumers.

Oral response to inquiries (§ 1030.3(e))

If an institution chooses to provide rate information orally, it must state the annual percentage yield and may state the interest rate. However, the institution may not state any other rate. The advertising rules do not cover an oral response to a rate inquiry.

Rounding and accuracy rules for rates and yields (§ 1030.3(f))

The rounding and accuracy requirements are as follows:

- Rounding — The annual percentage yield, the annual percentage yield earned, and the interest rate must be rounded to the nearest one-hundredth of one percentage point (.01%) and expressed to two decimal places. (For account disclosures, the interest rate may be expressed to more than two decimal places.) For example, if an annual percentage yield is calculated at 5.644 percent, it must be rounded down and disclosed as 5.64 percent, or if annual percentage yield is calculated at 5.645 percent, it must be rounded up and disclosed as 5.65 percent.
- Accuracy — The annual percentage yield (and the annual percentage yield earned) will be considered accurate if it is not more than one-twentieth of one percentage point (.05 percent) above or below the annual percentage yield (and the annual percentage yield earned) that are calculated in accordance with Appendix A of Regulation DD.

Account disclosures (§ 1030.4)

Section 1030.4 covers the delivery and content of account disclosures both at the time an account is open and when requested by a consumer.

Delivery of account disclosures (§ 1030.4(a))

Disclosures at account opening (§ 1030.4(a)(1))

A depository institution must provide account disclosures to a consumer before an account is opened or a service is provided, whichever is earlier. (An institution is deemed to have provided a service when a fee, required to be disclosed, is assessed.) An institution must mail or deliver the account opening disclosures no later than ten business days after the account is opened or the service is provided, whichever is earlier, if the consumer:

- Is not present when the account is opened or the service is provided; and
- Has not received the disclosures.

If a consumer who is not present at the institution uses electronic means (for example, an Internet Web site) to apply to open an account or to request a service, the disclosures must be provided before the account is opened or the service is provided.

Disclosures upon request (§ 1030.4(a)(2))

A depository institution must provide full account disclosures, including complete fee schedules, to a consumer upon request. Institutions must comply with all requests for this information, whether or not the requestor is an existing customer or a prospective customer. A response to an oral inquiry (by telephone or in person) about rates and yields or fees does not trigger the duty to provide account disclosures. However, when consumers ask for written information about an account (whether by telephone, in person, or by other means), the institution must provide disclosures, unless the account is no longer offered to the public.

If the consumer makes the request in person, disclosures must be provided at that time. If a consumer is not present when the request is made, the institution must mail or deliver the disclosures within a reasonable time after it receives the request. Ten business days is considered a reasonable time for responding to requests for account information that a consumer does not make in person, including requests made by electronic means (such as by electronic mail).

If a consumer who is not present at the institution makes a request for account disclosures, including a request made by telephone, e-mail, or via the institution's Web site, the institution may send the disclosures in paper form, or if the consumer agrees, may provide the disclosures electronically, such as to an e-mail address that the consumer provides for that purpose, or on the institution's Web site, without regard to the consumer consent or other provisions of the E-Sign Act. The institution is not required to provide, nor is the consumer required to agree to receive, the disclosures required by section 1030.4(a)(2) in electronic form.

When providing disclosures upon the request of a consumer, the institution has several choices of how to specify the interest rate and annual percentage yield. The institution may disclose the rate and yield offered:

- Within the most recent seven calendar days;
- As of an identified date; or
- Currently by providing a telephone number for consumers to call.

Further, when providing disclosures upon the request of a consumer, the institution may state the maturity of a time account as a term rather than a date. Describing the maturity of a time account as "1 year" or "6 months," for example,

illustrates a statement of the maturity as a term rather than a date ("January 10, 1995").

Content of account disclosures (§ 1030.4(b))

Account disclosures must include, as applicable, information on the following (see Appendix A and B of Regulation DD for information on the annual percentage yield calculation and for model clauses for account disclosures and sample forms):

Rate information (§ 1030.4(b)(1))

An institution must disclose both the "annual percentage yield" and the "interest rate," using those terms.

For fixed-rate accounts, an institution must disclose the period of time that the interest rate will be in effect.

For variable-rate accounts, an institution must disclose the following:

- The fact that the interest rate and annual percentage yield may change;
- How the interest rate is determined;
- The frequency with which the interest rate may change; and
- Any limitation on the amount the interest rate may change.

Compounding and crediting (§ 1030.4(b)(2))

An institution must disclose the frequency with which interest is compounded and credited. In cases where consumers will forfeit interest if they close an account before accrued interest is credited, an institution must state that interest will not be paid.

Balance information (§ 1030.4(b)(3))

An institution must disclose the following information about account balances:

-
- Minimum balance requirements – An institution must disclose any minimum balance requirement to:
  a. Open the account;
  b. Avoid the imposition of a fee; or
  c. Obtain the annual percentage yield disclosed.

In addition, the institution must disclose how the balance is determined to avoid the imposition of a fee or to obtain the annual percentage yield.

- Balance computation method – An explanation of the balance-computation method, specified in section 1030.7 of Regulation DD, that is used to calculate interest on the account. An institution may use different methods or periods to calculate minimum balances for purposes of imposing a fee and accruing interest. Each method and corresponding period must be disclosed.
- When interest begins to accrue – An institution must state when interest begins to accrue on noncash deposits.

Fees (§ 1030.4(b)(4))

An institution must disclose the amount of any fee that may be imposed in connection with the account (or an explanation of how the fee will be determined) and the conditions under which the fee may be imposed. Examples of fees that must be disclosed are:

- Maintenance fees, such as monthly service fees;
- Fees to open or to close an account;
- Fees related to deposits or withdrawals, such as fees for use of the institution's ATMs; and
- Fees for special services, such as stop-payment fees.

Institutions must state if fees that may be assessed against an account are tied to other accounts at the institution. For example, if an institution ties the fees payable on a NOW account to balances held in the NOW account and a savings account, the NOW account disclosures must state that fact and explain how the fee is determined.

An institution must specify the categories of transactions for which an overdraft fee may be imposed. For example, it is sufficient to state that the fee applies to overdrafts "created by check, in-person withdrawal, ATM withdrawal, or other electronic means." However, it is insufficient to state that a fee applies "for overdraft items."

Transaction limitations (§ 1030.4(b)(5))

An institution must disclose any limitations on the number or dollar amount of withdrawals or deposits. Examples of such limitations include:

- Limits on the number of checks that may be written on an account within a given time period;
- Limits on withdrawals or deposits during the term of a time account; and
- Limits under Regulation D (Reserve Requirements on Depository Institutions) on the number of withdrawals permitted from money market deposit accounts by check to third parties each month.

Features of time accounts (§ 1030.4(b)(6))

For time accounts, an institution must disclose information about the following features:

- Time requirements — An institution must state the maturity date and, for "callable" time accounts, the date or circumstances under which an institution may redeem a time account at the institution's option.

- Early withdrawal penalties — An institution must state:
  a. If a penalty will or may be imposed for early withdrawal;
  b. How it is calculated; and
  c. The conditions for its assessment.

  An institution may, but does not need to, use the term "penalty" to describe the loss of interest that consumers may incur for early withdrawal of funds from an account.

  Examples of early withdrawal penalties include:
  a. Monetary penalties, such as "$10.00" or "seven days' interest plus accrued but uncredited interest;"
  b. Adverse changes to terms such as a lowering of the interest rate, annual percentage yield, or compounding frequency for funds remaining on deposit; and
  c. Reclamation of bonuses.

- Withdrawal of interest prior to maturity — An institution must disclose the following, as applicable:
  a. A statement that the annual percentage yield assumes interest remains on deposit until maturity and that a withdrawal will reduce earnings for accounts where:
     i. Compounding occurs during the term; and
     ii. Interest may be withdrawn prior to maturity.

  OR

  b. A statement that interest cannot remain on deposit and that payout of interest is mandatory for accounts where:
     i. The stated maturity is greater than one year;
     ii. Interest is not compounded on an annual or more frequent basis;
     iii. Interest is required to be paid out at least annually; and
     iv. The annual percentage yield is determined in accordance with section E of Appendix A of Regulation DD.
- Renewal policies — An institution must state whether an account will, or will not, renew automatically at maturity. If it will, the statement must indicate whether a grace period will be provided and, if so, must indicate the length of that period. For accounts that do not renew automatically, the statement must indicate whether interest will be paid after maturity if the consumer does not renew the account.

Bonuses (§ 1030.4(b)(7))

For bonuses, an institution must disclose:

- The amount or type of any bonus;
- When the bonus will be provided; and
- Any minimum balance and time requirements to obtain the bonus.

Subsequent disclosures (§ 1030.5)

Section 1030.5 covers the required disclosures when the terms of an account change, resulting in a negative effect on the consumer. In addition, this section covers the required disclosures for both time accounts that automatically renew and have a maturity longer than one month and time accounts that do not renew automatically and have a maturity of longer than one year.

Change in terms (§ 1030.5(a))

Advance notice required (§ 1030.5(a)(1))

An institution must give advance notice to affected consumers of any change in a term that is required to be disclosed if the change may reduce the annual percentage yield or adversely affect the consumer. The notice must include the effective date of the change and must be mailed or delivered at least 30 calendar days before the effective date of the change.

No notice required (§ 1030.5(a)(2))

An institution is not required to provide a notice for the following changes:

- For variable-rate accounts, any change in the interest rate and corresponding changes in the annual percentage yield;
- Any changes in fees assessed for check printing;
- For short-term time accounts, any changes in any term for accounts with maturities of one month or less;
- The imposition of account maintenance or activity fees that previously had been waived for a consumer when the consumer was employed by the depository institution, but who is no longer employed there; and
- The expiration of a one-year period that was part of a promotion, described in the account opening disclosures, for example, to "waive $4.00 monthly service charges for one year."

Notice for time accounts longer than one month that renew automatically (§ 1030.5(b))

For automatically renewing time accounts with maturity longer than one month, an institution must provide different disclosures depending on whether the maturity is longer than one year or whether the maturity is one year or less. All disclosures must be provided *before* maturity. The requirements are summarized below and in a chart in Attachment A of these procedures.

Maturities longer than one year (§ 1030.5(b)(1))

If the maturity is longer than one year, the institution must provide the date the existing account matures and the required account disclosures for a new account, as described in section

1030.4(b). If the interest rate and annual percentage yield that will be paid for the new account are unknown when disclosures are provided, the institution must state:

- That those rates have not yet been determined;
- The date when they will be determined; and
- A telephone number for consumers to call to obtain the interest rate and the annual percentage yield for the new account.

Maturities longer than one month but no more than one year (§ 1030.5(b)(2))

If the maturity is longer than one month but less than or equal to one year, the institution must either:

- Provide the disclosures required in section 1030.5(b)(1) for accounts longer than one year; or
- Disclose to the consumer:
  a. The date the existing account matures and the new maturity date if the account is renewed;
  b. The interest rate and the annual percentage yield for the new account if they are known. If the rates have not yet been determined, the institution must disclose:
     i. The date when they will be determined; and
     ii. A telephone number the consumer may call to obtain the interest rate and the annual percentage yield for the new account; and
  c. Any difference in the terms of the new account as compared to the terms required to be disclosed for the existing account.

Delivery (§ 1030.5(b))

All disclosures must be mailed or delivered at least 30 calendar days before maturity of the existing account. Alternatively, the disclosures may be mailed or delivered at least 20 calendar days before the end of the grace period on the existing account, provided a grace period of at least five calendar days is allowed.

Notice for time accounts longer than one year that do not renew automatically (§ 1030.5(c))

For time accounts with maturity longer than one year that do not renew automatically at maturity, an institution must disclose to consumers the maturity date and whether interest will be paid after maturity. The disclosures must be mailed or delivered at least 10 calendar days before maturity of the existing account. The requirements are summarized in a chart in Attachment A of these procedures.

Periodic statement disclosures (§ 1030.6)

Regulation DD does not require institutions to provide periodic statements. However, for institutions that mail or deliver periodic statements, section 1030.6 sets forth specific information that must be included in a periodic statement.

General Requirements (§ 1030.6(a))

The statement must include the following disclosures:

Annual percentage yield earned (§ 1030.6(a)(1))

An institution must state the annual percentage yield earned during the statement period, using that term, and calculated according to Appendix A of Regulation DD.

Amount of interest (§ 1030.6(a)(2))

An institution must state the dollar amount of interest earned during the statement period, whether or not it was credited. In disclosing interest earned for the period, an institution must use the term “interest” or terminology such as:

- “Interest paid,” to describe interest that has been credited; or
- “Interest accrued” or “interest earned,” to indicate that interest is not yet credited.

Fees imposed (§ 1030.6(a)(3))

An institution must report any fees that are required to be disclosed and that were debited to the account during the statement period, even if assessed for an earlier period. The fees must be itemized by type and dollar amounts.

When fees of the same type are imposed more than once in a statement period, an institution may itemize each fee separately or group the fees together and disclose a total dollar amount for all fees of that type. When fees of the same type are grouped together, the description must make clear that the dollar figure represents more than a single fee, for example, “total fees for checks written this period.” The Staff Commentary provides examples of fees that may not be grouped together. For example, an institution must separately identify whether a fee was for the payment of an overdraft or for returning the item unpaid.

Total overdraft and returned item fees, if any, must also be disclosed on the periodic statement. An institution must provide totals for fees for the payment of overdrafts and totals for items returned unpaid, both for the statement period and for the calendar year to date. See section 1030.11(a)(1) and (2). (The institution may, however, continue to itemize overdraft and returned item fees.)

Length of period (§ 1030.6(a)(4))

An institution must indicate the total number of days in the statement period, or the beginning and ending dates of the period. Institutions providing the beginning and ending dates of the period must make clear whether both dates are included in the period.

Combined statements (Staff Commentary § 1030.6(a)-3)

Institutions may provide information about an account (for example, a Money Market Deposit Account) on the periodic statement for another account (such as a Negotiable Order of Withdrawal account) without triggering the disclosures required by this section, as long as:

- The information is limited to the account number, the type of account, or balance information; and
- The institution also provides a periodic statement complying with this section for each account.

Aggregate fee disclosure (§ 1030.6(a)(5))

If an institution charges a consumer overdraft and returned item fees, it must disclose them on the consumer's periodic statement as required by section 1030.11(a).

Special rule for average daily balance method (§ 1030.6(b))

Section 1030.6 has special periodic statement requirements for an institution using the average daily balance method and calculating interest for a period other than the statement period. In these situations, an institution must calculate and disclose the annual percentage yield earned and amount of interest earned based on the time period used rather than the statement period. In addition, when disclosing the length of period requirement on the periodic statement, an institution must state this information for the statement period as well as the interest-calculation period. See Staff Commentary for examples.

Payment of interest (§ 1030.7)

Section 1030.7 covers the payment of interest, including how to determine the balance on which to pay interest, the daily periodic rate to use, and the date interest begins to accrue.

Permissible methods to determine balance to calculate interest (§ 1030.7(a)(1))

An institution must calculate interest on the full amount of principal in an account for each day by using one of the two following methods:

- Daily balance method, where the daily periodic rate is applied to the full amount of principal in the account each day; or
- Average daily balance method, where a periodic rate is applied to the average daily balance in the account for the 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.

The following are prohibited calculation methods:

- Ending-balance method, where interest is paid on the balance in the account at the end of the period;
- Low-balance method, where interest is paid based on the lowest balance in the account for any day in that period; and
- Investable-balance method, where interest is paid on a percentage of the balance, excluding the amount set aside for reserve requirements.

Use of 365-day basis (Staff Commentary § 1030.7(a)(1)-2)

Institutions may apply a daily periodic rate greater than 1/365 of the interest rate—such as 1/360 of the interest rate—as long as it is applied 365 days a year.

Leap year (Staff Commentary § 1030.7(a)(1)-4)

Institutions may apply a daily rate of 1/366 or 1/365 of the interest rate for 366 days in a leap year, if the account will earn interest for February 29.

Maturity of time accounts (Staff Commentary § 1030.7(a)(1)-5)

Institutions are not required to pay interest after time accounts mature.

Dormant accounts (Staff Commentary § 1030.7(a)(1)-6)

Institutions must pay interest on funds in an account, even if inactivity or the infrequency of transactions would permit the institution to consider the account to be "inactive" or "dormant" (or similar status) as defined by state, other laws, or the account contract.

Permissible methods to determine minimum balance to earn interest (§ 1030.7(a)(2))

If an institution requires a minimum balance to earn interest, it must use the same method to determine the required minimum balance as it uses to determine the balance on which interest is calculated. For example, if an institution requires a $300 minimum balance that would be determined by using the average daily balance method, then it must calculate interest based on the average daily balance method. Further, an institution may use an additional method that is unequivocally beneficial to the consumer.

Balances below the minimum (Staff Commentary § 1030.7(a)(2)-1 and 2)

An institution that requires a minimum balance may choose not to pay interest for days or periods when the balance drops below the required minimum, whether they use the daily-balance method or the average-daily-balance method to calculate interest.

Paying on full balance (Staff Commentary § 1030.7(a)(2)-4)

Institutions must pay interest on the full balance in the account that meets the required minimum balance. For example, if $300 is the minimum daily balance required to earn interest,

and a consumer deposits $500, the institution must pay the stated interest rate on the full $500 and not just on $200.

Minimum balance not affecting interest (Staff Commentary § 1030.7(a)(2)-7)

Institutions may use the daily-balance, average-daily-balance, or any other computation method to calculate minimum-balance requirements that do not involve the payment of interest. For example, an institution may use any computation method to compute minimum balances for assessing fees.

Compounding and crediting policies (§ 1030.7(b))

This section does not require institutions to compound or credit interest at any particular frequency. Institutions choosing to compound interest may compound or credit interest annually, semi-annually, quarterly, monthly, daily, continuously, or on any other basis.

An institution may choose not to pay accrued interest if consumers close an account prior to the date accrued interest is credited, as long as the institution has disclosed this practice in the initial account disclosures.

Date interest begins to accrue (§ 1030.7(c))

Interest shall begin to accrue not later than the business day specified for interest-bearing accounts in section 606 of the Expedited Funds Availability Act, which states:

> *… interest shall accrue on funds deposited in an interest-bearing account at a depository institution beginning not later than the business day on which the depository institution receives provisional credit for such funds.*

Interest shall accrue until the day funds are withdrawn.

Advertising (§ 1030.8)

Section 1030.8 contains account advertising requirements, including overall general rules and rules for special account features. In addition, the section describes advertising involving certain types of media and in-house posters that are exempt from Regulation DD's advertising requirements.

General advertising rules (§ 1030.8(a) and (b))

Misleading or inaccurate advertising (§ 1030.8(a))

An institution may not advertise in a way that is misleading or inaccurate or misrepresents its deposit contract. In addition, an advertisement may not use the word "profit" in referring to interest paid on an account.

An institution's advertisement may not refer to or describe an account as "free" or "no cost" (or contain a similar term such as "fees waived") if a maintenance or activity fee may be imposed on the account. Examples of such maintenance or activity fees include:

- Any fee imposed when a minimum-balance requirement is not met, or when consumers exceed a specified number of transactions;
- Transaction and service fees that consumers reasonably expect to be imposed on a regular basis;
- A flat fee, such as a monthly service fee; and
- Fees imposed to deposit, withdraw, or transfer funds, including per-check or per-transaction charges (for example, 25 cents for each withdrawal, whether by check or in person).

Examples of fees that are not maintenance or activity fees include:

- Fees not required to be disclosed under section 1030.4(b)(4),
- Check-printing fees;
- Balance-inquiry fees;
- Stop-payment fees and fees associated with checks returned unpaid;
- Fees assessed against a dormant account; and
- Fees for ATM or electronic transfer services (such as preauthorized transfers or home banking services) not required to obtain an account.

If an account (or a specific account service) is free only for a limited period of time (for example, for one year following the account opening) the account (or service) may be advertised as free if the time period is also stated.

If an electronic advertisement (such as an advertisement appearing on an Internet Web site) displays a triggering term (such as a bonus or annual percentage yield), described elsewhere in section 1030.8, the advertisement must clearly refer the consumer to the location where the additional required information begins. For example, an advertisement that includes a bonus or annual percentage yield may be accompanied by a link that directly takes the consumer to the additional information. As discussed in section 1030.3(a), electronic advertising disclosures may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act.

The Staff Commentary provides the following examples of advertisements that would ordinarily be misleading, inaccurate, or misrepresent the deposit contract:

- Representing an overdraft service as a "line of credit," unless the service is subject to the Bureau's Regulation Z (12 C.F.R. § 1026).
- Representing that the institution will honor all checks or authorize payment of all transactions that overdraw an account, with or without a specified dollar limit, when the

institution retains discretion at any time not to honor checks or authorize transactions.

- Representing that consumers with an overdrawn account are allowed to maintain a negative balance when the terms of the account's overdraft service require consumers promptly to return the deposit account to a positive balance.
- Describing an institution's overdraft service solely as protection against bounced checks when the institution also permits overdrafts for a fee for overdrawing accounts by other means, such as ATM withdrawals, debit card transactions, or other electronic fund transfers.
- Advertising an account-related service for which the institution charges a fee in an advertisement that also uses the word "free" or "no cost" (or a similar term) to describe the account, unless the advertisement clearly and conspicuously indicates that there is a cost associated with the service. If the fee is a maintenance or activity fee under section 1030.8(a)(2), however, an advertisement may not describe the account as "free" or "no cost" (or contain a similar term) even if the fee is disclosed in the advertisement.

Advertising rate information (§ 1030.8(b))

When an institution states a rate of return in an advertisement:

- It must state the rate as an "annual percentage yield," using that term.
- If the advertisement uses the abbreviation "APY," the term "annual percentage yield" must be stated at least once in the advertisement.
- If the advertisement uses the term "interest rate," it must use the term in conjunction with, but not more conspicuously than, the related annual percentage yield.
- It may not state any other rate except "annual percentage yield" or "interest rate."
- It must round the annual percentage yield, the annual percentage yield earned, and the interest rate to the nearest one-hundredth of one percentage point (.01%) and express them to two decimal places.

An advertisement for a tiered-rate account that states an annual percentage yield must also state the annual percentage yield for each tier, along with corresponding minimum-balance requirements.

An advertisement for a stepped-rate account that states an interest rate must state all the interest rates and the time period that each rate is in effect.

Required advertising for special account features (§ 1030.8(c))

If an institution advertises an annual percentage yield for a product and the product includes one of the features listed in sections 1030.8(c)(1)-(6), then the institution must clearly and conspicuously disclose the information outlined in sections 1030.8(c)(1)-(6) as noted below. However, these requirements do not necessarily apply if the situation falls under the exemptions of section 1030.8(e).

Variable rates (§ 1030.8(c)(1))

For variable-rate accounts, the advertisement must state that the rate may change after the account is opened.

Time annual percentage yield (APY) is offered (§ 1030.8(c)(2))

The advertisement must include the period of time during which the annual percentage yield will be offered. Alternatively, the advertisement may state that the annual percentage yield is accurate as of a specified date. The date must be recent in relation to the publication or media broadcast used for the advertisement, taking into account the particular circumstances or production deadlines involved. An advertisement may refer to the annual percentage yield as being accurate as of the date of publication, if the date is on the publication itself.

Minimum balance (§ 1030.8(c)(3))

For accounts that have a required minimum balance, the advertisement must state the minimum balance required to obtain the advertised annual percentage yield. For tiered-rate accounts, the advertisement must state the minimum balance required for each tier in close proximity and with equal prominence to the applicable annual percentage yield.

Minimum opening deposit (§ 1030.8(c)(4))

For an account that requires a minimum deposit to open the account, the advertisement must state the minimum deposit required to open the account, if it is greater than the minimum balance necessary to obtain the advertised annual percentage yield.

Effect of fees (§ 1030.8(c)(5))

An advertisement must state that fees could reduce the earnings on the account. This requirement only applies to maintenance or activity fees.

Features of time accounts (§ 1030.8(c)(6))

For time accounts, the advertisement must include:

- Term of the account;
- Early withdrawal penalties — a statement that a penalty will or may be imposed for early withdrawal; and

- Required interest payouts — a statement that interest cannot remain on deposit and that payout of interest is mandatory for noncompounding time accounts with the following features:
  a. The stated maturity is greater than one year;
  b. Interest is not compounded on an annual or more frequent basis;
  c. Interest is required to be paid out at least annually; and
  d. The annual percentage yield is determined in accordance with section E of Appendix A of Regulation DD.

Bonuses (§ 1030.8(d))

If an institution states a bonus in an advertisement, the advertisement must state clearly and conspicuously the following information, if applicable to the advertised product:

- "Annual percentage yield," using that term;
- Time requirement to obtain the bonus;
- Minimum balance required to obtain the bonus;
- Minimum balance required to open the account, if it is greater than the minimum balance necessary to obtain the bonus; and
- Time when the bonus will be provided.

However, these requirements do not necessarily apply if the situation falls under the exemptions of section 1030.8(e). In addition, general statements such as "bonus checking" or "get a bonus when you open a checking account" do not trigger the bonus disclosures.

Exemption for certain advertisements (§ 1030.8(e))

Section 1030.8(e) exempts certain types of media and certain indoor signs from some of the section's advertising rules.

Media exemptions (§ 1030.8(e)(1))

If an institution advertises through one of the following media, the advertisement does not need to include information required under certain section 1030.8 rules, as outlined below:

- Exempted media:
  a. Broadcast or electronic media, such as television or radio. However, the exemption does not extend to Internet and email advertisements.
  b. Outdoor media, such as billboards.
  c. Telephone response machines. However, solicitations for a tiered-rate account made through telephone-response machines must provide the annual percentage yields and the balance requirements applicable to each tier.
- Exempted advertising requirements:
  a. Information required for special account features involving variable rates, time an annual percentage yield is offered, minimum opening deposit, effect of fees, and early withdrawal penalties for time accounts.
  b. When bonuses are advertised, information required related to a minimum balance to open an account (if it is greater than the minimum balance necessary to obtain the bonus) and related to when a time the bonus will be provided.

Indoor signs (§ 1030.8(e)(2))

If an institution posts account information on signs inside its premises (or the premises of a deposit broker), the posting are exempt from the advertising requirements for:

- Permissible rates;
- When additional disclosures are required;
- Bonuses; and
- Certain media exemption.

If a sign, falling under this exemption, states a rate of return, it must:

- State the rate as an "annual percentage yield," using that term or the term "APY." The sign must not state any other rate, although the related interest rate may be stated.
- Contain a statement advising consumers to contact an employee for further information about applicable fees and terms.

Indoor signs include advertisements displayed on computer screens, banners, preprinted posters, and chalk or peg boards. Any advertisement inside the premises that can be retained by a consumer (such as a brochure or a printout from a computer) is not an indoor sign.

Additional disclosures in connection with the payment of overdrafts (§ 1030.8(f))

In addition to the general requirement that advertisements not be misleading, an institution that promotes the payment of overdrafts in an advertisement must also include in the advertisement the disclosures required under section 1030.11(b).

Record retention (§ 1030.9(c))

Section 1030.9(c) covers the record retention requirements in order for an institution to demonstrate compliance with Regulation DD, including rate information, advertising, and providing disclosures to consumers at the appropriate time (including upon a consumer's request).

Timing

An institution must retain records that evidence compliance for a minimum of two years after the date that disclosures are required to be made or an action is required to be taken. If required by its supervising agency, an institution may need to retain records for a longer time period.

Evidence of required actions

An institution may demonstrate its compliance by

- Establishing and maintaining procedures for paying interest and providing timely disclosures, and
- Retaining sample disclosures for each type of account offered to consumers such as account-opening disclosures, copies of advertisements, and change-in-term notices; and information regarding the interest rates and annual percentage yields offered.

Methods of retaining evidence

An institution must be able to reconstruct the required disclosures and other required actions, but does not need to maintain hard copies of disclosures and other records. It may keep records evidencing compliance in microfilm, microfiche, or other methods that reproduce records accurately (including computer files).

Payment of interest

An institution must retain sufficient rate and balance information to permit the verification of interest paid on an account, including the payment of interest on the full principal balance.

Section 1030.10 – [Reserved]

Additional disclosure requirements for overdraft services (§ 1030.11)

Section 1030.11 contains periodic statement and advertising requirements for certain discretionary overdraft services. The requirements address concerns about the uniformity and adequacy of information provided to consumers when they overdraw their deposit accounts. Specifically, they address certain types of services – sometimes referred to as "bounced-check protection" or "courtesy overdraft protection" – which institutions offer to pay consumers' checks and other items when there are insufficient funds in the account. The requirements apply to all depository institutions, regardless of whether they promote their overdraft services.

Periodic statement disclosures (§ 1030.11(a))

Disclosure of total fees (§ 1030.11(a)(1))

The institution must disclose on its periodic statements (if it provides periodic statements) separate totals for the statement period and for the calendar year to date for:

- The total dollar amount for all fees or charges imposed on the account for paying checks or other items when there are insufficient or unavailable funds and the account becomes overdrawn, using the term "Total Overdraft Fees" (the requirement to use the term "Total Overdraft Fees" is effective October 1, 2010), and
- The total dollar amount for all fees or charges imposed on the account for returning items unpaid.

The aggregate fee disclosures must be placed in close proximity to the disclosure of any fee(s) that may be imposed in connection with the account and must use a substantially similar format as shown below. (See Appendix B of the regulation). The table must contain lines (or similar markings such as asterisks) inside the table to divide the columns and rows.

The total dollar amount for paying overdrafts includes per-item fees as well as interest charges, daily or other periodic fees, or fees charged for maintaining an account in overdraft status, whether the overdraft is by check, debit card transaction, or by other transaction type. It also includes fees charged when there are insufficient funds because previously deposited funds are subject to a hold or are uncollected. It does not include fees for transferring funds from another account of the consumer to avoid an overdraft, or fees charged under a service subject to Regulation Z (12 C.F.R. § 1026).

	Total for this period	**Total year-to-date**
Total Overdraft Fees	$60.00	$150.00
Total Returned Item Fees	0.00	30.00

The total dollar amount for all fees for returning items unpaid must include all fees charged to the account for dishonoring or returning checks or other items drawn on the account. The institution must disclose separate totals for the statement period and for the calendar year-to-date. Fees imposed when deposited items are returned are not included. Institutions may use terminology such as ''returned item fee'' or ''NSF fee'' to describe fees for returning items unpaid.

In the case of waived fees, an institution may provide a statement for the current period reflecting that fees imposed during a previous period were waived and credited to the account. Institutions may, but are not required to, reflect the adjustment in the total for the calendar year-to-date and in the applicable statement period. For example, if an institution assesses a fee in January and refunds the fee in February, the institution could disclose a year-to-date total reflecting the amount credited, but it should not affect the total disclosed for the February statement period, because the fee was not assessed in the February statement period. If an institution

assesses and then waives and credits a fee within the same cycle, the institution may, at its option, reflect the adjustment in the total disclosed for fees imposed during the current statement period and for the total for the calendar year-to-date. Thus, if the institution assesses and waives the fee in the February statement period, the February fee total could reflect a total net of the waived fee.

The disclosures under this section must be included on periodic statements provided by an institution starting the first statement period that began after January 1, 2010. For example, if a consumer's statement period typically closes on the 15th of each month, an institution must provide the disclosures required by this section on subsequent periodic statements for that consumer beginning with the statement reflecting the period from January 16, 2010 to February 15, 2010.

Advertising disclosures for overdraft services (§ 1030.11(b))

Disclosures (§ 1030.11(b)(1))

Unless an exception in section 1030.11(b)(2)-(4) applies, any advertisement promoting the payment of overdrafts must disclose in a clear and conspicuous manner all of the following:

- The fee(s) for the payment of each overdraft;
- The categories of transactions for which a fee may be imposed for paying an overdraft;
- The time period by which the consumer must repay or cover any overdraft; and
- The circumstances under which the institution will not pay an overdraft. It is sufficient to state, as applicable, "Whether your overdrafts will be paid is discretionary and we reserve the right not to pay. For example, we typically do not pay overdrafts if your account is not in good standing, or you are not making regular deposits, or you have too many overdrafts."

Communications not subject to additional advertising disclosures (§ 1030.11(b)(2))

The advertising disclosure rules for overdraft services do not apply in the following circumstances:

- An advertisement promoting a service where the institution's payment of overdrafts would be agreed upon in writing and subject to Regulation Z (12 C.F.R. § 1026);
- A communication by an institution about the payment of overdrafts in response to a consumer-initiated inquiry about deposit accounts or overdrafts. However, providing information about the payment of overdrafts in response to a balance inquiry made through an automated system, such as a telephone response machine, ATM, or an institution's Internet site, is not a response to a consumer-initiated inquiry that is exempt from the advertising disclosures;
- An advertisement made through broadcast or electronic media, such as television or radio. However, this exception does not apply to advertisements posted on an institution's Internet site, on an ATM screen, provided on telephone-response machines, or sent by electronic mail;
- An advertisement made on outdoor media, such as billboards;
- An ATM receipt;
- An in-person discussion with a consumer;
- Disclosures required by federal or other applicable law;
- Information included on a periodic statement or on a notice informing a consumer about a specific overdrawn item or the amount the account is overdrawn;
- A term in a deposit account agreement discussing the institution's right to pay overdrafts;
- A notice provided to a consumer, such as at an ATM, that completing a requested transaction may trigger a fee for overdrawing an account, or a general notice that items overdrawing an account may trigger a fee;
- Informational or educational materials concerning the payment of overdrafts if the materials do not specifically describe the institution's overdraft service; or
- An opt-out or opt-in notice regarding the institution's payment of overdrafts or provision of discretionary overdraft services.

Exception for ATM screens and telephone response machines (§ 1030.11(b)(3))

Any advertisement made on an ATM screen or using a telephone response machine is not required to include the following:

- The categories of transactions for which a fee may be imposed for paying an overdraft; or
- The circumstances under which the institution will not pay an overdraft.

Exception for indoor signs (§ 1030.11(b)(4))

The advertising requirement to disclose fees for the payment of each overdraft does not apply to advertisements for the payment of overdrafts on indoor signs, if the indoor sign contains a clear and conspicuous statement that:

- Fees may apply; and
- Consumers should contact an employee for further information about applicable fees and terms.

An indoor sign covered under this exception is one described in section 1030.8(e)(2) and the accompanying Staff Commentary. In addition to the Staff Commentary's examples

of advertisements that are not considered indoor signs, an ATM screen is not considered an indoor sign for purposes of the overdraft disclosure requirements.

Account balance disclosures (§ 1030.11(c))

In general, section 1030.11(c) covers how an institution displays a consumer's account balance information on automated systems, such as an ATM, when the institution will advance additional funds to cover insufficient or unavailable funds in a consumer's account. Specifically, if an institution discloses balance information to a consumer through an automated system, the disclosed balance may not include additional amounts that the institution may provide to cover an item when there are insufficient or unavailable funds in the consumer's account. This requirement covers additional funds that an institution may provide under a service provided at the institution's own discretion, a service subject to Regulation Z (12 C.F.R. § 1026), or a service to transfer funds from another account of the consumer. However, the institution may, at its option, disclose an additional, second account balance that would include funds provided by the institution, if the institution prominently states that any such second balance includes funds that the institution may provide to cover insufficient or unavailable funds in the consumer's account and, if applicable, that additional funds are not available for all transactions.

Additional amounts that may be included in balance

The balance may, but need not, include funds that are deposited in the consumer's account, such as from a check, that are not yet made available for withdrawal in accordance with the funds availability rules under Regulation CC (12 C.F.R. § 229). In addition, the balance may, but need not, include funds that are held by the institution to satisfy a prior obligation of the consumer (for example, to cover a hold for an ATM or debit card transaction that has been authorized but for which the bank has not settled).

Retail sweep programs

When disclosing a transaction account balance, an institution is not required to exclude funds from the consumer's balance that may be transferred from another account pursuant to a retail sweep account. In a retail sweep program, an institution establishes two legally distinct subaccounts, a transaction subaccount and a savings subaccount. These two accounts together make up the consumer's account. Retail sweep account programs typically:

- Comply with Regulation D;
- Prevent direct access by the consumer to the non-transaction subaccount that is part of the retail sweep program; and
- Document on the consumer's periodic statements the account balance as the combined balance in the subaccounts.

Disclosure of second balance

If an institution discloses additional balances that include funds that may be provided to cover an overdraft, the institution must prominently state that the additional balance(s) includes additional overdraft funds. The institution may not simply state, for instance, that the second balance is the consumer's "available balance," or contains "available funds" Rather, the institution should provide enough information to convey that the second balance includes funds that the institution may provide to cover insufficient or unavailable funds. For example, the institution may state that the balance includes ''overdraft funds.'' Where a consumer has not opted into (or as applicable, has opted out of) the institution's discretionary overdraft service, any additional balance disclosed should not include funds that otherwise might be available under that service. Where a consumer has not opted into (or as applicable, has opted out of) the institution's discretionary overdraft service for some, but not all transactions (e.g., the consumer has not opted into overdraft services for ATM and one-time debit card transactions), an institution that includes funds from its discretionary overdraft service in the balance should convey that the overdraft funds are not available for all transactions. For example, the institution could state that overdraft funds are not available for ATM and one-time debit card transactions. Similarly, if funds are not available for all transactions pursuant to a service subject to the Bureau's Regulation Z (12 C.F.R. § 1026) or a service that transfers funds from another account, a second balance that includes such funds should also indicate this fact.

Automated systems

The balance disclosure requirement applies to any automated system through which the consumer requests a balance, including, but not limited to, a telephone response system, the institution's Internet site, or an ATM. The requirement applies whether the institution discloses a balance through an ATM owned or operated by the institution or through an ATM not owned or operated by the institution (including an ATM operated by a non-depository institution). If the balance is obtained at an ATM, the requirement also applies whether the balance is disclosed on the ATM screen or on a paper receipt.

Effect on state laws (Regulation DD - Appendix C)

Regulation DD preempts state law requirements that are inconsistent with the requirements of the Truth in Savings Act (TISA) or Regulation DD. A state law is inconsistent if it contradicts the definitions, disclosure requirements, or interest-calculation methods outlined in the act or the regulation. The regulation also provides that interested parties may request the Bureau to determine whether a state law is inconsistent with the TISA.

Examination Objectives

To determine the institution's compliance with Regulation DD, including the requirements to provide full account disclosures (for example, fee schedules) to consumers to open an account and upon request and including the requirements covering overdraft payment disclosures and advertising.

To assess the quality of the institution's compliance risk management systems and its policies and procedures for implementing Regulation DD.

To determine the reliance that can be placed on the institution's internal controls and procedures for monitoring the institution's compliance with Regulation DD.

To direct corrective action when violations of law are identified, or when the institution's policies or internal controls are deficient.

Examination Procedures[1]

Management and Policy-Related Examination Procedures

1. Determine the types of deposit accounts offered by the institution to consumers (including accounts usually offered to commercial customers that may occasionally be offered to consumers) as well as the characteristics of each type of deposit account (for example, bonuses offered, minimum balances, balance-computation method, frequency of interest crediting, fixed or variable rates, fees imposed, and frequency of periodic statements).
2. Review relevant written policies and procedures, management's self-assessments, complaints, and any compliance audit material including work papers and reports to determine whether:
   a. The scope of the audit addresses all provisions as applicable.
   b. Management has taken corrective actions 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 to the Board of Directors, as appropriate.
   f. The frequency of review is appropriate.
3. Through discussions with management and review of available information, determine whether the institution's internal controls are adequate to ensure compliance in Regulation DD area under review. Consider the following:
   a. Organization charts
   b. Process flowcharts
   c. Policies and procedures
   d. Account documentation
   e. Checklists
   f. Computer program documentation
4. Through a review of the institution's training materials, determine whether:
   a. The institution provides appropriate training to individuals responsible for Regulation DD compliance and operational procedures.
   b. The training is comprehensive and covers the various aspects of Regulation DD that apply to the individual institution's product offerings and operations.
   c. The training includes the timing requirements of section 1030.4(a)(2) to provide disclosure information (e.g., terms, conditions, and fees) to a consumer upon a request, whether or not the consumer is an existing or a prospective customer. Review whether the training instructs all employees to provide such disclosures at the time of the request if the consumer makes the request in person or within 10 days if the consumer is not present when making the request.
5. Determine the extent and adequacy of the institution's policies, procedures, and practices for ensuring compliance with the regulation. In particular, verify that:
   a. Account disclosure information is provided to all consumers within the appropriate time frames. This requirement pertains to all consumer requesters whether or not the consumer is an existing customer or a prospective customer.
   b. Advance notice is given for any changes in terms required to be disclosed under section 1030.4 and that exceptions to the advance notice requirements are limited to those set forth in section 1030.5(a)(2).
   c. If periodic statements are given, the statements disclose the required information, including the annual percentage yield earned, the amount of interest, fees imposed, and the statement's covered time period.
   d. The institution's methods of paying interest are permissible. Review the dates on which interest begins to accrue on deposits to accounts, and determine whether hold times comply with the Expedited Funds Availability Act.
   e. The institution's advertising policies are consistent with the requirements of the regulation, including advertising requirements for overdraft services.
   f. Evidence of compliance is retained for a minimum of two years after the date disclosures are required to be made or action is required to be taken.
   g. The periodic statements separately disclose the total fees and charges for payment of items that overdraw the account and for returning items unpaid. These

[1] These reflect the interagency examination procedures in their entirety.

disclosures must be provided for the statement period and the calendar year-to-date.

Transaction-Related Examination Procedures

If upon conclusion of the management and policy-related examination procedures, procedural weaknesses or other risks requiring further investigation are noted, conduct the transaction testing, as necessary, using the following examination procedures. Use examiner judgment in deciding how large each sample of deposit account disclosures, notices, and advertisements should be. The sample size should be increased until confidence is achieved that all aspects of the institution's activities and policies that are subject to the regulation are reviewed.

General Disclosure Requirements (12 C.F.R. § 1030.3)

1. Determine whether disclosures are made clearly and conspicuously in writing and in a form the consumer may keep. (§ 1030.3(a))
2. If the disclosures are combined with other account disclosures, determine whether it is clear which disclosures are applicable to the consumer's account. (§ 1030.3(a))
3. If the institution provides a consumer disclosures in electronic form, determine whether the institution has obtained the consumer's consent, where required, and complies with the other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. § 7001 *et seq*.). (§ 1030.3(a))
4. Determine whether the disclosures reflect the legal obligation of the account agreement between the consumer and the institution. (§ 1030.3(b))
5. If disclosures are provided in a language other than English, verify whether the disclosures are available in English upon request. (§ 1030.3(b))
6. Determine whether disclosures use consistent terminology when describing terms or features that are required to be disclosed. (Staff Commentary 1030.3(a)-2)
7. Determine whether the institution substitutes disclosures required by Regulation E for disclosures required by Regulation DD. (§ 1030.3(c))
8. Determine whether the institution provides required disclosures to at least one account holder if there are multiple holders. (§ 1030.3(d))
9. Determine whether the institution's oral response to a consumer's inquiry about interest rates payable on accounts state the annual percentage yield (APY). If the institution chooses, it may also state the interest rate, but no other rate. (§ 1030.3(e))
10. Determine whether the APY, the annual percentage earned (APYE) and the interest rate are rounded to the nearest one-hundredth of one percentage point (.01%).

NOTE: *For account disclosures, the interest rate may be expressed to more than two decimal places. (§ 1030.3(f)(1))*

11. Determine whether the APYs and APYEs are not more than one-twentieth of one percentage point (.05%) above or below the APY (and APYE) as determined in accordance with Appendix A of Regulation DD. (§ 1030.3(f)(2))

Account Disclosures (12 C.F.R. § 1030.4)

Delivery of Account Disclosures

Account Opening

1. Determine whether account disclosures are provided to consumers before an account is opened or a service is provided, whichever is earlier. (§ 1030.4(a)(1)(i))
   a. If the consumer is not present when the account is opened or a service is provided (and has not already received the disclosures), the disclosures should be mailed or delivered no later than 10 business days after the account is opened or the service is provided, whichever is earlier. (§ 1030.4(a)(1)(i))
   b. If the consumer who is not present at the institution uses electronic means to open an account or request a service, the disclosures must be provided before the account is open or the service is provided. (§ 1030.4(a)(1)(ii))

Consumer Request

2. Determine whether full account disclosures, including complete fee schedules, are provided to a consumer upon request. This requirement pertains to all consumer requests, whether or not the consumer is an existing customer or a prospective customer.
   a. If the request is made in person, determine whether the disclosures are provided at the time of the request.
   b. If the consumer is not present, the institution must mail or deliver the disclosures within a reasonable period of time after it receives the request (generally no more than 10 days). (§ 1030.4(a)(2)(i))
3. Determine whether the institution chooses one of the following options when providing rate information. (§ 1030.4(a)(2)(ii)(A))
   a. Specifies an interest rate and APY that were offered within the most recent seven calendar days;
   b. States that the rate and yield are accurate as of an identified date; or
   c. Provides a telephone number that consumers may call to obtain current rate information.
4. For a time deposit account, the institution may state the maturity as a term rather than a date. (§ 1030.4(a)(2)(ii)(B))

Content of Disclosures

Rate information

5. Determine whether account disclosures include, as applicable:
   a. The "annual percentage yield" and the "interest rate" using those terms; and
   b. For fixed-rate accounts the period of time the interest rate will be in effect. (§ 1030.4(b)(1)(i))
6. For variable-rate accounts, determine whether account disclosures include the following information: (§ 1030.4(b)(1)(ii))
   a. The fact that the interest rate and APY may change;
   b. How the interest rate is determined;
   c. The frequency with which the interest rate may change; and
   d. Any limitations on the amount the interest rate may change.

Compounding and crediting

7. Determine whether account disclosures describe the frequency with which interest is compounded or credited. (§ 1030.4(b)(2)(i))
8. If the consumer will forfeit interest if the consumer closes an account before accrued interest is credited, determine whether account disclosures include a statement that interest will not be paid in such cases. (§ 1030.4(b)(2)(ii))

Balance information

9. As applicable, determine whether account disclosures:
   a. Describe the minimum balance required to: (§ 1030.4(b)(3)(i))
      i. Open an account;
      ii. Avoid the imposition of a fee; or
      iii. Obtain the APY disclosed.
   b. Describe how the minimum balance requirement is determined to avoid the imposition of a fee or to obtain the APY disclosed. (§ 1030.4(b)(3)(i))
   c. Explain the balance computation method (specified in Section 1030.7) used to calculate interest on the account. (§ 1030.4(b)(3)(ii))
   d. State when interest begins to accrue on noncash deposits (§ 1030.4(b)(3)(iii))

Fees

10. Determine whether account disclosures state the amount of any fee that may be imposed in connection with the account (or an explanation of how the fee will be determined) and the conditions under which the fee may be imposed. (§ 1030.4(b)(4))
    - Determine whether the institution has specified the categories of transactions for which an overdraft fee may be imposed. (Staff Commentary § 1030.4(b)(4)-5)

Transaction Limitations

11. Determine whether the account disclosures state any limits on the number or dollar amount of withdrawals or deposits. (§ 1030.4(b)(5))

Features of time accounts

12. For time accounts, determine whether account disclosures include, as applicable:
    a. The maturity date. (§ 1030.4(b)(6)(i))
    b. A statement that a penalty will or may be imposed for early withdrawal, how it is calculated, and the conditions for its assessment. (§ 1030.4(b)(6)(ii))
    c. If compounding occurs during the term and the interest may be withdrawn prior to maturity, a statement that the APY assumes interest remains on deposit until maturity and that a withdrawal will reduce earnings. (§ 1030.4(b)(6)(iii))
    d. A statement that interest cannot remain on deposit and that payout of interest is mandatory for accounts: (§ 1030.4(b)(6)(iii))
       i. With a stated maturity greater than one year;
       ii. That do not compound interest on an annual or more frequent basis;
       iii. That require interest payouts at least annually; and
       iv. That disclose an APY determined in accordance with section E of Appendix A of Regulation DD.
    e. A statement of whether or not the account will renew automatically at maturity. (§ 1030.4(b)(6)(iv))
       i. If it will renew automatically at maturity, a statement whether or not a grace period will be provided and, if so, the length of the grace period.
       ii. If it will not renew automatically, a statement of whether interest will be paid after maturity if the consumer does not renew the account.

Bonuses

Determine whether the account disclosures state the amount or type of any bonus, when the bonus will be provided, and any minimum balance and time requirements to obtain the bonus. (§ 1030.4(b)(7))

Subsequent Disclosures (12 C.F.R. § 1030.5**)**

Change in Terms Notice

1. Determine whether the institution sends out advance change in terms notices to consumers of any change in a term, required to be disclosed under section 1030.4(b), that may reduce the annual percentage yield (APY) or that otherwise adversely affects consumers. Verify that the notice: (§ 1030.5(a)(1))

a. Includes the effective date of the change; and
b. Is mailed or delivered at least 30 days before the effective date of the change.

2. Determine whether exceptions to the notice requirements are limited to: (§ 1030.5(a)(2))
   a. Variable-rate changes
   b. Check-printing fees
   c. Short-term time accounts (1 month or less)

Pre-Maturity Notices – Renewable Accounts

3. For time accounts with a maturity longer than one month and that renew automatically, determine whether the proper subsequent disclosures (§ 1030.5(b)):
   a. Are mailed or delivered at least 30 days before maturity of the existing account. Alternatively, the disclosures may be mailed or delivered at least 20 calendar days before the end of the grace period on the existing account, if a grace period of at least five days is allowed. (§ 1030.5(b))
   b. For accounts with maturities of more than one year, include the following information (§ 1030.5(b)(1)):
      i. The account disclosures required in section 1030.4(b) for new accounts
      ii. The date the existing account matures
      iii. If the interest rate and APY are not known, include the following:
         - The fact that the rates are unknown
         - The date that the rates will be determined
         - A telephone number to call to obtain the rates that will be paid on the new account.
   c. For accounts with maturities of one year or less, include the following information: (§ 1030.5(b)(2))
      i. The account disclosures required in section 1030.5(b)(1) for accounts with maturities of more than one year;

      OR

      ii. The date the existing account matures and the new maturity date if the account is renewed, and:
         - The interest and APY, if known. If the rates are not known, include the following:
            ° The fact that the rates are unknown;
            ° The date they will be determined; and
            ° A telephone number to call to obtain the rates that will be paid on the new account;

         AND

         - The difference in the terms of the new account, as compared to the existing account.

Pre-Maturity Notices – Nonrenewable Accounts

4. For time accounts with a maturity longer than one year and that do not renew automatically, determine whether the institution (§ 1030.5(c)):
   a. Discloses the maturity date
   b. Discloses whether interest will be paid after maturity
   c. Mails or delivers the disclosures at least 10 calendar days before maturity of the existing account.

Periodic Statement Disclosures (12 C.F.R. § 1030.6)

1. If an institution mails or delivers a periodic statement, determine whether the statements include the following (§ 1030.6(a)):
   a. The "annual percentage yield earned" during the statement period, using that term and calculated in accordance to Appendix A of Regulation DD; (§ 1030.6(a)(1))
   b. The amount of interest earned during the statement period; (§ 1030.6(a)(2))
   c. Any debited fees required to be disclosed under section 1030.4(b)(4) itemized by dollar amount and type; (§ 1030.6(a)(3))

      NOTE: *Except as required in section 1030.11(a)(1) for overdraft payment fees, if fees of the same type are imposed more than once in a statement period, an institution may itemize fees separately or group them together and disclose a total dollar amount for all fees of the same type. Fees for paying overdrafts and for returning items unpaid are not fees of the same type and must be separately distinguished.*

   d. The total number of days in the statement period, or the beginning and ending dates of the period; (§1030.6(a)(4)) and
   e. If applicable, the total overdraft and returned item fees required to be disclosed by § 1030.11(a). (§1030.6(a)(5))
2. If the institution uses the average daily balance method and calculates interest for a period other than the statement period, determine whether the institution: (§ 1030.6(b))
   a. Calculates and discloses the APY earned and the amount of interest earned based on the other period rather than the statement period; and
   b. States the information required in section 1030.6(a)(4), specifying the period length for the other period as well as for the statement period.

Payment of Interest (12 C.F.R. § 1030.7)

1. Determine whether the institution calculates interest based on the full amount of principal in an account for each day by use of either the daily balance method or the average daily balance method. (§ 1030.7(a)(1))

2. For deposit accounts that require a minimum balance to earn interest, determine whether the institution is using the same method to determine the minimum balance as it uses to determine the balance on which interest is calculated. (§ 1030.7(a)(2))

   NOTE: *An institution may use an additional method that is unequivocally beneficial to the consumer. (§ 1030.7(a)(2))*

3. If an institution chooses not to pay accrued interest if the consumer closes an account prior to the date accrued interest is credited, determine whether the institution has disclosed this practice in the initial account disclosures. (Staff Commentary § 1030.7(b)-3)

   NOTE: *An institution is not required to compound or credit interest at any particular frequency but, if it does, it may compound or credit interest annually, semi-annually, quarterly, monthly, daily, continuously, or on any other basis. (§ 1030.7(b) and Staff Commentary § 1030.7(b)-1)*

4. Determine whether interest begins to accrue no later than the business day on which the depository institution receives provisional credit for the funds, in accordance with section 606 of the Expedited Funds Availability Act and the implementing Regulation CC, section 1029.14. (§ 1030.7(c))
5. Determine whether interest accrues until the day funds are withdrawn. (§ 1030.7(c))

Advertising (12 C.F.R. § 1030.8)

General

1. Determine the types of advertising the institution uses, including visual, oral, or print, that meet the regulatory definition of an advertisement.
2. Determine that all types of advertisements do not contain misleading or inaccurate statements, and do not misrepresent deposit contracts. (§ 1030.8(a)(1))
3. Determine that advertisements of accounts do not:
   a. Refer to or describe an account as "free" or "no cost" (or contain a similar term) if any maintenance or activity fee is charged;
   b. Use the word profit to refer to interest paid on the account;
   c. Use the term "fees waived" if a maintenance or activity fee can be imposed. (§ 1030.8(a)(2) and Staff Commentary § 1030.8(a)-5)
4. If an electronic advertisement displays a triggering term, determine whether the advertisement clearly refers the consumer to the location where the additional required information begins. (Staff Commentary § 1030.8(a)-9)
5. For institutions that promote the payment of overdrafts in an advertisement, determine whether the advertisement includes the disclosures required by section 1030.11(b). (§ 1030.8(f))

Permissible Advertisement Rates

6. For advertisements that state a rate of return, determine whether (§ 1030.8(b)):
   a. The rate is stated as an "annual percentage yield" using that term and that no other rate is stated except "interest rate."
   b. If the advertisement uses the abbreviation "APY," the term "annual percentage yield" is stated at least once in the advertisement.
   c. If the advertisement states the interest rate, it uses the term "interest rate" in conjunction with, but not be more conspicuous than, the annual percentage yield to which it relates.
   d. Rates are rounded to the nearest one-hundredth of one percentage point (.01%) and expressed to two decimal places.
7. For tiered-rate accounts, determine whether an annual percentage yield is stated for each tier, along with corresponding minimum-balance requirements. (Staff Commentary § 1030.8(b)-1)
8. For stepped-rate accounts, determine whether all interest rates and the time period that each rate is in effect are stated. (Staff Commentary § 1030.8(b)-2)

Required Additional Disclosures

9. With the exception of broadcast, electronic, or outdoor media, telephone-response machines, and indoor signs, if the annual percentage yield is stated in the advertisement, determine whether it includes the following information, as applicable, clearly and conspicuously:
   a. For a variable rate account, that the rate may change after account opening. (§ 1030.8(c)(1))
   b. The time period that the annual percentage yield will be offered, or a statement that it is accurate as of a specified date. (§ 1030.8(c)(2))
   c. The minimum balance required to earn the advertised annual percentage yield. (§ 1030.8(c)(3))
   d. For tiered accounts, the minimum balance required for each tier stated in close proximity and with equal prominence to the applicable APY, if applicable. (§ 1030.8(c)(3))
   e. The minimum deposit to open the account, if it is greater than the minimum balance necessary to obtain the advertised annual percentage yield. (§ 1030.8(c)(4))
   f. A statement that fees could reduce the earnings on the account. This applies only in the case of maintenance

or activity fees. (§ 1030.8(c)(5) and Staff Commentary § 1030.8(c)(5)-1)

g. For time accounts:

i. Term of the account. (§ 1030.8(c)(6)(i))

ii. A statement that a penalty will or may be imposed for early withdrawal. (§ 1030.8(c)(6)(ii))

iii. A statement that interest cannot remain on deposit and that payout of interest is mandatory for noncompounding time accounts with the following features: (§ 1030.8(c)(6)(iii))

- Stated maturity greater than one year.
- Interest is not compounded annually or more frequently.
- Interest is required to be paid out at least annually.
- The APY is determined in accordance with section E of Appendix A of Regulation DD.

Bonuses

10. For advertisements that state a bonus (a premium, gift, award or other consideration worth more than $10), determine whether they also state:

a. The "annual percentage yield," using that term; (§ 1030.8(d)(1))

b. The time requirement to obtain the bonus; (§ 1030.8(d)(2))

c. The minimum balance required to obtain the bonus; (§ 1030.8(d)(3))

d. The minimum balance required to open the account, if it is greater than the minimum balance required to obtain the bonus; and (§ 1030.8(d)(4))

e. When the bonus will be provided. (§ 1030.8(d)(5))

Exemptions for certain advertisements

11. Advertisements made through broadcast, electronic, or outdoor media, and telephone-response machines are exempted from some of the Regulation DD advertising requirements and are only required to contain certain information. (This exemption does not apply to Internet or e-mail advertisements.) Determine whether advertisements made in these media contain the following information as applicable, clearly and conspicuously: (§ 1030.8(e)(1) and Staff Commentary § 1030.8(e)(1)(i)-1)

a. The minimum balance required to earn the advertised annual percentage yield. For tiered accounts, the minimum balance required for each tier stated in close proximity and with equal prominence to the applicable APY, if applicable. (§ 1030.8(c)(3))

b. For time accounts:

i. Term of the account. (§ 1030.8(c)(6)(i))

ii. A statement that interest cannot remain on deposit and that payout of interest is mandatory for noncompounding time accounts with the following features: (§ 1030.8(c)(6)(iii))

- Stated maturity greater than one year.
- Interest is not compounded annually or more frequently.
- Interest is required to be paid out at least annually.
- The APY is determined in accordance with section E of Appendix A of Regulation DD.

c. For advertisements that state a bonus (a premium, gift, award or other consideration worth more than $10):

i. The "annual percentage yield," using that term. (§ 1030.8(d)(1))

ii. The time requirement to obtain the bonus. (§ 1030.8(d)(2))

iii. The minimum balance required to obtain the bonus. (§ 1030.8(d)(3))

12. Indoor signs are exempted from most of the Regulation DD advertising requirements.

a. Determine that indoor signs do not:

i. Contain misleading or inaccurate statements, and do not misrepresent deposit contracts; (§ 1030.8(a)(1))

ii. Refer to or describe an account as "free" or "no cost" (or contain a similar term) if any maintenance or activity fee is charged; (§.8(a))

iii. Use the word profit to refer to interest paid on the account; (§.8(a)(2))

iv. Use the term "fees waived" if a maintenance or activity fee can be imposed. (Staff Commentary § 1030.8(a)-5)

b. If a rate of return is stated, determine whether the indoor sign:

i. States the rate as "annual percentage yield" or "APY." No other rate may be stated except for the interest rate in conjunction with the APY to which it relates.

ii. Contains a statement advising consumers to contact an employee for further information about applicable fees and terms. (§ 1030.8(e)(2))

Record Retention Requirements (12 C.F.R. § 1030.9)

Determine whether the institution has maintained evidence of compliance with Regulation DD, including rate information, advertising, and providing consumers disclosures at the appropriate time (including upon a consumer's request), for a minimum of two years after disclosures are required to be made or action is required to be taken. (§ 1030.9(c))

Section 1030.10 - [Reserved]

Additional Disclosure Requirements for Overdraft Services (12 C.F.R. § 1030.11)

Periodic Statement Disclosures

1. Determine whether the institution discloses, on each periodic statement (if a statement is provided), separate totals for both the statement period and for the calendar year-to-date, for the following: (§ 1030.11(a)(1) and (a)(2))
   a. The total amount for all fees or charges imposed on the account for paying checks or other items when there are insufficient or unavailable funds and the account becomes overdrawn, using the term "Total Overdraft Fees" (the requirement to use the term "Total Overdraft Fees" is effective October 1, 2010); and (§1030.11(a)(1)(i))
   b. The total amount for all fees or charges imposed on the account for returning items unpaid. (§ 1030.11(a)(1)(ii))
2. Determine if the aggregate fee disclosures are in a format that is substantially similar to the sample form in Appendix B of Regulation DD and that the disclosures are in close proximity to any fee identified in section 1030.6(a)(3). (§ 1030.11(a)(3))

   NOTE: *The table must contain lines (or similar markings such as asterisks) inside the table to divide the columns and rows.*

Advertisement Requirements

3. Unless an exception under section 1030.11(b)(2)-(4) applies, when an institution advertises the payment of overdrafts, determine whether the institution clearly and conspicuously discloses in advertisements:
   a. The fee(s) for the payment of each overdraft; (§ 1030.11(b)(1)(i))
   b. The categories of transactions for which a fee may be imposed for paying an overdraft; (§ 1030.11(b)(1)(ii))
   c. The time period by which the consumer must repay or cover any overdraft; and (§ 1030.11(b)(1)(iii))
   d. The circumstances under which the institution will not pay an overdraft. (§ 1030.11(b)(1)(iv))

Disclosure of Account Balances

4. If the institution discloses account balance information through automated systems, determine whether:
   a. The balance excludes additional amounts that the institution may provide to cover items when there are insufficient or unavailable funds. (§ 1030.11(c))
   b. The institution, if it discloses at its option additional account balances that include additional amounts, prominently states that any such balance includes additional amounts and, if applicable, that those additional amounts are not available for all transactions. (§ 1030.11(c))

NOTE: *Regulation DD does not require an institution to exclude funds from the consumer's balance that may be transferred from another account pursuant to a retail sweep program. (Staff Commentary § 1030.11(c)–2)*

References

Truth in Savings Act

Part 1030, Truth in Savings (Regulation DD)

Advisory Opinion 94-54: Regulation DD — Truth in Savings: Disclosures in Advertisements Soliciting Deposits

Advisory Opinion 93-67: Regulation DD — Tiered-Rate Accounts and Disclosures Statements Requirements

Advisory Opinion 93-56: Regulation DD — Sufficiency of Proposed Disclosures of Annual Percentage Yields for Tiered-Rate Accounts

Subsequent Notice Requirements for Time Accounts		
Maturity	Automatically Renewable (Rollover)	Non-automatically Renewable (Non-rollover)
> One Year	*Timing* a. 30 calendar days before maturity, or b. 20 calendar days before end of grace period, if a grace period is at least 5 calendar days *Content* a. Date existing account matures b. Disclosures for a new account (§ 1030.4(b)) If terms have not been determined, indicate this fact, state the date when they will be determined, and provide a telephone number to obtain the terms. (§1030.5(b)(1))	*Timing* 10 calendar days before maturity *Content* Maturity date, and whether or not interest will be paid after maturity (§1030.5(c))
> One Month and < One Year	*Timing* a. 30 calendar days before maturity, or b. 20 calendar days before end of grace period, if a grace period is at least 5 calendar days *Content* a. Disclosures required under § 1030.5(b)(1), or b. Date of maturities of existing and new account, any change in terms, and a difference in terms between new account and ones of existing account. If terms have not been determined, indicate this fact, state the date when they will be determined, and provide a telephone number to obtain the terms. (§1030.5(b)(2))	No subsequent notice required

	Yes	No	NA
Section 1030.3 General Disclosure Requirements			
1. Does the institution make the required disclosures clearly and conspicuously in writing and in a form the consumer may keep? (§ 1030.3(a))			
2. If the disclosures are combined with other account disclosures, is it clear which disclosures are applicable to the consumer's account? (§ 1030.3(a))			
3. If the institution provides in electronic form disclosures to a consumer, does the institution obtain the consumer's consent, if required, and comply with the other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. § 7001 *et seq.*)? (§ 1030.3(a))			
4. Do the disclosures reflect the terms of the legal obligation of the account agreement between the consumer and the institution? (§ 1030.3(b))			
5. If the disclosures are provided in a language other than English, are disclosures also available in English upon request? (§ 1030.3(b))			
6. Do the disclosures use consistent terminology when describing terms or features that are required to be disclosed? (Staff Commentary § 1030.3(a)-2)			
7. Does the institution substitute disclosures required by Regulation E for disclosures required by this regulation? (§ 1030.3(c))			
8. Does the institution provide disclosures to at least one account holder if there are multiple holders? (§ 1030.3(d))			
9. Do the institution's oral responses to a consumer's inquiry about interest rates payable on accounts state the annual percentage yield (APY)? If the institution chooses, it may state the interest rate, but no other rate. (§ 1030.3(e))			
10. Are the APY, annual percentage yield earned (APYE), and the interest rate rounded to the nearest one-hundredth of one percentage point (.01%) and expressed to two decimal places? (§ 1030.3(f)(1))			
• For account disclosures, is the interest rate expressed to two or more decimal places? (§ 1030.3(f)(1))			
11. Are the APY and APYE not more than one-twentieth of one percentage point (.05%) above or below the APY and APYE determined in accordance with appendix A of Regulation DD? (§ 1030.3(f)(2))			

	Yes	No	NA
Section 1030.4 Account Disclosures			
Delivery of Account Disclosures			
Account Opening			
1. Does the institution provide initial disclosures before an account is opened or a service provided, whichever is earlier? (§ 1030.4(a)(1))			
• If the consumer is not present when the account is open or a service is provided (and has not already received the disclosures), 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? (§ 1030.4(a)(1)(i))			
• If the consumer who is not present at the institution uses electronic means to open an account or request a service, are the disclosures provided before the account is open or the service is provided? (§ 1030.4(a)(1)(ii))			
Consumer Request			
2. Does the institution have full account disclosures, including complete fee schedules, available to be provided to consumers upon request? This requirement pertains to all consumer requests, whether or not the consumer is an existing customer or a prospective customer. (§ 1030.4(a)(2)(i))			
• If the consumer makes the request in person, does the institution have disclosures available to be provided upon request?			
• If the consumer who is not present at the institution makes a request, does the institution mail or deliver the account disclosures within a reasonable time after it receives the request (generally no more than 10 days)? (§ 1030.4(a)(2)(i))			
3. In providing disclosures upon request, does the institution choose one of the following options when providing rate information: (§ 1030.4(a)(2)(ii))			
• Specify an interest rate and APY that were offered within the most recent seven calendar days; (§ 1030.4(a)(2)(ii)(A))			
• State that the rate and yield are accurate as of an identified date; (§ 1030.4(a)(2)(ii)(A)) **OR**			
• Provide a telephone number that consumers may call to obtain current rate information? (§ 1030.4(a)(2)(ii)(A))			
4. For a time deposit account, does the institution choose to state the maturity of the time account as a term rather than a date? (§ 1030.4(a)(2)(ii)(B))			

	Yes	No	NA
Content of Disclosures			
Rate Information			
5. Do account disclosures include, as applicable: (§ 1030.4(b))			
• The "annual percentage yield" and interest rate, using those terms? (§ 1030.4(b)(1(i))			
• For fixed-rate accounts, the period of time the interest rate will be in effect? (§ 1030.4(b)(1)(i))			
6. For variable-rate accounts, do account disclosures include the following information: (§ 1030.4(b)(1)(ii))			
• The fact that the interest rate and APY may change; (§ 1030.4(b)(1)(ii)(A))			
• How the interest rate is determined; (§ 1030.4(b)(1)(ii)(B))			
• The frequency with which the interest rate may change; (§ 1030.4(b)(1)(ii)(C)) **AND**			
• Any limitation on the amount the interest rate may change? (§ 1030.4(b)(1)(ii)(D))			
Compounding and Crediting			
7. Do the account disclosures describe the frequency with which interest is compounded and credited? (§ 1030.4(b)(2)(i))			
8. If consumers will forfeit interest if they close the account before accrued interest is credited, do the account disclosures include a statement that interest will not be paid in such cases? (§ 1030.4(b)(2)(ii))			
Balance Information			
9. As applicable, do the account disclosures: (§ 1030.4(b)(3)(i)) • Describe the minimum balance required to:			
° Open an account? (§ 1030.4(b)(3)(i)(A))			
° Avoid the imposition of a fee? (§ 1030.4(b)(3)(i)(B))			
° Obtain the APY disclosed? (§ 1030.4(b)(3)(i)(C))			
• Describe how the minimum balance requirement is determined to avoid the imposition of a fee or to obtain the APY disclosed? (§ 1030.4(b)(3)(i))			
• Explain the balance computation method used to calculate interest on the account? (§ 1030.4(b)(3)(ii))			
• State when interest begins to accrue on noncash deposits? (§ 1030.4(b)(3)(iii))			

	Yes	No	NA
Fees			
10. Do the account disclosures state the amount of any fee that may be imposed in connection with the account (or an explanation of how the fee will be determined) and the conditions under which the fee may be imposed? (§ 1030.4(b)(4))			
• Does it disclose specific categories of transactions that may cause an overdraft fee to be imposed on the accountholder? (Staff Commentary § 1030.4(b)(4)-5)			
Transaction Limitations			
11. Do the account disclosures state any limits on the number or dollar amount of withdrawals or deposits? (§ 1030.4(b)(5))			
Features of Time Accounts			
12. For time accounts, do the account disclosures also include the following, as applicable: (§ 1030.4(b)(6))			
• The maturity date? (§ 1030.4(b)(6)(i))			
• A statement that a penalty will or may be imposed for early withdrawal, how it is calculated, and the conditions for its assessment? (§ 1030.4(b)(6)(ii))			
• If compounding occurs during the term and the interest may be withdrawn prior to maturity, a statement that the APY assumes that interest remains on deposit until maturity and that a withdrawal will reduce earnings? (§ 1030.4(b)(6)(iii))			
• A statement that interest cannot remain on deposit and that payout of interest is mandatory for accounts with the following features: (§ 1030.4(b)(6)(iii))			
° A stated maturity greater than one year;			
° Does not compound interest on an annual or more frequent basis;			
° Requires interest payouts at least annually; and			
° Discloses an APY determined in accordance with section E of Appendix A of Regulation DD.			
• A statement of whether or not the account will renew automatically at maturity? (§ 1030.4(b)(6)(iv))			
° If the account will renew automatically at maturity, a statement of whether or not a grace period is provided, and if so, the length of the grace period.			
° If the account does not renew automatically, a statement of whether interest will be paid after maturity if the consumer does not renew the account.			
Bonuses			
13. Do account disclosures state the amount or type of any bonus, when the bonus will be provided, and any minimum balance and time requirements to obtain the bonus? (§ 1030.4(b)(7))			

	Yes	No	NA
[redacted]			
1. Does the institution provide advance change in terms notices to consumers of any change to a term, required to be disclosed under section 1030.4(b), that may reduce the annual percentage yield or that otherwise adversely affects the consumer? (§ 1030.5(a)(1))			
• Does the notice include the effective date of the change? (§ 1030.5(a)(1))			
• Is the notice mailed or delivered at least 30 days before the effective date of the change? (§ 1030.5(a)(1))			
2. Are exceptions to the notice requirements limited to the following:(§ 1030.5(a)(2))			
• Variable-rate changes? (§ 1030.5(a)(2)(i))			
• Check-printing fees? (§ 1030.5(a)(2)(ii))			
• Short-term time accounts (one month or less)? (§ 1030.5(a)(2)(iii))			

	Yes	No	NA
- –			
3. For time accounts with maturities longer than one month and that automatically renew, does the institution: (§ 1030.5(b))			
• Mail or deliver subsequent disclosures at least 30 calendar days before maturity of existing account? (§ 1030.5(b)) (Alternatively, if grace period of at least five calendar days is allowed, disclosures may be mailed or delivered at least 20 calendar days before the end of grace period).			
• For accounts with maturities longer than one year, include in the disclosures: (§ 1030.5(b)(1))			
° The account disclosures outlined in section 1030.4(b) for the new account?			
° The date the existing account matures?			
° If the interest rate and APY for the new account have not been determined:			
1. The fact that the rates have not yet been determined?			
2. The date that the rates will be determined?			
3. A telephone number to call for the interest rate and APY that will be paid on the new account?			
• For accounts with maturities of one year or less, include in the disclosures: (§ 1030.5(b)(2))			
° The account disclosures required under section 1030.5(b)(1) for accounts with maturities of more than one year; (§ 1030.5(b)(2)(i))			
OR			
° The date the existing account matures and the new maturity date if the account is renewed. (§ 1030.5(b)(2)(ii)(A))			
° The interest rate and APY for the new account, if known. (§ 1030.5(b)(2)(ii)(B))			
° If the rates are not known: (§ 1030.5(b)(2)(ii)(B))			
1. The fact that the rates have not yet been determined.			
2. The date they will be determined.			
3. A telephone number to call for the interest rate and APY that will be paid on the new account.			
° Any difference in the terms of the new account, compared to the existing account. (§ 1030.5(b)(2)(ii)(C))			

	Yes	No	NA
Pre-Maturity Notices – Nonrenewable Accounts			
4. For time accounts with maturities longer than one year and that do not automatically renew, does the institution: (§ 1030.5(c))			
• Disclose the maturity date?			
• Disclose whether interest will be paid after maturity?			
• Mail or deliver the disclosures at least 10 calendar days before the maturity of the existing account?			
Section 1030.6 Periodic Statement Disclosures			
1. If an institution mails or delivers a periodic statement, do the statements include the following: (§ 1030.6(a))			
• The "annual percentage yield earned" during the statement period, using that term and calculated in accordance to Appendix A of Regulation DD? (§ 1030.6(a)(1))			
• The amount of interest earned during the statement period? (§ 1030.6(a)(2))			
• Any debited fees required to be disclosed under section 1030.4(b)(4), itemized by dollar amount and type? (§1030.6(a)(3)) NOTE: *Except as required in section 1030.11(a)(1) for overdraft payment fees, if fees of the same type are imposed more than once in a statement period, an institution may itemize fees separately or group them together and disclose a total dollar amount for all fees of the same type. Fees for paying overdrafts and for returning items unpaid are not fees of the same type and must be separately distinguished.*			
• The total number of days in the statement period, or the beginning and ending dates of the period? (§ 1030.6(a)(4))			
2. If the institution uses the average daily balance method and calculates interest for a period other than the statement period, does the institution: (§ 1030.6(b))			
• Calculate and disclose the APYE and the amount of interest earned based on the other period rather than the statement period?			
• State the information required in section 1030.6(a)(4), specifying the period length for the other period as well as for the statement period?			

	Yes	No	NA
Section 1030.7 Payment of Interest			
1. If the rates are not known: (§ 1030.5(b)(2)(ii)(B)) Does the institution calculate interest on the full amount of principal in the account each day by use of either the daily balance method or the average daily balance method? (§ 1030.7(a)(1))			
2. For deposit accounts that require a minimum balance to earn interest, does the institution use the same method to determine any minimum balance as it uses to determine the balance on which interest is calculated? NOTE: *An institution may use an additional method that is unequivocally beneficial to the consumer. (§ 1030.7(a)(2))*			
3. If an institution chooses not to pay accrued interest if the consumer closes an account prior to the date accrued interest is credited, does the institution disclose this practice in the initial account disclosures? (Staff Commentary §1030.7(b)-3) NOTE: *An institution is not required to compound or credit interest at any particular frequency but, if it does, it may compound or credit interest annually, semi-annually, quarterly, monthly, daily, continuously, or on any other basis. (§ 1030.7(b) and Staff Commentary § 1030.7(b)-1)*			
4. 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 and implementing Regulation CC? (§1030.7(c))			
5. Does interest accrue until the day the funds are withdrawn? (§1030.7(c))			
Section 1030.8 Advertising Requirements			
General			
1. Do the types of advertising that the institution uses, including visual, oral, or print, meet the regulatory definition of an advertisement?			
2. Do the advertisements refrain from misleading or inaccurate statements, and from misrepresenting the institution's deposit contract? (§ 1030.8(a)(1))			
3. Do the advertisements refrain from using: (§ 1030.8(a)(2) and Staff Commentary § 1030.8(a)-5)			
• The terms "free" or "no cost" (or similar term) if any maintenance or activity fee may be imposed?			
• The word "profit" when referring to interest paid on an account?			
• The term "fees waived" if a maintenance or activity fee can be imposed?			
4. If an electronic advertisement displays a triggering term, does the advertisement clearly refer the consumer to the location where the additional required information begins? (Staff Commentary § 1030.8(a)-9)			
5. For an institution that promotes the payment of overdrafts in an advertisement, does the advertisement include the disclosures required by section 1030.11(b)? (§ 1030.8(f))			
Permissible Advertisement Rates			

	Yes	No	NA
6. If the institution advertises a rate of return: (§ 1030.8(b))			
• Is the rate stated as "annual percentage yield," using that term, and no other rate except "interest rate"?			
• If the advertisement uses the abbreviation "APY," has the term "annual percentage yield" been stated at least once in the advertisement?			
• If the advertisement states the interest rate, using that term, is it stated in conjunction with, but not more conspicuous than, the annual percentage yield to which it relates?			
• Are the annual percentage yields and interest rates rounded to the nearest one-hundredth of one percentage point (.01%) and expressed to two decimal places?			
7. If the institution advertises tiered-rate accounts, does the advertisement state an annual percentage yield for each tier, along with corresponding minimum-balance requirements? (Staff Commentary § 1030.8(b)-1)			
8. If the institution advertises stepped-rate accounts, does the advertisement state all the interest rates and the time period that each rate is in effect? (Staff Commentary § 1030.8(b)-2)			

	Yes	No	NA
Required Additional Disclosures			
9. With the exception of broadcast, electronic, or outdoor media, telephone-response machines, and indoor signs, if the annual percentage yield is stated in the advertisement, is the following information, as applicable, stated clearly and conspicuously: (§ 1030.8(c))			
• For a variable rate account, that the rate may change after account opening? (§ 1030.8(c)(1))			
• The time period that the annual percentage yield will be offered, or a statement that it is accurate as of a specified date? (§1030.8(c)(2))			
• The minimum balance required to earn the advertised annual percentage yield? (§ 1030.8(c)(3))			
• For tiered-rate accounts, the minimum balance required for each tier stated in close proximity and with equal prominence to the applicable APY, if applicable? (§ 1030.8(c)(3))			
• The minimum deposit to open the account, if it is greater than the minimum balance necessary to obtain the advertised annual percentage yield? (§ 1030.8(c)(4))			
• A statement that maintenance or activity fees could reduce the earnings on the account? (§ 1030.8(c)(5) and Staff Commentary § 1030.8(c)(5)-1)			
• For time accounts, the following features: (§ 1030.8(c)(6))			
° Term of the account? (§ 1030.8(c)(6)(i))			
° A statement that a penalty will or may be imposed for early withdrawal? (§ 1030.8(c)(6)(ii))			
° A statement that interest cannot remain on deposit and that payout of interest is mandatory for noncompounding time accounts with the following features: (§ 1030.8(c)(6)(iii))			
1. A stated maturity greater than one year;			
2. Interest is not compounded on an annual or more frequent basis;			
3. Interest is required to be paid out at least annually; and			
4. The APY is determined in accordance with section E of Appendix A.			

	Yes	No	NA
Bonuses			
10. Unless an exception applies in section 1030.8(e), if a bonus is stated in an advertisement, does the advertisement state the following information, as applicable, clearly and conspicuously: (§ 1030.8(d))			
• The "annual percentage yield," using that term? (§ 1030.8(d)(1))			
• The time requirement to obtain the bonus? (§ 1030.8(d)(2))			
• The minimum balance required to obtain the bonus? (§ 1030.8(d)(3))			
• The minimum balance required to open the account, if it is greater than the minimum balance necessary to obtain the bonus)? (§ 1030.8(d)(4))			
• When the bonus will be provided? (§ 1030.8(d)(5))			
Exemptions for Certain Advertisements			
11. Do advertisements made through broadcast, electronic, or outdoor media, and telephone-response machines contain the following information, as applicable, clearly and conspicuously: (§ 1030.8(e)(1) and Staff Commentary § 1030.8(e)(1)(i)-1)			
• The minimum balance required to earn the advertised annual percentage yield? For tiered accounts, the minimum balance required for each tier stated in close proximity and with equal prominence to the applicable APY, if applicable? (§ 1030.8(c)(3))			
• For time accounts:			
° Term of the account? (§1030.8(c)(6)(i))			
° A statement that interest cannot remain on deposit and that payout of interest is mandatory for noncompounding time accounts with the following features: (§1030.8(c)(6)(iii))			
1. A stated maturity greater than one year;			
2. Interest is not compounded on an annual or more frequent basis;			
3. Interest is required to be paid out at least annually; and			
4. The APY is determined in accordance with section E of Appendix A of Regulation DD.			
• If an advertisement states a bonus:			
° The "annual percentage yield," using that term? (§ 1030.8(d)(1))			
° The time requirement to obtain the bonus? (§ 1030.8(d)(2))			
° The minimum balance required to obtain the bonus? (§ 1030.8(d)(3))			

	Yes	No	NA
Exemptions for Certain Advertisements (continued)			
12. Do indoor signs:			
• Refrain from:			
° Containing misleading or inaccurate statements, and misrepresenting deposit contracts? (§ 1030.8(a)(1))			
° Referring to or describe an account as "free" or "no cost" (or contain a similar term) if any maintenance or activity fee is charged?			
° Using the word profit to refer to interest paid on the account?			
° Using the term "fees waived" if a maintenance or activity fee can be imposed? (§ 1030.8(a)(2) and Staff Commentary § 1030.8(a)-5)			
• If a rate of return is stated,			
° State the rate as "annual percentage yield" or "APY"? No other rate may be stated except for the interest rate in conjunction with the APY to which it relates.			
° Contain a statement advising consumers to contact an employee for further information about applicable fees and terms? (§ 1030.8(e)(2))			
Section 1030.9 Record Retention Requirements			
Has the institution retained evidence of compliance with Regulation DD, including rate information, advertising, and providing consumers disclosures at the appropriate time (including upon a consumer's request), for a minimum of two years after disclosures are required to be made or action is required to be taken? For example, review samples of advertising and disclosures, policies and procedures, and training activities, as appropriate. (§ 1030.9(c))			
Section 1030.10 RESERVED			
Section 1030.11 Overdraft Payment Disclosure and Advertising Requirements			
Periodic Statement Disclosures			
1. Does the institution disclose on each periodic statement (if it provides a statement, and if a consumer is charged such fees) separate totals, for both the statement period and the calendar year-to-date, for the following: (§ 1030.11(a)(1) and (2))			
• The total amount of fees and charges imposed for paying checks or other items when there are insufficient or unavailable funds and the account becomes overdrawn, using the term "Total Overdraft Fees"? (§ 1030.11(a)(1)(i)) NOTE*: The requirement to use the term "Total Overdraft Fees" is effective October 1, 2010* **AND**			
• The total amount of fees or charges imposed on an account for returning items unpaid? (§ 1030.11(a)(1)(ii))			

	Yes	No	NA
Periodic Statement Disclosures (continued)			
2. Does the institution disclose the fees in close proximity to any fee identified in section 1030.6(a)(3) that may be imposed in connection with the account and in a substantially similar format as found in Appendix B of Regulation DD? NOTE: *The table must contain lines (or similar markings such as asterisks) inside the table to divide the columns and rows.*			
Advertisement Requirements			
3. Unless an exception under section 1030.11(b)(2)-(4) applies, when an institution advertises the payment of overdrafts, are the following disclosed clearly and conspicuously in the advertisement:			
• The fee(s) for the payment of each overdraft; (§ 1030.11(b)(1)(i))			
• The categories of transactions for which a fee may be imposed for paying an overdraft; (§ 1030.11(b)(1)(ii))			
• The time period by which the consumer must repay or cover any overdraft; (§ 1030.11(b)(1)(iii)) **AND**			
• The circumstances under which the institution will not pay an overdraft? (§ 1030.11(b)(1)(iv))			
Disclosure of Account Balances			
4. If the institution discloses account balance information to a consumer through an automated system, does:			
• The balance excludes additional amounts that the institution may provide to cover an item when there are insufficient or unavailable funds in the consumer's account? (§ 1030.11(c)) NOTE: *The regulation does not require an institution to exclude funds from the consumer's balance that may be transferred from another account pursuant to a retail sweep program. (Staff Commentary ((§ 1030.11(c)-2))*			
• The institution, if it discloses at its option additional account balances that include such additional amounts, prominently state that the balance includes such additional amounts, and if applicable, that the additional amounts are not available for all transactions? (§ 1030.11(c))			

Garnishment of Accounts Containing Federal Benefit Payments

Introduction

Many consumers receive Federal benefit payments that are protected under Federal law from being accessed or "garnished" by creditors, other than the United States government and certain State agencies, through a garnishment order or similar written instruction issued by a court. Despite these protections, developments in debt collection practices and technology, including the direct deposit of benefits, have led to an increase in the freezing of accounts containing Federal benefit payments by financial institutions that receive a garnishment order. As a result, the Department of the Treasury (Fiscal Service), the Social Security Administration, the Department of Veterans Affairs, the Railroad Retirement Board, and the Office of Personnel Management have jointly issued a rule[1] (interagency regulation or regulation) that a financial institution must follow when it receives a garnishment order against an account holder who receives certain Federal benefit payments by direct deposit. The types of Federal benefit payments covered by the interagency regulation are:

- Social Security benefits;
- Supplemental Security Income benefits;
- Veterans benefits;
- Federal Railroad retirement, unemployment and sickness benefits;
- Civil Service Retirement System benefits; and
- Federal Employee Retirement System benefits.

The Federal banking agencies are responsible for enforcing compliance with this regulation.[2] Under the regulation, generally, financial institutions that receive a garnishment order are required to follow certain procedures, including the following: (1) determine whether any account held by the named account holder received exempt Federal payments by direct deposit; (2) determine the sum of protected Federal benefits deposited to each individual account during a two-month period; and (3) ensure that the account holder has access to an amount equal to that sum or to the current balance of such account(s), whichever is lower.

When a financial institution receives a garnishment order, it must first determine whether the order was obtained by the United States or issued by a State child support enforcement agency.[3] If so, the financial institution follows its customary procedures for handling the order since Federal benefit payments can generally be accessed or garnished by such agencies.

If the garnishment order was not obtained by the United States or issued by a State child support enforcement agency, the financial institution must follow the interagency regulation to protect Federal benefit payments directly deposited into a consumer's account during a two-month "lookback" period. The interagency regulation contains provisions on the timing of an account review, the determination of the protected amount, notice to the account holder (including a model form) regarding the garnishment order, and record retention. In addition, the interagency regulation allows a financial institution to rely on the presence of certain ACH identifiers (i.e., character "XX" encoded in the appropriate positions of the "Company Entry Description" field and the number "2" in the "Originator Status Code" field of the Batch Header Record) to determine whether a direct deposit payment is a Federal benefit payment for purposes of the regulation.

The financial institution must notify the account holder that the financial institution has received a garnishment order, if all of the following conditions are met: (1) a covered benefit agency deposited a benefit payment into an account during the lookback period; (2) the balance in the account on the date of account review was above zero dollars and the financial institution established a protected amount; and (3) there are funds in the account in excess of the protected amount. For an account containing a protected amount, the financial institution may not charge or collect a garnishment fee against the protected amount. The financial institution may charge or collect a garnishment fee against additional funds deposited to the account up to five business days after the account review date.

Scope (31 CFR 212.2)

The interagency regulation applies to financial institutions that hold accounts into which the following benefits have been **directly** deposited:

1. Social Security Administration
   - Social Security benefits
   - Supplemental Security Income benefits
2. Department of Veterans Affairs
   - Veterans benefits
3. Railroad Retirement Board
   - Federal Railroad retirement, unemployment and sickness benefits

[1] Final rule published in the Federal Register on May 29, 2013. Effective June 28, 2013. 78 FR at 32099. Interim final rule published in the Federal Register on February 23, 2011. Effective May 1, 2011. 76 FR at 9939.

[2] The regulation specifically defines "Federal banking agency" to include: the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the National Credit Union Administration. *See* 31 CFR 212.3.

[3] A State child support enforcement agency is the single and separate organizational unit in a State that has the responsibility for administering or supervising the State's plan for child and spousal support pursuant to Title IV, Part D, of the Social Security Act, 42 U.S.C. 654. *See* 31 CFR 212.3.

4. Office of Personnel Management
   - Civil Service Retirement System benefits
   - Federal Employee Retirement System benefits

Definitions (31 CFR 212.3)

"Account" means an account, including a master account or subaccount, at a financial institution to which an electronic payment may be directly routed.[4]

"Account holder" means a natural person against whom a garnishment order is issued and whose name appears in a financial institution's records as the direct or beneficial owner of an account.

"Account review" means the process of examining deposits in an account to determine if a benefit agency has deposited a benefit payment into the account during the lookback period.

"Benefit agency" means the Social Security Administration, the Department of Veterans Affairs, the Railroad Retirement Board, or the Office of Personnel Management.

"Benefit payment" means a Federal benefit payment referred to in 31 CFR 212.2(b) paid by direct deposit to an account with the character "XX" encoded in positions 54 and 55 of the Company Entry Description field and the number "2" encoded in the Originator Status Code field of the Batch Header Record of the direct deposit entry.[5]

"Freeze" or "account freeze" means an action by a financial institution to seize, withhold, or preserve funds, or to otherwise prevent an account holder from drawing on or transacting against funds in an account, in response to a garnishment order.

"Garnish" or "garnishment" means execution, levy, attachment, garnishment, or other legal process.

"Garnishment fee" means any service or legal processing fee, charged by a financial institution to an account holder, for processing a garnishment order or any associated withholding or release of funds.

"Garnishment order" or "order" means a writ, order, notice, summons, judgment, levy, or similar written instruction issued by a court, a State or State agency, a municipality or municipal corporation, or a State child support enforcement agency, including a lien arising by operation of law for overdue child support or an order to freeze the assets in an account, to effect a garnishment against a debtor.

Lookback period means the two-month period that (a) begins on the date preceding the date of account review and (b) ends on the corresponding date of the month two months earlier, or on the last date of the month two months earlier if the corresponding date does not exist.

For example, under this definition, the lookback period that begins on November 15 would end on September 15. On the other hand, the lookback period that begins on April 30 would end on February 28 (or 29 in a leap year), to reflect the fact that there are not 30 days in February.

Other examples illustrating the application of this definition are included in Appendix C of the interagency regulation.

"Protected amount" means the lesser of:

1. The sum of all benefit payments posted to an account between the close of business on the beginning date of the lookback period and the open of business on the ending date of the lookback period; or
2. The balance in an account when the account review is performed.[6]

Examples illustrating the application of this definition are included in Appendix C of the interagency regulation.

Initial Action upon Receipt of a Garnishment Order (31 CFR 212.4)

Within two business days after receiving a garnishment order, and prior to taking any other action related to the order, a financial institution must determine whether the order was obtained by the United States or issued by a State child support enforcement agency.[7] To make this determination, the financial institution may rely on a "Notice of Right to Garnish Federal Benefits" (see Appendix B of the interagency regulation). For such orders obtained by the United States or issued by a State child support enforcement agency, the financial institution should not follow the interagency regulation but instead should follow its customary procedures for handling a garnishment order.

For all other garnishment orders, the financial institution is required to follow the procedures in 31 CFR 212.5 and 212.6.

[4] An account does not include an account to which a benefit payment is subsequently transferred following its initial delivery by direct deposit to another account. See 76 FR at 9950. If a payment recipient is assigned a customer number that serves as a "prefix" for individual sub-accounts, the individual sub-account (and not the "master account") is subject to the account review and lookback. See 78 FR at 32100.

[5] For more information, see the Treasury Department's "Guidelines for Garnishment of Accounts Containing Federal Benefit Payments" (https://www.fms.treas.gov/greenbook/Garnishment-Guideline-06-13.pdf).

[6] The account balance includes intraday items such as ATM or cash withdrawals. The balance does not include any line of credit associated with the account. *See* 78 FR at 32101-32102.

[7] Financial institutions will not violate State law by utilizing the two-day period, because the rule preempts any State requirement that an order be processed on the day of receipt. *See* 78 FR at 32104.

If a State law establishes a minimum protected amount before a garnishment order can be applied, the financial institution need not examine the order to determine if a Notice of Right to Garnish Federal Benefits is attached or included, or take any of the additional steps required under the rule.[8]

Account Review (31 CFR 212.5)

Timing of account review

After having been served a garnishment order issued against a debtor, a financial institution must perform an account review:

1. No later than two business days following receipt of both the garnishment order and sufficient information from the creditor to determine whether the debtor is an account holder; or
2. By a later date permitted by the creditor in situations where the financial institution is served a batch of a large number of orders. The date must be consistent with the terms of the orders and the financial institution must maintain records on such batches and creditor permissions, consistent with 31 CFR 212.11(b).

No benefit payment deposited during lookback period

If the account review shows that a benefit agency did not deposit a benefit payment into the account during the lookback period, then the financial institution should follow its customary procedures for handling the garnishment order and not the procedures in 31 CFR 212.6.

Benefit payment deposited during lookback period

If the account review shows that a benefit agency deposited a benefit payment into the account during the lookback period, then the financial institution must follow the procedures in 31 CFR 212.6.

Uniform application of account review

The financial institution must perform an account review without consideration for any other attributes of the account or the garnishment order, such as:

1. The presence of other funds, from whatever source, that may be commingled in the account with funds from a benefit payment;
2. The existence of a co-owner on the account;
3. The existence of benefit payments to multiple beneficiaries, and/or under multiple programs, deposited in the account;
4. The balance in the account, provided the balance is above zero dollars on the date of account review;
5. Instructions to the contrary in the order; or
6. The nature of the debt or obligation underlying the order.

Priority of account review

The financial institution must perform the account review prior to taking any other actions related to the garnishment order that may affect funds in the account.

Rules and Procedures to Protect Benefits (31 CFR 212.6)

If an account review shows that covered Federal benefits have been directly deposited into an account during the lookback period, the financial institution must comply with the rules and procedures to protect Federal benefits set forth in 31 CFR 212.6.

Protected amount

The financial institution must calculate and establish the protected amount for an account, ensuring that the account holder has full access to the protected amount.[9] The financial institution may not freeze the protected amount in response to the garnishment order. Further, the account holder may not be required to assert any right of garnishment exemption prior to accessing the protected amount in the account.

Separate protected amounts

The financial institution must calculate and establish the protected amount separately for each account in the name of an account holder, consistent with the requirements in 31 CFR 212.5(f) to conduct distinct account reviews.

Funds in excess of the protected amount

For any funds in an account in excess of the protected amount, the financial institution must follow its customary procedures for handling garnishment orders, including the freezing of

[8] State law is not inconsistent with the interagency regulation if it protects benefit payments in an account from being frozen or garnished at a higher protected amount than required under the regulation. For further discussion on preemption of State law (31 CFR 212.9), see "Comments and Analysis" section in Part II of Supplementary Information of the final rule. *See* 78 FR at 32106-32107.

[9] Where an account holder had debit card access to an account prior to the receipt of a garnishment order, the requirement to provide "full and customary" access to the protected amount means the account holder should have debit card access to that amount. See 78 FR at 32104. Also, the interagency regulation does not limit a Federal credit union's right to exercise its statutory lien authority against the protected amount in a member's account. A lien may be enforced against an account when the member fails to satisfy an outstanding financial obligation due and payable to the Federal credit union. 12 U.S.C. 1757(11) and 12 CFR 701.39.

funds, provided they are consistent with paragraphs (f) and (g) of 31 CFR 212.6.

One-time account review process

The financial institution is only required to perform the account review one time after it receives a garnishment order. The financial institution should not repeat the account review or take any other action related to the order if the same order is subsequently served again upon the financial institution. However, if the financial institution is subsequently served a new or different garnishment order against the same account holder, the financial institution must perform a separate and new account review.[10]

No continuing or periodic garnishment responsibilities

The financial institution may not continually garnish amounts deposited or credited to the account following the date of account review. It also must take no action to freeze any funds subsequently deposited or credited, unless the institution is served with a new or different garnishment order.

Impermissible garnishment fee

The financial institution may not charge or collect a garnishment fee against a protected amount. The financial institution may charge or collect a garnishment fee up to five business days after the account review if funds other than a benefit payment are deposited to the account within this period, provided that the fee may not exceed the amount of the non-benefit deposited funds.

Notice to the Account Holder (31 CFR 212.7)

A financial institution must send an account holder named in the garnishment order a notice if:

1. A covered Federal benefit payment was directly deposited into an account during the lookback period;
2. The balance in the account on the date of account review was above zero dollars and the financial institution established a protected amount; and
3. There are funds in the account in excess of the protected amount.

Notice content

The notice must contain the following information in readily understandable language:

1. The financial institution's receipt of an order against the account holder;
2. The date on which the order was served;
3. A succinct explanation of garnishment;
4. The financial institution's requirement under the interagency regulation to ensure that account balances up to the protected amount specified in 31 CFR 212.3 are protected and made available to the account holder if a benefit agency deposited a benefit payment into the account in the last two months;
5. The account subject to the order and the protected amount established by the financial institution;
6. The financial institution's requirement pursuant to State law to freeze other funds in the account to satisfy the order and the amount frozen, if applicable;
7. The amount of any garnishment fee charged to the account, consistent with 31 CFR 212.6;
8. A list of the Federal benefit payments subject to this interagency regulation, as identified in 31 CFR 212.2(b);
9. The account holder's right to assert against the creditor that initiated the order a further garnishment exemption for amounts above the protected amount, by completing exemption claim forms, contacting the court of jurisdiction, or contacting the creditor, as customarily applicable for a given jurisdiction;
10. The account holder's right to consult an attorney or legal aid service in asserting against the creditor that initiated the order a further garnishment exemption for amounts above the protected amount; and
11. The name of the creditor, and, if contact information is included in the order, means of contacting the creditor.

Optional notice content

The financial institution also may provide the account holder in readily understandable language any of the following information:

1. The means of contacting a local free attorney or legal aid service;
2. The means of contacting the financial institution; and

[10] A "new" garnishment order means the creditor has gone back to court and obtained a new order, as opposed to re-filing an order previously served (https://www.fms.treas.gov/greenbook/FAQs-May-12-trsy-ver1.pdf). A garnishment order that is re-issued after the return date, under a different execution number, would not constitute a "new" garnishment order.

3. A disclaimer that the financial institution is not providing legal advice by sending the required notice to the account holder.

Amending notice content

The financial institution may also amend the content of the notice to integrate information about a State's garnishment rules and protections in order to avoid potential confusion or harmonize the notice with State requirements, or to provide more complete information about an account.

Notice delivery

The financial institution must issue the notice directly to the account holder, or to a fiduciary who administers the account and receives communications on behalf of the account holder. Only information and documents pertaining to the garnishment order (including other notices or forms that may be required under State or local law) may be included in the communication.

Notice timing

The financial institution must send the notice to the account holder within three business days of the date of account review.

One notice for multiple accounts

The financial institution may issue one notice with information related to multiple accounts of an account holder.

Record Retention (31 CFR 212.11)

A financial institution must maintain records of account activity and actions taken in response to a garnishment order, sufficient to demonstrate compliance with this part, for a period of not less than two years from the date on which the financial institution receives the garnishment order.[11]

Model Notice to Account Holder (31 CFR 212, Appendix A)

A financial institution may use the model notice found in Appendix A to the interagency regulation to meet the requirements of 31 CFR 212.7. Although use of the model notice is not required, a financial institution using it properly is deemed to be in compliance with 31 CFR 212.7.

[11] The financial institution has discretion in deciding what documentation to retain. The appropriate documentation may vary depending on the circumstances of each situation. See 78 FR at 32107.

Examination Procedures[12]

Initial Action upon Receipt of a Garnishment Order (31 CFR 212.4)

1. Determine whether, prior to taking any action relating to a garnishment order, the financial institution reviewed the order within two business days of receiving the order to ascertain whether it was obtained by the United States or issued by a State child support enforcement agency.

   A. If the garnishment order was obtained by the United States or issued by a State child support enforcement agency as indicated by an attached or included Notice of Right to Garnish Federal Benefits, determine whether the financial institution followed its customary procedures to comply with the order.

   B. If the garnishment order is not accompanied by a Notice of Right to Garnish Federal Benefits, proceed with the remaining examination procedures to determine whether the institution followed the requirements of 31 CFR 212.5 and 212.6.

Account Review (31 CFR 212.5)

2. Determine whether the financial institution performed an account review:

   A. No later than two business days following receipt of both the garnishment order and sufficient information from the creditor to determine whether the debtor is an account holder; or

   C. By a later date permitted by the creditor in situations where the financial institution is served a batch of a large number of orders. The date must be consistent with the terms of the orders and the financial institution must maintain records on such batches and creditor permissions consistent with 31 CFR 212.11(b).

Rules and Procedures to Protect Benefits (31 CFR 212.6)

3. If an account review shows that a covered benefit agency deposited a benefit payment into an account during the lookback period (i.e., the preceding two-month period as defined in 31 CFR 212.3), determine whether the financial institution has appropriately calculated and established the protected amount, and has done this separately for each account in the name of the account holder, if applicable.

[12] These reflect the interagency examination procedures in their entirety.

4. Determine that the account holder has full and customary access to the protected amount established after the account review.

5. If a garnishment fee has been assessed, determine that it was charged or collected up to five business days of the account review date and was not charged against a protected amount.

6. For any funds in an account in excess of the protected amount, determine whether the financial institution followed its customary procedures for handling garnishment orders, including the freezing of funds.

7. Determine whether the financial institution ceased to garnish amounts deposited or credited to the account following the date of account review.

8. Determine whether the financial institution performed one-time account review upon the first service of the order and only took action to freeze funds subsequently deposited or credited if the institution was served with a new or different garnishment order consistent with the interagency regulation.

Notice to the Account Holder (31 CFR 212.7)

9. If a covered benefit agency deposited a benefit payment into an account during the lookback period, the balance in the account on the date of account review was above zero dollars, the financial institution established a protected amount, and there are funds in the account in excess of the protected amount, determine whether the financial institution sent a notice to the account holder named in the garnishment order in readily understandable language within three business days of account review and included the following:

   D. The financial institution's receipt of an order against the account holder.

   E. The date on which the order was served.

   F. A succinct explanation of garnishment.

   G. The financial institution's requirement under the interagency regulation to ensure that account balances up to the protected amount specified in 31 CFR 212.3 are protected and made available to the account holder if a benefit agency deposited a benefit payment into the account in the last two months.

   H. Identification of the account subject to the order and notice of the protected amount established by the financial institution.

   I. The financial institution's requirement pursuant to State law to freeze other funds in the account to satisfy the order and the amount frozen, if applicable.

   J. The amount of any garnishment fee charged to the account, consistent with 31 CFR 212.6.

   K. A list of the Federal benefit payments subject to this interagency regulation, as identified in 31 CFR 212.2(b).

   L. The account holder's right to assert against the creditor that initiated the order a further garnishment exemption for amounts above the protected amount, by completing exemption claim forms, contacting the court of jurisdiction, or contacting the creditor, as customarily applicable for a given jurisdiction.

   M. The account holder's right to consult an attorney or legal aid service in asserting against the creditor that initiated the order a further garnishment exemption for amounts above the protected amount.

   N. The name of the creditor, and, if contact information is included in the order, means of contacting the creditor.

   A financial institution may also provide optional notice content or amend the notice content consistent with this section of the regulation.

   A financial institution may use the model notice in Appendix A of the interagency regulation to meet the requirements of 31 CFR 212.7. Although use of the model notice is not required, a financial institution that uses it properly is deemed to be in compliance with this section.

Record Retention (31 CFR 212.11)

10. Determine whether the financial institution maintains records of account activity and actions taken in response to a garnishment order for at least two years from the date on which it receives the garnishment order.

Job Aids

Garnishment of Accounts Containing Federal Benefit Payments Examination Checklist

Treasury Garnishment Guidelines 06-2013

31 C.F.R Part 212 Frequently Asked Questions

Garnishment of Accounts Containing Federal Benefit Payments Examination Checklist	Yes	No	NA
Initial Action upon Receipt of a Garnishment Order (31 CFR 212.4)			
1. Did the financial institution (bank) receive a garnishment order since the rule's May 1, 2011, effective date? If No, stop here and do not complete the remainder of the checklist.			
2. Was the garnishment order accompanied by a Notice of Right to Garnish Federal Benefits? If Yes, stop here and do not complete the remainder of the checklist.			
Account Review (31 CFR 212.5)			
3. Does the financial institution perform an account review:			
a. No later than two business days following receipt of both the garnishment order and sufficient information from the creditor to determine whether the debtor is an account holder; or			
b. By a later date permitted by the creditor in situations where the financial institution is served a batch of a large number of orders? *NOTE: The date must be consistent with the terms of the orders and the financial institution must maintain records on such batches and creditor permissions consistent with 31 CFR 212.11(b).*			
4. Did the bank perform an account review to determine if a benefit agency (Social Security Administration, Department of Veterans Affairs, Office of Personnel Management, or the Railroad Retirement Board) deposited a benefit payment into the account during the lookback period (two month period preceding the date of the account review)?			
The bank must perform an account review without consideration for any other attributes of the account or the garnishment order, including but not limited to: 1) the presence of other funds that may be comingled in the account, 2) the existence of a co-owner on the account, and 3) the balance in the account, provided the balance is above zero dollars on the date of the account review. The regulation provides more guidance regarding timing and review requirements.			
5. Did the bank perform the account review prior to taking any other actions related to the garnishment order that may affect funds in the account?			

Garnishment of Accounts Containing Federal Benefit Payments Examination Checklist	Yes	No	NA
6. Did the bank perform the account review separately for each account in the name of an account holder against whom a garnishment order has been issued?			
In performing account reviews for multiple accounts, the bank shall not trace the movement of funds between accounts.			
7. Did the account review show that a benefit payment was deposited? If No, stop here and do not complete the remainder of the checklist.			
Rules and Procedures to Protect Benefits (31 CFR 212.6)			
8. If an account review shows that a covered benefit agency deposited a benefit payment into an account during the lookback period (i.e., during the preceding two month period as defined in 31 CFR 212.3), does the financial institution appropriately calculate and establish the protected amount, and if applicable, do this separately for each account in the name of the account holder?			
9. Does the financial institution refrain from charging or collecting a garnishment fee against the protected amount?			
10. Does the financial institution refrain from charging or collecting a garnishment fee against additional funds deposited to the account after five business days of the account review date?			
11. For any funds in an account in excess of the protected amount, does the financial institution follow its customary procedures for handling garnishment orders, including the freezing of funds?			
12. Does the financial institution cease to garnish amounts deposited or credited to the account following the date of account review?			
13. Does the financial institution perform a one-time account review upon the first service of the order and only take action to freeze funds subsequently deposited or credited, if the institution is served with a new or different garnishment order consistent with the interagency regulation?			
Notice to the Account Holder (31 CFR 212.7)			
14. If a covered benefit agency (a) deposited a benefit payment into an account during the lookback period, (b) the balance in the account on date of account review was above zero dollars and the financial institution established a protected amount, and (c) there are funds in the account in excess of the protected amount, does the financial institution send a notice within three business days of			

Garnishment of Accounts Containing Federal Benefit Payments Examination Checklist	Yes	No	NA
account review to the account holder named in the garnishment order?			
15. Does the notice include the following:			
16. The financial institution's receipt of an order against the account holder?			
17. The date on which the order was served?			
18. A succinct explanation of garnishment?			
19. The financial institution's requirement under the interagency regulation to ensure that account balances up to the protected amount specified in 31 CFR 212.3 are protected and made available to the account holder, if a benefit agency deposited a benefit payment into the account in the last two months?			
20. The account subject to the order and the protected amount established by the financial institution?			
21. The financial institution's requirement pursuant to State law to freeze other funds in the account to satisfy the order and the amount frozen, if applicable?			
22. The amount of any garnishment fee charged to the account, consistent with 31 CFR 212.6?			
23. A list of the benefit payments subject to this part, as identified in 31CFR 212.2(b)?			
24. The account holder's right to assert against the creditor that initiated the order a further garnishment exemption for amounts above the protected amount, by completing exemption claim forms, contacting the court of jurisdiction, or contacting the creditor, as customarily applicable for a given jurisdiction?			
25. The account holder's right to consult an attorney or legal aid service in asserting against the creditor that initiated the order a further garnishment exemption for amounts above the protected amount?			
26. The name of the creditor, and, if contact information is included in the order, means of contacting the creditor?			
Record Retention (31 CFR 212.11)			

Garnishment of Accounts Containing Federal Benefit Payments Examination Checklist			
	Yes	**No**	**NA**
27. Does the financial institution maintain records of account activity and actions taken in response to a garnishment order for at least two years from the date on which it receives the garnishment order?			

VII. Unfair and Deceptive Practices

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

Introduction

Advances in banking technology and changes in lending organization structure since Gramm-Leach-Bliley have permitted institutions 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 (UDAPs), 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. UDAPs are illegal; can cause significant financial injury to consumers; erode consumer confidence; and present significant credit and asset quality risks, undermining the financial soundness of banking organizations.

Section 5 of the Federal Trade Commission Act (FTC Act) declares that UDAPs affecting commerce are illegal. *See* 15 USC § 45(a) (Section 5 FTC Act). The banking agencies[1] have authority to enforce Section 5 of the FTC Act for the institutions they supervise. The FDIC has provided notice to state nonmember institutions of its intent to cite them and their institution affiliated parties for violations of Section 5 FTC Act and of its intent to take appropriate action pursuant to its authority under Section 8 of the Federal Deposit Insurance Act (FDI Act) when a UDAP is discovered. The FTC has authority to take action against nonbanks that engage in a UDAP. If a UDAP involves an entity or entities over which more than one agency has enforcement authority such as, for example, the FDIC and the FTC, the agencies may coordinate their enforcement actions. Unlike many consumer protection laws, Section 5 of the FTC Act also applies to transactions with non-consumers and businesses.[2]

On March 11, 2004, the FDIC and the Board of Governors of the Federal Reserve System (FRB) issued additional guidance regarding UDAPs prohibited by Section 5 of the FTC Act.[3] Following the release of the guidance, the FDIC issued examination procedures include:

- Standards used to assess whether an act or practice is unfair or deceptive
- Interplay between the FTC Act and other consumer protection statutes
- Examination procedures for determining compliance with the FTC Act standards, including risk assessment procedures that should be followed to determine if transaction testing is warranted
- Best practices for documenting a case
- Corrective actions that should be considered for violations of Section 5
- List of resources

NOTE: In August 2014, the FDIC, FRB, CFPB, the National Credit Union Administration (NCUA), and the Office of the Comptroller of the Currency (OCC) (collectively, the Agencies) issued guidance regarding certain consumer credit practices as they relate to Section 5 of the FTC Act. The authority to issue credit practices rules under Section 5 of the FTC Act (e.g., Regulation AA, Credit Practices Rule) for banks, savings associations, and federal credit unions was repealed as a consequence of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

Notwithstanding the repeal of such authority, the guidance indicated that the Agencies continue to have supervisory and enforcement authority regarding unfair or deceptive acts or practices, which could include those practices previously addressed in the former credit practices rules. Such practices included: (1) the use of certain provisions in consumer credit contracts, (2) the misrepresentation of the nature or extent of cosigner liability, and (3) the pyramiding of late fees.

The guidance clarifies that institutions should not construe the repeal of these rules to indicate that the unfair or deceptive practices described in these former regulations are permissible. The guidance makes clear that these practices remain subject to Section 5 of the Federal Trade Commission (FTC) Act and Sections 1031 and 1036 of the Dodd-Frank Act.

Standards for Determining What is Unfair or Deceptive

The legal standard for unfairness is independent of the legal standard for deception. Depending on the facts, an act or practice may be unfair, deceptive, both, or neither.

In order to determine whether an act or practice is "unfair," the FDIC will consider whether the practice "causes or is likely to cause substantial injury to consumers which cannot be reasonably avoided by consumers themselves and are not outweighed by countervailing benefits to consumers or to competition."[4] Section 5 of the FTC Act also applies to commercial transactions and businesses. In applying these statutory factors, the FDIC will identify and take action

1 Federal Deposit Insurance Corporation, Federal Reserve Board, Office of the Comptroller of the Currency and Office of Thrift Supervision.

2 *FTC v. IFC Credit Corp.*, 543 F. Supp. 2d 925, 943 (2008): "The FTC has construed the term 'consumer' to include businesses as well as individuals. Deference must be given to the interpretation of the agency charged by Congress with the statute's implementation."

3 See FIL-26-2004, Unfair or Deceptive Acts or Practices Under Section 5 of the Federal Trade Commission Act (March 11, 2004).

4 See FTC Policy Statement on Unfairness (December 19, 1980).

whenever it finds conduct that is unfair, as such 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 or omissions, that is, those that affect choices made by consumers because such misrepresentations are most likely to cause consumers financial harm.[5]

UDAPs that violate the FTC Act may also violate other federal or state laws. However, practices that fully comply with consumer protection or other laws may still violate the FTC Act. For additional information, please refer to the "Relationship to Other Laws" section further in this document.

Unfair Acts or Practices

The FDIC applies the same standards as the FTC in determining whether an act or practice is unfair. These standards were first stated in the FTC Policy Statement on Unfairness. Under the FTC Policy Statement on Unfairness, an act or practice is unfair when it (1) causes or is likely to cause substantial injury (usually monetary) 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. All three of the elements necessary to establish unfairness are discussed further below.

- ***The act or practice must cause or be likely to cause substantial injury to consumers.***
  Substantial injury usually involves monetary harm, but can also include reputational 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 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 be reasonably able to avoid the injury.***
  An act or 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 or to take action to avoid injury. This may occur if material information about a product, such as pricing, is modified or withheld until after the consumer has committed to purchasing the product, so that the consumer cannot reasonably avoid the injury. It also may occur where testing reveals that disclosures do not effectively explain an act or practice to consumers.[6] A practice may also be unfair where consumers are subject to undue influence or are coerced into purchasing unwanted products or services.

  Because consumers should be able to survey the available alternatives, choose those that are most desirable, and avoid those that are inadequate or unsatisfactory, the question is whether an act or practice unreasonably impairs the consumer's ability to make an informed decision, not whether the consumer could have made a wiser decision. The FDIC will not second-guess the wisdom of particular consumer decisions. Instead, the FDIC will consider whether an institution's behavior unreasonably creates an obstacle that impairs the free exercise of consumer decision-making.

  The actions that a consumer is expected to take to avoid injury must be reasonable. While a consumer may avoid harm by hiring independent experts to test products in advance or bring legal claims for damages, these actions generally would be too expensive to be practical for individual consumers and, therefore, are not reasonable.
- ***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 consumer or competitive benefits may include lower prices or a wider availability of products and services. Nonetheless, both consumers and competition benefit from preventing unfair acts or practices because prices are likely to better reflect actual transaction costs, and merchants who do not rely on unfair acts or practices are no longer required to compete with those who do. Unfair acts or practices injure both consumers and competitors because consumers who would otherwise have selected a competitor's product are wrongly diverted by the unfair act or practice.

  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

5 See FTC Policy Statement on Deceptive Acts and Practices (October 14, 1983).

6 The FRB's testing of certain disclosures concluded that consumers cannot reasonably avoid certain payment allocation and billing practices because disclosures fail to adequately explain these practices. The FTC discusses potential ways to make electronic disclosures clear and understandable in its "Dot Com Disclosures: How to Make Effective Disclosures in Digital Advertising" (March 2013), available at https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf.

costs may include the costs to the institution 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, judicial decision, or agency determination may be considered with all other evidence in determining whether an act or practice is unfair. Public policy considerations by themselves, however, will not serve as the primary basis for determining that 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 permitted by statute or regulation may be considered as evidence that the practice is not unfair. However, the fact that a statute or regulation recognizes the existence of a practice does not establish its fairness. The requirements of the Truth in Lending Act (TILA), the Truth in Savings Act (TISA), the Fair Credit Reporting Act (FCRA), or the Fair Debt Collection Practices Act (FDCPA) are examples of public policy considerations. Fiduciary responsibilities under state law may clarify public policy for actions, especially those involving trusts, guardianships, unsophisticated consumers, the elderly, or minors. State statutes and regulations that prohibit UDAPs are often aimed at making sure that lenders do not exploit the lack of access to mainstream banking institutions by low-income individuals, the elderly, and minorities.

Deceptive Acts or Practices

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. Third, the misleading representation, omission, or practice must be material.[7] As a general matter, the standards for establishing deception are less burdensome than the standards for establishing unfairness because, under deception, there is no requirement that the injury could not be reasonably avoidable or that the injury be weighed against benefits to consumers or to competition. The following discusses all three of the elements necessary to establish deception.[8]

- ***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 a 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. An individual statement, representation, or omission is not evaluated in isolation to determine if it is misleading, but rather in the context of the entire advertisement, transaction, or course of dealing. 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. In other words, whether an act or practice is deceptive depends on how a reasonable member of the target audience would interpret the marketing material. When representations or marketing practices are targeted to a specific audience, such as the elderly or the financially unsophisticated, the communication is reviewed from the point of view of 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.

  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 are generally insufficient to cure a misleading headline or prominent written representation. Finally, a deceptive act or practice cannot be cured by subsequent truthful disclosures.

7 See FTC Act Policy Statement on Deceptive Acts and Practices.

8 Clear and Conspicuous Disclosures
When evaluating the three-part test for deception, the four "Ps" should be considered: prominence, presentation, placement, and proximity. First, is the statement prominent enough for the consumer to notice? Second, is the information presented in an easy to understand format that does not contradict other information in the package and at a time when the consumer's attention is not distracted elsewhere? Third, is the placement of the information in a location where consumers can be expected to look or hear? Finally, is the information in close proximity to the claim it qualifies?

- ***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 to purchase or use 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. While intent to deceive is not a required element of proving that an act or practice is deceptive, the materiality of an implied claim will be presumed if it can be shown that the institution intended that the consumer draw certain conclusions based upon the claim.

  Claims made with 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 make an informed choice about the product or service.

The Role of Consumer Complaints in Identifying Unfair or Deceptive Acts or Practices

Consumer complaints play a key role in the detection of a UDAP. Consumer complaints have often been an essential source of information for possible UDAPs and can also be an indicator of weaknesses in elements of the institution's compliance management system, such as training, internal controls, or monitoring.

While the absence of complaints does not ensure that UDAPs are not occurring, the presence of complaints may be a red flag indicating that a more detailed review is warranted. This is especially the case when similar complaints are received from several consumers regarding the same product or service. One of the three tests in evaluating an apparent deceptive practice is: "The act or practice must be considered from the perspective of the reasonable consumer." Consumer complaints provide a window into the perspective of the reasonable consumer.

Complaint Resolution Procedures

Examiners should interview institution staff about consumer complaints and the institution's procedures for resolving and monitoring consumer complaints. Examiners should determine whether management has responded promptly and appropriately to consumer complaints. The FDIC expects institutions to be proactive in resolving consumer complaints, as well as monitoring complaints for trends that indicate potential UDAP concerns. Institutions should centralize consumer complaint handling and ensure that all complaints are captured, whether they are made via telephone, mail, email, the institution's regulator, or other methods. In addition to resolving individual complaints, an institution should take action to improve its business practices and compliance management system, when appropriate. The institution's audit function should also include a review of consumer complaints.

Sources for Identifying Complaints

Consumer complaints can originate from many different sources. The primary sources for complaints are those received directly by the institution and those received by the FDIC Consumer Response Center. Secondary sources for complaints would include State Attorneys General, the Better Business Bureau, the FTC's Consumer Sentinel database, consumer complaint boards, and web blogs. In many cases, complaints have been identified through simple Internet searches with the institution's name or particular product or service that it offers. At times, former employees may post complaints. These can be an important information source. For institutions that have significant third-party relationships, complaints may have been directed to the third-party, rather than to the institution. Examiners should determine if the institution is provided with copies of complaints received by third-parties. If they are not, this would be a red flag and should be examined further.

Analyzing Complaints

Examiners should consider conducting transaction testing when consumers repeatedly complain about an institution's product or service. However, even a single complaint may raise valid concerns that would warrant transaction testing. Complaints that allege misleading or false statements, missing disclosure information, excessive fees, inability to reach customer service, or previously undisclosed charges may indicate a possible UDAP.[9]

If a large volume of complaints exists, examiners should create a spreadsheet that details the complainant, date, source (i.e., institution, website, etc.), product or service involved, summary of the issue, and action taken by the institution. The spreadsheets can then be used to identify trends by type of product or issue. The Consumer Response Center can be of assistance during this process by creating spreadsheets for complaints that were received by the FDIC.

When reviewing complaints, examiners should look for trends. While a large volume of complaints may indicate an area of concern, the number of complaints alone is not dispositive of whether a potential UDAP exists. Conversely, a small number of complaints does not undermine the seriousness of the allegations that are raised. If even a single complaint raises valid concerns relative to a UDAP, a more thorough review may be warranted. It is important to focus on the issues raised

9 ***See*** Supervisory Insights FDIC, Supervisory Insights, Winter 2006, Vol. 3, Issue 2, Chasing the Asterisk: A Field Guide to Caveats, Exceptions, Material Misrepresentations, and Other Unfair or Deceptive Acts or Practices.

in the complaints and the institution's responses, and not just on the number of complaints.

Note also that high rates of chargebacks or refunds regarding a product or service can be indicative of potential UDAP violations. This information may not appear in the consumer complaint process.

When reviewing complaints, also look for any complaints lodged against subsidiaries, affiliates, third-parties, and affinity groups regarding activities that involve the institution, a product offered through the institution, or a product offered using the institution's name. While the institution may not be actively involved in the activity, if it is a branded product or third-party relationship product, the institution can be held responsible and face the same risks as if the activity was housed within the institution. *In re Columbus Bank and Trust Company, First Bank of Delaware, First Bank and Trust (Brookings, South Dakota), and CompuCredit Corporation*[10] is a prime example of where complaints against a third-party directly related to the institutions and the institutions were held accountable for the activities of the third-party.

Relationship to Other Laws

A UDAP that violates the FTC Act may also violate other federal or state laws. These include TILA, TISA, the Equal Credit Opportunity Act (ECOA), the Fair Housing Act (FHA), the FDCPA, the FCRA, and laws related to the privacy of consumer financial information. On the other hand, certain practices may violate the FTC Act while complying with the technical requirements of other consumer protection laws. Examiners should consider both possibilities. The following laws warrant particular attention in this regard:

Truth in Lending Act (TILA)

Pursuant to TILA, creditors must "clearly and conspicuously" disclose the costs and terms of credit. An act or practice that does not comply with these provisions of TILA may also violate the FTC Act. Conversely, a transaction that is in technical compliance with TILA may nevertheless violate the FTC Act. For example, an institution's credit card advertisement may contain all the required TILA disclosures, but limitations or restrictions that are obscured or inadequately disclosed may be considered a UDAP.

Truth in Savings Act (TISA)

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 cannot be misleading or inaccurate or misrepresent an institution's deposit contract. As with TILA, an act or practice that does not comply with these provisions may also violate the FTC Act, but transactions that are in technical compliance with TISA may still be considered as unfair or deceptive. 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, even if the disclosures satisfy the technical requirements of TISA.

Equal Credit Opportunity (ECOA) and Fair Housing (FHA) Acts

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. The FHA 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. UDAPs that target or have a disparate impact on consumers in one of these prohibited basis groups may violate the ECOA or the FHA, as well as the FTC Act. Moreover, some state and local laws address discrimination against additional protected classes, e.g., handicap in non-housing transactions, or sexual orientation. Such conduct may also violate the FTC Act.

Fair Debt Collection Practices Act (FDCPA)

The FDCPA prohibits unfair, deceptive, and abusive practices related to the collection of consumer debts. Although this statute does not apply to institutions that collect their own debts in their own name, failure to adhere to the standards set by this Act may support a claim of a UDAP in violation of the FTC Act. Moreover, institutions 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 participating in or permitting a UDAP.

Fair Credit Reporting Act (FCRA)

The FCRA contains significant responsibilities for institutions that obtain and use information about consumers to determine the consumer's eligibility for products, services, or employment; share such information among affiliates; and furnish information to consumer reporting agencies. The FCRA was substantially amended with the passage of the Fair and Accurate Credit Transactions Act (FACT Act) in 2003, which contained many new consumer disclosure requirements as well as provisions to address identity theft. Violations of the FCRA may also be considered as a UDAP. For example, obtaining and using unsolicited medical information (outside of the exceptions provided by the rule) to make credit decisions may also be considered as unfair.

10 Available at http://www.fdic.gov.

Privacy of Consumer Financial Information

Section 332.12 prohibits an institution or its affiliates from disclosing a customer's account number or similar access code for a credit card, deposit, or transaction account to a nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail. There are only three exceptions to this prohibition. A financial institution may disclose its customers' account numbers to: (1) a consumer reporting agency; (2) its agent to market the institution's own products or services, provided that the agent is not authorized to directly initiate charges to the account; or (3) another participant in a private label credit card or an affinity or similar program involving the institution. Depending upon the totality of the circumstances, an institution that does not comply with these requirements may be also engaging in UDAPs.

Examination Procedures

Examination Objectives

1. To assess the quality of the financial institution's compliance risk management systems, internal controls, and policies and procedures for avoiding unfairness and deception.
2. To identify products, services, or activities that materially increase the risk of being unfair or deceptive.
3. To gather facts that help determine whether a financial institution's products, services, programs, or operations are likely to be unfair or deceptive.

General Guidance

During pre-examination planning, examiners should determine if transaction-related testing is warranted for one or more of the institution's products or services. Also, examiners should be alert to possible UDAPs throughout an examination, including when reviewing specific institution products or services for compliance with other consumer compliance regulatory requirements.

The following risk assessment and transaction-related examination procedures should be used, as appropriate, to assist examiners in recognizing potential UDAPs, analyzing potential issues, and determining an appropriate response.

Risk Assessment Procedures

The risk assessment process should begin during the pre-examination planning stage, when the institution is first contacted to discuss the Compliance and Information Document Request (CIDR). The CIDR can then be customized to request information that is needed to determine the institution's risk profile for potential UDAPs.

Institutions warranting transaction testing: Transaction testing is not automatically required when a risk factor is identified because all factors need to be taken into consideration. For example, transaction testing may not be warranted for an institution that offers a rewards checking account program, if the following conditions are present: the product was reviewed at the previous examination, with no deficiencies noted; marketing or terms remain unchanged; complaints do not indicate a UDAP concern; and the institution has strong internal controls, monitoring, and audit functions.

Institutions with limited risk: Many institutions have low risk profiles for potential Section 5 FTC Act violations and would not generally require transaction testing. These include institutions that do not offer products associated with increased incidence of complaints, violations, chargebacks, or risk of consumer harm, have not introduced any new products, and have no consumer complaints (or a limited number that are unrelated to UDAP). However, examiners should be alert to possible UDAPs throughout an examination, including when reviewing specific institution products or services for compliance with other consumer compliance regulatory requirements.

Transaction-Related Examination Procedures

If upon conclusion of the risk assessment procedures, risks requiring further investigation are noted, conduct transaction testing, as necessary. Use examiner judgment in deciding whether to sample individual products, services, or marketing programs. Increase the sample to achieve confidence that all aspects of the financial institution's products and services are reviewed sufficiently.

A Section 5 FTC Act analysis is fact-specific and cannot be based on a particular checklist; however, transaction-related examination procedures fall into the following general categories: marketing and disclosures, availability of credit, availability of advertised terms, repricing and other changes, servicing, and collections.

The following are examples of items that should be reviewed, as applicable:

- Advertisement and marketing documentations
- New product development documentation
- Documentation of software testing
- Procedural manuals, including those for servicing and collections
- Customer disclosures, notices, agreements, and periodic statements for each product and service reviewed
- Account statements
- Agreements with third-parties
- Compensation programs
- Promotional materials
- Telemarketing and customer service scripts
- Recorded calls for telemarketing or collections

- Organization charts and process workflows
- Software parameters
- Relevant marketing and advertising materials, including website pages
- Relevant disclosures and customer contracts
- Collection scripts and notices
- Relevant training materials
- Relevant software parameters

Collaboration with Others

Regional Examination Specialists

Examiners should follow regional protocol and consult with the appropriate Regional Examination Specialists for assistance in determining whether unfair or deceptive acts or practices have occurred. When potential UDAPs appear to target or have a disparate impact on consumers on a prohibited basis under ECOA or FHA, the examiner should follow regional protocol to request additional guidance from their FLEX. A separate consultation may be warranted for potential discriminatory violations.

Legal Division (Legal)

Following regional protocol, examiners are encouraged to consult with Regional Office Legal as early as possible when potential violations of Section 5 FTC Act are identified. Legal can provide valuable assistance to examiners during the onsite examination, including advising examiners on the types of documentation that should be obtained and developing interview questions.

Risk Management Supervision

Following regional protocol, examiners should consider if a potential violations of Section 5 FTC Act could have an impact on the safety and soundness of the bank and alert risk management staff accordingly. This may warrant a joint onsite presence at the institution, request for additional information or other appropriate supervisory action.

Policy and Research Branch

The Policy and Research Branch can provide assistance in conducting an analysis of large amounts of customer data. Examiners should follow regional and Washington consultation procedures in seeking assistance from Policy and Research.

Documentation

Documentation of potential UDAP cases is extremely important. The following guidance should be used to facilitate review of the case:

1. Create an inventory of documentary evidence gathered and interviews conducted.
2. Create chronologies or charts to explain complex fact patterns.
3. For printed materials (marketing, solicitations, disclosures), an original, unmarked copy should be maintained.
4. For websites, print copies or save the webpages electronically as soon as possible. Websites are easily altered, so versions of the website that support the case must be preserved by the examiner. When possible, print in color. If they cannot be printed in color, notate the colors used on the website. The printed copy should be formatted such that the following information is included: window title, URL, date, time, page number, total number of pages.
   In cases where the website includes links for additional information, notate the page succession. In addition to printing the website, the examiner should attempt to save the webpages electronically. The electronic and print versions can be used in combination to replicate the live website as closely as possible.
5. If consumer complaints are voluminous, create spreadsheets or summaries. Refer to the Analyzing Complaints section for additional guidance.
6. Indicate the type of institution reports that are available. For those documents received, notate why it was obtained, how it was received, when, and from whom.
7. Maintain a final, typed version of the interview notes. All examiners that participated in the interview should review the notes and attest to their accuracy.
8. During the onsite review, the examiner should consider the types of corrective actions that may be pursued. For cases where restitution to consumers may be necessary, the examiner should obtain information needed to identify and estimate restitution.
9. If the potential violation involves an affiliate or third party, obtain the information and documentation needed to determine whether an affiliate is an institution affiliated party (IAP). Refer to the IAP examination procedures for further information and guidance.
10. The following includes a list of other documents that are generally needed:
    - Income reports
    - Third-party contracts
    - Relevant board minutes
    - Relevant audit reports
    - Due diligence records
    - Training materials
    - Telemarketing and customer service scripts

- Software parameters
- Account agreements
- Collection scripts and notices
- Consumer communications
- Billing Statements

Corrective Actions to be Considered for Section 5 FTC Act Violations

As with any violation of law or regulation, the response to a violation of Section 5 FTC Act will depend on a number of factors, including:

- The nature of the violation;
- Whether it is a repeat violation or a variation of a previously cited violation;
- The harm, or potential harm, suffered by consumers;
- The number of parties affected; and
- The institution's overall compliance posture and history, both in general and with respect to UDAP.

Level 3 or Level 2 violations may result in a downgrade of the institution's compliance and CRA ratings and potentially, the institution's risk management rating. In determining the overall CRA rating for an institution, examiners consider evidence of discrimination or other illegal acts, including violations of Section 5 of the FTC Act.

In addition to determining a violation's impact on the institution's compliance and CRA ratings, examiners must consider corrective actions that should be taken. These may include requiring the discontinuance of the act or practice, restitution to consumers, informal or formal enforcement actions, and assessment of a civil money penalty. Examiners should refer to the Formal and Informal Actions Procedures Manual for additional guidance.

List of Resources

This list includes references that are cited in the text, as well as additional resources that may be useful to examiners.

Agency Issuances

- Interagency Guidance: Deposit-Reconciliation Practices (FIL 35-2016).
  - Interagency Guidance Regarding Unfair or Deceptive Credit Practices (FIL 44-2014).
  - FDIC, *Supervisory Insights, Winter 2008, Vol. 5, Issue 2*, *From the Examiner's Desk: Unfair and Deceptive Acts and Practices: Recent FDIC Experience*
  - FDIC, *Supervisory Insights, Winter 2006, Vol. 3, Issue 2*, *Chasing the Asterisk: A Field Guide to Caveats, Exceptions, Material Misrepresentations, and Other Unfair or Deceptive Acts or Practices.*
  - FIL 26-2004: *Unfair or Deceptive Acts or Practices by State-Chartered Banks.*
  - FTC Policy Statement on Deceptive Acts and Practices.
  - FTC Policy Statement on Unfairness.
  - FTC's Dot Cm Disclosures: How to Make Effective Disclosures in Digital Advertising
  - Joint Guidance on Overdraft Protection Programs, 70 Fed. Reg. 9127 (Feb. 24, 2005).

References

FIL-32-2009 Third-Party Referrals Promising Above-Market Rates on Certificates of Deposit

FIL-44-2008 Third-Party Risk: Guidance for Managing Third-Party Risk

FTC Enforcement Actions Involving Unfair or Deceptive Acts or Practices

FTC's Subprime Lending Cases

FTC Unfair or Deceptive Acts or Practices Enforcement Actions: Mortgage Servicing

FTC Unfair or Deceptive Acts or Practices Enforcement Actions: Collection Practices

Other Regulations with Provisions that Relate to Accurate Advertising

12 CFR Part 1026: Regulation Z Truth in Lending

12 CFR Section 1026.16: Open-end advertising

12 CFR Section 1026.24: Closed-end advertising

12 CFR Part 1030: Regulation DD, Truth in Savings Advertising: 12 CFR Section 1030.8

12 CFR Section 1030.11: Additional disclosure requirements for institutions advertising the payment of overdrafts

12 CFR Part 343: Consumer Protection in Sales of Insurance

12 CFR Section 343.40(d): Advertising

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 C.F.R. 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.

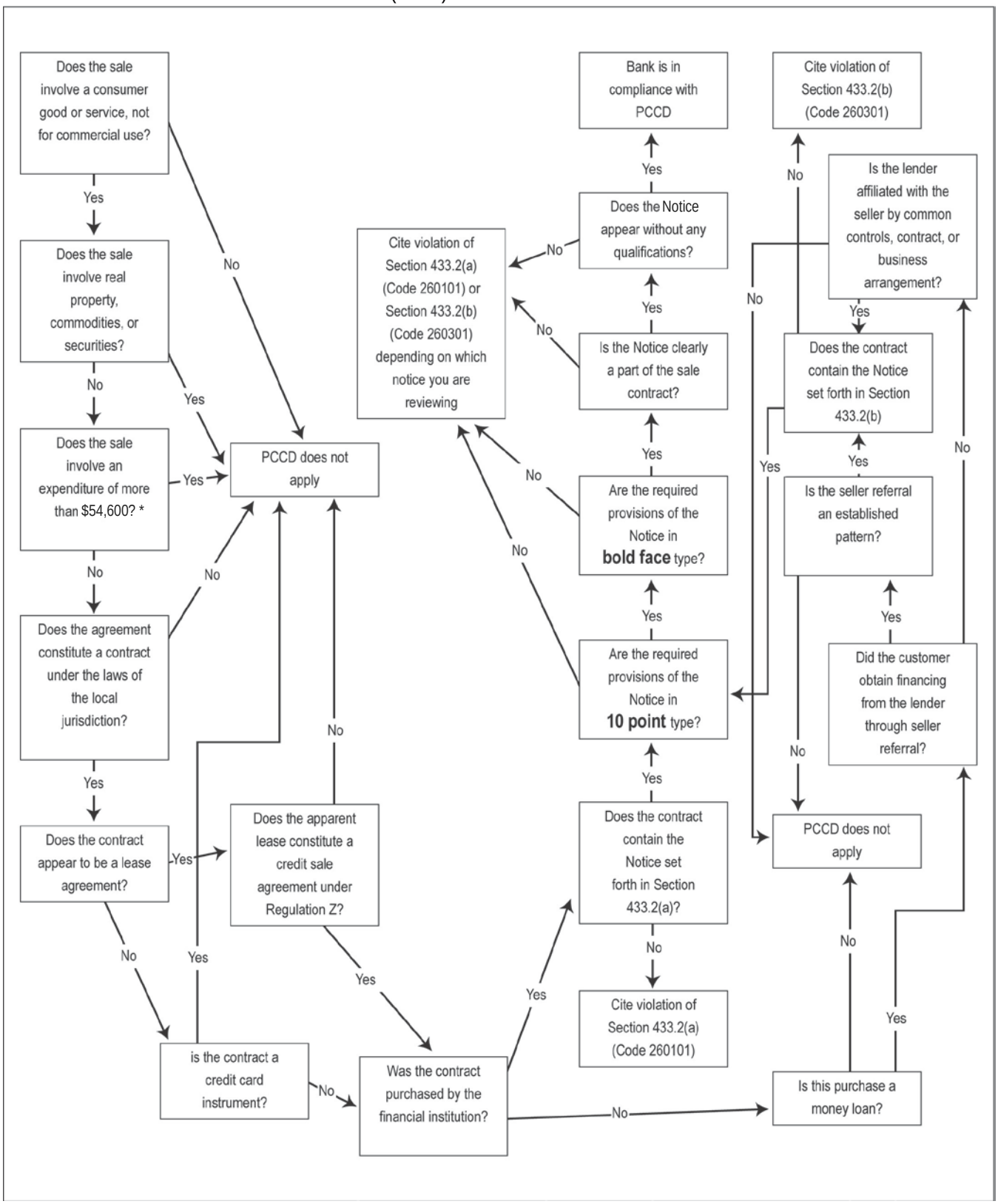
References

FTC Trade Regulation Rule Concerning the Preservation of Consumers' Claims and Defenses, and Staff Guidelines

Job Aids

***See* Preservation of Consumers' Claims and Defenses (PCCD)** *chart, next page.*

Preservation of Consumers' Claims and Defenses (PCCD)



* The exemption threshold is adjusted annually. *See* 12 C.F.R. 1026.3(b)(1)(ii); *see also* 80 Fed. Reg. 73949.

Fair Debt Collection Practices Act

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).
- 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) and the Consumer Financial Protection Bureau (CFPB) are the primary enforcement agency for the FDCPA. The various financial regulatory agencies enforce the FDCPA for the institutions they supervise. The CFPB, as directed by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), may issue substantive rules governing the collection of consumer debts by debt collectors.

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[1]

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 collection 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

Federal Trade Commission Staff Commentary on the FDCPA

Job Aids

***See* Examination Checklist – Fair Debt Collection Practices Act** *on the following page.*

[1] These reflect the interagency examination procedures in their entirety.

Examination Checklist—Fair Debt Collection Practices Act

	Yes	No
1. Is management/compliance officer of the institution aware of the circumstances in which the FDCPA applies?		
2. Are the bank employees involved in collections aware of thecircumstances in which the FDCPA applies?		
3. Are new employees provided with educational materials, copies of policies and procedures, and other guidance related to the FDCPA and its application within the bank?		
4. Have internal procedures and controls been established to ensure compliance with the FDCPA?		
5. Does the loan or collection department avoid communicating with customers or third parties in a manner that is prohibited by law or policy?		
a. Does the bank refrain from assuming a fake identity in order to gain information about the location of the borrower? (§ 804 (1))		
b. Is the inclusion of debt collection terminology or messages on the outside of envelopes strictly forbidden? (§ 804 (5) and 808 (8))		
c. Are contacts always made at times that are consistent with the bank's policy?		
d. Does the bank refrain from calling before 8 am or after 9 pm local time at the consumer's location? (§ 805(a)(1))		
e. Does the bank refrain from calling the borrower at work if they know the borrower can't accept calls at work? (§ 805(a)(3))		
f. Is communication with third parties regarding a debt prohibited without the prior consent of the borrower? (§ 805(b))		
g. Is the use of harassing, abusive, false, misleading, unfair, or deceptive practices or language strictly forbidden? (§ 806, 807, and 808)		
h. Does the bank only collect the amount authorized by the debt instrument or state law? (§ 808 (1))		

	Yes	No
i. Are collectors prohibited from accepting checks postdated by more than five days unless the customer is notified in writing of any intention to deposit the check? (§ 808 (2))		
j. Is the deposit of a postdated check before the date on the check strictly prohibited? (§ 808 (4))		
k. Is the use of postcards to request payment prohibited? (§ 808 (7))		
l. Are required debt validation procedures always followed? (§ 809(a))		
m. If a debt is disputed, are collection efforts stopped until the debt is verified and a written response is provided to the borrower? (§809(b))		
n. Are payments properly applied in the case of multiple debts owed by the same customer? (§ 810)		

Third Party Risk

Introduction

The board of directors and management of an insured depository institution (institution) are ultimately responsible for managing activities conducted through third-party relationships, and identifying and controlling the risks arising from such relationships, to the same extent as if the activity were handled within the institution. The use of third-party relationships does not relinquish responsibility of the board of directors and management. The institution's officials are expected to have a clearly defined system of risk management controls built into the management system that governs the institution's compliance operations, including controls over activities conducted by affiliates and third-party vendors. The more significant the third party program, the more important it is that the institution conduct regular periodic reviews of the adequacy of its oversight and controls over third-party relationships.

Examiners should evaluate all applicable activities conducted through third-party relationships as though the activities were performed by the institution itself. It must be emphasized that while an institution may properly seek to mitigate the risks of third-party relationships through the use of indemnity agreements with third parties, such agreements do not insulate the institution from its ultimate responsibility to conduct banking-related activities in a safe and sound manner and in compliance with applicable consumer protection laws and regulations including fair lending laws and regulations (for example, the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act).

The Federal Financial Institutions Examination Council's Uniform Interagency Consumer Compliance Rating System (CC Rating System), which is a supervisory policy for evaluating financial institutions' adherence to consumer compliance requirements, addresses third-party relationships. Under the CC Rating System, each financial institution is assigned a consumer compliance rating. The CC Rating System requires examiners to review a financial institution's management of third-party relationships and servicers as part of its overall consumer compliance program.

These examination procedures provide additional context and guidance for compliance examiners when evaluating an institution's third-party relationships. These procedures include a description of potential risks arising from third-party relationships and provide examiners with insight on how to assess compliance risk for third-party business relationships.

A third-party relationship could be considered "significant" if:

- the institution's relationship with the third party is a new relationship or involves implementing new institution activities;
- the relationship has a material effect on the institution's revenues or expenses;
- the third party performs critical functions;
- the third party stores, accesses, transmits, or performs transactions on sensitive customer information;
- the third-party relationship significantly increases the institution's geographic market;
- the third party provides a product or performs a service involving lending or card payment transactions;
- the third party poses risks that could materially affect the institution's earnings, capital, or reputation;
- the third party provides a product or performs a service that covers or could cover a large number of consumers;
- the third party provides a product or performs a service that implicates several or higher risk consumer protection regulations;
- the third party is involved in deposit taking arrangements such as affinity arrangements; or
- the third party markets products or services directly to institution customers that could pose a risk of financial loss to the individual.

Background

For purposes of this guidance, the term "third party" is broadly defined to include all entities that have entered into a business relationship with the institution, whether the third party is a bank or a nonbank, affiliated or not affiliated, regulated or nonregulated, a wholly- or partially-owned subsidiary, or a domestic or a foreign institution.

Institutions generally enter into third-party relationships by outsourcing[1] certain operational functions to a third party or by using a third party to make products and services available that the institution does not originate. Also, institutions may

[1] The term "outsourcing" is a vernacular expression that refers to a company or business that contracts or subcontracts a service or function to a third party that might otherwise be performed by in-house employees. Institutions may use the terms "outsourcing" and "third-party" interchangeably. However, examiners should remember that services and functions outsourced by an institution contain varying degrees of risk. Therefore, when reviewing for third-party risk, examiners should request a listing of all functions and services outsourced to ensure that appropriate relationships that have third-party risk are captured for review.

enter into arrangements with third parties in which the institution funds directly or indirectly through a line of credit certain products originated by a third party. As the financial services industry continues to evolve, some institutions are also using third parties for functions that are either new or have traditionally been performed in-house, ***e.g.***, outsourcing the institution's audit function.

The use of third parties can aid institution management in attaining strategic objectives by increasing revenues or reducing costs. The use of a third party also serves as a vehicle for management to access greater expertise or efficiency for a particular activity. Appropriately managed third-party relationships can enhance competitiveness, provide diversification, and ultimately strengthen the safety and soundness and compliance management system (CMS) of the institution. However, third-party arrangements also present risks if not properly managed. Specifically, failure to manage these risks can expose an institution to supervisory action, financial loss, litigation, and reputational damage. To that end, the decision about whether to use a third party should be considered by an institution's board of directors and management, taking into account the circumstances unique to the potential relationship.

Institutions have also been presented with increasing opportunities to enter into contractual arrangements with foreign-based third-party service providers to fulfill outsourcing needs. Examiners should evaluate these relationships with, at least, the same level of vigilance and scrutiny as with domestic third-party service providers (see discussion of Country Risk below).

These examination procedures provide a framework for examining the effectiveness of an institution's CMS as it relates to the policies and procedures for overseeing, managing, and controlling third-party relationships. More importantly, this guidance supplements, but does not replace, previously issued information on third-party risk and is intended to aid in the examination of third-party arrangements.[2]

Potential Risks Arising from Third-Party Relationships

There are numerous risks that may arise from an institution's use of third parties. Some of the risks are associated with the underlying activity itself, similar to the risks faced by an institution directly conducting the activity. Other potential risks arise from or are heightened by the involvement of a third party. Failure to prevent or mitigate these risks can expose an institution to supervisory action, financial loss, litigation, and reputation damage, and may even impair the institution's ability to establish new or service existing customer relationships.

Not all of the following risks will be applicable to every third-party relationship; however, complex or significant arrangements may have definable risks in most areas. The institution's board of directors and management should understand the nature of these risks in the context of the institution's current or planned use of third parties and in establishing and evaluating the institution's risk oversight and control systems. The following summary of risks is not considered all-inclusive.

"Compliance Risk" Compliance risk is the risk arising from violations of laws, rules, or regulations, or from noncompliance with the institution's internal policies or procedures or business standards. This risk exists when the products or activities of a third party are not consistent with governing laws, rules, regulations, policies, or ethical standards. For example, some third parties may engage in product marketing practices that are deceptive in violation of Section 5 of the Federal Trade Commission Act, or lending practices that are discriminatory in violation of the ECOA and the Consumer Financial Protection Bureau's Regulation B. The ability of the third party to maintain the privacy of customer records and to implement an appropriate information security and disclosure program is another compliance concern. Liability could potentially extend to the institution when third parties experience security breaches involving customer information in violation of the safeguarding requirements of customer information, as set out in Federal Deposit Insurance Corporation (FDIC) and Federal Trade Commission regulations. Compliance risk is exacerbated when an institution has inadequate oversight, monitoring, or audit functions over third-party relationships.

"Reputation Risk" Reputation risk is the risk arising from negative public opinion. Third-party relationships that result in dissatisfied customers, unexpected customer financial loss, interactions not consistent with institution policies, inappropriate recommendations, security breaches resulting in the disclosure of customer information, and violations of laws and regulations are all examples that could harm the reputation and standing of the institution. Any negative publicity involving the third party, whether or not the publicity is related to the institution's use of the third party, could result in reputation risk.

"Strategic Risk" Strategic risk is the risk arising from adverse business decisions, or the failure to implement appropriate business decisions in a manner that is consistent with the institution's strategic goals. The use of a third party to perform banking functions or to offer products or services that do not help the institution achieve corporate strategic goals and

[2] Financial Institution Letter 44-2008 dated June 6, 2008, entitled *Third Party Risk, Guidance for Managing Third-Party Risk*

provide an adequate return on investment exposes the institution to strategic risk.

"Operational Risk" Operational risk is the risk of loss resulting from inadequate or failed internal processes, people, systems, or external events. Third-party relationships often integrate the internal processes of other organizations with the institution's processes and can increase the overall operational complexity.

"Transaction Risk" Transaction risk is the risk arising from problems with service or product delivery. A third-party's failure to perform as expected by customers or the institution due to reasons such as inadequate capacity, technological failure, human error, or fraud, exposes the institution to transaction risk. The lack of an effective business resumption plan and appropriate contingency plans increase transaction risk. Weak control over technology used in the third-party arrangement may result in threats to security and the integrity of systems and resources. These issues could result in unauthorized transactions or the inability to transact business as expected.

"Credit Risk" Credit risk is the risk that a third party, or any other creditor necessary to the third-party relationship, is unable to meet the terms of the contractual arrangements with the institution or to otherwise financially perform as agreed. The basic form of credit risk involves the financial condition of the third party itself. Some contracts provide that the third party ensures some measure of performance related to obligations arising from the relationship, such as loan origination programs. In these circumstances, the financial condition of the third party is a factor in assessing credit risk. Credit risk also arises from the use of third parties that market or originate certain types of loans, solicit and refer customers, conduct underwriting analysis, or set up product programs for the institution. Appropriate monitoring of the financial activity of the third party is necessary to ensure that credit risk is understood and remains within board-approved limits.

"Country Risk" Country risk is the exposure to the economic, social and political conditions and events in a foreign country that may adversely affect the ability of the foreign-based third-party service provider (FBTSP) to meet the level of service required by the arrangement, resulting in harm to the institution. In extreme cases, this exposure could result in the loss of data, research and development efforts, or other assets. Contracting with a FBTSP exposes an institution to country risk, a unique characteristic of these arrangements. Managing country risk requires the ability to gather and assess information regarding a foreign government's policies, including those addressing information access, as well as local political, social, economic, and legal conditions.

"Other Risks" The types of risk introduced by an institution's decision to use a third party cannot be fully assessed without a complete understanding of the resulting arrangement. Therefore, a comprehensive list of potential risks that could be associated with a third-party relationship is not possible. In addition to the risks described above, third-party relationships may also subject the institution to liquidity, interest rate, price, legal, and foreign currency translation risks.

With the wide array of risks that may occur, the following includes some pragmatic examples of concerns that can surface if there is lack of appropriate oversight and monitoring of third-party relationships and associated CMSs:

- Where the institution lends its name or regulated entity status to products and services originated by others or activities predominantly conducted by others, and those vendors engage in practices that may be considered predatory, abusive, or unfair and deceptive to consumers;
- When possible violations of fair lending and consumer protection laws and regulations occur, particularly when the actual involvement of the institution and the third party is invisible to the customer;
- Where the third-party relationships do not meet the expectation of the institution's customers;
- Where, due to the third party, the customer experiences poor service, disruption of service, financial loss resulting from not understanding product or service risks or alternatives, and inferior choices stemming from lack of disclosure(s);
- When privacy of consumer and customer records is not adequately protected;
- Where the third party is unable to deliver products or services due to fraud, error, inadequate capacity, or technology failure, and where there is a lack of effective business resumption and contingency planning for such situations;
- Where a problem or issue lies with a service being rendered by a third party that went undetected by the institution because an appropriate audit or monitoring program was not in place for the third-party relationship; and
- Where the third party is the auditor for the institution's CMS and management failed to properly oversee and manage the scope and intensity of these audits to ensure reviews were comprehensive or covered areas of significant risk.

Compliance Management System Review

The key to the effective and successful use of a third party in any capacity is for the institution's management to

appropriately assess, measure, monitor, and control the risks associated with the relationship and weave that process into its CMS. While engaging another entity may aid management and the board in achieving strategic goals, such an arrangement reduces management's direct control. Therefore, the use of a third party increases the need for robust oversight of the process from start to finish. This guidance provides four main elements of an effective third-party risk compliance management process:

1. *Risk Assessment* – The process of assessing risks and options for controlling third-party arrangements.

2. *Due Diligence in Selecting a Third Party* – The process of selecting a qualified entity to implement the activity or program.

3. *Contract Structuring and Review* – The process of ensuring that the specific expectations and obligations of both the institution and the third party are outlined in a written contract prior to entering into the arrangement—a contract should act as a map to the relationship and define its structure.

4. *Oversight* – The process of reviewing the operational and financial performance of third-party activities over those products and services performed through third-party arrangements on an ongoing basis, to ensure that the third party meets and can continue to meet the terms of the contractual arrangement.

While these four elements apply to any third-party activities, the precise use of this process is predicated upon the nature of the third-party relationship, the scope and magnitude of the activity, and the risks identified. These examination procedures are not intended to result in an expansion or a decrease in the use of third parties by institutions, but to provide a framework for assessing, measuring, monitoring, and controlling risks associated with third parties. A comprehensive risk management process, which includes management of any third-party relationships, will enable management to ensure that the third party is operating in a manner consistent with federal and state laws, rules, and regulations, including those intended to protect consumers. With that, the aforementioned four elements will serve as the nexus for examining the effectiveness of an institution's oversight and management of third-party relationships.

Examination Objectives

1. Determine if the financial institution has any "significant" third-party relationships;

2. Determine the adequacy of the institution's CMS, including policies and procedures, internal controls, training, monitoring, and internal and external auditing procedures associated with third-party relationships to ensure consistent and ongoing compliance with all applicable consumer protection laws and regulations;

3. Determine whether activities conducted through third parties are compliant with applicable consumer protection laws, fair lending regulations, and internal policies; and

4. Determine appropriate corrective action when third-party risk issues are identified or deficiencies are noted.

Examination Procedures

Pre-Examination Planning

Examiners should follow the general Compliance Examination procedures pertaining to pre-examination planning, found in the FDIC's Compliance Examination Manual, to gather as much information as possible about an institution's involvement in any third-party arrangement. Examiners must consider these relationships when assessing the quality of the institution's CMS. The following includes the steps that examiners should generally follow in gathering information on an institution's third-party relationships:

1. During the initial contact with the institution and through the Compliance Information and Document Request (CIDR), identify the presence of any third-party relationships;

2. During the initial contact with the institution and through the CIDR, identify planned or newly initiated third-party relationships;

3. Obtain and review copies of current contracts and relevant records that management utilizes to manage third-party relationships. Examples of relevant records may include, but are not limited to, audit reports, engagement letters, contracts, references, marketing scripts, due diligence documentation, advertisements (***e.g.***, paper, electronic, and e-mail), promotional materials, disclosures, documentation of monitoring efforts, training material, policies, and procedural manuals;

4. Review prior Compliance and Risk Management examination reports along with institution file correspondence for information concerning any adverse material effect the third-party relationship(s) has on compliance with consumer protection laws and regulations that may affect safe and sound operations. It may be possible to risk scope certain aspects of the Compliance review depending on timing and depth of the Risk Management Review; and

5. Review any consumer complaints received against the institution and/or third-party provider(s).[3]

Risk Assessment

1. Determine if management, prior to entering the third-party relationship, ensured that the proposed third-party relationship is consistent with the institution's strategic planning and overall business strategy.

2. Determine if management, prior to entering the third-party relationship, analyzed the strategic risk the institution is willing to enter into given its size, resources, capacity, and number of employees.

3. Determine if management, prior to entering the third-party relationship, analyzed the benefits, costs, legal aspects, and the potential risks associated with the third party under consideration.

4. Determine if management performed a risk/reward analysis, comparing the proposed third-party relationship to other methods of performing the activity or product offering, including the use of other vendors or in-house staff. For such matters, the analysis should be considered integral to the institution's overall strategic planning, and should thus be performed by management and reviewed by the board or an appropriate committee.

5. Determine if institution personnel have the requisite knowledge and skills to adequately perform the risk analysis. Certain aspects of the risk assessment phase may include the use of internal or external auditors, compliance officers, technology officers, and legal counsel. This phase should also identify performance criteria, internal controls, reporting needs, and contractual requirements that would be critical to the ongoing assessment and control of specific identified risks. For example, if the activity involves consumer products or services, the board and management should establish a clear solicitation and origination strategy that allows for an assessment of performance, as well as mid-course corrections.

6. Determine if management reviewed whether the third-party's activities could be viewed as predatory, discriminatory, abusive, unfair, or deceptive to consumers.

7. Determine if management reviewed its ability to provide adequate oversight and management of the proposed third-party relationship on an ongoing basis.

8. Determine if management has a process in place for elevating new or significant third-party relationships and issues to the board and appropriate committee for review and approval.

Due Diligence in Selecting a Third Party

1. Determine if management conducted an adequate due diligence that included a review of all available information about a potential third party, focusing on the entity's financial condition, its specific relevant experience, its knowledge of applicable laws and regulations, its reputation, and the scope and effectiveness of its operations and controls, as applicable. The scope and depth of due diligence should be directly related to the importance and magnitude of the third-party relationship. (Note: Due diligence should be performed not only prior to selecting a third-party relationship, but also periodically during the course of the relationship, particularly when considering a renewal of a contract.) The evaluation of a third party may include the following items:

- Audited financial statements, annual reports, Securities and Exchange Commission filings, and other available financial information;
- Significance of the proposed contract on the third-party's financial condition;
- Experience and ability in implementing and monitoring the proposed activity;
- Business reputation, including any complaints filed;
- Span of business operations in which the third party is engaged;
- Qualifications and experience of the company's principals;
- Strategies and goals, including service philosophies, quality initiatives, efficiency improvements, and employment policies;
- Existence of any significant complaints or litigation (past and pending), or supervisory actions against the company or its owners or principals;
- Ability to perform the proposed functions using current systems or the need to make additional investment;
- Use of other parties or subcontractors by the third party;
- Scope of internal controls, systems and data security, privacy protections, and audit coverage;
- Business resumption strategy and contingency plans;
- Knowledge of and background and experience with consumer protection laws and regulations;

3 Resources: www.bbb.org (Better Business Bureau); websites/blogs such as www.Ripoffreport.com and www.complaints.com; and state attorney general offices.

- Underwriting criteria;
- Adequacy of management information systems;
- Insurance coverage;
- Marketing materials to determine how the institution's name will be associated with the product;
- Websites; and
- Vendor and institution management responsibilities.

Contract Structuring and Review

1. Determine if management ensures that the specific expectations and obligations of both the institution and the third party are outlined in a written contract prior to entering into the arrangement. Any material or significant contract with a third party should prohibit assignment, transfer, or subcontracting by the third party of its obligations unless the institution appropriately determines that such activity is consistent with its due diligence responsibilities.

2. Determine if the board provides approval prior to entering into any material third-party arrangements. When reviewing this area, questions that compliance examiners may want to consider are: (1) Are board members fully aware of the risks, issues, and responsibilities associated with the third-party relationship under consideration?; (2) Do any board members have close ties to or have a vested interest in the third-party relationship under consideration?; (3) Did the Directorate abrogate their responsibilities during the review and approval of any material third-party relationship?; (4) Were board members provided access to the due diligence findings and were findings accurately presented?; and (5) Do minutes exist of Board meetings where the third-party arrangements were addressed?

3. Determine if appropriate legal counsel reviewed significant contracts prior to finalization.

4. Determine if clearly defined performance standards are included to serve as a basis for measuring the performance of the third party. Determine if management periodically reviews the performance measures to ensure consistency with its overall objectives. Performance standards may also be used as a factor in the compensation or fee paid to the third party. Institutions should employ compensation programs that are consistent with consumer protection laws and sound banking practices.[4]

5. Determine if the contract addresses the following:

   - Outlines the fees to be paid, including fixed compensation, variable charges, and any fees to be paid for nonrecurring items or special requests. Other items that should be addressed, if applicable, are the cost and responsibility for purchasing and maintaining any equipment, hardware, software, or other item related to the activity. Additionally, the contract should address obligations for retaining documentation for compensation arrangements, as appropriate. Also, the party responsible for payment of any legal or audit expenses should be identified.

   - Specifies the type and frequency of management information reports to be received from the third party. Routine reports may include performance, audits, financial, security, consumer complaint, and business resumption testing reports. Determine if management considers mandating exception-based reports that would serve as notification of any changes or problems that could affect the nature of the relationship or pose a risk to the institution.

   - Specifies the institution's right to audit the third party (or engage an independent auditor) as needed to monitor performance under the contract. Management should ensure that the third-party's internal control environment as it relates to the service or product being provided to the institution is sufficiently audited or monitored. Does the contract specify the scope of audits that will be performed? Do audits capture all compliance-related risk?

   - Prohibits the third party and its agents from using or disclosing the institution's information, except as necessary to perform the functions designated by the contract, or as otherwise permitted by law. For example, any non-public personal information of the institution's customers must be handled in a manner consistent with the institution's own privacy policy and in accordance with applicable privacy laws and regulations. Any breaches in the security and

4 The FDIC enforces laws and regulations that prohibit the use of compensation arrangements that encourage third-party originators to inappropriately steer borrowers into higher cost products or avoid mortgage lending in low-income neighborhoods where home prices are lower. Compensation arrangements should not create unintended incentives to engage in unfair or deceptive acts or practices, particularly with respect to product sales, loan originations, and collections; or be tailored to circumvent other applicable consumer protection laws and regulations, including fair lending laws and regulations.

confidentiality of information should be fully and promptly disclosed to the institution.

- Specifies whether the institution or the third party has the duty to respond to any complaints received by the third party from customers of the institution. If the third party is responsible for such responses, a copy of any complaint and the response should be forwarded to the institution. The contract should also provide for periodic summary reports detailing the status and resolution of complaints along with a trend analysis on types of complaints. Additionally, the contract should address record retention provisions for retaining relevant consumer complaint records.

- Addresses the third-party's responsibility for continuation of services provided for in the contractual arrangement in the event of an operational failure, including both man-made and natural disasters. The third party should have appropriate protections for backing up information and also maintain disaster recovery and contingency plans with sufficiently detailed operating procedures. Results of testing of these plans should be provided to the institution.

- Specifies what circumstances constitute default, identifies remedies, and allows for a reasonable opportunity to cure a default. Similarly, termination rights should be identified in the contract, especially for material third-party arrangements and relationships involving rapidly changing technology or circumstances. For example, termination rights may be sought for various conditions, such as inability to prevent violations of consumer protection laws and regulations.

- Includes a dispute resolution process for the purpose of resolving problems expeditiously. Continuation of the arrangement between the parties during the dispute should also be addressed.

- Addresses ownership issues and the third-party's right to use the institution's property, including intellectual property such as the institution's name and logo, trademark, and other copyrighted material. It should also address ownership and control of any records generated by the third party.

- Provides indemnification provisions that require the third party to hold the institution harmless from liability as a result of negligence by the third party, and vice versa. The existence of indemnification provisions will not be a mitigating factor where deficiencies indicate the need to seek corrective actions. For example, where violations of consumer protection laws and regulations are present, the FDIC's consideration of remedial/enforcement measures will be made irrespective of the existence of indemnification clauses in third-party contracts.

Board and Management Oversight

1. Determine if the board initially approved significant third-party arrangements, and what the Board considered in reaching that approval. Additionally, determine if the board oversees and reviews, at least annually, significant third-party arrangements, and reviews these arrangements and written agreements whenever there is a material change to the program.

2. Determine if management periodically reviews the third party's operations in order to verify that they are consistent with the terms of the written agreement and that risks are being controlled. The institution's CMS should also ensure continuing compliance with applicable consumer protection laws and regulations, as well as internal policies and procedures.

3. Determine if management allocates sufficient qualified staff to monitor significant third-party relationships and provides the necessary oversight. Specifically, management should consider designating an individual or committee to coordinate the oversight activities with respect to significant relationships, and involve their compliance management function and, as necessary, other operational areas such as audit.[5]

   - An oversight program will generally include monitoring of the third-party's quality of service, risk management practices, financial condition, and applicable controls and reports.

4. Determine if management is following the institution's policies and procedures for terminating or probating third-party relationships, based on findings from audits and/or performance monitoring.

5. Determine if the results of oversight activities for material third-party arrangements are periodically reported to the institution's board of directors or designated committee. Identified weaknesses should be documented and promptly addressed.

6. Determine if the institution maintains documents and records on all aspects of the third-party relationship, including valid contracts, business plans, risk analyses, due diligence, and oversight activities (including reports to the board or delegated committees and documents

5 The extent of oversight of a particular third-party relationship will depend upon the potential risks and the scope and magnitude of the arrangement.

regarding any dispute resolution) and for what period of time.

Institution-Affiliated Party

Institutions can also outsource activities to third parties, or otherwise make use of products or services provided by third parties, via a subsidiary or affiliate referred to as an Institution-Affiliated Party (IAP).[6] By statute, an IAP is defined as:

- Any director, officer, employee, or controlling stockholder (other than a bank holding company) of, or agent for, an insured depository institution;
- Any other person who has filed or is required to file a change-in-control notice with their primary Federal banking regulator;
- Any shareholder (other than a bank holding company), consultant, joint venture partner, and any other person as determined by the appropriate Federal banking agency (by regulation or case-by-case) who participates in the conduct of the affairs of an insured depository institution; or
- Any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in:
  - any violation of any law or regulation;
  - any breach of fiduciary duty; or
  - any unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the insured depository institution.

The designation of a third party as an IAP is significant when the FDIC is considering bringing enforcement action against a third party, because the FDIC's direct enforcement jurisdiction over third parties generally is limited to insured State nonmember banks, foreign institutions having an insured branch, and their IAPs. Examiners should be mindful of the possible existence of this status during examinations and utilize the same examination principles and level of caution for reviewing the institution's management of these third-party relationships.

If significant ambiguity exists when trying to ascertain if the third party is an IAP, a case-by-case analysis may be warranted, in consultation with the FDIC's Legal Division, before proceeding with the examination of the third party. The FDIC's examination authority over third parties is broader than enforcement jurisdiction.

Refer to the IAP examination procedures[7] for further information and guidance on examining and potentially bringing enforcement action against a person or entity that may be an IAP.

Transaction Sampling and Testing

Based on the examiner's conclusions about the institution'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 risks present should dictate the intensity of transaction testing. The determination and level of transaction testing should be tailored to weaknesses identified in the CMS as it relates to specific third-party relationships, focusing on those areas that present the greatest degree of risk to the institution or to consumers. The following are examples of items that should be reviewed, as applicable:

- Advertisement and marketing documentation;
- New product development documentation;
- Procedural manuals, including those for servicing, collections, and safeguarding customer information;
- Employee training records;
- Audit/monitoring report findings;
- Customer disclosures, notices, agreements, and periodic statements for each product and service reviewed;
- Account statements;
- Contracts with third parties;
- Compensation programs;
- Promotional materials;
- Telemarketing scripts; and
- Recorded calls for telemarketing or collections.

Documentation of Examination Findings

At the conclusion of the examination, examiners should document their conclusions about the institution's third-party relationships in the examination work papers and Report of Examination, as appropriate. The Third Party Check List is

6 Despite the use of the word "person" and other similar vernaculars in the definition, an institution-affiliated party can be an individual or institution itself.

7 Examination procedures for IAPs can be found in Section X-5.1, Bank Subsidiaries and Affiliates, of the Compliance Examination Manual.

provided to aid examiners in reviewing third-party relationships and documenting examination findings.

Institutions that fail to comply with applicable laws and regulations, or fail to establish or observe appropriate policies and procedures should be subject to criticism in the Report of Examination and appropriate corrective action.

Consultations

Because of the wide range of facts, activities, and issues that can arise in the context of third-party relationships, as well as the multitude of consumer protection regulations that can be impacted, the examiner should consult the Regional Office when possible issues or concerns are identified at a Compliance Examination.

Appropriate corrective action, including enforcement action, may be pursued for deficiencies related to a third-party relationship, including IAP activities that pose compliance management concerns or result in violations of applicable consumer protection laws and regulations.

Examiners are reminded that indemnity or other contractual provisions with third parties cannot insulate the institution from regulatory corrective action.

References

FIL-75-2016: Final Guidance on the Uniform Interagency Consumer Compliance Rating System

FIL-32-2009:Third-Party Referrals Promising Above-Market Rates on Certificates of Deposit

FIL-44-2008:Third-Party Risk: Guidance for Managing Third-Party Risk

FIL-03-2012: Payment Processor Relationships Revised Guidance

FIL-41-2014: FDIC Clarifying Supervisory Approach to Institutions Establishing Account Relationships with Third-Party Payment Processors

FIL-5-2015: Statement on Providing Banking Services

This job aid can be utilized for examining the effectiveness of a financial institution's (institution) compliance management system as it relates to the procedures for overseeing, managing, and controlling third-party relationships. Complete only those aspects of the job aid that specifically relate to the area being reviewed and retain those completed sections in the compliance examination work papers.

When reviewing an institution's self-monitoring controls and oversight of third-party relationships, a "No" answer indicates a possible exception/deficiency and should be further investigated and explained in the examination work papers and report of examination, as appropriate. If a line item is not applicable within the area of review, indicate "NA."

	Yes	No	N/A	Comments
Risk Assessment				
1. Did management, prior to entering the third-party relationship, ensure that the proposed third-party relationship is consistent with the institution's strategic planning and overall business strategy?				
2. Did management, prior to entering the third-party relationship, analyze the strategic risk the institution is willing to enter into given its size, resources, capacity, and number of employees?				
3. Did management, prior to entering the third-party relationship, analyze the benefits, costs, legal aspects, and the potential risks associated with the third party under consideration?				
4. Did management perform a risk/reward analysis, comparing the proposed third-party relationship to other methods of performing the activity or product offering, including the use of other vendors or in-house staff?				
5. Do institution personnel have the requisite knowledge and skills to adequately perform the risk analysis?				
• Does this phase identify performance criteria, internal controls, reporting needs, and contractual requirements that would be critical to the ongoing assessment and control of specific identified risks?				

	Yes	No	N/A	Comments
Risk Assessment (cont.)				
6. Did management review whether the third-party's activities could be viewed as predatory, discriminatory, abusive, unfair, or deceptive to consumers, particularly if products and services offered through the institution have fees, interest rates, or other terms that the third party could not otherwise offer on its own?				
• Are there any differences in fees, interest rates, or other terms for products and services offered to area consumers versus non-area consumers through third-party arrangements?				
7. Did management review its ability to provide adequate oversight and management of the proposed third-party relationship on an ongoing basis?				
• Is the institution's compliance management system (CMS) adapted to effectively address the third-party relationship and appropriately respond to emerging issues and compliance deficiencies?				
8. Does management have a process in place for elevating new or significant third-party relationships and issues to the board and appropriate committee for review and approval?				
Due Diligence in Selecting a Third Party				
1. Did management conduct an adequate due diligence that included a review of all available information about a potential third party, focusing on the entity's financial condition, its specific relevant experience, its knowledge of applicable laws and regulations, its reputation, and the scope and effectiveness of its operations and controls, as applicable?				

	Yes	No	N/A	Comments
Due Diligence in Selecting a Third Party (cont.)				
2. Did management review the following items when evaluating the third party, as applicable?				
• Audited financial statements, annual reports, Securities and Exchange Commission filings, and other available financial information;				
• Significance of the proposed contract on the third party's financial condition;				
• Experience and ability in implementing and monitoring the proposed activity;				
• Business reputation;				
• Span of business operations in which the third party is engaged;				
• Qualifications and experience of the company's principals:				
• Strategies and goals, including service philosophies, quality initiatives, efficiency improvements, and employment policies;				
• Existence of any significant complaints or litigation (past and pending), or regulatory actions against the company or its owners or principals;				
• Ability to perform the proposed functions using current systems or the need to make additional investment;				
• Use of other parties or subcontractors by the third party;				
• Scope of internal controls, systems and data security, privacy protections, and audit coverage;				
• Business resumption strategy and contingency plans;				
• Knowledge of, and background and experience with, consumer protection laws and regulations;				
• Underwriting criteria;				
• Adequacy of management information systems;				
• Insurance coverage;				

	Yes	No	N/A	Comments
Due Diligence in Selecting a Third Party (cont.)				
• Marketing materials to determine how the institution's name will be associated with the product;				
• Websites; and				
• Vendor and institution management responsibilities.				
Contract Structuring and Review				
1. Did management ensure that the specific expectations and obligations of both the institution and the third party are outlined in a written contract prior to entering into the arrangement?				
2. Did the board provide the appropriate level of review and approval prior to entering into any material third-party arrangements?				
3. Did appropriate legal counsel review significant contracts prior to finalization?				
4. Are the following topics considered as the contract is structured, with the applicability of each dependent upon the nature and significance of the third-party relationship?				
• Timeframe covered by the contract;				
• Frequency, format, and specifications of the service or product to be provided;				
• Other services to be provided by the third party, such as software support and maintenance, training of employees, and customer service;				
• Requirement that the third party comply with all applicable consumer protection laws and regulations;				
• If a third party vendor is found culpable for violations, does the contract address responsibility for making appropriate customer restitution, paying any civil money penalty, etc.;[1]				

1 Examiners should be cognizant that the FDIC believes that an institution cannot contractually transfer its liability to a third party. If an institution is found to be derelict in its obligation to monitor the third-party's activities, the FDIC will impose a civil money penalty against the institution.

	Yes	No	N/A	Comments
Contract Structuring and Review (cont.)				
• Requirement governing which parties must retain records relating to agreements and activities conducted pursuant to the relationship, for at least a minimum required period;				
• Authorization for the institution and the appropriate federal and state regulatory agency to have access to records of the third party as are necessary or appropriate to evaluate compliance with consumer protection and fair lending laws and regulations;				
• Identification of which party will be responsible for delivering any required customer disclosures and in what format;				
• Terms and conditions relating to any compensation, monetary or otherwise, to be paid in connection with products or services rendered as a result of the third-party relationship;				
• Insurance coverage to be maintained by the third party;				
• Terms relating to any use of institution premises, equipment, data, or employees; • Permissibility/prohibition of the third party to assign, transfer, or subcontract its obligations with respect to the material or significant contract, and any notice/approval requirements;				
• Notification protocols when software or other relevant product modifications are made;				
• Protocols for reporting and handling breaches of security;				
• Authorization for the institution to monitor and periodically review the third party for compliance with its agreement; and				
• Indemnification.				

	Yes	No	N/A	Comments
Contract Structuring and Review (cont.)				
5 Are clearly defined performance standards included to serve as a basis for measuring the performance of the third party?				
• Does management periodically review the performance measures to ensure consistency with its overall objectives?				
• Does the institution employ a compensation program that is consistent with consumer protection laws and sound banking practices?				
6. Does the contract outline the fees to be paid, including fixed compensation, variable charges, and any fees to be paid for nonrecurring items or special requests?				
• Does the contract address, if applicable, the cost and responsibility for purchasing and maintaining any equipment, hardware, software, or other item related to the activity?				
• Does the contract address obligations for retaining documentation for compensation arrangements, as appropriate?				
• Does the contract identify the party responsible for payment of any legal or audit expenses?				
7. Does the contract specify the type and frequency of management information reports to be received from the third party?				
• Does management consider mandating exception-based reports that would serve as notification of any changes or problems that could affect the nature of the relationship or pose a risk to the institution?				

	Yes	No	N/A	Comments
Contract Structuring and Review (cont.)				
8. Does the contract specify the institution's right to audit the third party (or engage an independent auditor) as needed to monitor performance under the contract?				
• Does management ensure that the third party's internal control environment as it relates to the service or product being provided to the institution is sufficiently audited or monitored?				
• Does the contract specify the scope of audits that will be performed?				
• Do audits capture all compliance-related risk?				
9. Does the contract prohibit the third party and its agents from using or disclosing the institution's information, except as necessary to perform the functions designated by the contract, or as otherwise permitted by law?				
• Are any breaches in the security and confidentiality of information fully and promptly disclosed to the institution?				
10. Does the contract specify whether the institution or the third party has the duty to respond to any complaints received by the third party from customers of the institution?				
• If the third party is responsible for such responses, is a copy of any complaint and the response forwarded to the institution?				
• Does the contract provide for periodic summary reports detailing the status and resolution of complaints along with any trend analysis on types of complaints?				
• Does the contract address record retention provisions for retaining relevant consumer complaint records?				
11. Does the contract address the third-party's responsibility for continuation of services provided for in the contractual arrangement in the event of an operational failure, including both man-made and natural disasters?				
• Are the results of testing of these plans provided to the institution?				

	Yes	No	N/A	Comments
Contract Structuring and Review (cont.)				
12. Does the contract specify what circumstances constitute default, identify remedies, and allow for a reasonable opportunity to cure a default?				
• Are termination rights identified in the contract, especially for material third-party arrangements and relationships involving rapidly changing technology or circumstances?				
13. Does the contract include a dispute resolution process for the purpose of resolving problems expeditiously?				
• Does the contract address the continuation of the arrangement between the parties during the dispute?				
14. Does the contract address ownership issues and the third-party's right to use the institution's property, including intellectual property such as the institution's name and logo, trademark, and other copyrighted material?				
• Does the contract address ownership and control of any records generated by the third party?				
15. Does the contract provide indemnification provisions that require the third party to hold the institution harmless from liability as a result of negligence by the third party, and vice versa?				
Board and Management Oversight				
1. Did the board initially approve the significant third-party relationship and what the Board considered in reaching that approval?				
• Does the board oversee and review at least annually significant third-party arrangements, and review these arrangements and written agreements whenever there is a material change to the program?				
2. Does management periodically review the third party's operations in order to verify that they are consistent with the terms of the written agreement and that risks are being controlled?				
3. Does management allocate sufficient qualified staff to monitor significant third-party relationships and provide the necessary oversight?				

	Yes	No	N/A	Comments
Board and Management Oversight (cont.)				
4. Does performance monitoring (i.e., third-party's quality of service, risk management practices, financial condition, and applicable controls and reports) include any of the following, as applicable?				
• Evaluate the overall effectiveness of the third-party relationship and the consistency of the relationship with the institution's strategic goals;				
• Review any licensing or registrations to ensure the third party can legally perform its services (e.g., non-deposit products);				
• Evaluate the third-party's financial condition at least annually, including its owners and principals. Financial review should be as comprehensive as the credit risk analysis performed on the institution's borrowing relationships. Audited financial statements should be required for significant third-party relationships;				
• Review the adequacy of the third party's insurance coverage;				
• Ensure that the third party's financial obligations to others are being met;				
• Review audit reports or other reports of the third party, and follow up on significant complaints and any needed corrective actions;				
• Review the adequacy and adherence to the third-party's policies relating to internal controls and security issues. This practice may also include performing on-site quality assurance reviews, targeting adherence to specified policies and procedures (e.g., visiting customer call centers to observe and verify sales, customer service, collection call procedures, and listening to verification recordings);				

	Yes	No	N/A	Comments
Board and Management Oversight (cont.)				
• Monitor for compliance with applicable consumer protection laws, rules, and regulations (e.g., reviewing/checking scripts, consumer disclosures, appropriate compensation, advertisements and other promotional materials, procedures for safeguarding customer information, etc.);				
• Review the third-party's business resumption contingency planning and testing;				
• Assess the effect and risks of any change in key third-party personnel involved in the relationship with the institution;				
• Review reports relating to the third-party's performance in the context of contractual requirements and performance standards, with appropriate follow-up as needed;				
• Determine the adequacy and reach of any training afforded to employees of the institution and the third party as it relates to applicable consumer protection laws and regulations, including fair lending laws and regulations;				
• Administer any testing programs for third parties with direct interaction with customers;				
• Review customer complaints about the products and services provided by the third party and the resolution of the complaints on a periodic basis; and				
• Meet as needed with representatives of the third party to discuss performance and operational issues.				

	Yes	No	N/A	Comments
Board and Management Oversight (cont.)				
5. Does management follow the institution's policies and procedures for terminating or probating third-party relationships, based on findings from audits and performance monitoring?				
6. Are the results of oversight activities for material third-party arrangements periodically reported to the institution's board of directors or designated committee?				
• Are identified weaknesses documented and promptly addressed?				
7. Does the institution maintain documents and records on all aspects of the third-party relationship, including valid contracts, business plans, risk analyses, due diligence, and oversight activities (including reports to the board or delegated committees and documents regarding any dispute resolution) and for what period of time?				
Summary Comment – Findings				

VIII. Privacy and Consumer Information

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

Introduction

Title V, Subtitle A of the Gramm-Leach-Bliley Act ("GLBA")[1] 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 (i) the institution satisfies various notice and opt-out requirements, and (ii) 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.

In 2000, the Board of Governors of the Federal Reserve System ("Board"), the Federal Deposit Insurance Corporation ("FDIC"), the National Credit Union Administration ("NCUA"), the Office of the Comptroller of the Currency ("OCC"), and the former Office of Thrift Supervision ("OTS"), published regulations implementing provisions of GLBA governing the treatment of nonpublic personal information about consumers by financial institutions.[2]

Title X of the Dodd-Frank Act Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")[3] granted rulemaking authority for most provisions of Subtitle A of Title V of GLBA to the Consumer Financial Protection Bureau ("CFPB") with respect to financial institutions and other entities subject to the CFPB's jurisdiction, except securities and futures-related companies and certain motor vehicle dealers. The Dodd-Frank Act also granted authority to the CFPB to examine and enforce compliance with these statutory provisions and their implementing regulations with respect to entities under CFPB jurisdiction.[4] In December 2011 the CFPB recodified in Regulation P, 12 CFR Part 1016, the implementing regulations that were previously issued by the Board, the FDIC, the Federal Trade Commission ("FTC"), the NCUA, the OCC, and the former OTS.[5]

The regulation establishes rules governing duties of a financial institution to provide particular notices and limitations on its disclosure of nonpublic personal information, as summarized below.

- A financial institution must provide notice of its privacy policies and practices, 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 regulation. If the financial institution provides the consumer's nonpublic personal information to a nonaffiliated third party under the exception in section 13, it must provide notice of its privacy policies and practices to the consumer. Under the exception in section 13, the financial institution must also enter into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to perform services for the institution or functions on the institution's behalf, including use under an exception in sections 14 or 15 in the ordinary course of business to carry out those services or functions. If the financial institution complies with these requirements, it is not required to provide an opt out notice.
- Regardless of whether a financial institution shares nonpublic personal information, the institution must provide notice of its privacy policies and practices to its customers.
- A financial institution generally may not disclose consumer account numbers to any nonaffiliated third party for marketing purposes.
- A financial institution must follow redisclosure and reuse limitations on any nonpublic personal information it receives from a nonaffiliated financial institution.

In general, the privacy notice must describe a financial institution's policies and practices with respect to collecting and disclosing nonpublic personal information about a consumer to both affiliated and nonaffiliated third parties. Also, the notice must provide a consumer a reasonable opportunity to direct the institution generally not to share nonpublic personal information about the consumer (that is, to "opt out") with nonaffiliated third parties other than as permitted by exceptions under the regulation (for example, sharing for everyday business purposes, such as processing transactions and maintaining customers' accounts, and in response to properly executed governmental requests). The privacy notice must also provide, where applicable under the Fair Credit Reporting Act ("FCRA"), a notice and an opportunity for a consumer to opt out of certain information sharing among affiliates.

[1] 15 U.S.C. Sections6801-6809.

[2] The NCUA published its final rule in the *Federal Register* on May 18, 2000 (65 FR 31722). The Board, the FDIC, the OCC, and the former OTS jointly published their final rules on June 1, 2000 (65 FR 35162).

[3] Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, Title X, 124 Stat. 1983 (2010).

[4] Dodd-Frank Act Sections1002(12)(J), 1024(b)-(c), and 1025(b)-(c); 12 U.S.C. Sections5481(12)(J), 5514(b)-(c), and 5515(b)-(c). Section 1002(12)(J) of the Dodd-Frank Act, however, excluded financial institutions' information security safeguards under GLBA section 501(b) from the CFPB's rulemaking, examination, and enforcement authority.

[5] 76 FR 79025 (Dec. 21, 2011). Pursuant to GLBA, the FTC retains rulemaking authority over any financial institution that is a person described in 12 U.S.C. Section5519 (with certain statutory exceptions, the FTC generally retains rulemaking authority for motor vehicle dealers predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both).

Section 728 of the Financial Services Regulatory Relief Act of 2006 required the four federal banking agencies (the Board, the FDIC, the OCC, and the former OTS) and four additional federal regulatory agencies (the Commodity Futures Trading Commission ("CFTC"), the FTC, the NCUA, and the Securities and Exchange Commission ("SEC")) to develop a model privacy form that financial institutions may rely on as a safe harbor to provide disclosures under the privacy rules.

On December 1, 2009, the eight federal agencies jointly released a voluntary model privacy form designed to make it easier for consumers to understand how financial institutions collect and share nonpublic personal information.[6] The final rule adopting the model privacy form was effective on December 31, 2009.

On October 28, 2014, the CFPB published a final rule amending the requirements regarding financial institutions' provision of their annual disclosures of privacy policies and practices to customers by creating an alternative delivery method that financial institutions can use under certain circumstances.[7] The amendment was effective immediately upon publication. The alternative delivery method allows a financial institution to provide an annual privacy notice by posting the annual notice on its web site, if the financial institution meets certain conditions.

As of December 4, 2015, section 75001 of the Fixing America's Surface Transportation Act[8] ("FAST Act") amended section 503 of GLBA to establish an exception to the annual privacy notice requirements whereby a financial institution that meets certain criteria is not required to provide an annual privacy notice to customers. The amendment was effective upon enactment.

There are fewer requirements to qualify for the exception to providing an annual privacy notice pursuant to the FAST Act GLBA amendments than there are to qualify to use the CFPB's alternative delivery method; any institution that meets the requirements for using the alternative delivery method is effectively excepted from delivering an annual privacy notice.

Definitions and Key Concepts

In discussing the duties and limitations imposed by the regulation, 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 regulation.

Financial Institution: A "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.[9]

Nonpublic personal information: "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 security interest 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 same 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.

6 74 FR 62890.
7 79 FR 64057.
8 Fixing America's Surface Transportation Act of 2015, Pub. L. No. 114-94 (2015), 129 Stat. 1312 (2015).

9 Certain functionally regulated subsidiaries, such as brokers, dealers, and investment advisers, are subject to GLBA implementing regulations issued by the SEC. Other functionally regulated subsidiaries, such as futures commission merchants, commodity trading advisors, commodity pool operators, and introducing brokers in commodities, are subject to GLBA implementing regulations issued by the CFTC. Insurance entities may be subject to privacy regulations issued by their respective state insurance authorities.

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 of mortgage customers from public mortgage 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 those customers without having to provide notice or opt out.

Nonaffiliated third party: A "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 regulation 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. 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 regulation. Financial institutions need not comply with opt-out requirements if they limit disclosure of nonpublic personal information:

- Section 13: 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 an initial notice of these arrangements and by contract prohibits the third party from disclosing or using the information for other than the specified purposes. 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 disclosure and confidentiality requirements of section 13.
- Section 14: 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 provision of an account statement.
- Section 15: 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.

Consumer and Customer:

The distinction between consumers and customers is significant because financial institutions have additional disclosure duties with respect to customers. Under the regulation, all customers 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 before the financial institution shares nonpublic personal information with nonaffiliated third parties outside of the exceptions in sections 13, 14, and 15. Consumers who are not customers are entitled to an initial privacy notice before the financial institution shares nonpublic personal information with a nonaffiliated third party under the exception in section 13. Under the exception in section 13, the financial institution must also enter into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to perform services for the institution or functions on the institution's behalf, including use under an exception in sections 14 or 15 in the ordinary course of business to carry out those services or functions. If a financial institution complies with these requirements, it is not required to provide an opt out notice.

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 unless an exception to the annual privacy notice requirement applies.

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 regulation establishes specific duties and limitations for a financial institution based on its activities. Financial institutions that intend to disclose nonpublic personal information outside the exceptions in sections 13, 14, and 15 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 initial and annual notices of their privacy policies and practices to their customers (unless an exception to the annual privacy notice requirement applies) and to provide an initial notice to consumers who are not customers before disclosing nonpublic personal information to a nonaffiliated third party other than under sections 14 and 15. 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 regulation.

Notice and Opt Out Duties to Consumers:

Before a financial institution discloses nonpublic personal information about any of its consumers to a nonaffiliated third party, and an exception in section 14 or 15 does not apply, then the financial institution must provide to the consumer:

- an initial notice of its privacy policies and practices;
- 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.

Before a financial institution discloses nonpublic personal information about a consumer to a nonaffiliated third party under the exception in section 13, the financial institution must provide to the consumer an initial notice of its privacy policies and practices. Under the exception in section 13, the financial institution must also enter into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to perform services for the institution or functions on the institution's behalf, including use under an exception in sections 14 or 15 in the ordinary course of business to carry out those services or functions. If a financial institution complies with these requirements, it is not required to provide an opt out notice.

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 (where applicable). 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 in sections 14 and 15. A financial institution that discloses nonpublic personal information about a consumer to a nonaffiliated third party under the exception in section 13 must provide an initial notice. Under the exception in section 13, the financial institution must also enter into a contractual agreement with the third party that prohibits the third party from disclosing or

using the information other than to perform services for the institution or functions on the institution's behalf, including use under an exception in sections 14 or 15 in the ordinary course of business to carry out those services or functions. If these requirements are met, the financial institution is not required to provide an opt out notice.

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 regulation 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 unless an exception to the annual privacy notice requirement applies.
- 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 regulation does not prescribe specific methods for making a notice clear and conspicuous, but does 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 any annual notice and any revised notice) so that a customer can 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.

As of October 28, 2014, a financial institution may use an alternative delivery method for providing annual privacy notices to customers through posting the annual notices on their web sites if: (1) no opt out rights are triggered by the financial institution's information sharing practices under GLBA or under FCRA section 603, and opt out notices required by FCRA section 624 and Subpart C of Regulation V have previously been provided, if applicable, or the annual privacy notice is not the only notice provided to satisfy those requirements; (2) certain information included in the annual privacy notice has not changed since the previous notice; and (3) the financial institution uses the model form provided in the regulation as its annual privacy notice. In order to use this alternative delivery method, an institution must: (1) insert a clear and conspicuous statement at least once per year on an account statement, coupon book, or a notice or disclosure the institution issues under any provision of law that informs customers that the annual privacy notice is available on the institution's web site, that the institution will mail the notice to customers who request it by calling a specific telephone number, and that the notice has not changed; (2) continuously post the current privacy notice in a clear and conspicuous manner on a page on its web site, on which the only content is the privacy notice, without requiring the customer to provide any information such as a login name or password or agree to any conditions to access the web site; and (3) mail its current privacy notice to those customers who request it by telephone within ten calendar days of the request.

As of December 4, 2015, pursuant to the FAST Act's GLBA amendment, a financial institution is not required to provide an annual privacy notice to its customers if it: (1) solely shares nonpublic personal information in accordance with the provisions of GLBA sections 502(b)(2) (corresponding to Regulation P section 1016.13) or 502(e) (corresponding to

Regulation P sections 1016.14 and .15) or regulations prescribed under GLBA section 504(b); and (2) has not changed its policies and practices with regard to disclosing nonpublic personal information since its most recent disclosure to its customers that was made in accordance with GLBA section 503. An institution that at any time fails to comply with either of the criteria is not eligible for the exception and is required to provide an annual privacy notice to its customers.

Notice Content. A privacy notice must contain specific disclosures. However, a financial institution may provide to consumers who are not also 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 and practices with respect to the treatment of former customers' information;
5. categories of information disclosed to nonaffiliated third parties that perform services for the institution or functions on the institution's behalf and categories of third parties with whom the institution has contracted (Section 13);
6. an explanation of the opt out right and methods for opting out;
7. any opt out notices that the institution must provide under the FCRA with respect to affiliate information sharing;
8. policies and practices for protecting the security and confidentiality of information; and
9. a statement that the institution makes disclosures to other nonaffiliated third parties for everyday business purposes or as permitted by law (Sections 14 and 15).

Model Privacy Form. The Appendix to the regulation contains the model privacy form. A financial institution can use the model form to obtain a "safe harbor" for compliance with the content requirements for notifying consumers of its information-sharing practices and their right to opt out of certain sharing practices. To obtain the safe harbor, the institution must provide a model form in accordance with the instructions set forth in the Appendix of the regulation. Additionally, institutions using the alternative delivery method for providing annual privacy notices to customers must use the model form.

Limitations on Disclosure of Account Numbers (section 12):

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). The regulation also does not bar a financial institution from disclosing account numbers to participants in private-label or affinity card programs, if the participants are identified to the customer when the customer enters the program.

Redisclosure and Reuse Limitations on Nonpublic Personal Information Received (section 11):

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 in accordance with the privacy policy of the financial institution that provided the list, subject to any opt out election or revocation by the consumers on the list, and in accordance with appropriate exceptions under sections 14 and 15.

Other Matters

Fair Credit Reporting Act

The regulation does not modify, limit, or supersede the operation of the FCRA.

State Law

The regulation does not supersede, alter, or affect any state statute, regulation, order, or interpretation, except to the extent that it is inconsistent with the regulation. A state statute, regulation, order, or interpretation is consistent with the regulation if the protection it affords any consumer is greater than the protection provided under the regulation, as determined by the CFPB, on its own motion or upon the petition of any interested party, after consultation with the agency or authority with jurisdiction under section 505(a) of GLBA over either the person who initiated the complaint or that is the subject of the complaint.

Guidelines Regarding Protecting Customer Information

The regulation requires 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.

The four federal banking agencies published guidelines, pursuant to section 501(b) of GLBA, 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 information security.

Examination Objectives

1. To assess the quality of a financial institution's compliance management policies, procedures, and internal controls for implementing the 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 policies, procedures, and internal controls for monitoring the institution's compliance with the regulation.
3. To determine a financial institution's compliance with the 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 regulation.
4. To initiate effective corrective actions when violations of law are identified, or when policies, procedures, or internal controls are deficient.

Examination Procedures[10]

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:
   1. Notices (initial, annual, revised, opt out, short-form, and simplified);
   2. Institutional privacy policies, procedures, and internal controls, including those to:
      - Process requests for nonpublic personal information, including requests for aggregated information;
      - 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

[10] These reflect the interagency examination procedures in their entirety.

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 information collected electronically through Internet cookies; or through ATM transactions);
6. Categories of nonpublic personal information shared with, or received from, each nonaffiliated third party;
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; and
9. Results of a 501(b) inspection (used to determine the accuracy of the institution's privacy disclosures regarding information security).

B. Use the information gathered from step A to work through the "Privacy Notice and Opt Out Decision Tree" (Attachment A). Identify which module(s) of procedures is (are) applicable.

C. Use the information gathered from step A to work through the Redisclosure and Reuse and Account Number Sharing Decision Trees, as necessary (Attachments B and C). Identify which module is applicable.

D. Determine the adequacy of the financial institution's policies, procedures, and internal controls to ensure compliance with the regulation as applicable. Consider the following:

1. Sufficiency of internal policies, procedures, and internal 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 instructions 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.

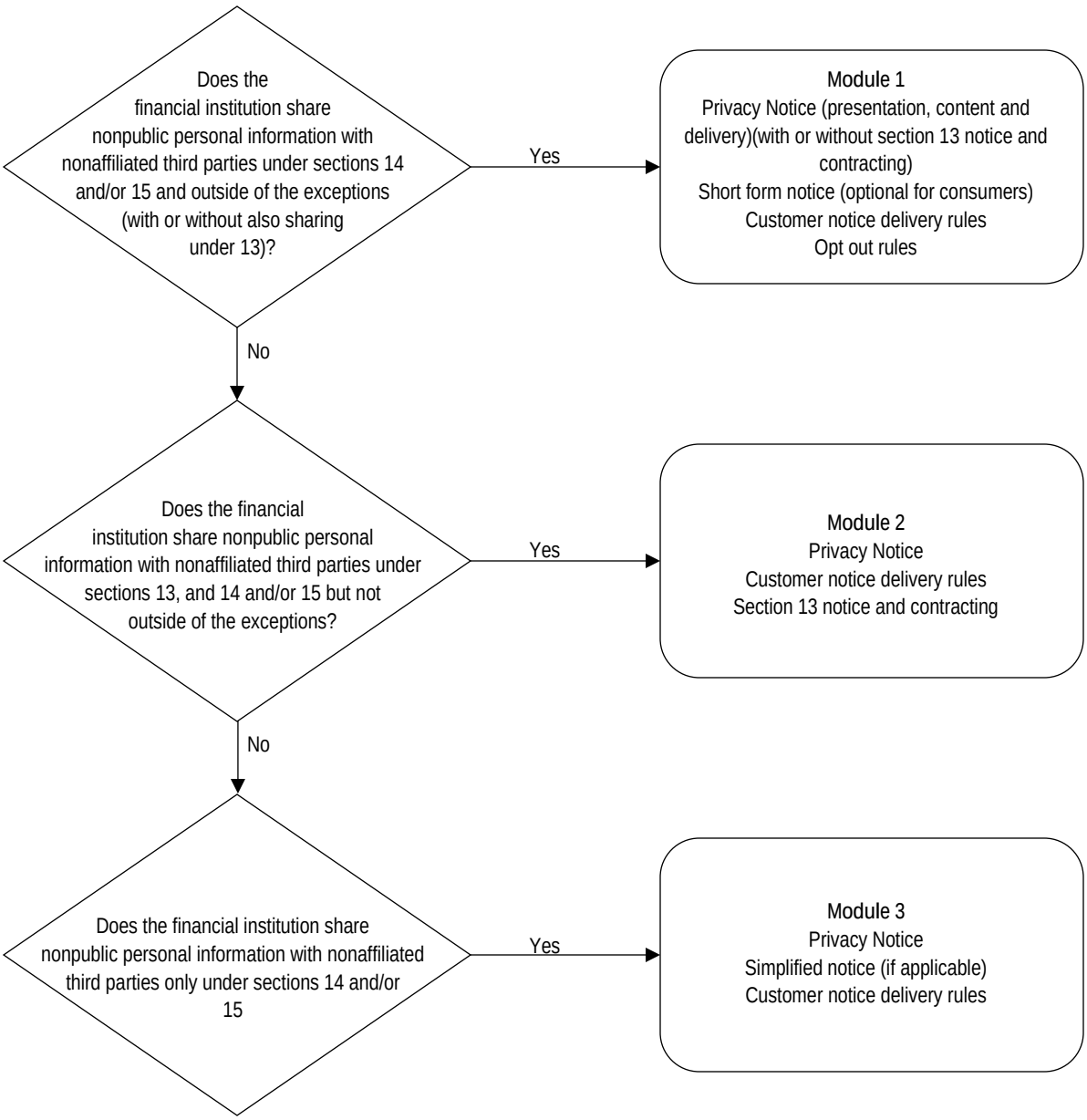
G. Evaluate any additional information or documentation discovered during the course of the examination according to these procedures. Note that this may reveal new or different sharing practices necessitating reapplication of the Decision Trees and completion of additional or different modules.

H. Formulate conclusions.

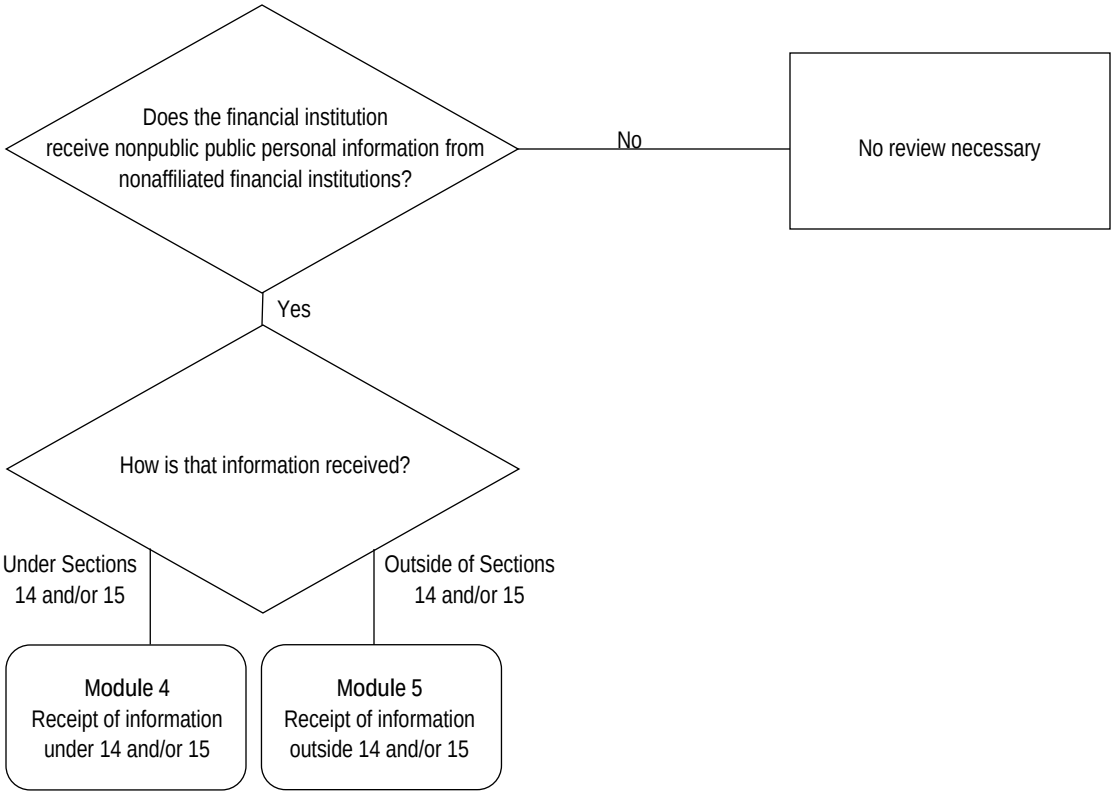
Summarize all findings.

- For violation(s) noted, determine the cause by identifying weaknesses in internal controls, compliance review, training, management oversight, or other areas.
- Identify action needed to correct violations and to address weaknesses in the institution's compliance system, as appropriate.
- Discuss findings with management and obtain a commitment for corrective action.

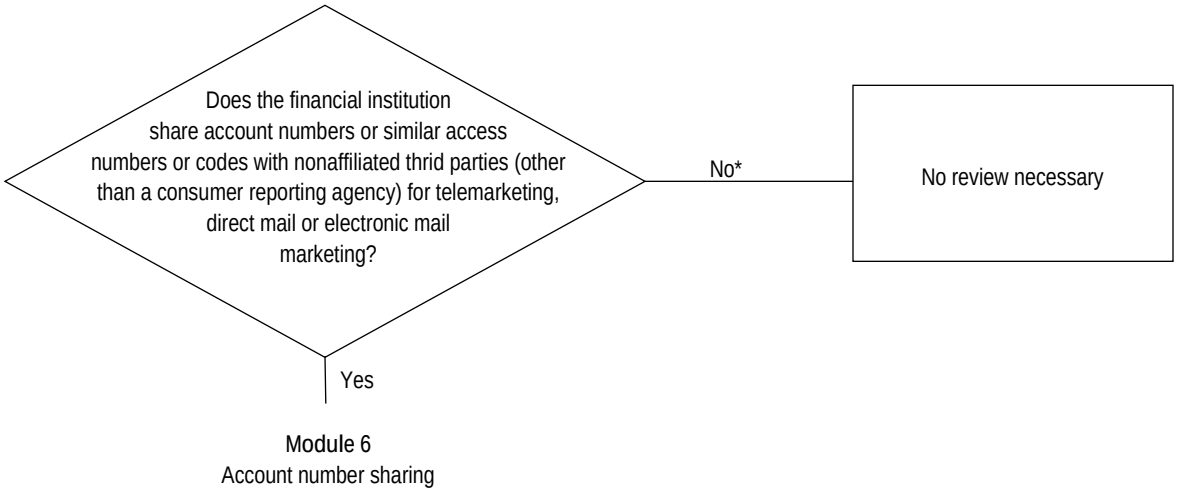
Privacy Notice and Opt Out Decision Tree



Redisclosure and Reuse 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 regulation.

NOTE: As of December 4, 2015, a financial institution is not required to provide an annual privacy notice to its applicable customers if it: (1) solely shares nonpublic personal information in accordance with the provisions of GLBA sections 502(b)(2) (corresponding to Regulation P section 1016.13) or 502(e) (corresponding to Regulation P sections 1016.14 and .15) or regulations prescribed under GLBA section 504(b); and (2) has not changed its policies and practices with regard to disclosing nonpublic personal information since its most recent disclosure to its customers that was made in accordance with GLBA section 503. A financial institution that at any time fails to comply with either of the criteria is not eligible for the exception and is required to provide an annual privacy notice to its customers.

A. Disclosure of Nonpublic Personal Information
   1. Select a sample of third party relationships with nonaffiliated third parties and obtain a sample of information 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 information shared and with whom the information was shared to those stated in the privacy notice and verify that what the institution tells consumers (both 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. (Sections 6,10)
      b. Compare the information 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 (Section 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 (Section 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 (Sections 3(b), 4(a), 5(a)(1), 8(a)(1));
      b. Accurately reflect the institution's policies and practices. (Sections 4(a), 5(a)(1), 8(a)(1)) *NOTE: this includes policies and 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 (Section 6). Note that if the institution shares under nonpublic personal information under Section 13 the notice provisions for that section shall also apply.
      d. If the model privacy form is used, determine that it reflects the institution's policies and practices. For institutions seeking a safe harbor for compliance with the content requirements of the regulation, verify that the notice has the proper content and is in the proper format as specified in the Appendix A of the regulation.
   2. Through discussions with management, review of the institution's policies, procedures, and internal controls and a sample of electronic or written consumer records where available, determine if the institution has adequate policies, procedures, and internal controls in place to provide notices to consumers, as appropriate. Assess the following:

      Timeliness of delivery (Sections 4(a), 7(c), 8(a)); and
      a. 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) (Section 9).
      b. For customers only, review the timeliness of delivery (Sections 4(d), 4(e), 5(a)), means of delivery of annual notice (Section 9(c)), and accessibility of or ability to retain the notice (Section 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 (Sections 3(b) and 7(a)(1));
b. Accurately explain the right to opt out (Section 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) (Section 7(a)(1)); and
d. Describe how the institution treats joint relationships, as applicable (Section 7(d)).

2. Through discussions with management, review of the institution's policies, procedures, and internal controls and a sample of electronic or written consumer records where available, determine if the institution has adequate policies, procedures, and internal controls in place to provide notices to consumers, as appropriate. Assess the following:
   a. Timeliness of delivery (Section 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) (Section 9).
   c. Reasonableness of the opportunity to opt out (the time allowed to and the means by which the consumer may opt out) (Sections 10(a)(1)(iii), 10(a)(3)); and
   d. 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 (Section 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, 41
4(a, c, d, e); 5; and 9(c, e)	Customer notice delivery rules	1, 3-7, 37, 39
13	Section 13 notice and contracting rules (as applicable)	12, 48
6(d)	Short form notice rules (optional for consumers only)	15-17
7; 8; and 10	Opt out rules	19-34, 42-44
14, 15	Exceptions	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

NOTE: As of December 4, 2015, a financial institution is not required to provide an annual privacy notice to its applicable customers if it: (1) solely shares nonpublic personal information in accordance with the provisions of GLBA sections 502(b)(2) (corresponding to Regulation P section 1016.13) or 502(e) (corresponding to Regulation P sections 1016.14 and .15) or regulations prescribed under GLBA section 504(b); and (2) has not changed its policies and practices with regard to disclosing nonpublic personal information since its most recent disclosure to its customers that was made in accordance with GLBA section 503. A financial institution that at any time fails to comply with either of the criteria is not eligible for the exception and is required to provide an annual privacy notice to its customers.

A. Disclosure of Nonpublic Personal Information

1. Select a sample of third party relationships with nonaffiliated third parties and obtain a sample of information 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 information shared and with whom the information was shared to ensure that the institution accurately categorized its information sharing practices and is not sharing nonpublic personal information outside the exceptions. (Sections 13, 14, 15)
   b. Compare the categories of information shared and with whom the information was 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. (Sections 10, 6)
   c. If the model privacy form is used, determine that it reflects the institution's policies and practices. For institutions seeking a safe harbor for compliance with the content requirements of the regulation, verify that the notice has the proper content and is in the proper format as specified in the Appendix of the regulation.
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 (Section 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 (Sections 3(b), 4(a), 5(a)(1));
   b. Accurately reflect the institution's policies and practices (Sections4(a), 5(a)(1)). Note, this includes policies and 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. (Sections 6, 13)
2. Through discussions with management, review of the institution's policies, procedures, and internal controls and a sample of electronic or written consumer records where available, determine if the institution has adequate policies, procedures, and internal controls in place to provide notices to consumers, as appropriate. Assess the following:
   a. Timeliness of delivery (Section 4(a)); and
   b. Reasonableness of the method of delivery (e.g., by hand; by mail; electronically, if the consumer agrees; as a necessary step of a transaction; or pursuant to the alternative delivery method) (Section9).
   c. For customers only, review the timeliness of delivery (Sections 4(d), 4(e), and 5(a)), means of delivery of annual notice Section 9(c)), and accessibility of or ability to retain the notice (Section 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, 41
4(a, c, d, e); 5; and 9(c, e)	Customer notice delivery rules	1, 3-7, 37, 39
13	Section 13 notice and contracting rules	12, 48

14, 15	Exceptions	49-51

Module 3

Sharing nonpublic personal information with nonaffiliated third parties only under Sections 14 and/or 15.

NOTE: This module applies only to customers.

NOTE: As of December 4, 2015, a financial institution is not required to provide an annual privacy notice to its applicable customers if it: (1) solely shares nonpublic personal information in accordance with the provisions of GLBA sections 502(b)(2) (corresponding to Regulation P section 1016.13) or 502(e) (corresponding to Regulation P sections 1016.14 and .15) or regulations prescribed under GLBA section 504(b); and (2) has not changed its policies and practices with regard to disclosing nonpublic personal information since its most recent disclosure to its customers that was made in accordance with GLBA section 503. A financial institution that at any time fails to comply with either of the criteria is not eligible for the exception and is required to provide an annual privacy notice to its customers.

A. Disclosure of Nonpublic Personal Information
   1. Select a sample of third party relationships with nonaffiliated third parties and obtain a sample of information shared between the financial institution and the third party.
      a. Compare the information shared and with whom the information was 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 (Sections 3(b), 4(a), 5(a)(1));
      b. Accurately reflect the institution's policies and practices (Sections 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 (Section 6).
      d. If the model privacy form is used, determine that it reflects the institution's policies and practices. For institutions seeking a safe harbor for compliance with the content requirements of the regulation, verify that the notice has the proper content and is in the proper format as specified in the Appendix of the regulation.
   2. Through discussions with management, review of the institution's policies, procedures, and internal controls and a sample of electronic or written customer records where available, determine if the institution has adequate policies, procedures, and internal controls in place to provide notices to customers, as appropriate. Assess the following:
      a. Timeliness of delivery (Sections 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; as a necessary step of a transaction; or pursuant to the alternative delivery method) (Section 9) and accessibility of or ability to retain the notice (Section 9(e)).

C. Checklist Cross References—Module 3

Regulation Section	**Subject**	**Checklist Questions**
4(a, d, e); 5; and 9	Customer notice delivery process	1, 3,-7, 35-41
6	Customer notice content and presentation	8-11, 14, 18
6(c)(5);	Simplified notice content (optional)	13
14, 15	Exceptions	49-51

Module 4

Redisclosure and Reuse 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 policies, procedures, and internal controls, determine whether the institution has adequate policies, procedures, and internal controls to prevent the unlawful redisclosure and reuse of the information where the institution is the recipient of nonpublic personal information (Section 11(a)).

B. Select a sample of information received from nonaffiliated financial institutions, to evaluate the financial institution's compliance with redisclosure and reuse 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 2 below (Section 11(a)(1)(i) and (ii)).
   2. Verify that the institution only uses and shares the information pursuant to an exception in Sections 14 and 15 (Section 11(a)(1)(iii)).

C. Checklist Cross References—Module 4

Regulation Section	Subject	Checklist Questions
11(a)	Reuse and disclosure presentation	45
14, 15	Exceptions	49-51

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 policies, procedures, and internal controls, determine whether the institution has adequate policies, procedures, and internal controls to prevent the unlawful redisclosure of the information where the institution is the recipient of nonpublic personal information (Section 11(b)).

B. Select a sample of information 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 2 below (Section 11(b)(1)(i) and (ii)).
   2. If the institution shares information with entities other than those under step 1 above, verify that the institution's information sharing practices conform to those in the nonaffiliated financial institution's privacy notice (Section 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 (Sections 10, 11(b)(1)(iii)).

C. Checklist Cross References—Module 5

Regulation Section	Subject	Checklist Questions
11(b)	Redisclosure	46

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 (Section 12(a)).

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 the accounts (Section 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 (Section 12(b)(2)).

D. Checklist Cross References—Module 6

Regulation Section	Subject	Checklist Questions

12	Account number sharing	47

References

Listed below are links to several Privacy resources, including the official examination procedures and the examination job-aid.

Regulations

FDIC Part 332: Privacy of Consumer Financial Information

FILs

FIL 01-106: Privacy of Consumer Financial Information

Job Aids

FDIC Staff Response to Questions Regarding the Privacy of Consumer Financial Information

Privacy of Consumer Financial Information - FDIC Part 332 Compliance Examination Job-Aid

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 4 of the regulation? [Section 4(a)(1))] *NOTE: A financial institution establishes a customer relationship when it enters into a continuing relationship with a consumer. [Section 4(c)(1)] 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. [Section 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 Sections 14 or 15? [Section 4(a)(2)] *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. [Section 4(b)])*		
3. Does the institution provide to existing customers, who obtain a revised 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? [Section 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; [Section 4(e)(1)(i)] or		
b. o 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? [Section 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? [Section 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? [Section 5(a)(1)and (2)] *NOTE: annual notices are not required for former customers. [Section 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? [Sections 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; [Section 6(a)(1)]		
b. the categories of nonpublic personal information that the institution discloses; [Section 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 Section 14 or Section 15; [Section 6(a)(3)]		

Examination Checklist Subpart A	Yes	No
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 Section 14 or Section 15; [Section 6(a)(4)]		
e. if the institution discloses nonpublic personal information to a nonaffiliated third party under Section 13, and no exception under Section 14 or Section 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; [Section 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; [Section 6(a)(6)]		
g. any disclosures that the institution makes under FCRA Section 603(d)(2)(A)(iii); [Section 6(a)(7)]		
h. the institution's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; [Section 6(a)(8)] and		
i. a general statement – with no specific reference to the third parties – that the institution makes disclosures to other nonaffiliated third parties for everyday business purposes, such as (with the institution including all that are applicable) to process transactions, maintain accounts, respond to court orders and legal investigations, or report to credit bureaus, or as otherwise permitted by law? [Section 6(a)(9), (b)(1) and (2)] *NOTE: Institutions that provide a model privacy form in accordance with the instructions in the Appendix of the regulation will receive a safe harbor for compliance with the content requirements 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; [Section 6(c)(1)(i)]		
b. information about the consumer's transactions with the institution or its affiliates; [Section 6(c)(1)(ii)]		
c. information about the consumer's transactions with nonaffiliated third parties; [Section 6(c)(1)(iii)] and		
d. information from a consumer reporting agency? [Section 6(c)(1)(iv)]		
10. Does the institution list the following Section 6(c)(1) 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? [Section 6(c)(2)] *NOTE: examples are recommended under Section 6(c)(2(i)) although not under Section 6(c)(1).*		
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:		

Examination Checklist Subpart A	Yes	No
a. financial service providers; [Section 6(c)(3)(i)]		
b. non-financial companies; [Section 6(c)(3)(ii)] and		
c. others? [Section 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 Section 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 6 (*see* questions 8b and 10); [Section 6(c)(4)(i)] and		
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; [Section 6(c)(4)(ii)(A)] or		
c. that the third party is a financial institution with which the institution has a joint marketing agreement? [Section 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 Section 14 and Section 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 (same as paragraph (a)(1) of section 6);		
c. the policies and practices the institution uses to protect the confidentiality and security of nonpublic personal information (same as paragraph (a)(8) of section 6); and		
d. a general statement that the institution makes disclosures to other nonaffiliated third parties as permitted by law (same as paragraphs (a)(9) and (b) of section 6)? [Section 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; [Section 6(c)(6)(i)] and		
b. whether security practices and policies are in place to ensure the confidentiality of the information in accordance with the institution's policy? [Section 6(c)(6)(ii)] *NOTE: the institution is not required to describe technical information about the safeguards used in this respect.*		
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? [Section 6(d)(1)]		
16. If the institution provides a short-form initial privacy notice according to Section 6(d)(1), does the short-form initial notice:		
a. conform to the definition of "clear and conspicuous"; [Section 6(d)(2)(i)]		
b. state that the institution's full privacy notice is available upon request; [Section 6(d)(2)(ii)] and		
c. explain a reasonable means by which the consumer may obtain the notice? [Section 6(d)(2)(iii)]		

Examination Checklist Subpart A	Yes	No
NOTE: the institution is not required to deliver the full privacy notice with the short-form initial notice. [Section 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; [Section 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? [Section 6(d)(4)(ii)]		
18. If the institution, in its privacy policies and practices, 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; [Section 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? [Section 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 Sections 13, 14, and 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? [Section 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; [Section 7(a)(1)(i)]		
b. that the consumer has the right to opt out of that disclosure; [Section 7(a)(1)(ii)] and		
c. a reasonable means by which the consumer may opt out? [Section 7(a)(1)(iii)]		
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; [Section 7(a)(2)(i)(A)]		
b. all the categories of nonaffiliated third parties to whom the information is disclosed; [Section 7(a)(2)(i)(A)];		
c. that the consumer has the right to opt out of the disclosure of that information; [Section 7(a)(2)(i)(A)] and		
d. the financial products or services that the consumer obtains to which the opt out direction would apply? [Section 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; [Section 7(a)(2)(ii)(A)]		

Examination Checklist Subpart A	Yes	No
b. a reply form included with the opt out notice; [Section 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; [Section 7(a)(2)(ii)(C)] or		
d. a toll-free telephone number? [Section 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. [Section 7(a)(2)(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? [Section 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? [Section 7(d)(1)]		
25. Does the institution permit each of the joint consumers in a joint relationship to opt out? [Section 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; [Section 7(d)(2)(i)] or		
b. each joint consumer is permitted to opt out separately? [Section 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; [Section 7(d)(3)]		
b. the joint consumers to notify the institution in a single response; [Section 7(d)(5)(i)] and		
c. each joint consumer to opt out either for himself or herself, and/or for another joint consumer? [Section 7(d)(5)(ii)]		
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? [Section 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? [Section 7(g)]		
30. Does the institution allow the consumer to opt out at any time? [Section 7(h)]		
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? [Section 7(i)(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)? [Section 7(i)(2)]		
Revised Notices		
33. Except as permitted by Sections 13, 14, and 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:		

Examination Checklist Subpart A	Yes	No
a. the institution has provided the consumer with a clear and conspicuous revised notice that accurately describes the institution's privacy policies and practices; [Section 8(a)(1)]		
b. the institution has provided the consumer with a new opt out notice; [Section 8(a)(2)]		
c. the institution has given the consumer a reasonable opportunity to opt out of the disclosure, before disclosing any information; [Section 8(a)(3)] and		
d. the consumer has not opted out? [Section 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; [Section 8(b)(1)(i)]		
b. discloses nonpublic personal information to a new category of nonaffiliated third party; [Section 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? [Section 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. [Section 8(b)(2)]*		
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? [Section 9(a)]		
36 Does the institution use a reasonable means for delivering the notices, such as:		
a. hand-delivery of a printed copy; [Section 9(b)(1)(i)]		
b. mailing a printed copy to the last known address of the consumer; [Section 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; [Section 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? [Section 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. [Section 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; [Section 9(c)(1)(i)] or		
b. for the customer who has requested the institution refrain from sending any information about the		

Examination Checklist Subpart A	Yes	No
customer relationship, making copies of the current privacy notice available upon customer request? [Section 9(c)(1)(ii)]		
38. For annual notices only, if the institution uses the alternative delivery method does the institution meet the following conditions:		
a. the institution does not disclose the customer's nonpublic personal information to nonaffiliated third parties other than for purposes under sections 13, 14, and 15; [Section9(c)(2)(i)(A)]		
b. the institution does not include on its privacy notice an opt out under FCRA section 603(d)(2)(A)(iii); [Section9(c)(2)(i)(B)]		
c. the institution previously provided the customer the opt out notices required by FCRA section 624 and Subpart C of Regulation V, if applicable, or the privacy notice is not the only notice provided to satisfy those requirements; [Section9(c)(2)(i)(C)]		
d. the information that the institution is required to convey on its privacy notice pursuant to sections 6(a)(1)-(5), (8), and (9) has not changed since it provided the immediately previous privacy notice to the customer, other than to eliminate categories of information that it discloses or categories of third parties to which it discloses information; [Section9(c)(2)(i)(D)]		
e. the institution uses the model privacy form for its privacy notice; [Section9(c)(2)(i)(E)]		
f. the institution conveys in a clear and conspicuous manner not less than annually on an account statement, coupon book, or a notice or disclosure that it is required or expressly and specifically permitted to issue to the customer under any other provision of law that the privacy notice is available on its web site and will be mailed to the customer upon request by telephone, and the statement states that the privacy notice has not changed and includes a specific web address that takes the customer to the web site where the privacy notice is pasted and a telephone number for the customer to request that it be mailed; [Section9(c)(2)(ii)(A)]		
g. the institution posts its privacy notice continuously and in a clear and conspicuous manner on a page on its web site on which the only content is the privacy notice, without requiring the customer to provide any information such as a login name or password or agree to any conditions to access the web site; [Section9(c)(2)(ii)(B)] and		
h. the institution mails its current privacy notice to those customers who request it by telephone within ten calendar days of the request? [Section9(c)(2)(ii)(C)]		
39. 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? [Section 9(e)(1)]		
40. 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; [Section 9(e)(2)(i)]		
b. mailing a printed copy to the last known address of the customer; [Section 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? [Section 9(e)(2)(iii)]		
41. Does the institution provide at least one initial, annual, and revised notice, as applicable, to joint consumers? [Section 9(g)]		

Examination Checklist Subpart B	Yes	No
Limits on Disclosure to Nonaffiliated Third Parties		
42. Does the institution refrain from disclosing any nonpublic personal information about a consumer to a nonaffiliated third party, other than as permitted under Sections 13, 14, and 15, unless:		
a. it has provided the consumer with an initial notice; [Section 10(a)(1)(i)]		
b. it has provided the consumer with an opt out notice; [Section 10(a)(1)(ii)]		
c. it has given the consumer a reasonable opportunity to opt out before the disclosure; [Section 10(a)(1)(iii)] and		
d. the consumer has not opted out? [Section 10(a)(1)(iv)] *NOTE: this disclosure limitation applies to consumers as well as to customers [Section 10(b)(1)], and to all nonpublic personal information regardless of whether the information was collected before or after receiving an opt out direction. [Section 10(b)(2)]*		
43. Does the institution provide the consumer with a reasonable opportunity to opt out such as by:		
a. mailing the notices required by Section 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; [Section 10(a)(3)(i)]		
b. where the consumer opens an on-line account with the institution and agrees to receive the notices required by Section 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; [Section 10(a)(3)(ii)] or		
c. for isolated transactions, providing the notices required by Section 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? [Section 10(a)(3)(iii)]		
44. 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? [Section 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		
45. If the institution receives information from a nonaffiliated financial institution under an exception in Section 14 or Section 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; [Section 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; [Section 11(a)(1)(ii)] and		
c. to disclose and use the information pursuant to an exception in Section 14 or Section 15 in the ordinary course of business to carry out the activity covered by the exception under which the information was received? [Section 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 the phrase "in the ordinary course of business" does not include marketing. [Section 11(a)(2)]*		

Examination Checklist Subpart B	Yes	No
46. If the institution receives information from a nonaffiliated financial institution other than under an exception in Section 14 or Section 15, does the institution refrain from disclosing the information except:		
a. to the affiliates of the financial institution from which it received the information; [Section 11(b)(1)(i)]		
b. to its own affiliates, which are in turn limited by the same disclosure restrictions as the recipient institution; [Section 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? [Section 11(b)(1)(iii)]		
Limits on Sharing Account Number Innformation for Marketing Purposes		
47. 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; [Section 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? [Section 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. [Section 12(c)(1)] A transaction account does not include an account to which third parties cannot initiate charges. [Section 12(c)(2)]*		

Examination Checklist Subpart C	Yes	No
Exception to Opt Out Requirements for Providers and Joint Marketing		
48. 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 Section 7 and Section 10, and the revised notice requirements in Section 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 Section 13); [Section 13(a)(1)]		
b. the institution has provided consumers with the initial notice; [Section 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 Section 14 or Section 15 in the ordinary course of business to carry out those purposes? [Section 13(a)(1)(ii)]		
Exceptions to Notice and Opt Out Requirements for Processing and Servicing Transactions		
49. If the institution discloses nonpublic personal information to nonaffiliated third parties, do the requirements for initial notice in Section 4(a)(2), opt out in Sections 7 and 10, revised notice in Section 8, and for service providers and joint marketing in Section 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; [Section 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 [Section 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? [Section 14(a)(3)]		
50. If the institution uses a Section 14 exception as necessary to effect, administer, or enforce a transaction, is the disclosure:		
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; [Section 14(b)(1)] or		
b. required, or is a usual, appropriate, or acceptable method, to:[Section 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; [Section 14(b)(2)(i)]		
ii. administer or service benefits or claims; [Section 14(b)(2)(ii)]		
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; [Section 14(b)(2)(iii)]		
iv. accrue or recognize incentives or bonuses; [Section 14(b)(2)(iv)]		
v. underwrite insurance or for reinsurance or for certain other purposes related to a consumer's		

Examination Checklist Subpart C	Yes	No
insurance; [Section 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; [Section 14(b)(2)(vi)(A)]		
(2) the transfer of receivables, accounts or interests therein; [Section 14(b)(2)(vi)(B)] or		
(3) the audit of debit, credit, or other payment information? [Section 14(b)(2)(vi)(C)]		
Other Exceptions to Notice and Opt Out Requirements		
51. If the institution discloses nonpublic personal information to nonaffiliated third parties, do the requirements for initial notice in Section 4(a)(2), opt out in Sections 7 and 10, revised notice in Section 8, and for service providers and joint marketers in Section 13, not apply because the institution makes the disclosure:		
a. with the consent or at the direction of the consumer; [Section 15(a)(1)]		
b. to protect the confidentiality or security of records, [Section15(a)(2)(i)]; to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability, [Section15(a)(2)(ii)]; for required institutional risk control or for resolving consumer disputes or inquiries, [Section15(a)(2)(iii)]; to persons holding a legal or beneficial interest relating to the consumer, [Section15(a)(2)(iv)]; or to persons acting in a fiduciary or representative capacity on behalf of the consumer; [Section15(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; [Section15(a)(3)]		
i. to protect the confidentiality or security of records; [Section 15(a)(2)(i)]		
ii. to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability; [Section 15(a)(2)(ii)]		
iii. for required institutional risk control or for resolving consumer disputes or inquiries; [Section 15(a)(2)(iii)]		
iv. to persons holding a legal or beneficial interest relating to the consumer; [Section 15(a)(2)(iv)] or		
v. to persons acting in a fiduciary or representative capacity on behalf of the consumer; [Section 15(a) (2)(v)]		
d. as specifically permitted or required by other provisions of law and in compliance with the Right to Financial Privacy Act, to law enforcement agencies, self-regulatory organizations, or for an investigation on a matter related to public safety; [Section15(a)(4)]		
e. to a consumer reporting agency in accordance with the FCRA or from a consumer report reported by a consumer reporting agency; [Section 15(a)(5)]		
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; [Section 15(a)(6)]		

Examination Checklist Subpart C	Yes	No
g. to comply with Federal, state, or local laws, rules, or legal requirements; [Section 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; [Section 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? [Section 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."*		

Children's Online Privacy Protection Act (COPPA)

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

Regulation: Children's Online Privacy Protection Rule

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. (§ 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

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

Introduction

Under Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM or Act)[1], the Federal Trade Commission (FTC) is charged with issuing regulations for implementing CAN-SPAM.[2] 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 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

1 15 USC 7701–7713

2 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).

- 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 can be found at the FTC website.

Controlling the Assault of Non-Solicited Pornography and marketing Act of 2003

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)]		
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)]		

Examination Worksheet—CAN-SPAM	Yes	No
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

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)[1]. 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"[2] registry by including banks, insurance companies, credit unions, and savings associations. The Federal Trade Commission's (FTC) telemarketing regulations parallel the FCC regulations[3] 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.[4]
- 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 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.

1 47 USC 227; The Federal Communications Commission final regulations were published in the *Federal Register* on July 25, 2003 (68 FR 44144).

2 The Federal Trade Commission (FTC) maintains the registry adopted by the FCC.

3 The Federal Trade Commission final regulations were published in the *Federal Register* on January 29, 2003. (68 FR 4580)

4 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.

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 not 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)][5]
- 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;
   - Process flow charts to determine how the financial institution's TCPA compliance is planned for, evaluated, and achieved;
   - Policies and procedures that address:

5 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)

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 Registration at FTC Website

Telephone Disclosure and Dispute Resolution Act of 1992

Telemarketing and Consumer Fraud and Abuse Prevention Act

Telecommunication Act of 1996

Do-Not-Call Implementation Act

Do-Not-Call Registry Act of 2003

Federal Communications Commission Resources

Do-Not-Call Registry

Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991

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: a) To any emergency telephone line, including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency; b) To the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or ABC c) To any telephone number assigned 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 for the call.		
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)]		
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)]		

Examination Worksheet—Telephone Consumer Protection Act	Yes	No
• 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)]		
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)]		

Fair Credit Reporting Act

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. Elements of the FCRA and Fair and Accurate Credit Transactions Act of 2003 (FACT Act) have been implemented in Regulation V (12 CFR 1022).

The FCRA was substantively amended in 2003 upon the passage of the 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 contained in regulations issued by the Consumer Financial Protection Bureau (Bureau), 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);
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[1]

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

[1] These reflect the interagency examination procedures in their entirety.

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 FCR

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 and used only in situations for which there are permissible

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.

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 gives a consumer the right to restrict an entity, with which it does not have a pre-existing business relationship, from using certain information obtained from an affiliate to make solicitations to that consumer. This provision is distinct from Section 603(d)(2)(A)(iii) which gives consumer the right to restrict the sharing of certain consumer information amongst affiliates.[3]

Under Section 624, an entity may not use information received from an affiliate to market its products or services to a consumer, unless the consumer is given notice and a reasonable opportunity and a reasonable and simple method to opt out of the making of such solicitations. The affiliate marketing opt-out applies to both transaction or experience information and "other" information, such as information from credit reports and credit applications. On November 7, 2007, the federal financial institution regulators published final regulations in the Federal Register to implement this section (72 FR 62910).[4]

Exceptions to the notice and opt out requirements apply when an entity uses eligibility information in certain ways, as described later in these procedures.

Key Definitions (12 CFR 1022.20)[5]

1. "**Eligibility information"** (12 CFR 1022.20(b)(3)) includes not only transaction and experience information, but also the type of information found in consumer reports, such as information from third party sources and credit scores. Eligibility information does not include aggregate or blind data that does not contain personal identifiers such as account numbers, names, or addresses.[6]
2. "**Pre-existing business relationship"** (12 CFR 1022.20(b)(4))[7] means a relationship between a person, such as a financial institution (or a person's licensed agent), and a consumer based on:
   a. A financial contract between the person and the consumer which is in force on the date on which the consumer is sent a solicitation covered by the affiliate marketing regulation;
   b. The purchase, rental, or lease by the consumer of the person's goods or services, or a financial transaction (including holding an active account or a policy in force, or having another continuing relationship) between the consumer and the person, during the 18-month period immediately preceding the date on which the consumer is sent a solicitation covered by the affiliate marketing regulation; or
   c. An inquiry or application by the consumer regarding a product or service offered by that person during the three-month period immediately preceding the date on which the consumer is sent a solicitation covered by the affiliate marketing regulation.
3. "**Solicitation"** (12 CFR 1022.20(b)(5) means the marketing of a product or service initiated by a person, such as a financial institution, to a particular consumer that is:
   a. Based on eligibility information communicated to that person by its affiliate; and
   b. Intended to encourage the consumer to purchase or obtain such product or service.

Examples of a solicitation include a telemarketing call, direct mail, e-mail, or other form of marketing communication directed to a particular consumer that is based on eligibility information received from an affiliate. A solicitation does not include marketing communications that are directed at the general public (e.g., television, general circulation magazine, and billboard advertisements).

Initial Notice and Opt-out Requirement (12 CFR 1022.21(a), 1022.24, and 1022.25). A financial institution and its

3 *See* Module 2, Section 603(d) Consumer Report and Information Sharing, for provisions pertaining to the sharing of consumer information. Under section 603(d)(2)(A)(iii) of the FCRA, entities are responsible for complying with the affiliate sharing notice and opt-out requirement, where applicable. Thus, under the FCRA, certain consumer information will be subject to two opt-outs, a sharing opt-out (section 603(d)) and a marketing use opt-out (section 624). These two opt-outs may be consolidated.

4 *See* 12 CFR 1022.20(a) for the scope of entities covered by Subpart C of 12 CFR 1022.

5 *See* 12 CFR 1022.20 for other definitions.

6 Specifically, "eligibility information" is defined in the affiliate marketing regulation as "any information the communication of which would be a consumer report if the exclusions from the definition of "consumer report" in Section 603(d)(2)(A) of the [Fair Credit Reporting] Act did not apply."

7 *See* 12 CFR 1022.20(b)(4)(ii) and (iii) for examples of pre-existing business relationships and situations where no pre-existing business relationship exists.

subsidiaries ("financial institution") generally may not use eligibility information about a consumer that it receives from an affiliate to make a solicitation for marketing purposes to the consumer, unless:

1. It is clearly and conspicuously disclosed to the consumer in writing or, if the consumer agrees, electronically, in a concise notice that the financial institution may use eligibility information about that consumer that it received from an affiliate to make solicitations for marketing purposes to the consumer;
2. The consumer is provided a reasonable opportunity and a reasonable and simple method to "opt out" (that is, the consumer prohibits the financial institution from using eligibility information to make solicitations for marketing purposes to the consumer);[8] and
3. The consumer has not opted out.

For example, a consumer has a homeowner's insurance policy with an insurance company. The insurance company shares eligibility information about the consumer with its affiliated depository institution. Based on that eligibility information, the depository institution wants to make a solicitation to the consumer about its home equity loan products. The depository institution does not have a pre-existing business relationship with the consumer and none of the other exceptions apply. The depository institution may not use eligibility information it received from its insurance affiliate to make solicitations to the consumer about its home equity loan products unless the insurance company gave the consumer a notice and opportunity to opt out and the consumer does not opt out.

Making Solicitations (12 CFR 1022.21(b)).[9] A financial institution (or a service provider acting on behalf of the financial institution) makes a solicitation for marketing purposes if:

1. The financial institution receives eligibility information from an affiliate, including when the affiliate places that information into a common database that the financial institution may access;
2. The financial institution uses that eligibility information to do one or more of the following:
   a. Identify the consumer or type of consumer to receive a solicitation;
   b. Establish criteria used to select the consumer to receive a solicitation; or
   c. Decide which of the financial institution's products or services to market to the consumer or tailor the financial institution's solicitation to that consumer; and
3. As a result of the financial institution's use of the eligibility information, the consumer is provided a solicitation.

A financial institution does not make a solicitation for marketing purposes (and therefore the affiliate marketing regulation, with its notice and opt-out requirements, does not apply) in the situations listed below, commonly referred to as "constructive sharing." Constructive sharing occurs when a financial institution provides criteria to an affiliate to use in marketing the financial institution's product and the affiliate uses the criteria to send marketing materials to the affiliate's own customers that meet the criteria. In this situation, the financial institution is not using shared eligibility information to make solicitations.

1. The financial institution provides criteria for consumers to whom it would like its affiliate to market the financial institution's products. Then, based on this criteria, the affiliate uses eligibility information that the affiliate obtained in connection with its own pre-existing business relationship with the consumer to market the financial institution's products or services (or directs its service provider to use the eligibility information in the same manner and the financial institution does not communicate with the service provider regarding that use).
2. A service provider, applying the financial institution's criteria, uses information from an affiliate, such as that in a shared database, to market the financial institution's products or services to the consumer, so long as it meets certain requirements, including:
   a. The affiliate controls access to and use of its eligibility information by the service provider under a written agreement between the affiliate and the service provider;
   b. The affiliate establishes, in writing, specific terms and conditions under which the service provider may access and use the affiliate's eligibility information to market the financial institution's products and services (or those of affiliates generally) to the consumer;
   c. The affiliate requires the service provider, under a written agreement, to implement reasonable policies and procedures designed to ensure that the service provider uses the affiliate's eligibility information in accordance with the terms and conditions established by the affiliate relating to the marketing of the financial institution's products or services;
   d. The affiliate is identified on or with the marketing materials provided to the consumer; and
   e. The financial institution does not directly use its affiliate's eligibility information in the manner

8 *See* 12 CFR 1022.24 and 1022.25 for examples of "a reasonable opportunity to opt out" and "reasonable and simple methods for opting out."

9 *See* 12 CFR 1022.21(b)(6) for examples of making solicitations.

described above under "Making Solicitations (12 CFR 1022.21(b))," item 2.

Exceptions to Initial Notice and Opt-out Requirements (12 CFR 1022.21(c)).[10] The initial notice and opt-out requirements do not apply to a financial institution if it uses eligibility information that it receives from an affiliate:

1. To make a solicitation for marketing purposes to a consumer with whom the financial institution has a pre-existing business relationship;
2. To facilitate communications to an individual for whose benefit the financial institution provides employee benefit or other services pursuant to a contract with an employer;
3. To perform services on behalf of an affiliate (but this would not allow solicitation where the consumer has opted out);
4. In response to a communication about the financial institution's products or services initiated by the consumer;
5. In response to a consumer's authorization or request to receive solicitations; or
6. If the financial institution's compliance with the affiliate marketing regulation would prevent it from complying with State insurance laws pertaining to unfair discrimination in any state in which the financial institution is lawfully doing business.

Contents of Opt-out Notice (12 CFR 1022.23). A financial institution must provide to the consumer a reasonable and simple method for the consumer to opt out. The opt-out notice must be clear, conspicuous, and concise, and must accurately disclose specific information outlined in 12 CFR 1022.23(a), including that the consumer may elect to limit the use of eligibility information to make solicitations to the consumer. *See* Appendix C to the regulation for the model notices contained in the affiliate marketing regulation.

Alternative contents. An affiliate that provides a consumer a broader right to opt out than that required by the affiliate marketing regulation may satisfy the regulatory requirements by providing the consumer with a clear, conspicuous, and concise notice that accurately discloses the consumer's opt-out rights.

Coordinated, consolidated, and equivalent notices. Opt-out and renewal notices may be coordinated and consolidated with any other notice or disclosure required under any other provision of law, such as the Gramm-Leach-Bliley Act (GLBA), 15 USC 6801 et seq. Renewal notices, which have additional required content (12 CFR 1022.27), may be consolidated with the annual GLBA privacy notices.

Delivery of the Opt-out Notice (12 CFR 1022.21(a)(3) and 1022.26)[11] An affiliate that has or previously had a pre-existing business relationship with the consumer must provide the notice either individually or as part of a joint notice from two or more members of an affiliated group of companies. The opt-out notice must be provided so that each consumer can reasonably be expected to receive actual notice. A consumer may not reasonably be expected to receive actual notice if, for example, the affiliate providing the notice sends the notice via e-mail to a consumer who has not agreed to receive electronic disclosures by e-mail from the affiliate providing the notice.[12]

Scope of Opt-out (12 CFR 1022.22(a) and 1022.23(a)(2)).[13] As a general rule, the consumer's election to opt out prohibits any affiliate covered by the opt-out notice from using eligibility information received from another affiliate, described in the notice, to make solicitations to the consumer. If two or more consumers jointly obtain a product or service, any of the joint consumers may exercise the right to opt out. It is impermissible to require all joint consumers to opt out before implementing any opt-out direction.

Menu of alternatives. A consumer may be given the opportunity to choose from a menu of alternatives when electing to prohibit solicitations, such as by:

1. Electing to prohibit solicitations from certain types of affiliates covered by the opt-out notice but not other types of affiliates covered by the notice,
2. Electing to prohibit solicitations based on certain types of eligibility information but not other types of eligibility information, or
3. Electing to prohibit solicitations by certain methods of delivery but not other methods of delivery.

One of the alternatives, however, must allow the consumer to prohibit all solicitations from all of the affiliates that are covered by the notice.

10 *See* 12 CFR 1022.21(d) for examples of exceptions to the initial notice and opt-out requirement.

11 *See* 12 CFR 1022.26(b) and (c) for examples of "reasonable expectation of actual notice" and "no reasonable expectation of actual notice."

12 For opt-out notices provided electronically, the notice may be provided in compliance with either the electronic disclosure provisions of 12 CFR 1022.24(b)(2) and 1022.24(b)(3) or the provisions in section 101 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq.

13 *See* 12 CFR 1022.22(a) for examples of the scope of the opt-out, including examples of continuing relationships.

Continuing relationship. If the consumer establishes a continuing relationship with a financial institution or its affiliate, an opt-out notice may apply to eligibility information obtained from one or more continuing relationships (such as a deposit account, a mortgage loan, or a credit card), if the notice adequately describes the continuing relationships covered. The opt-out notice can also apply to future continuing relationships if the notice adequately describes the continuing future relationships that would be covered.

Special rule for a notice following termination of all continuing relationships. After all continuing relationships with a financial institution or its affiliate(s) are terminated, a consumer must be given a new opt-out notice if the consumer later establishes another continuing relationship with the financial institution or its affiliate(s) and the consumer's eligibility information is to be used to make a solicitation. The consumer's decision not to opt out after receiving the new opt-out notice would not override a prior opt-out election that applies to eligibility information obtained in connection with a terminated relationship.

No continuing relationship (isolated transaction). If the consumer does not establish a continuing relationship with a financial institution or its affiliate, but the financial institution or its affiliate obtains eligibility information about the consumer in connection with a transaction with the consumer (such as an ATM cash withdrawal, purchase of traveler's checks, or a credit application that is denied), an opt-out notice provided to the consumer only applies to eligibility information obtained in connection with that transaction.

Time, Duration, and Renewal of Opt-out (12 CFR 1022.22(b) and (c) and 1022.27). A consumer may opt out at any time. The opt-out must be effective for a period of at least five years beginning when the consumer's opt-out election is received and implemented, unless the consumer later revokes the opt-out in writing or, if the consumer agrees, electronically. An opt-out period may be set at more than five years, including an opt-out that does not expire unless the consumer revokes it.

Renewal after opt-out period expires. After the opt-out period expires, a financial institution may not make solicitations based on eligibility information it receives from an affiliate to a consumer who previously opted out, unless:

1. The consumer receives a renewal notice and opportunity to opt out, and the consumer does not renew the opt-out; or
2. An exception to the notice and opt-out requirements applies.[14]

14 *See* 12 CFR 1022.21(c) for exceptions.

Contents of renewal notice. The renewal notice must be clear, conspicuous, and concise, and must accurately disclose most of the elements of the original opt-out notice, as well as the facts that:

1. The consumer previously elected to limit the use of certain information to make solicitations to the consumer;
2. The consumer's election has expired or is about to expire;
3. The consumer may elect to renew the consumer's previous election; and
4. If applicable, that the consumer's election to renew will apply for the specified period of time stated in the notice and that the consumer will be allowed to renew the election once that period expires.

See 12 CFR 1022.27(b) for all the content requirements of renewal notice.

Renewal period. Each opt-out renewal must be effective for a period of at least five years.

Affiliate who may provide the notice. The renewal notice must be provided by the affiliate that provided the previous opt-out notice, or its successor; or as part of a joint renewal notice from two or more members of an affiliated group of companies, or their successors, that jointly provided the previous opt-out notice.

Timing of the renewal notice. A renewal notice may be provided to the consumer either a reasonable period of time before the expiration of the opt-out period[15] or any time after the expiration of the opt-out period but before solicitations that would have been prohibited by the expired opt-out are made to the consumer.

Model forms for opt-out notices (12 CFR 1022, Appendix C). Appendix C of the affiliate marketing regulation contains model forms that may be used to comply with the requirement for clear, conspicuous, and concise notices. The five model forms are:

C-1 Model Form for Initial Opt-out Notice (Single-Affiliate Notice)

C-2 Model Form for Initial Opt-out Notice (Joint Notice)

C-3 Model Form for Renewal Notice (Single-Affiliate Notice)

C-4 Model Form for Renewal Notice (Joint Notice)

15 An opt-out period may not be shortened by sending a renewal notice to the consumer before expiration of the opt-out period, even if the consumer does not renew the opt-out. If a financial institution provides an annual privacy notice under the Gramm-Leach-Bliley Act, providing a renewal notice with the last annual privacy notice provided to the consumer before expiration of the opt-out period is a reasonable period of time before expiration of the opt-out in all cases. 12 CFR 1022.27(d)

C-5 Model Form for Voluntary "No Marketing" Notice

Use of the model forms is not required and a financial institution may make certain changes to the language or format of the model forms without losing the protection from liability afforded by use of the model forms. These changes may not be so extensive as to affect the substance, clarity, or meaningful sequence of the language in the model forms. Institutions making such extensive revisions will lose the safe harbor that Appendix C provides. Examples of acceptable changes are provided in Appendix C to the regulation.

Examination Procedures

Section 624 Affiliate Marketing Opt Out

1. Determine whether the financial institution receives consumer eligibility information from an affiliate. Stop here if it does not because Subpart C of 12 CFR 1022 does not apply.
2. Determine whether the financial institution uses consumer eligibility information received from an affiliate to make a solicitation for marketing purposes that is subject to the notice and opt-out requirements. If it does not, stop here.
3. Evaluate the institution's policies, procedures, practices and internal controls to ensure that, where applicable, the consumer is provided with an appropriate notice, a reasonable opportunity, and a reasonable and simple method to opt out of the institution's using eligibility information to make solicitations for marketing purposes to the consumer, and that the institution is honoring the consumer's opt-outs.
4. If compliance risk management weaknesses or other risks requiring further investigation are noted, obtain and review a sample of notices to ensure technical compliance and a sample of opt-out requests from consumers to determine if the institution is honoring the opt-out requests.
   a. Determine whether the opt-out notices are clear, conspicuous, and concise and contain the required information, including the name of the affiliate(s) providing the notice, a general description of the types of eligibility information that may be used to make solicitations to the consumer, and the duration of the opt out. (12 CFR 1022.23(a))
   b. Review opt-out notices that are coordinated and consolidated with any other notice or disclosure that is required under other provisions of law for compliance with the affiliate marketing regulation. (12 CFR 1022.23(b))
   c. Determine whether the opt-out notices and renewal notices provide the consumer a reasonable opportunity to opt out and a reasonable and simple method to opt out. (12 CFR 1022.24 and 1022.25)
   d. Determine whether the opt-out notice and renewal notice are provided (by mail, delivery or electronically) so that a consumer can reasonably be expected to receive that actual notice. (12 CFR 1022.26)
   e. Determine whether, after an opt-out period expires, a financial institution provides a consumer a renewal notice prior to making solicitations based on eligibility information received from an affiliate. (12 CFR 1022.27)

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.

Examination Procedures
Section 615(h) Duties of Users Regarding Risk-Based Pricing (Regulation V, Subpart H)

Background

Section 615(h) of the Fair Credit Reporting Act (FCRA) generally requires a user of consumer reports, such as a financial institution, to provide a risk-based pricing notice to a consumer when the financial institution, based on a consumer report, extends credit to the consumer on terms that are "materially less favorable" than the terms the financial institution has extended to other consumers. On January 15, 2010, the Federal Reserve and the Federal Trade Commission published final rules in the Federal Register (75 FR 2724) implementing this section of the FCRA.

The risk-based pricing notice requirement is designed primarily to improve the accuracy of consumer reports by alerting consumers to the existence of negative information in their consumer reports so that the consumers can, if they choose, check their consumer reports for accuracy and correct any inaccurate information. This notice provision is meant to complement an existing provision of the FCRA, Section 615(a), whereby a creditor that denies a consumer's application for credit, based in whole or in part on information in a consumer's report, must provide an adverse action notice. The new provision, Section 615(h), covers the situation where credit is offered at "materially less favorable terms," rather than being denied.

Definitions (12 CFR 1022.71)

The following definitions pertain to the rules governing the risk-based pricing regulation:

1. **"Material terms"** means in general:
   a. For open-end credit, the annual percentage rate (APR) required to be disclosed in the account opening disclosures required under Regulation Z. This does not include a temporary initial rate that is lower than the rate that will apply when the temporary rate expires, any penalty rate that applies upon the occurrence of specific events (such as a late payment), or any fixed APR option for a home equity line of credit;
   b. For credit cards (other than a credit card used to access a home equity line of credit or a charge card), the APR that applies for purchases. For credit cards without a purchase APR, "material terms" means the APR that varies based on consumer report information and that has the most significant financial impact on consumers;
   c. For closed-end credit, the APR required to be disclosed prior to consummation under the closed-end provisions of Regulation Z; and
   d. For credit that does not have an APR, the financial term that varies based on consumer report information and that has the most significant financial impact on consumers, such as an annual membership fee for a charge card.
2. **"Materially less favorable"** means, generally, that the cost of credit to a consumer would be significantly greater than the cost of credit to another consumer from or through the same creditor. Relevant factors in determining the significance of a difference in cost include the type of credit product, the term of the credit extension, and the extent of the difference.

General Requirements (12 CFR 1022.72-73)

A financial institution must provide to a consumer a notice ("risk-based pricing notice") in the form and manner prescribed by the regulation if:

1. The institution uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to a consumer for personal, family, or household purposes; and
2. Based in whole or in part on the consumer report, the institution grants, extends, or otherwise provides credit to that consumer on material terms that are materially less favorable than the most favorable material terms available

to a substantial proportion of consumers from that institution.

The obligation to provide the notice applies to the creditor to whom the obligation is initially payable, i.e. the original creditor. This interpretation excludes brokers and other intermediaries who do not themselves grant, extend, or provide credit to consumers. *See* preamble to the final regulation (75 FR at 2730 - 2731).

Determination of which consumers must receive notice (12 CFR 1022.72(b))

A financial institution may determine, on a case-by-case basis, whether a consumer has received material terms that are materially less favorable by comparing the material terms offered to the consumer to the material terms offered to other consumers for a specific type of credit product. A "specific type of credit product" means one or more credit products with similar features that are designed for similar purposes. Examples include student loans, unsecured credit cards, secured credit cards, new automobile loans, used automobile loans, fixed-rate mortgage loans, and variable-rate mortgage loans.

Because making such a direct comparison between consumers may not be operationally feasible, the rules provide the two alternative methods, a credit score proxy method and a tiered pricing method, both of which are described as follows:

1. ***Credit score proxy method*** (12 CFR 1022.72(b)(1)). If a creditor uses credit scores to set the material terms of credit, the creditor may determine a cutoff score that represents the point at which approximately 40 percent of its consumers have higher credit scores and 60 percent of its consumers have lower credit scores. The creditor may then provide a risk-based pricing notice to each consumer who has a credit score lower than the cutoff score.

Credit Score Proxy Example	
The number of all, or a representative sample of, consumers to whom the institution granted credit for a specific type of credit product	10,000
40 percent of consumers	4,000
Credit scores of the 4,000 consumers with the highest credit scores	700 or higher
Cutoff score	700
Credit scores of those consumers to whom the creditor must provide a risk-based pricing notice, because the consumers' scores are lower than cutoff score	699 or lower

Alternative to 40/60 cutoff. The regulation provides an alternative to the 40/60 cutoff discussed above for situations where more than 40 percent of consumers (e.g., 80 percent) receive the most favorable material terms. In such situations, the creditor may set a different cutoff score based on its historical experience. The cutoff score would be set at a point at which the approximate percentage of consumers who historically have received the most favorable material terms based on their credit score would not receive a notice in the future. Under this alternative, the risk-based pricing notices would be provided to the approximate percentage of consumers who historically have been granted credit on material terms other than the most favorable terms.

For example, based on a sample of credit extended in the past six months, a creditor may determine that approximately 80 percent of its consumers received credit at its lowest APR (i.e., the most favorable material terms), and 20 percent of its consumers received credit at a higher APR (i.e., material terms other than the most favorable). Approximately 80 percent of the sampled consumers had a credit score at or above 750, and 20 percent had a credit score below 750. As a result, the card issuer could select 750 s its cutoff score. Consumers who have credit scores lower than 750 would receive the risk-based pricing notice. See preamble to the final regulation (75 FR at 2733).

Recalculation. An institution must recalculate the score no less than every two years.

Specific type of product. A financial institution must calculate the cutoff score by considering the credit scores of all, or a representative sample of, the consumers who have received credit for a specific type of credit product.

New entrants or new products. For new entrants into the credit business or for new products subject to risk-based pricing, a financial institution may determine the cutoff score based on information from market research or other third-party sources. For a newly acquired credit portfolio, a financial institution may determine the cutoff score from information obtained from the party from which it acquired the portfolio. The institution must recalculate the cutoff score using the scores of its own consumers within one year after it begins using a score derived from market research, a third-party, or the party from which it acquired the portfolio. If, within that one year, it has not granted credit to a sufficient number of new consumers, thus preventing it from having sufficient data with which to recalculate a cut-off score based on the credit scores of its own consumers, it may continue to use the original cutoff score. However, within two years, it must calculate its own cutoff score if it has granted credit to some new consumers within those two years.

Use of multiple credit scores. For a financial institution that generally uses two or more credit scores to set material credit terms, the institution must determine the cutoff score using the same method used to evaluate multiple scores when making credit decisions (for example, using an average credit score). If the institution does not consistently use the same method for evaluating multiple scores, the institution must use a reasonable means. For example, the institution may use any one of the methods that the institution ordinarily uses or the average credit score of each consumer to calculate the credit score by a reasonable means.

No credit score available for a consumer. If no credit score is available for a consumer, a financial institution must assume that it is granting credit on materially less favorable terms and thus must provide a risk-based pricing notice to the consumer.

2. ***Tiered pricing method*** (12 CFR 1022.72(b)(2)). If a financial institution sets the material terms of credit by assigning each consumer to one of a discrete number of pricing tiers for a specific type of credit product, based in whole or in part on a consumer report, the institution may provide a risk-based pricing notice to each consumer who is not assigned to the top pricing tier or tiers.

   If the financial institution uses four or fewer pricing tiers, it complies by providing risk-based pricing notices to all consumers who do not qualify for the top, best-priced tier. If the institution uses five or more pricing tiers, it complies by providing the notices to all consumers who do not qualify for the two top, best-priced tiers and any other tier that, combined with the top two tiers, equal no less than the top 30 percent and no more than the top 40 percent of the total number of tiers.

Tiered Pricing Example		
Four or fewer tiers		
Top tier = best rate	APR	Notice requirement
Tier 1 (top)	8%	No risk-based pricing notice required.
Tier 2	10%	Risk-based pricing notice required for Tiers 2-4.
Tier 3	12%	
Tier 4	14%	
Five or more tiers (5 tiers)		
Tier 1 (top)	8%	No risk-based pricing notice required for top 30% to 40% of tiers. Top two tiers comprise 2 out of 5 (40%) of the number of tiers.
Tier 2	10%	
Tier 3	12%	**Risk-based notices required for Tiers 3–5.**
Tier 4	14%	
Tier 5	16%	
Five or more tiers (9 tiers)		
Tier 1 (top)	8%	No risk-based pricing notice required for top 30% to 40% of tiers. Top three tiers comprise 3 out of 9 (33%) of the number of tiers.
Tier 2	10%	
Tier 3	12%	
Tier 4	14%	**Risk-based notices required for Tiers 4–9.**
Tier 5	16%	
Tier 6	18%	
Tier 7	20%	
Tier 8	22%	
Tier 9	24%	

Application to credit card issuers (12 CFR 1022.72(c)). A credit card issuer may use any of the methods in 12 CFR 1022.72(b) to identify consumers to whom it must provide a risk-based pricing notice. Alternatively, the card issuer may provide the notice when:

(a) a consumer applies for a credit card in connection with an application program or in response to a solicitation, and more than one purchase APR may apply under the program or solicitation, and

(b) based in whole or in part on a consumer report, the credit card is issued to a consumer with an APR that is higher than the lowest APR available in connection with the application or solicitation.

The risk-based pricing requirements do not apply to a card issuer if the credit card program offers only a single annual APR (other than temporary initial rates or penalty rates) or if the issuer offers the consumer the lowest possible APR under the credit card program.

Content of the notice (12 CFR 1022.73(a)(1)*).* The risk-based pricing notice must include:

1. A statement that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that history;
2. A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;
3. The identity of each consumer reporting agency that furnished a consumer report used in the credit decision;
4. A statement that federal law gives the consumer the right to obtain a copy of a consumer report from the consumer reporting agency or agencies identified in the notice without charge for 60 days after receipt of the notice;
5. A statement informing the consumer how to obtain a consumer report from the consumer reporting agency or agencies identified in the notice and providing contact information (including a toll-free telephone number, where applicable) specified by the consumer reporting agency or agencies;
6. A statement directing consumers to the web site of the Bureau to obtain more information about consumer reports;
7. A statement that the terms offered, such as the APR, have been set based on information from a consumer report; and
8. A statement that the terms offered may be less favorable than the terms offered to consumers with better credit histories.

See Appendix H-1 of the regulation for a model form for the risk-based pricing notice.

Account Review (12 CFR 1022.72(d)). Generally, creditors must provide an account review risk-based pricing notice to the consumer if the creditor, based in whole or in part on a consumer report, increases the consumer's APR after a review of the consumer's account, unless one of the exceptions in 12 CFR 1022.74(a), (b), or (c) applies (for example, the creditor provides an adverse action notice).

Content of account review risk-based pricing notice (12 CFR 1022.73(a)(2)). The account review risk-based pricing notice must include:

1. A statement that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that history;
2. A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;
3. The identity of each consumer reporting agency that furnished a consumer report used in the account review;
4. A statement that federal law gives the consumer the right to obtain a copy of a consumer report from the consumer reporting agency or agencies identified in the notice without charge for 60 days after receipt of the notice;
5. A statement informing the consumer how to obtain a consumer report from the consumer reporting agency or agencies identified in the notice and providing contact information (including a toll-free telephone number, where applicable) specified by the consumer reporting agency or agencies;
6. A statement directing consumers to the web site of the Bureau to obtain more information about consumer reports;
7. A statement that the financial institution has conducted a review of the account using information from a consumer report; and
8. A statement that as a result of the review, the APR on the account has been increased based on information from a consumer report.

NOTE: Items 1 through 6 for account review risk-based pricing notice are substantially the same as items 1 through 6 for the risk-based pricing notice. Only the last two items in each list are different.

See Appendix H-2 of the regulation for a model form for the account review risk-based pricing notice.

Form of the notice (12 CFR 1022.73(b)). The risk-based pricing notices and the account review risk-based pricing notices must be clear and conspicuous and provided to the

consumer in oral, written, or electronic form. Creditors are deemed to be in compliance with the disclosure requirements through use of the optional, applicable model forms, found in Appendix H of the regulation.

Timing (12 CFR 1022.73(c)). The timing requirement depends on the specific type of credit transaction as specified below:

- For closed-end credit, a risk-based pricing notice must be provided to the consumer after the decision to approve a credit request is communicated to the consumer, but before consummation of the transaction.
- For open-end credit, the notice must be provided after the decision to grant credit is communicated to the consumer, but before the first transaction under the plan has been made.
- For account reviews, the notice must be provided at the time that the decision to increase the APR is communicated to the consumer. If no notice of the increase in the APR is provided to the consumer prior to the effective date of the APR change, the notice must be provided no later than five days after the effective date of the APR change.
- For automobile lending transactions made through an auto dealer that is unaffiliated with the institution, the institution may provide a risk-based pricing notice in the time periods described above for closed-end credit. Alternatively, the institution may arrange to have the auto dealer provide a risk-based pricing notice to the consumer on its behalf within these time periods and maintain reasonable policies and procedures to verify that the auto dealer provides the notices to consumers within the applicable time periods.
- For instant credit that is granted under an open-end credit plan to a consumer in person or by telephone, the risk-based pricing notice may be provided at the earlier of:
  - The time of the first mailing to the consumer after the decision is made to approve the credit, such as in a mailing containing the account agreement or a credit card; or
  - Within 30 days after the decision to approve the credit.

Exceptions (12 CFR 1022.74)
The rules contain a number of exceptions to the risk-based pricing notice requirement, as follows:

1. When a consumer applies for specific terms of credit, and receives them, unless those terms were specified by the creditor using a consumer report after the consumer applied for the credit and after the creditor obtained the consumer report (12 CFR 1022.74(a));
2. When a creditor provides a notice of adverse action (12 CFR 1022.74(b));
3. When a creditor makes a firm offer of credit in a prescreened solicitation (12 CFR 1022.74(c));
4. When an institution generally provides a credit score disclosure to each consumer that requests a loan that is or will be secured by residential real property (12 CFR 1022.74(d));
5. When an institution generally provides a credit score disclosure to each consumer that requests a loan that is not or will not be secured by residential real property (12 CFR 1022.74(e)):
6. When an institution, which otherwise provides credit score disclosures to consumers that request loans, provides a disclosure about credit scores when no credit score is available (12 CFR 1022.74(f)).

The regulation contains specific disclosure requirements for Sections 1022.74(d)-(f) exceptions, as discussed below.

Section 1022.74(d) exception – credit score disclosure for loans secured by residential real property (12 CFR 1022.74(d)). An institution is not required to provide a risk-based pricing notice to a consumer under Sections 1022.72(a) or (c) if:

1. The consumer requests from an institution an extension of credit that is or will be secured by one to four units of residential real property; and
2. The institution generally provides to each consumer that requests such an extension of credit a notice that contains the following:
   a. A statement that a consumer report (or credit report) is a record of the consumer's credit history and includes information about whether the consumer pays his or her obligations on time and how much the consumer owes to creditors;
   b. A statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes in the consumer's credit history;
   c. A statement that the consumer's credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;
   d. A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;
   e. A statement that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free report from each of the nationwide consumer reporting agencies once during any 12-month period;

f. Contact information for the centralized source from which consumers may obtain their free annual consumer reports;

g. A statement directing consumers to the web site of the Bureau to obtain more information about consumer reports;

h. The information required to be disclosed to the consumer in Section 609(g) of the FCRA, and as described in Module 3 of these examination procedures, under "Disclosure of Credit Scores by Certain Mortgage Lenders (FCRA), Section 609(g)"; and

i. The distribution of credit scores among consumers who are scored under the same scoring model that is used to generate the consumer's credit score. The distribution must:

   (i) Use the same scale as that of the credit score provided to the consumer; and

   (ii) Be presented:

   - In the form of a bar graph containing a minimum of six bars that illustrates the percentage of consumers with credit scores within the range of scores reflected in each bar,
   - By other clear and readily understandable graphical means, or
   - In a clear and readily understandable statement informing the consumer how his or her credit score compares to the scores of other consumers.

   The presentation may use a graph or statement obtained from the entity providing the credit score if it meets these requirements.

Form of the notice. (1022.74(d)) The notice must be:

a. Clear and conspicuous;

b. Provided on or with the notice required by Section 609(g) of the FCRA;

c. Segregated from other information provided to the consumer, except for the notice required by Section 609(g) of the FCRA; and

d. Provided to the consumer in writing and in a form that the consumer may keep.

Timing. (1022.74(d)) The notice must be provided to the consumer at the same time as the disclosure required by Section 609(g) of the FCRA is provided to the consumer, which must be provided as soon as reasonably practicable after the credit score has been obtained. In any event, the Section 1022.74(d) notice must be provided at or before consummation in the case of closed-end credit or before the first transaction is made under an open-end credit plan.

Content of the notice when using multiple credit scores. When an institution obtains two or more credit scores from consumer reporting agencies in setting material terms of credit, the content of the Section 1022.74(d) notice varies depending upon whether the institution only relies upon one of the credit scores or relies upon multiple credit scores.

a. If an institution only relies upon one of those credit scores in setting the material terms of credit granted, extended, or otherwise provided to a consumer (for example, by using the low, middle, high, or most recent score), the notice must include that credit score and the other information required by Section 1022.74(d).

b. If an institution relies upon multiple credit scores in setting the material terms of credit granted, extended, or otherwise provided to a consumer (for example, by computing the average of all the credit scores obtained), the notice must include one of those credit scores and the other information required by Section 1022.74(d).

At the institution's option, the notice may include more than one credit score, along with the additional information required by Section 1022.74(d) for each credit score disclosed.

Examples.

a. An institution uses consumer reports to set the material terms of mortgage credit granted, extended, or provided to consumers and regularly requests credit scores from several consumer reporting agencies. It relies upon the low score when determining the material terms it will offer to the consumer. The institution must disclose the low score in the Section 1022.74(d) notice.

b. An institution uses consumer reports to set the material terms of mortgage credit granted, extended, or provided to consumers and regularly requests credit scores from several consumer reporting agencies. The institution takes an average of all of the credit scores obtained in order to determine the material terms it will offer to the consumer, and thus relies upon all of the credit scores that it receives. The institution may choose one of these scores to include in the Section 1022.74(d) notice.

Model form. Appendix H-3 of the regulation contains a model form of the Section 1022.74(d) notice that is consolidated with the notice required by Section 609(g) of the FCRA. While use of the model form is optional, appropriate use of Model Form H-3 is deemed to comply with the requirements of Section 1022.74(d).

Section 1022.74(e) exception – credit score disclosure for loans not secured by residential real property (12 CFR 1022.74(e)). An institution is not required to provide a risk-based pricing notice to a consumer under Section 1022.72(a) or (c) if:

1. The consumer requests from an institution an extension of credit that is not or will not be secured by one to four units of residential real property; and
2. The institution provides to each consumer that requests such an extension of credit a notice that contains the following:
   a. A statement that a consumer report (or credit report) is a record of the consumer's credit history and includes information about whether the consumer pays his or her obligations on time and how much the consumer owes to creditors;
   b. A statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes in the consumer's credit history;
   c. A statement that the consumer's credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;
   d. A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;
   e. A statement that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free report from each of the nationwide consumer reporting agencies once during any 12-month period;
   f. Contact information for the centralized source from which consumers may obtain their free annual consumer reports;
   g. A statement directing consumers to the web site of the Bureau to obtain more information about consumer reports;
   h. The current credit score of the consumer or the most recent credit score of the consumer that was previously calculated by the consumer reporting agency for a purpose related to the extension of credit;
   i. The distribution of credit scores among consumers who are scored under the same scoring model that is used to generate the consumer's credit score. The distribution must:
      - Use the same scale as that of the credit score provided to the consumer, and
      - Be presented:
        - In the form of a bar graph containing a minimum of six bars that illustrates the percentage of consumers with credit scores within the range of scores reflected in each bar,
        - By other clear and readily understandable graphical means, or
        - In a clear and readily understandable statement informing the consumer how his or her credit score compares to the scores of other consumers.

      The presentation may use a graph or statement obtained from the entity providing the credit score if it meets these requirements.
   j. The range of possible credit scores under the model used to generate the credit score;
   k. The date on which the credit score was created; and
   l. The name of the consumer reporting agency or other person that provided the credit score.

   NOTE: Items a, b, c, d, e, f, g, and i for the Section 1022.74(e) notice are the same as items a, b, c, d, e, f, g, and i for the Section 1022.74(d) notice.

Form of the notice. 1022.74(e) The notice must be:

a. Clear and conspicuous;
b. Segregated from other information provided to the consumer; and
c. Provided to the consumer in writing and in a form that the consumer may keep.

Timing. 1022.74(e) The notice generally must be provided to the consumer as soon as reasonably practicable after the credit score has been obtained, but in any event at or before consummation in the case of closed-end credit or before the first transaction is made under an open-end credit plan. The notice may alternatively be provided in the following manner:

1. For automobile lending transactions made through an auto dealer that is unaffiliated with the institution, the institution may provide a Section 1022.74(e) notice in the time periods described above . Alternatively, the institution may arrange to have the auto dealer provide a Section 1022.74(e) notice to the consumer on its behalf within these time periods and maintain reasonable policies and procedures to verify that the auto dealer provides the notice to the consumer within the applicable time periods. If the institution arranges to have the auto dealer provide a Section 1022.74(e) notice, the institution complies if the consumer receives a notice containing a credit score obtained by the dealer, even if a different credit score is obtained and used by the institution. (12 CFR 1022.73(c)(2))

2. For instant credit that is granted under an open-end credit plan to a consumer in person or by telephone, the Section 1022.74(e) notice may be provided at the earlier of:
   a. The time of the first mailing to the consumer after the decision is made to approve the credit, such as in a mailing containing the account agreement or a credit card; or
   b. Within 30 days after the decision to approve the credit. 12 CFR 1022.73(c)(3))

Multiple credit scores. When an institution obtains two or more credit scores from consumer reporting agencies in setting material terms of credit, the content of the Section 1022.74(e) notice varies depending if the institution relies upon only one of the credit scores or relies upon multiple credit scores. These disclosures requirements are the same as those for the Section 1022.74(d) notices, as described previously.

Model form. Appendix H-4 of the regulation contains a model form of the Section 1022.74(e) notice. While use of the model form is optional, appropriate use of Model Form H-4 is deemed to comply with the requirements of Section 1022.74(e).

Section 1022.74(f) exception – credit score not available (12 CFR 1022.74(f)). An institution is not required to provide a risk-based pricing notice to a consumer under Section 1022.72(a) or (c) if the institution:

1. Regularly obtains credit scores from a consumer reporting agency and provides credit score disclosures to consumers in accordance with Sections 1022.74(d) or (e), but a credit score is not available from the consumer reporting agency from which the institution regularly obtains credit scores for a consumer to whom the institution grants, extends, or provides credit;
2. Does not obtain a credit score from another consumer reporting agency in connection with granting, extending, or providing credit to the consumer; and
3. Provides to the consumer a notice that contains the following:
   a. A statement that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that history;
   b. A statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time in response to changes in the consumer's credit history;
   c. A statement that credit scores are important because consumers with higher credit scores generally obtain more favorable credit terms;
   d. A statement that not having a credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;
   e. A statement that a credit score about the consumer was not available from a consumer reporting agency, which must be identified by name, generally due to insufficient information regarding the consumer's credit history;
   f. A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the consumer report;
   g. A statement that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free consumer report from each of the nationwide consumer reporting agencies once during any 12-month period;
   h. The contact information for the centralized source from which consumers may obtain their free annual consumer reports; and
   i. A statement directing consumers to the web site of the Bureau to obtain more information about consumer reports.

   NOTE: Items b, f, g, h, and i for the Section 1022.74(f) notice are the same as items b, f, g, h, and i for the Sections 1022.74(d) and (e) notices.

   Example. An institution uses consumer reports to set the material terms of non-mortgage credit granted, extended, or provided to consumers and regularly requests credit scores from a particular consumer reporting agency. As required by Section 1022.74(e), the institution provides those credit scores and additional information to consumers. The consumer reporting agency provides to the institution a consumer report on a particular consumer that contains one trade line, but does not provide the institution with a credit score on that consumer. If the institution does not obtain a credit score from another consumer reporting agency and, based in whole or in part on information in a consumer report, grants, extends, or provides credit to the consumer, the institution may provide the Section 1022.74(f) notice. If, however, the institution obtains a credit score from another consumer reporting agency, the institution may not rely upon the Section 1022.74(f) exception, but must satisfy the requirements of Section 1022.74(e).

Form of the notice. The Section 1022.74(f) notice must be:

1. Clear and conspicuous;
2. Segregated from other information provided to the consumer; and
3. Provided to the consumer in writing and in a form that the consumer may keep.

Timing. (1022.74(f)) The notice generally must be provided to the consumer as soon as reasonably practicable after the institution has requested the credit score, but in any event not later than consummation of a transaction in the case of closed-end credit or when the first transaction is made under an open-end credit plan. The notice may alternatively be provided in the following manner:

1. For automobile lending transactions made through an auto dealer that is unaffiliated with the institution, the institution may provide a Section 1022.74(f) notice in the time periods described above. Alternatively, the institution may arrange to have the auto dealer provide a Section 1022.74(f) notice to the consumer on its behalf within these time periods and maintain reasonable policies and procedures to verify that the auto dealer provides the notice to the consumer within the applicable time periods. 12 CFR 1022.73(c)(2))
2. For instant credit that is granted under an open-end credit plan to a consumer in person or by telephone, the Section 1022.74(f) notice may be provided at the earlier of:
    a. The time of the first mailing to the consumer after the decision is made to approve the credit, such as in a mailing containing the account agreement or a credit card; or
    b. Within 30 days after the decision to approve the credit. 12 CFR 1022.73(c)(3))

Model form. Appendix H-5 of the regulation contains a model form of the Section 1022.74(f) notice. While use of the model form is optional, appropriate use of Model Form H-5 is deemed to comply with the requirements of Section 1022.74(f).

Rules of Construction (12 CFR 1022.75) The rules clarify that, in general, only one risk-based pricing notice or one credit score exception notice is required to be provided per credit extension (however, an account review would still be required, if applicable). In a transaction involving two or more consumers, a financial institution must provide a risk-based pricing notice to each consumer. If the consumers have the same address, a financial institution may satisfy the requirements by providing a single risk-based pricing notice addressed to both consumers. For credit score disclosure exception notices, whether the consumers have the same address or not, the financial institution must provide a separate notice to each consumer.

Appendix H Appendix H contains five optional model forms that may be used to comply with the regulatory requirements. The five model forms are:

1. H-1 Model form for risk-based pricing notice
2. H-2 Model form for account review risk-based pricing notice
3. H-3 Model form for credit score disclosure exception for credit secured by one to four units of residential real property
4. H-4 Model form for credit score disclosure exception for loans not secured by residential real property
5. H-5 Model form for credit score disclosure exception for loans where credit score is not available

Use of the model forms is not required. A financial institution may change the forms by rearranging the format or by making technical modifications to the language of the forms. However, any change may not be so extensive as to materially affect the substance, clarity, comprehensibility, or meaningful sequence of the forms. Institutions making such extensive revisions would lose the "safe harbor" that Appendix H provides. Examples of acceptable changes are provided in Appendix H to the regulation.

Examination Procedures

1. Determine whether the financial institution uses consumer report information in consumer credit decisions.

    If yes, determine whether the institution uses such information to provide credit on terms that are "materially less favorable" than the most favorable material terms available to a substantial proportion of its consumers. Relevant factors in determining the significance of differences in the cost of credit include the type of credit product, the term of the credit extension, and the extent of the difference.

    If "yes," the financial institution is subject to the risk-based pricing regulations.
2. Determine whether the financial institution provides a risk-based pricing notice to a consumer (12 CFR 1022.72(a)). If it does, proceed to step #3. If the institution does not provide a risk-based pricing notice, proceed to step #5 to determine whether an exception applies (12 CFR 1022.74).
3. Determine the method the financial institution uses to identify consumers who must receive a risk-based pricing notice and whether the method complies with the regulation (12 CFR 1022.72(b)).
    a. For institutions that use the direct comparison method (12 CFR 1022.72(b)), determine whether the

institution directly compares the material terms offered to each consumer and the material terms offer to the other consumers for a specific type of credit product.

b. For institutions that use the credit score proxy method: (12 CFR 1022.72(b)(1))

   i. Determine whether the institution calculates the cutoff score by considering the credit scores of all, or a representative sample, of consumers who have received credit for a specific type of credit product;

   ii. Determine whether the institution recalculates the cutoff score no less than every two years;

   iii. For new entrants into the credit business, for new products subject to risk-based pricing, or for acquired credit portfolios, determine whether the institution recalculates the cutoff scores within time periods specified in the regulation;

   iv. For institutions using more than one credit score to set material terms, determine whether the institution establishes a cutoff score according to the methods specified in the regulation; and

   v. If no credit score is available for a consumer, determine whether the institution provides the consumer a risk-based pricing notice.

c. For institutions that use the tiered pricing method: (12 CFR 1022.72(b)(2))

   i. When four or fewer pricing tiers are used, determine if the institution sends risk-based pricing notices to consumers who do not qualify for the top, best-priced tier; or

   ii. When five or more pricing tiers are used, determine if the institution provides risk-based pricing notices to consumers who do not qualify for the two top, best-priced tiers and any other tier that, combined with the top two tiers, equal no less than the top 30 percent and no more than the top 40 percent of the total number of tiers.

d. For credit card issuers:

   i. Determine whether the card issuer uses the credit score proxy method or the tiered pricing method to identify consumers to whom it must provide a risk-based pricing notice.

   ii. If the institution does not use the credit score proxy method or the tiered pricing method, determine whether the card issuer uses the following method as permitted by 12 CFR 1022.72(c) to identify consumers to whom it must provide a risk-based pricing notice.:

      - A consumer applies for a credit card either in connection with an application program, such as a direct-mail offer or a take-one application, or in response to a solicitation under 12 CFR 1026.5a, and more than a single possible purchase annual percentage rate may apply under the program or solicitation; and
      - Based in whole or in part on a consumer report, the credit card issuer provides a credit card to the consumer with a purchase APR that is greater than the lowest purchase APR available in connection with the application or solicitation.

   iii. Determine whether the card issuer provides a risk-based pricing notice to each consumer that is provided a credit card with a purchase APR greater than the lowest purchase APR available under the program or solicitation.

4. Determine whether the risk based pricing notice contains: (12 CFR 1022.73(a)(1))

   a. A statement that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that history;

   b. A statement that the terms offered, such as the APR, have been set based on information from a consumer report;

   c. A statement that the terms offered may be less favorable than the terms offered to consumers with better credit histories;

   d. A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;

   e. The identity of each consumer reporting agency that furnished a consumer report used in the credit decision;

   f. A statement that federal law gives the consumer the right to obtain a copy of a consumer report from the consumer reporting agency or agencies identified in the notice without charge for 60 days after receipt of the notice;

   g. A statement informing the consumer how to obtain a consumer report from the consumer reporting agency or agencies identified in the notice and providing contact information (including a toll-free telephone number, where applicable) specified by the consumer reporting agency or agencies; and

   h. A statement directing consumers to the web site of the Bureau to obtain more information about consumer reports.

   Proceed to step #10.

5. If the institution does not provide a risk-based pricing notice, determine if one of the following situations that qualify for a regulatory exception applies: (12 CFR 1022.74(a)-(f))
   a. When a consumer applies for specific terms of credit, and receives them, unless those terms were specified by the creditor using a consumer report after the consumer applied for the credit and after the creditor obtained the consumer report;
   b. When a creditor provides a notice of adverse action;
   c. When a creditor makes a firm offer of credit in a prescreened solicitation;
   d. When an institution generally provides a credit score disclosure to each consumer that requests a loan that is or will be secured by residential real property;
   e. When an institution generally provides a credit score disclosure to each consumer that requests a loan that is not or will not be secured by residential real property; and
   f. When an institution, which otherwise provides credit score disclosures to consumers that request loans, provides a disclosure for when no credit score is available.
6. For institutions that choose to provide a credit score disclosure to consumers that request a loan that is or will be secured by residential real property, determine whether the Section 1022.74(d) notice generally is provided to each consumer that requests such an extension of credit and that each notice contains:
   a. A statement that a consumer report (or credit report) is a record of the consumer's credit history and includes information about whether the consumer pays his or her obligations on time and how much the consumer owes to creditors;
   b. A statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes in the consumer's credit history;
   c. A statement that the consumer's credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;
   d. A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;
   e. A statement that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free report from each of the nationwide consumer reporting agencies once during any 12-month period;
   f. Contact information for the centralized source from which consumers may obtain their free annual consumer reports;
   g. A statement directing consumers to the web site of the Bureau to obtain more information about consumer reports;
   h. The information required to be disclosed to the consumer in Section 609(g) of the FCRA, and as described in Module 3 of these examination procedures, under "Disclosure of Credit Scores by Certain Mortgage Lenders (FCRA), Section 609(g)"; and
   i. The distribution of credit scores among consumers who are scored under the same scoring model that is used to generate the consumer's credit score. The distribution should:
      - Use the same scale as that of the credit score provided to the consumer, and
      - Be presented:
        - In the form of a bar graph containing a minimum of six bars that illustrates the percentage of consumers with credit scores within the range of scores reflected in each bar,
        - By other clear and readily understandable graphical means, or
        - In a clear and readily understandable statement informing the consumer how his or her credit score compares to the scores of other consumers.

      The presentation may use a graph or statement obtained from the entity providing the credit score if it meets these requirements.
7. For institutions that choose to provide a credit score disclosure to consumers that request a loan that is not or will not be secured by residential real property, determine whether the Section 1022.74(e) notice generally is provided to each consumer that requests such an extension of credit and that each notice contains:
   a. A statement that a consumer report (or credit report) is a record of the consumer's credit history and includes information about whether the consumer pays his or her obligations on time and how much the consumer owes to creditors;
   b. A statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes in the consumer's credit history;
   c. A statement that the consumer's credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;

d. A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;

e. A statement that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free report from each of the nationwide consumer reporting agencies once during any 12-month period;

f. Contact information for the centralized source from which consumers may obtain their free annual consumer reports;

g. A statement directing consumers to the web site of the Bureau to obtain more information about consumer reports;

h. The current credit score of the consumer or the most recent credit score of the consumer that was previously calculated by the consumer reporting agency for a purpose related to the extension of credit;

i. The distribution of credit scores among consumers who are scored under the same scoring model that is used to generate the consumer's credit score. The distribution should:

- Use the same scale as that of the credit score provided to the consumer, and
- Be presented:
  - in the form of a bar graph containing a minimum of six bars that illustrates the percentage of consumers with credit scores within the range of scores reflected in each bar,
  - by other clear and readily understandable graphical means, or
  - in a clear and readily understandable statement informing the consumer how his or her credit score compares to the scores of other consumers.

The presentation may use a graph or statement obtained from the entity providing the credit score if it meets these requirements;

j. The range of possible credit scores under the model used to generate the credit score;

k. The date on which the credit score was created; and

l. The name of the consumer reporting agency or other person that provided the credit score.

8. For institutions that otherwise provide credit score disclosures to consumers that request loans, determine whether the Section 1022.74(f) notice is provided to the applicable consumers in situations where no credit score is available for the consumer, as required by 1022.74(f). Determine whether each notice contains:

a. A statement that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that history;

b. A statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time in response to changes in the consumer's credit history;

c. A statement that credit scores are important because consumers with higher credit scores generally obtain more favorable credit terms;

d. A statement that not having a credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;

e. A statement that a credit score about the consumer was not available from a consumer reporting agency, which must be identified by name, generally due to insufficient information regarding the consumer's credit history;

f. A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the consumer report;

g. A statement that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free consumer report from each of the nationwide consumer reporting agencies once during any 12-month period;

h. The contact information for the centralized source from which consumers may obtain their free annual consumer reports; and

i. A statement directing consumers to the web site of the Bureau to obtain more information about consumer reports.

9. For institutions that provide credit score exception notices and that obtain multiple credit scores in setting material terms of credit, determine whether the score(s) is disclosed in a manner consistent with the regulation: (12 CFR 1022.74(d)(4) and .74 (e)(4))

a. If an institution only relies upon one of those credit scores in setting the material terms of credit granted, extended, or otherwise provided to a consumer (for example, by using the low, middle, high, or most recent score), determine whether the notice includes that credit score and the other information required by Section 1022.74(d).

b. If an institution relies upon multiple credit scores in setting the material terms of credit granted, extended, or otherwise provided to a consumer (for example, by

computing the average of all the credit scores obtained), determine whether the notice includes one of those credit scores and the other information required by Section 1022.74(d).

10. Regardless of whether the institution provides risk-based pricing notices or credit score exception notices, if the institution increases the consumer's APR as the result of a review of a consumer's account, determine whether the financial institution provided the consumer with an account review risk-based pricing notice (12 CFR 1022.72(d)) if an adverse action notice was not already provided.
11. Determine whether the account review risk-based pricing notice contains (12 CFR 1022.73(a)(2)):
    a. a statement that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that history;
    b. a statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;
    c. the identity of each consumer reporting agency that furnished a consumer report used in the credit decision;
    d. a statement that federal law gives the consumer the right to obtain a copy of a consumer report from the consumer reporting agency or agencies identified in the notice without charge for 60 days after receipt of the notice;
    e. a statement that informs the consumer how to obtain a consumer report from the consumer reporting agency or agencies identified in the notice and provides contact information (including a toll-free telephone number, where applicable) specified by the consumer reporting agency or agencies;
    f. a statement that directs consumers to the web site of the Bureau to obtain more information about consumer reports;
    g. a statement that the financial institution has conducted a review of the account using information from a consumer report; and
    h. a statement that, as a result of the review, the APR on the account has been increased based on information from a consumer report.
12. For all notices, determine whether the notices are clear and conspicuous and comply with the specific format requirements for the notices (12 CFR 1022.73(b), .74(d)(2), .74(e)(2), and .74(f)(3)).
13. For all notices, determine whether the notices are provided within the required timeframes: (12 CFR 1022.73(c), .74(d)(3), .74(e)(3), and .74(f)(4))
    a. *Risk-based pricing notices and account review risk-based pricing notices*
        - For closed-end credit, the notice generally must be provided to the consumer after the decision to approve a credit request is communicated to the consumer, but before consummation of the transaction.
        - For open-end credit, the notice generally must be provided after the decision to grant credit is communicated to the consumer, but before the first transaction under the plan has been made.
        - For account reviews, the notice generally must be provided at the time that the decision to increase the APR is communicated to the consumer or no later than five days after the effective date of the change in the APR.
    b. *Credit score disclosures for loans secured by residential real property*
        - The credit score disclosure for loans secured by residential real property must be provided to the consumer at the same time as the disclosure required by Section 609(g) of the FCRA is provided to the consumer. The 609(g) notice must be provided as soon as reasonably practicable after the credit score has been obtained. In any event, the credit score disclosure for loans secured by residential real property must be provided at or before consummation in the case of closed-end credit or before the first transaction is made under an open-end credit plan.
    c. *Credit score disclosures for loans not secured by residential real property*
        - The notice generally must be provided to the consumer as soon as reasonably practicable after the credit score has been obtained, but in any event at or before consummation in the case of closed-end credit or before the first transaction is made under an open-end credit plan.
    d. *Credit score exception notices when no credit score is available*
        - The notice generally must be provided to the consumer as soon as reasonably practicable after the institution has requested the credit score, but in any event not later than consummation of a transaction in the case of closed-end credit or when the first transaction is made under an open-end credit plan.
    e. *All notices, except credit score disclosures for loans secured by residential real property*
        - For automobile lending transactions made through an auto dealer that is unaffiliated with the institution, the institution may provide a notice in

the time periods described above. Alternatively, the institution may arrange to have the auto dealer provide a notice to the consumer on its behalf within these time periods and maintain reasonable policies and procedures to verify that the auto dealer provides the notice to the consumer within the applicable time periods. If the institution arranges to have the auto dealer provide a credit score disclosure for loans not secured by residential real property, the institution complies if the consumer receives a notice containing a credit score obtained by the dealer with these time periods, even if a different credit score is obtained and used by the institution.

- For instant credit that is granted under an open-end credit plan to a consumer in person or by telephone, the notice may be provided at the earlier of:
  - The time of the first mailing to the consumer after the decision is made to approve the credit, such as in a mailing containing the account agreement or a credit card; or
  - Within 30 days after the decision to approve the credit.

14. For all notices, determine whether the financial institution follows the rules of construction pertaining to the number of notices provided to the consumer(s) (12 CFR 1022.75). In a transaction involving two or more consumers, a financial institution must provide a risk-based notice to each consumer. If the consumers have the same address, a financial institution may satisfy the requirements by providing a single risk-based pricing notice addressed to both consumers. For credit score disclosure exception notices, whether the consumers have the same address or not, the financial institution must provide a separate notice to each consumer.
15. For all notices, determine whether the financial institution uses the model forms in Appendix H of the regulation. If yes, determine that it does not modify the model form so extensively as to affect the substance, clarity, comprehensibility, or meaningful sequence of the forms (Appendix H).

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 605(h) Address Discrepancies

Section 605(h)(1) requires that, when providing a consumer report to a person that requests the report (a user), a nationwide consumer reporting agency (NCRA) must provide a notice of address discrepancy to the user if the address provided by the user in its request "substantially differs" from the address the NCRA has in the consumer's file. Section 605(h)(2) requires the federal banking agencies and the NCUA (the Agencies) and the FTC to prescribe regulations providing guidance regarding reasonable policies and procedures that a user of a consumer report should employ when such user has received a notice of address discrepancy. On November 9, 2007, the agencies published final rules in the Federal Register implementing this section. (72 FR 63718)

Definitions

"Nationwide consumer reporting agency." Section 603(p) defines an NCRA 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 and
2. Credit account information from persons who furnish that information regularly and in the ordinary course of business.

"**Notice of address discrepancy** (12 CFR 1022.82(b))." A "notice of address discrepancy" is a notice sent to a user by an NCRA (section 603(p)) that informs the user of a substantial difference between the address for the consumer that the user provided to request the consumer report and the address(es) in the NCRA's file for the consumer.

"Requirement to form a reasonable belief" (12 CFR 1022.82(c)). A user must develop and implement reasonable policies and procedures designed to enable the user to form a reasonable belief that the consumer report relates to the consumer whose report was requested, when the user receives a notice of address discrepancy in connection with a new or existing account.

The rules provide the following examples of reasonable policies and procedures for forming a reasonable belief that a consumer report relates to the consumer whose report was requested:

1. Comparing information in the consumer report with information the user
   a. has obtained and used to verify the consumer's identity as required by the Customer Identification Program rules (31 CFR 103.121);
   b. maintains in its records; or
   c. obtains from a third party; or
2. Verifying the information in the consumer report with the consumer.

"Requirement to furnish a consumer's address to an NCRA" (12 CFR 1022.82(d)). A user must develop and implement reasonable policies and procedures for furnishing to the NCRA an address for the consumer that the user has reasonably confirmed is accurate when the user

1. can form a reasonable belief that the report relates to the consumer whose report was requested;
2. establishes a continuing relationship with the consumer (i.e., in connection with a new account); and
3. regularly furnishes information to the NCRA that provided the notice of address discrepancy.

   A user's policies and procedures for furnishing a consumer's address to an NCRA must require the user to furnish the confirmed address as part of the information it regularly furnishes to the NCRA during the reporting period when it establishes a continuing relationship with the consumer.

The rules also provide the following examples of how a user may reasonably confirm an address is accurate:

1. Verifying the address with the consumer whose report was requested;
2. Reviewing its own records;
3. Verifying the address through third-party sources; or
4. Using other reasonable means.

Examination Procedures

(12 CFR 1022.82)

1. Determine whether a user of consumer reports has policies and procedures to recognize notices of address discrepancy that it receives from a nationwide consumer

reporting agency (NCRA)[16] in connection with consumer reports.

2. Determine whether a user that receives notices of address discrepancy has policies and procedures to form a reasonable belief that the consumer report relates to the consumer whose report was requested. (12 CFR 1022.82(c))

   See examples of reasonable policies and procedures "to form a reasonable belief" in 12 CFR 1022.82(c)(2).

3. Determine whether a user that receives notices of address discrepancy has policies and procedures to furnish to the NCRA an address for the consumer that the user has reasonably confirmed is accurate, if the user
   a. can form a reasonable belief that the report relates to the consumer;
   b. establishes a continuing relationship with the consumer; and
   c. regularly furnishes information to the NCRA. (12 CFR 1022.82(d)(1))

   See examples of reasonable confirmation methods in 12 CFR 1022.82(d)(2).

4. Determine whether the user's policies and procedures require it to furnish the confirmed address as part of the information it regularly furnishes to an NCRA during the reporting period when it establishes a relationship with the consumer. (12 CFR 1022.82(d)(3)

5. If procedural weaknesses or other risks requiring further information are noted, obtain a sample of consumer reports requested by the user from an NCRA that included notices of address discrepancy and determine:
   a. How the user established a reasonable belief that the consumer reports related to the consumers whose reports were requested: and
   b. If a consumer relationship was established:
      - Whether the institution furnished a consumer's address that it reasonably confirmed to the NCRA from which it received the notice of address discrepancy; and
      - Whether it furnished the address in the reporting period during which it established the relationship.

Conclusion. On the basis of examination procedures completed, form a conclusion about the ability of user's policies and procedures to meet regulatory requirements for the proper handling of address discrepancies reported by an NCRA.

16 A NCRA compiles and maintains files on consumers on a nationwide basis. As of the effective date of the rule (January 1, 2008) there were three such consumer reporting agencies: Experian, Equifax, and TransUnion. Section 603(p) of FCRA (15 USC 1681a).

Section 615(e) Change of Address

Section 615(e)(1)(C) requires the Agencies and the FTC to prescribe regulations for debit and credit card issuers regarding the assessment of the validity of address changes for existing accounts. The regulations require card issuers to have procedures to assess the validity of an address change if the card issuer receives a notice of change of address for an existing account, and within a short period of time (during at least the first 30 days) receives a request for an additional or replacement card for the same account. On November 9, 2007, the Agencies published final rules in the Federal Register implementing this section. (72 FR 63718)

Definitions **(12 CFR 334.91(b))**

The following definitions pertain to the rules governing the duties of card issuers regarding changes of address:

"Cardholder" a consumer who has been issued a credit or debit card.

"Clear and conspicuous" means reasonably understandable and designed to call attention to the nature and significance of the information presented.

Address validation requirements (12 CFR 334.91(c)). A card issuer must establish and implement policies and procedures to assess the validity of a change of address if it receives notification of a change of address for a consumer's debit or credit card account and, within a short period of time afterwards (during at least the first 30 days after it receives such notification), the card issuer receives a request for an additional or replacement card for the same account. In such situations, the card issuer must not issue an additional or replacement card until it assesses the validity of the change of address in accordance with its policies and procedures.

The policies and procedures must provide that the card issuer will:

1. Notify the cardholder of the request for an additional or replacement card
   a. at the cardholder's former address; or
   b. by any other means of communication that the card issuer and the cardholder have previously agreed to use; and
2. Provide to the cardholder a reasonable means of promptly reporting incorrect address changes; or
3. Assess the validity of the change of address according to the procedures the card issuer has established as a part of its Identity Theft Prevention Program (12 CFR 334.90).

Alternative timing of address validation (12 CFR 334.91(d). A card issuer may satisfy the requirements of these rules prior to receiving any request for an additional or replacement card

by validating an address when it receives an address change notification.

Form of notice (12 CFR 334.91(e))

Any written or electronic notice that a card issuer provides to satisfy these rules must be clear and conspicuous and provided separately from its regular correspondence with the cardholder.

Change of Address Examination Procedures (12 CFR 334.91)

1. Verify that the card issuer has policies and procedures to assess the validity of a change of address if:
   a. it receives notification of a change of address for a consumer's debit or credit card account; and
   b. within a short period of time afterwards (during at least the first 30 days after it receives such notification), the card issuer receives a request for an additional or replacement card for the same account. (12 CFR 334.91(c))
2. Determine whether the policies and procedures prevent the card issuer from issuing additional or replacement cards until it:
   a. notifies the cardholder at the cardholder's former address or by any other means previously agreed to and provides the cardholder a reasonable means to promptly report an incorrect address (12 CFR 334.91(c)(1)(i)-(ii)); or
   b. uses other reasonable means of evaluating the validity of the address change; (12 CFR 334.91(c)(2)).

   In the alternative, a card issuer may validate a change of address request when it is received, using the above methods, prior to receiving any request for an additional or replacement card. (12 CFR 334.91(d))
3. Determine whether any written or electronic notice sent to cardholders for purposes of validating a change of address request is clear and conspicuous and is provided separately from any regular correspondence with the cardholder. (12 CFR 334.91(e))
4. If procedural weaknesses or other risks requiring further information are noted, obtain a sample of notifications from cardholders of changes of address and requests for additional or replacement cards to determine whether the card issuer complied with the regulatory requirement to evaluate the validity of the notice of address change before issuing additional or replacement cards.

Conclusion. On the basis of examination procedures completed, form a conclusion about whether a card issuer's policies and procedures effectively meet regulatory requirements for evaluating the validity of change of address requests received in connection with credit or debit card accounts.

Section 623 Furnishers of Information – General

Background

Section 623 of the Fair Credit Reporting Act (FCRA) requires the federal banking agencies (Agencies) and the Federal Trade Commission (FTC) to:

Issue guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to consumer reporting agencies;

Prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines; and

Issue regulations identifying the circumstances under which a furnisher must reinvestigate disputes concerning the accuracy of information contained in a consumer report based on a direct request from a consumer.

On July 1, 2009, the Agencies and the FTC published final rules in the Federal Register (74 FR 31484) implementing this section of FCRA.

Definitions (12 CFR 1022.41)

The following definitions pertain to the rules governing the furnishers of information to a consumer reporting agency:

"Accuracy" means that the information a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer correctly:

1. Reflects the terms of and liability for the account or other relationship;
2. Reflects the consumer's performance and other conduct with respect to the account or other relationship; and
3. Identifies the appropriate consumer.

"Direct dispute" means a dispute submitted by a consumer directly to a furnisher (including a furnisher that is a debt collector) concerning the accuracy of any information contained in a consumer report and pertaining to an account or other relationship that the furnisher has or had with the consumer.

"Furnisher" means an entity that furnishes information relating to consumers to one or more consumer reporting agencies for inclusion in a consumer report. An entity is not a furnisher when it:

1. Provides information to a consumer reporting agency solely to obtain a consumer report in accordance with the permissible purposes outlined in sections 604(a) and (f) of the FCRA;
2. Is acting as a "consumer reporting agency" as defined in section 603(f) of the FCRA;

3. Is a consumer to whom the furnished information pertains; or
4. Is a neighbor, friend, or associate of the consumer, or another individual with whom the consumer is acquainted or who may have knowledge about the consumer, and who provides information about the consumer's character, general reputation, personal characteristics, or mode of living in response to a specific request from a consumer reporting agency.

"Identity theft" means a fraud committed or attempted using the identifying information of another person without authority. "Identifying information" means any name or number that may be used alone or in conjunction with any other information to identify a specific person (16 CFR 603.2).

"Integrity" means that the information a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer:

1. Is substantiated by the furnisher's records at the time it is furnished;
2. Is furnished in a form and manner that is designed to minimize the likelihood that the information may be incorrectly reflected in a consumer report; and
3. Includes:
   a. the information in the furnisher's possession about the account or other relationship that the relevant Agency has determined that the absence of which would likely be materially misleading in evaluating a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living; and
   b. the credit limit, if applicable and in the furnisher's possession.

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.

Reasonable policies and procedures concerning the accuracy and integrity of furnished information (12 CFR 1022.42) and Interagency Guidelines (12 CFR 1022, Appendix E).

Each furnisher must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of consumer information that it furnishes to a consumer reporting agency. The policies and procedures must be appropriate to the nature, size, complexity, and scope of each furnisher's activities. In developing its policies and procedures, a furnisher must consider the Interagency Guidelines and may include its existing policies and procedures that are relevant and appropriate. Each furnisher must also review its policies and procedures periodically and update them as necessary to ensure their continued effectiveness.

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 from a consumer reporting agency. 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; and
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.
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.

Duties upon notice of a direct dispute from a consumer (12 CFR 1022.43).

General rule. A furnisher must conduct a reasonable investigation of a direct dispute (unless exceptions, described later, apply) if the dispute relates to:

1. The consumer's liability for a credit account or other debt with the furnisher, such as direct disputes relating to whether there is or has been identify theft or fraud against the consumer, whether there is individual or joint liability on an account, or whether the consumer is an authorized user of a credit account;
2. The terms of a credit account or other debt with the furnisher, such as, direct disputes relating to the type of account, principal balance, scheduled payment amount on an account, or the amount of the credit limit on an open-end account.
3. The consumer's performance or other conduct concerning an account or other relationship with the furnisher such as, direct disputes relating to the current payment status, high balance, payment date, the payment amount, or the date an account was opened or closed; or
4. Any other information contained in a consumer report regarding an account or other relationship with the furnisher that bears on the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

Exceptions. The direct dispute requirements do not apply to a furnisher if the direct dispute relates to:

1. The consumer's identifying information such as name(s), date of birth, Social Security number, telephone number(s), or address(es);
2. The identity of past or present employers;
3. Inquiries or requests for a consumer report;
4. Information derived from public records, such as judgments, bankruptcies, liens, and other legal matters (unless the information was provided by a furnisher with an account or other relationship with the consumer);
5. Information related to fraud alerts or active duty alerts; or
6. Information provided to a consumer reporting agency by another furnisher.

The direct dispute requirements also do not apply if the furnisher has a reasonable belief that the direct dispute is:

1. submitted by a credit repair organization;
2. is prepared on behalf of the consumer by a credit repair organization; or
3. is submitted on a form supplied to the consumer by a credit repair organization.

Direct Dispute Address. A furnisher is required to investigate a direct dispute only if a consumer submits a dispute notice to the furnisher at:

1. The address provided by a furnisher and listed on a consumer report relating to the consumer;
2. An address clearly and conspicuously specified by the furnisher that is provided to the consumer in writing or electronically (if the consumer has agreed to the electronic delivery of information from the furnisher); or
3. Any business address of the furnisher if the furnisher has not provided a specific address for submitting direct disputes.

Direct Dispute Notice Contents. A dispute notice from a consumer must include:

1. Sufficient information to identify the account or other relationship that is in dispute, such as an account number and the name, address, and telephone number of the consumer;
2. The specific information that the consumer is disputing and an explanation of the basis for the dispute; and

3. All supporting documentation or other information reasonably required by the furnisher to substantiate the basis of the dispute. This documentation may include, for example, a copy of the relevant portion of the consumer report that contains the allegedly inaccurate information; a police report; a fraud or identity theft affidavit; a court order; or account statements.

Duties of a Furnisher after Receiving a Direct Dispute Notice from a Consumer. After receiving a dispute notice from a consumer, the furnisher must:

1. Conduct a reasonable investigation with respect to the disputed information;
2. Review all relevant information provided by the consumer with the dispute notice;
3. Complete its investigation of the dispute and report the results of the investigation to the consumer before the expiration of the period under section 611(a)(1) of the FCRA (15 U.S.C. 1681i(a)(1)) within which a consumer reporting agency would be required to complete its action if the consumer had elected to dispute the information under that section; and
3. If the investigation finds that the information reported was inaccurate, promptly notify each consumer reporting agency to which the furnisher provided inaccurate information of investigation findings and provide to the consumer reporting agency any correction to that information that is necessary to make the information provided by the furnisher accurate.

Frivolous or Irrelevant Disputes. A furnisher is not required to investigate a direct dispute if the furnisher has reasonably determined that the dispute is frivolous or irrelevant. A dispute qualifies as frivolous or irrelevant if:

1. The consumer did not provide sufficient information to investigate the disputed information;
2. The direct dispute is substantially the same as a dispute previously submitted by or on behalf of the consumer and the dispute is one with respect to which the furnisher has already complied with the statutory or regulatory requirements. However, a direct dispute would not be "substantially the same" as the one previously submitted if the dispute includes new information required by the regulation to be provided to the furnisher, but that had not previously been provided; or
3. The furnisher is not required to investigate the direct dispute because one or more of the exceptions listed in 12 CFR 1022.43(b) applies.

Upon making a determination that a dispute is frivolous or irrelevant, the furnisher must notify the consumer of the determination not later than five business days after making the determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the furnisher. The furnisher's notice that a dispute is frivolous or irrelevant must include the reasons for such determination and identify any information required to investigate the disputed information. The notice may consist of a standardized form describing the general nature of such information.

Examination Procedures

1. Determine whether the financial institution furnishes consumer information to a consumer reporting agency about an account or other relationship with a consumer. If so, the institution is subject to 12 CFR 1022.40.
2. Determine whether the financial institution has established and implemented reasonable policies and procedures regarding the accuracy and integrity of information furnished to a consumer reporting agency (12 CFR 1022.42(a)).
3. Determine whether the institution considered the Interagency Guidelines in Appendix E of the regulation when developing its policies and procedures, and incorporated the guidelines as appropriate (12 CFR 1022.42(b)).
4. Determine whether the institution reviews its policies and procedures periodically and updates them as necessary to ensure their effectiveness (12 CFR 1022.42(c)).
5. 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) [15U.S.C. § 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 U.S.C. § 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 U.S.C.§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 U.S.C. § 1681s-2(a)(5)].

6. 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 U.S.C. § 1681s-2(b)(1)(A)];
   b. Reviewed all relevant information provided by the consumer reporting agency. Section 623(b)(1)(B) [15 U.S.C. § 1681s-2(b)(1)(B)];
   c. Reported the results of the investigation to the consumer reporting agency. Section 623(b)(1)(C) [15 U.S.C. § 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 U.S.C. § 1681s-2)(b)(1)(D)]; and
   e. Modified, deleted, or blocked the reporting of information that could not be verified.
7. Determine whether the institution conducts reasonable investigations of direct disputes from consumers, including a review of all relevant information provided by the consumer (12 CFR 1022.43(e)(1) and (2)).
   a. Determine whether the institution completes the investigation and reports the results to the consumer within the required timeframe (12 CFR 1022.43(e)(3)).
   b. Determine whether the institution notifies and provides corrected information to the consumer reporting agencies when the results of its investigation find that inaccurate information was furnished to the consumer reporting agencies (12 CFR 1022.43(e)(4)).
   c. When the institution finds that a dispute is frivolous or irrelevant, determine whether the institution:
      - Notifies the consumer within five days after finding the dispute frivolous or irrelevant (12 CFR 1022.43(f)(2)), and
      - Includes in the consumer notification the reasons for the findings and the information necessary to investigate the disputed information (12 CFR 1022.43(f)(3)).

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.

Section 615(f) of the FCRA also prohibits a financial institution from selling or transferring debt caused by an alleged identity theft.

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.

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. Institutions can use the following model text 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.

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 policies 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

Statute

Fair Credit Reporting Act

Regulations

CFPB 12 CFR 1022

FILs

FIL 61-2001: Guidance on the Permissible Use of Consumer Reports in Certain Business Related Extensions of Credit

Job Aids

Privacy of Consumer Financial Information - FDIC Part 332 Compliance Examination Job-Aid

IX. Retail Sales

Retail Investment Sales

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.[1] 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,[2] and annuities.[3] 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 §1001 of GLBA, a bank is exempt from registration as a broker[4] 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 minimis* 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.[5] 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 Bank trust and fiduciary activities are viewed as non-retail. RMS 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 RMS Trust examiners is encouraged to ensure that activities receive the appropriate review.

2 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.

3 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.

4 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.

5 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),[6] FDIC Part 344 – Recordkeeping and Confirmation Requirements for Securities Transactions,[7] Treasury Regulations Part 403.5(d) – Custody of Securities Held by Financial Institutions that are Government Securities Brokers and Dealers,[8] and Treasury Regulations Part 450 – Custodial Holdings of Government Securities by Depository Institutions[9]. 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.[10]

At the end of the examination, examiners should document their conclusions about the bank's retail securities activities in the 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*[11] 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 500 transactions (excluding government securities transactions) per year.[12]
  - 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.

6 FDIC Laws, Regulations, Related Acts, and Statements of Policy.

7 See 12 CFR 344.

8 See 17 CFR 403.5(d).

9 See 17 CFR 450.

10 Examiners should refer to the general compliance examination procedures for guidance on transaction sampling and testing.

11 The Interagency Statement does not apply to trust activities. When trust powers are exercised, transactions should occur in segregated non-retail departments.

12 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,[13] 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.[14]

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 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–1.8. The written response should be retained in the examination workpapers.

Board and 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.

13 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.

14 DCP 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.

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:

- 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 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,[15] 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.

15 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.

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:

- *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 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 DCP Regional Office staff.

IRA and KEOGH Accounts

Where the bank offers self-directed IRA or Keogh accounts, the Interagency Statement generally applies,[16] except with respect to the suitability guidelines.[17] 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.

16 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).

17 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.

- 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 in SOURCE under the tabbed section labeled "NDP Sales" whether the institution sells investments (yes/no).

When a bank does not adhere to the Interagency Statement, these findings must be recorded in SOURCE under the "NDP Sales" tab, " 1: 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

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

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)

Treasury Regulations Part 450 – Custodial Holdings of Government Securities by Depository Institutions
17 CFR 450

Department of Treasury Staff Interpretations of Government Securities Regulations
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

Financial Institution Letters

FIL 38-2002: Credit Risks Arising From Bank Investment Securities and Custodial Accounts Held at Securities Broker-Dealers

FIL 80-98: Nondeposit Investment Products and Recordkeeping Requirements Questions and Answers

FIL 22-98: FDIC Adopts FFIEC's Modified Policy Statement on Repurchase Agreements

FIL 66-95: Overnight Hold-In-Custody Repurchase Transactions

FIL 9-94: Interagency Statement on the Retail Sales of Nondeposit Investment Products

RFDIC Legal Advisory Opinions

Advisory Opinion 86-34: Plan to Make Mutual Funds Available to Bank's Customers

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 92-74: 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 95-18: Custodial Holdings of Government Securities Held for Customers by Depository Banks

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			
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			
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 Securities 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?			
(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 Security Lending?			
2. For banks holding government securities as a custodian for other institutions:	450.4(a)(3)(i)		
(a) If the bank holds government securities that have been identified as customer securities by another depository institution:	450.4(a)(6)		
(1) Does the bank maintain these securities in a separate, designated account 450.4(a)(2)(i)(B) for customers of the depository institution?	450.4(a)(2)(i)(B)		
(2) Does the bank keep identified customer securities separate from other 450.4(a)(2)(ii) securities held for the other institution?	450.4(a)(2)(ii)		

Job Aid for 17 CFR §450 Custodial Holdings of Government Securities 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**
(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 Securities 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**
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? Note that the total amount of a security pledged to individual customers cannot exceed the fair market value or the par value of the security at any point in time.			
(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

Introduction

The following supervisory information and examination procedures apply to retail sales, solicitation, advertising, or offers of any insurance product or annuity[1] to a consumer[2] by a FDIC-supervised insured depository institution[3] or any person engaged in such activities at an office of the institution or on behalf of the institution. These materials do not apply to sales of insurance or annuities that occur as part of an institution'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 institutions, 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 institutions 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 institution as well as other parties that offer insurance or annuities on institution premises or on the institution's behalf. Under Part 343, a party offers these products on behalf of the institution when:

- it represents that it is doing so; or
- it pays the institution commissions for receiving customer referrals; or
- documents that evidence the sales transaction refer to the institution.

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, institutions that offer them must also adhere to the program requirements explained in the Interagency Policy Statement. In particular, an institution 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 an institution that offers insurance products, examiners must consider these activities when assessing the quality of the institution'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

1 The sale of variable annuities is supervised as both an insurance and an investment activity. Consequently, institutions 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).

2 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).

3 FDIC-supervised insured depository institution means any State nonmember insured bank or State savings association for which the FDIC is the appropriate Federal banking agency pursuant to section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

4 FDIC Statements 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 regulations, which complement financial solvency regulations, regardless of whether an institution 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.

insurance 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 institution'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 institution's program that present the greatest degree of risk to the institution or to consumers.

At the conclusion of the examination, examiners should document their conclusions about the institution's retail insurance sales activities in the examination work papers and Report of Examination, as appropriate. Institutions 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 institution. Information sharing agreements are in place with most states, and a list of contacts is posted on the National Association of Insurance Commissioners (NAIC) website: http://www.naic.org/state_web_map.htm.

Review and Analysis

Examiners should use the guidance below to evaluate the institution's CMS as it pertains to retail insurance sales activities to determine whether risks are adequately managed. After completing the review of the institution'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-2.4. 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 Management Oversight Evaluation

Consider whether the institution's board of directors has adopted written policies and procedures for the institution'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 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 institution 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 institution'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 institution premises;
  - Controls for the use of institution space, personnel, and equipment;
  - Detailed compensation arrangements for all institution 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 institution to monitor the activities of the third party and its sales representatives and to periodically review compliance with the agreement;
  - Authorization for the institution 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 institution for potential liability caused by the third party's sales activities; and
  - Written employment contracts satisfactory to the institution for personnel employed by both the institution and the third party; and
- Institution management periodically monitors the third party's compliance with the agreement.

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 institution 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 institution's insurance sales policy when making customer referrals.

Compensation

Compensation to institution 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 institution 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 INSTITUTION
- 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 institution 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 institution 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 institution'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 institution 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 institution review customer complaints to identify compliance issues?

Audit Function Evaluation

Consider whether the institution'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 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 institution's compliance management system that require further review to complete their assessment and to determine the institution'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 institution, 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 institution's monitoring at identifying and eliminating documentation deficiencies.

Review customer complaints and consider whether the institution 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 in SOURCE under the tabbed section labeled "NDP Sales" whether the institution sells insurance (yes/no).

References

12 CFR 343: Consumer Protection in Sales of Insurance

Regulatory Alert: Final Rule Regarding Consumer Protection in Sales of Insurance (3/26/2018)

Federal Register publication of latest insurance sales rule making it applicable to State savings associations.

FIL 84-2000: Consumer Protection for Bank Sales of Insurance
Federal Register publication of insurance sales rule with preamble that contains useful interpretive information.

Interagency Statement on Retail Sales of Nondeposit Investment Products

Joint Interpretations of the Interagency Statement on Retail Sales of Nondeposit Investment Products
Also released as FIL 61-95: Nondeposit Investment Activities

FIL 84-2001: Questions and Answers on Consumer Protections for Bank Sales of Insurance

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.

Job Aids

Job Aid for Review of Retail Sales of Insurance and Annuities				
	Yes	**No**	**N/A**	**Comments**
Policies and Procedures				
1. Do the institution'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 institution's policies and procedures detail sales employee qualification, training, licensing and compensation practices? ***See* §343.60.**				
3. Do the institution'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 institution'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 institution's policies and procedures prohibit discrimination against victims of domestic violence or providers of services to such victims? ***See* §343.30 (c)**				
Disclosures				
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);**				

Job Aid for Review of Retail Sales of Insurance and Annuities				
	Yes	**No**	**N/A**	**Comments**
Disclosures—*continued*				
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 institution or its affiliates; ***See* §343.40(a)(1)** • *not* guaranteed by the institution 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 institution; ***See* §343.40(a)(2) and** • are subject to investment risk, including potential loss of principal. ***See* §343.40(a)(3)**				
9. Where **insurance** is solicited, offered, or sold in connection with a **credit application**, do disclosures state that the institution may not condition the extension of credit on either: • the consumer's purchase of an insurance product or annuity from the institution 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)**				

Job Aid for Review of Retail Sales of Insurance and Annuities				
	Yes	**No**	**N/A**	**Comments**
Advertising and Promotional Materials				
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 INSTITUTION • MAY GO DOWN IN VALUE **See §343.40(c)(5)**				
Training				
12. Does the institution'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				
	Yes	**No**	**N/A**	**Comments**
Monitoring				
Sales Practices 13. Does the institution ensure that sales representatives do not engage in misleading or coercive sales practices? ***See* §343.30.** 14. Does the institution 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 institution ensure that disclosures are made in an appropriate and timely way? Does the institution'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)**				
16. Does the institution'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.				

Job Aid for Review of Retail Sales of Insurance and Annuities				
	Yes	**No**	**N/A**	**Comments**
***See* §343.40(c)(4).**				

Job Aid for Review of Retail Sales of Insurance and Annuities				
	Yes	**No**	**N/A**	**Comments**
Monitoring—*continued*				
17. Does the institution'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 institution 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).**				
18. *Do hiring practices* for insurance sales personnel include consideration of applicants' qualifications and experience? Does the institution 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.**				
• Institution 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.				
19. Does the institution 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?				

Job Aid for Review of Retail Sales of Insurance and Annuities				
	Yes	**No**	**N/A**	**Comments**
Audit Programs				
20. Does the institution have an audit program that includes insurance sales? Is it sufficient given the volume and complexity of the institution's products, as well as the institution's monitoring program?				
Complaint and Resolution Monitoring				
21. Does the institution 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 Oversights				
22. Does the institution responsibly manage the insurance and annuity sales compliance process?				

X. Other Consumer Compliance Issues

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.[1]

The regulation contained in this part describes the official sign of the FDIC and prescribes its use by insured depository institutions. It also prescribes the official advertising statement insured depository institutions must include in their advertisements. For purposes of Part 328, the term "insured depository institution" includes insured branches of a foreign depository institution. The regulation does not apply to non-insured offices or branches of insured depository institutions located in foreign countries.

Examination Objective

The objective of the examination is to:

- Determine whether public advertisements and signs comply with applicable regulatory requirements and adhere to FDIC guidance.

Examination Procedures

1. Determine whether the official sign is properly displayed at each station or window where deposits are received, in accordance with the requirements of §§ 328.1 and 328.2, including the requirements for varied signs in § 328.2(a)(2).

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 upon request and may be obtained by faxing a written request on bank letterhead to:

FAX: (703) 516-5201

Or via FDICconnect at:

https://www2.fdicconnect.gov

Requests should indicate the number of each requested item needed and the name and address of the financial institution.

Financial institutions can also order these items online at ***https://vcart.velocitypayment.com/fdic/****, under "Categories" select "For Banks Only."*

2. If the financial institution sells, on-premises, nondeposit investment products or insurance products, determine whether such activities (including any promotional materials) do not mislead consumers as to the products' insured status and comport with the requirements of the Interagency Statement on Retail Sales of Nondeposit Investment Products and Part 343 of the FDIC Rules and Regulations (Consumer Protection in Sales of Insurance).
3. Determine whether the official advertisement statement (as set forth in § 328.3(b)) is properly included in all advertisements (as defined in § 328.3(a)) that either promote deposit products or promote non-specific banking products and services, unless an exception in § 328.3(d) applies. Review for compliance with the restrictions in § 328.3(e) on using the official advertising statement when advertising nondeposit products.
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(f))
5. Provide a comment in the Report of Examination for any deficiencies noted during the examination.

References

FDIC Rules and Regulation Part 328; Advertisement of Membership

FDIC Rules and Regulation Part 343; Consumer Protection in Sales of Insurance

Interagency Statement on Retail Sales of Nondeposit Investment Products

FIL 40-2010: Standard Deposit Insurance Coverage Amount of $250,000 Made Permanent; Official FDIC Sign Updated and Available

FDIC Legal Advisory Opinions

Advisory Opinion 93-2: Advertisements Soliciting Deposits and Non-Deposit Obligations Should Clearly State Which Investments Are Insured

Advisory Opinion 00-10: Whether the Rules Regarding the Use of the FDIC Logo Apply to Insured Institution Web Sites

Advisory Opinion 95-12: "Federal Deposit Insurance Corporation" Should not be Translated into Non-English Equivalent on Advertising

Advisory Opinion 94-17: Night Depositories and Official Bank Signs

[1] Pursuant to 12 U.S.C. §§ 1821(a)(1)(F), beginning April 1, 2010, and every succeeding 5 years, subject to approval by the FDIC and NCUA, the current standard maximum deposit insurance amount is subject to an inflation adjustment.

Advisory Opinion 93-42: Official Bank Sign Need not be Displayed on Night Depositories

Advisory Opinion 92-15: Official FDIC Sign Need not be Black or Gold, but Text and Symbol

Advisory Opinion 90-77: Savings, Loan and Mortgage Charts Listing Both Insured and Uninsured Institutions Need not Include Official FDIC Advertising Statement

Advisory Opinion 96-7: Whether an Insured Depository Institution Can Operate Branch Under a Name that is Different Than That of the Insured Institution

Advisory Opinion 92-22: Whether FDIC Logo may be Displayed on Lapel Pin Worn by Bank Employees

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.

Statutory 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))
   - The notice must include:
     - A detailed statement of the reasons, and
     - Statistical or other information in support of such reasons.
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.

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

Interagency Policy Statement Concerning Branch Closing Notices and Policies

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) and on November 9, 2007, the FRB adopted final rules (Final Rules) establishing uniform standards for the

1 Public Law 106-229, June 30, 2000.

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.

The Final Rules provided guidance on the timing and delivery of electronic disclosures. Pursuant to the Final Rules, electronic disclosures should be made using a method best suited to the particular type of disclosure. If the consumer uses electronic means to open an account or request a service, the disclosures must be provided before the account is opened or the service is requested. In response to a consumer request, disclosures should be made available in a reasonable amount of time and may be electronic if the consumer agrees. There are exceptions to the consumer consent requirement for electronically providing certain types of disclosures when the consumer is using electronic means such as a home computer. Disclosures should be maintained on the website for a reasonable amount of time for consumers to access, view, and retain the disclosures. The mandatory compliance date was October 1, 2008.

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 non-electronic 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 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 Guidance Attachment

FIL 72-2000: Notice of Consumer Consent Requirements Applicable to the Electronic Delivery of Consumer Disclosures

FIL 70-2001: FDIC Seeks Comment on Study of Banking Regulations Regarding the Online Delivery of Banking Services

FIL 30-2003: Federal Bank and Credit Union Regulatory Agencies Jointly Issue Guidance on the Risk Associated with Weblinking

Prohibition Against Use of Interstate Branches Primarily for Deposit Production

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[1] 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 whether a bank is complying with the provisions of section 109. Section 109 provides a two-step test for determining

1 See 12 CFR 25, 12 CFR 208, and 12 CFR 369.

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,[2] 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[3]

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.*

2 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.

[3] This reflects the interagency examination procedures in their entirety.

- 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

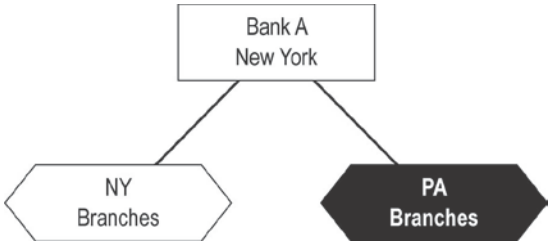
7. Calculate the bank's statewide LTD ratio for each host State in which the bank failed the credit needs determination test. The data used to calculate these ratios may be obtained from any reliable source. The bank may, but is not required to, provide the examiner with additional data at any time during 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;		
• The most recent ratings (overall rating, multistate MSA rating, and State ratings) received by the bank under the Community Reinvestment Act (CRA);		

Examination Checklist		
Identify covered interstate branches subject to Section 109	**Yes**	**No**
• 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

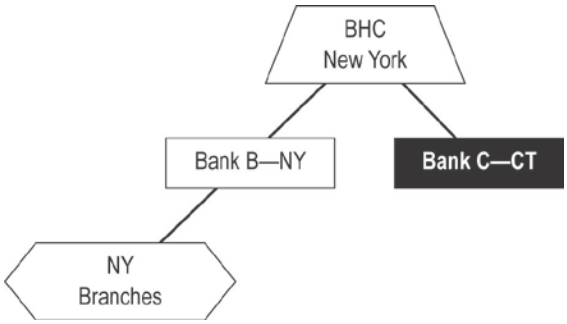
Bank with branches outside of its home State.



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.

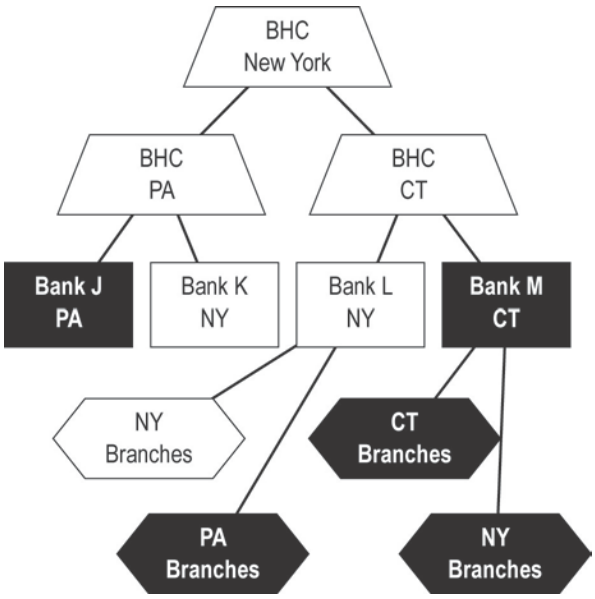


Banks B and Bank C are both controlled by a BHC whose home State is NY. Bank B is an intrastate bank and is not subject to the section 109 review.

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

Job Aids

Host State Loan-to-Deposit Ratios
(Updated annually in June for use during the following 12

month. The following ratios were released June 30, 2015 for use with evaluations through June 30, 2016.

Section 109 of the Interstate Banking and Branching Efficiency Act
Host State Loan-to-Deposit Ratios Using Data as of June 30, 2014 (Excludes wholesale or limited purpose Community Reinvestment Act-designated banks, credit card banks, and special purpose banks)

State or U.S. Territory	***Host State Loan-to-Deposit Ratio***
Alabama	74%
Alaska	66%
Arizona	86%
Arkansas	74%
California	77%
Colorado	68%
Connecticut	90%
Delaware	47%
District of Columbia	78%
Florida	77%
Georgia	79%
Hawaii	57%
Idaho	72%
Illinois	71%
Indiana	80%
Iowa	80%
Kansas	69%
Kentucky	80%
Louisiana	79%
Maine	100%
Maryland	89%
Massachusetts	89%
Michigan	82%
Minnesota	78%
Mississippi	74%
Missouri	71%
Montana	75%
Nebraska	82%
Nevada	74%
New Hampshire	91%
New Jersey	94%
New Mexico	59%
New York	73%
North Carolina	63%
North Dakota	83%
Ohio	72%
Oklahoma	70%
Oregon	87%
Pennsylvania	85%
Rhode Island	88%
South Carolina	74%
South Dakota	65%
Tennessee	82%
Texas	68%
Utah	101%
Vermont	88%
Virginia	76%
Washington	83%
West Virginia	84%
Wisconsin	87%
Wyoming	59%
Guam	64%
Puerto Rico	87%
Virgin Islands	56%

Bank Subsidiaries and Affiliates

These examination procedures were developed to provide examiners guidance regarding:

1. how to review bank subsidiaries and affiliates (including those that are not institution-affiliated parties (IAPs)) of an FDIC-supervised institution for compliance with consumer protection laws and regulations;
2. the information and documentation needed to determine whether an affiliate is an IAP; and
3. how to incorporate violations involving subsidiaries and affiliates in the Report of Examination (ROE).

These procedures should be used when, in the course of an examination, visitation, or investigation, examiners believe an affiliate or subsidiary of a state non-member bank may have violated fair lending or other consumer protection laws and regulations.

Background

FDIC examination authority over IAPs is derived from the Federal Deposit Insurance Act (FDI Act). The FDI Act permits examiners to examine affiliates of insured banks as needed to disclose the relationship between the bank and a given affiliate, as well as the effect of that relationship on the bank.[1] The term "affiliate" encompasses any company that controls, is controlled by, or is under common control with another company. Therefore, a subsidiary controlled by a non-member bank, whether wholly owned or not, is considered an "affiliate" of the bank[2] for purposes of the FDI Act.

The FDIC generally may only bring enforcement actions against insured state non-member banks and their IAPs.[3] Accordingly, while affiliates of FDIC-supervised banks should be reviewed in all cases, it is necessary to determine whether the affiliate qualifies as an IAP of the bank both in order to properly document violations of the affiliate in the ROE and to determine whether such violations can be pursued directly by the FDIC or must be referred to another agency.

Once a potential violation of a consumer protection law or regulation is discovered during the review of the affiliate's activities, then IAP status of the affiliate must be determined. An affiliate may be an IAP based on any one or more of the statutory bases set forth in section (u) of the FDI Act, 12 U.S.C. § 1813(u), where the term "institution-affiliated party" is defined as:

1. any director, officer, employee, or controlling stockholder (other than a bank holding company) of, or agent for, an insured depository institution;
2. any other person who has filed or is required to file a change-in-control notice with the appropriate Federal banking agency under section 7(j);
3. any shareholder (other than a bank holding company), consultant, joint venture partner, and any other person as determined by the appropriate Federal banking agency (by regulation or case-by-case) who participates in the conduct of the affairs of an insured depository institution;
4. any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in
   - any violation of any law or regulation;
   - any breach of fiduciary duty; or
   - any unsafe or unsound practice,

   which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the insured depository institution.

Most often, an affiliate or subsidiary of a bank could be an IAP:

- as an agent of the institution under subsection;
- as a consultant, joint venture partner, or "other person" participating in the affairs of the institution under subsection; or,
- less likely, as an independent contractor whose misconduct has caused serious loss to, or an adverse effect on the institution.

Examination Procedures

1. During the pre-examination process, an examiner should determine if the bank has an affiliate, and the relationship of that affiliate to the bank. Examiners should apply a risk-focused approach in determining if and to what extent an affiliate's activities should be reviewed. The scope of the review of affiliate activity will be preliminarily established during the pre-examination process and should be refined during the examination as a result of discussions held or the presence of significant issues or violations.
2. Regardless of whether an affiliate is an IAP or not, examiners should review affiliates of FDIC-supervised banks. Affiliate activity is considered under many aspects of the examination process, such as during the review of Non-Deposit Insurance/Investment Products, Privacy of Consumer Financial Information, Fair Credit Reporting Act, Third-Party Risk, UDAP, RESPA, Fair Lending, and CRA, if applicable. Applicable examination procedures should be applied to the various activities of bank affiliates. Transactional testing may be necessary using examination procedures for applicable consumer laws and

1 12 U.S.C. § 1820(b)(4).

2 Hereinafter "affiliate" will include both subsidiaries (wholly owned or otherwise) and affiliates of the bank.

3 12 U.S.C. § 1813(u); 12 U.S.C. § 1818.

regulations. If a review of the affiliate's activities results in no apparent violation or issue, then determination of IAP status is not necessary, and no further examination procedures apply.

3. Once an examiner identifies a potential violation of a consumer protection law or regulation during his or her review of an affiliate's activities, the next step should be to consult Legal to determine IAP status so that the FDIC can decide whether it has enforcement jurisdiction over the affiliate. An examiner initially should ascertain if this determination previously has been made (***e.g.***, during a prior compliance or risk management examination). If so, verify that the facts relied upon in making the prior determination remain substantially unchanged. If a determination previously has not been made, the process of determining IAP status should begin as soon as a potential violation is discovered, but should not hold up the examiner's review if discovered prior to the determination.
4. If apparent violations exist and no IAP determination previously has been made, then during the examination proper documentation should be gathered to determine the relationship of any affiliates and the bank utilizing the guidance below. The Region should consult the Legal Division early in the process to discuss and determine which of the areas outlined below would be most fruitful in determining whether the affiliate is an IAP and in identifying the additional information or documentation necessary to support an IAP status determination.

   The first and most important step in the analysis of IAP status is to fully understand the relationship between the bank and its affiliate with regard to its operations and its structure. Analysis of IAP status is fact-specific and can be complex. This includes, among other things, the extent to which the affiliate is involved in the activities of the bank. IAP determinations can also require an in-depth analysis of the effect of the affiliate's operations on the bank's financial stability and viability.

   As a threshold matter, identify the asset size of the bank and the asset size of the affiliate. As you gather the information and documentation below, keep in mind that no single fact or element will prove institution affiliated or non-affiliated status.

   - **What is the legal relationship between the bank and the affiliate?**
     - What is the contractual relationship between the bank and the affiliate?
     - Are the bank and the affiliate under common control (***e.g.***, under the same holding company structure)?
     - How much of the affiliate is owned by the bank? (***e.g.***, Is it a wholly owned subsidiary? If not, does the bank have a majority or minority interest? What is the bank's ownership percentage of interest? What is the amount of the bank's investment?)
   - **What is the management relationship between the bank and the affiliate?**
     - Does the composition of the board of directors of the affiliate mirror or overlap with the board of directors of the bank?
     - Do the affiliate and the bank share management or employees? If so, are expenses for the affiliate's employees reflected on the bank's Call Report?
     - Does the affiliate influence or have the ability to affect bank policies, procedures, activities, or operations?
   - **What is the financial relationship between the bank and the affiliate?**
     - Has the bank funded affiliate loans either directly or indirectly through funding a revolving line of credit to the affiliate? If so, what are the amount and terms of the loan? Who else lends to the affiliate and what proportion of the outstanding credit comes from the bank versus outside sources? What is the ratio of the bank's total assets to the loan(s) or line(s) of credit to the affiliate?
     - What is the percentage of the bank's total net income that is derived from the affiliate services or accounts?
     - What effect would the failure or bankruptcy of the affiliate have on the bank? How closely is the bank's success linked to the affiliate's success?
     - Are customers referred between the bank and the affiliate? If so, on what basis? If so, what are the percentages of total referrals made and received by each entity, respectively?
     - If any customers are referred between the bank and affiliate, are any referral fees paid?
     - Are there any shared resources between the bank and affiliate (such as compliance consulting firms, audit firms, or marketing firms)?
   - **What is the professional relationship between the bank and the affiliate?**
     - What services does the affiliate perform for the bank?
     - Who prepares and files the HMDA LAR on behalf of the bank?
     - If the affiliate makes loans, does the affiliate file its HMDA LAR independently, or with the bank?
     - Does the bank claim the affiliate's loans for CRA credit?

- What is the affiliate's involvement in developing the bank's loan program?
  - Does the affiliate develop the terms and conditions of the bank's loan program(s)? If so, to what extent does the bank participate?
  - Does the affiliate set underwriting standards for the bank (or vice versa)?
  - Who prepares marketing materials for the bank's loan programs? If the affiliate is involved, what is the level of the bank's oversight? To the extent that solicitation materials are reviewed for legal compliance, whose attorney does so? Who has final approval of the solicitation and marketing materials?
- What is the affiliate's involvement in loan processing?
  - To what extent does the affiliate receive loan applications, engage in underwriting activities, service loans, etc.?
  - Does the affiliate participate in credit decisions for loans originated by the bank? Are the decisions of the affiliate subject to review by the bank? What type of review does the bank conduct?
  - Who closes the loans? In whose name?
- What is the Bank's involvement in loan funding?
  - Who funds the loans?
  - What percentage of loans funded by the bank are originated by the affiliate?
  - If the affiliate focuses on one or a few loan categories, what portion of the loans the bank funds in those categories are originated by the affiliate?
  - To what extent do the bank and affiliate purchase loans from each other? What percentage of loans made by one entity are purchased by the other entity?
  - To what extent does the bank buy participation interests from the affiliate or vice versa? Are such purchases pursuant to an agreement?
- If the loans are sold to investors: 1) Does the bank guarantee any warranty obligation of the affiliate in the Loan Sale Agreement? 2) How are the participation interests, if any, transferred to investors?
- Are there any other facts or information that connect the affiliate with the bank, or that otherwise may be relevant?
- What is the physical proximity between the affiliate and the bank? Do they share office space? If so, is the space leased or provided at no cost to the affiliate? If not, are the offices in close proximity to each other?

- **How do the bank and the affiliate define their relationship to the public?**
  - Does the affiliate refer loan customers to the bank (and vice versa)?
  - Does the affiliate share the same website as the bank?
  - Does the website of the affiliate contain references or links to the bank (and vice versa)?
  - Who sends the bank's marketing materials to potential customers? In whose name are the materials sent?
  - Do the affiliate's marketing materials and solicitations reference the bank?
  - Do other public representations demonstrate a link between the bank and the affiliate?

Gathering Documents:

The following are examples of types of documents that may be relevant in conducting an IAP analysis. This list is not all-inclusive and examiners are encouraged to gather and consider any and all relevant documentation.

- Contracts or other written agreements between the bank and the affiliate;
- E-mails or other written correspondence between the affiliate and the bank relating to any services or programs conducted by the affiliate of the bank that are relevant in defining the relationship between the bank and its affiliate;
- Documentation relating to transactions conducted, and compensation arrangements between the affiliate and the bank;
- Policies governing the relationship between the affiliate and the bank and any other pertinent policies and procedures;
- Documents relating to marketing materials, transactions, loan terms and conditions, underwriting standards, and the extent to which the affiliate is involved;
- If the bank's website refers to the affiliate, a screen shot of that page, and other relevant pages, if any;
- If the affiliate's website refers to the bank, a screen shot of that page, and other relevant pages, if any;
- HMDA LARs;

- Organizational charts that show the relationship between the holding company (if any), the bank, and the affiliate;
- Officer and Director lists for bank and affiliate;
- Entity formation documents for the affiliate (Articles of Incorporation and Bylaws);
- For loans originated by the affiliate: investor contracts, including Investor Lock Agreements, Loan Sale Agreements and Guarantees with investors, to determine the bank's potential liability;
- Interview notes with bank management and the affiliate about the relationship between the two entities and how it works in practice (not just as written);
- Board minutes of bank and affiliate; and
- Any line-of-credit agreements with the bank or any entities with which the bank and/or affiliate both have credit lines (reflecting shared source of funding).

5. If the Region has conducted a review of the affiliate's activities and believes that a violation has occurred, in cases where a 15-day letter is appropriate, a 15-day letter must be sent to both the bank and the affiliate informing them of the preliminary finding and providing them an opportunity to respond. In instances where an affiliate is deemed not to be an IAP, and there is a potential fair lending violation, the FDIC must determine if the bank is liable on its ***own*** actions. Prior to sending the 15-day letter, the examiner must determine whether the bank participated in the credit decision for the loans at issue, and thus can be deemed a "Creditor" under the Equal Credit Opportunity Act (ECOA). Regulation B defines the term "Creditor" as a person who, in the ordinary course of business, regularly participates in a credit decision, including setting the terms of the credit (***i.e.*** did the bank establish the underwriting standards for the affiliate). The term "Creditor" includes a creditor's assignee, transferee, or subrogee who so participates. For purposes of ECOA's discrimination provision[4] and its discouragement provision,[5] the term "Creditor" also includes a person who, in the ordinary course of business, regularly refers applicants or prospective applicants to creditors, or selects or offers to select creditors to whom requests for credit may be made. A person[6] is ***not*** a "Creditor" regarding any violation of ECOA committed by another "Creditor" unless the person knew or had reasonable notice of the act, policy, or practice that constituted the violation before becoming involved in the credit transaction.[7] One of the primary purposes of this analysis is to determine whether the bank has any independent liability under ECOA.
6. The following applies: 1) in instances when a 15-day letter is not required, or 2) in instances when a 15-day letter has been sent and, after reviewing the response to the 15-day letter, DCP continues to believe that a violation has occurred. If the affiliate is an IAP, the violation should be cited in the ROE and enforcement action against the IAP directly should be considered. If the affiliate is deemed not to be an IAP, the FDIC will refer the case to the appropriate Federal agency with primary enforcement responsibility, such as the Federal Trade Commission (FTC), the Department of Housing and Urban Development (HUD) or the Board of Governors of the Federal Reserve System (FRB).
7. Regardless of the affiliate's IAP status, the violation should be documented in the ROE. Section 10(b)(5)(B) of the FDI Act requires that FDIC examiners make "a full and detailed report of condition of any insured depository institution or affiliate examined to the Corporation."
   - The examiner should include appropriate comments on the Examiner's Comments and Conclusion pages of the ROE. The comments should identify the specific affiliate and describe how that affiliate violated fair lending or other consumer protection laws and regulations.
   - The examiner should include a description of the affiliate's violation on the Violations page of the ROE. In situations where the affiliate is not an IAP, a summary should be included at the top of the Violations page explaining that because the entity is not an IAP, the FDIC will refer the matter to the appropriate Federal agency with primary enforcement jurisdiction over the entity. However, violations of affiliates, whether an IAP or not, should not be entered in SOURCE.
   - Whether or not the affiliate is an IAP, the bank remains responsible for robust oversight of third-party activities and quality control over those products and services provided through third-party arrangements, in order to minimize exposure to potential significant financial loss, reputational damage and supervisory action. Where a bank has failed to fulfill its oversight responsibility, and particularly where the bank has had prior notice of affiliate violations, the bank should be criticized for a lack of proper oversight and required to establish proper controls.[8]

4 12 C.F.R. § 1002.4(a).

5 12 C.F.R. § 1002.4(b).

6 "Person" means a natural person, corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association. 12 C.F.R. § 1002.2(x).

7 12 C.F.R. § 1002.2(l). The regulation states that the term "Creditor" does not include a person whose only participation in the credit transaction involves honoring a credit card.

8 See FIL-44-2008 (Guidelines for Managing Third Party Risk).

- Whether or not the affiliate is an IAP, the bank's overall CMS and consumer compliance rating (and potentially CRA rating) should be reflective of the affiliate's violations.

8. All Regional and Washington Office consultation policies should be followed throughout bank subsidiary and affiliate reviews.

Sweep Account Disclosure Requirements—FDIC Part 360.8

Introduction

These examination procedures were developed to assist examiners in the review of disclosure requirements that apply to all sweep account contracts for compliance with Part 360.8(e) of the FDIC Rules and Regulations. The regulation contained in this part describes the requirement for institutions to prominently disclose to sweep account customers whether the swept funds are deposits and the status of the swept funds if the institution were to fail.

For purposes of FDIC Part 360, the term "sweep account" is an account held pursuant to a contract between an insured depository institution and its customer involving the pre-arranged, automated transfer of funds from a deposit account to either another account or investment vehicle located within the depository institution (internal sweep account), or an investment vehicle located outside the depository institution (external sweep account). Excluded from the requirement are sweep arrangements where funds are moved between deposit accounts and the deposit insurance available to the customer is unchanged.

Examination Objective

The objective of the examination is to:

- Determine whether the disclosures provided to sweep account customers comply with applicable regulatory requirements.

Examination Procedures

1. Determine for all new sweep account contracts and renewals of existing sweep account contracts, and no less than annually thereafter, that the institution prominently discloses in writing to sweep account customers whether their swept funds are deposits within the meaning of the Federal Deposit Insurance Act (12 U.S.C. 1813(l)).
2. If the funds are not deposits, determine whether the institution discloses the status such funds would have if the institution fails.
3. Provide a comment in the Report of Examination for any deficiencies noted during the examination.

References

12 CFR Part 360.8(e): Resolution and Receivership Rules; Method for determining deposit and other liability account balances at a failed insured depository institution; Disclosure requirements

FIL-9-2009: Processing of Deposit Accounts in the Event of an Insured Depository Institution Failure

FIL-39-2009: Sweep Account Disclosure Requirements Frequently Asked Questions

XI. Community Reinvestment Act

Community Reinvestment Act

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), and the Office of the Comptroller of the Currency (OCC).

The Agencies[1], through the Federal Financial Institution Examination Council (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 examination procedures vary based upon the classification of the institution relative to asset size as of December 31st of the prior two calendar years. 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.

Asset Thresholds for Determining CRA Performance Evaluation Procedures

The Federal Financial Institution Examination Council (FFIEC) releases the newly adjusted asset thresholds annually which determine the performance evaluation method to be performed by examiners. This information is located at www.ffiec.gov. As of January 2020, the FFIEC published the factors used to determine the size of the institution which also determine the performance evaluation methods used, as follows:

A Small institution means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.305 billion.

An Intermediate small institution means a small institution with assets of at least $326 million as of December 31 of both of the prior two calendar years, and less than $1.305 billion as of December 31 of either of the prior two calendar years. Since there is no CRA loan data requirement for an intermediate small institution, its next examination is under the intermediate small institution examination procedures even if that examination comes due during the institution's first year as an intermediate small institution.

A Large institution has total assets of at least $1.305 billion for December 31 of both of the prior two years. Large institutions are subject to CRA data collection requirements. Thus, they cannot be examined under the large institution examination procedures until they have at least one full year of data collected. In addition, any size institution may opt to be examined as a large institution provided it has collected and reported the required CRA loan data.

FFIEC examples of how the asset thresholds are utilized to determine the performance evaluation method follow:

[1] The "Agencies" include: the Board of Governors of the Federal Reserve System (FRB); the Federal Deposit Insurance Corporation (FDIC); and the Office of the Comptroller of the Currency (OCC).

FFIEC examples of how the asset thresholds are applied to determine the applicable CRA Performance Evaluation method for January 1, 2020.

Institution	Total Assets 12/31/19	Total Assets 12/31/18	CRA Examination Procedures as of 1/1/20	Explanation
Institution A	$340 million	$290 million	Small institution	Institution did not have assets of at least $326 million as of December 31 of both of the prior two calendar years.
Institution B	$1.025 billion	$925 million	Intermediate small institution	Institution had assets of at least $326 million as of December 31 of both of the prior two calendar years, and less than $1.305 billion as of December 31 of either of the prior two calendar years.
Institution C	$1.325 billion	$1.025 billion	Intermediate small institution	Institution had assets of at least $326 million as of December 31 of both of the prior two calendar years, and less than $1.305 billion as of December 31 of either of the prior two calendar years.
Institution D	$1.500 billion	$1.325 billion	Large institution	Institution had total assets of at least $1.305 billion as of December 31 of both of the prior two years.

Small Bank[1]

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 a rating of "Outstanding."

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 average net 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 average net loan-to-deposit ratio. However, such an analysis may not be necessary or a less extensive analysis may be sufficient if the average net loan-to-deposit ratio is high.

Examination Procedures for Small Institutions[2]
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 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[3] designated by the Agencies[4] based on
      i. rates of poverty, unemployment, and population loss, or
      ii. population size, density, and dispersion;
   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.

[1] Detailed in section XI - 1.1 are the asset threshold criteria used to determine the type of examination procedures that will be used for evaluating the institution's ability to meet the needs of its community.

[2] These reflect the interagency examination procedures in their entirety.

[3] A list of distressed or underserved nonmetropolitan middle-income geographies is available on the FFIEC web site at www.ffiec.gov.

[4] The Board of Governors of the Federal Reserve System, The Federal Deposit Insurance Corporation, and The Office of the Comptroller of the Currency.

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)[5], Uniform Bank Performance Reports (UBPR)[6], annual reports, supervisory reports, and prior CRA evaluations[7] 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.

Performance Criteria

Loan-to-Deposit Analysis

1. From data contained in Call Reports or UBPRs, calculate the average net loan-to-deposit ratio since the last examination by adding the quarterly net loan-to-deposit ratios and dividing by the number of quarters.

2. Evaluate whether the institution's average net 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 average net loan-to-deposit ratio does not appear reasonable in light of the performance context, consider

[5] The Call Report and UBPR data for most FDIC financial institutions are available through the FFIEC Central Data Repository's Public Data Distribution web site at https://cdr.ffiec.gov/public.
[6] Refer to note 3.
[7] Prior CRA Performance Evaluations can be obtained from the regulator that conducted the previous CRA evaluation through their public websites. This would include the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Reserve Bank.

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 average net 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).

   Refer to 12 USC 2901 for additional definitions.

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[8] 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.

[8] The reference to MSA may also reference MD

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 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.[9] 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;

[9] "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.

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.

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 and Appendix B.

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 substantiated 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

CRA Ratings Matrix—Small Institutions				
Characteristic	**Outstanding**	**Satisfactory**	**Needs to Improve**	**Substantial Noncompliance**
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

Intermediate Small Bank[1]

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) 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.

The following information should be incorporated into all ISB public evaluations, as applicable:

1. The total number and dollar amount of community development loans, qualified investments, and community development services, including:
   a. The total number and dollar amount of community development activities on an annual basis, and
   b. Complete listings of loans, investments, and services or consistent summary listings (by category such as affordable housing, economic development, etc.) of community development activities.
2. A determination of the opportunity and need for community development activities, including:
   a. Information on any self-assessment performed by the bank,
   b. Information from the examiner's assessment based, for example, on review of current economic and demographic conditions, and
   c. Activities of similarly situated banks based, for example, on review of recent public evaluations and information obtained from community contacts.
3. An analysis of the institution's capacity to meet the community development needs of the assessment area(s), including the use of quantitative performance measures such as:
   a. The ratio of community development loans to net loans,
   b. The ratio of community development investments to total investments or total assets, and
   c. Any other performance ratios which support the analysis.

Intermediate Small Institution Examination Procedures[2]

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[3] based on (a) rates of poverty, unemployment, and population loss or (b) population size, density, and dispersion;[4]
   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;

[1] Detailed in section XI - 1.1 are the asset threshold criteria used to determine the type of examination procedures that will be used for evaluating the institution's ability to meet the needs of its community.

[2] These reflect the interagency examination procedures in their entirety.

[3] The Board of Governors of the Federal Reserve System, the Federal - Deposit Insurance Corporation, and the Office of the Comptroller of the Currency.

[4] A list of distressed or undeserved non-metropolitan middle-income geographies will be made available on the FFIEC web site at www.ffiec.gov.

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 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.

CRA 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 area credit needs.	The institution has taken appropriate action in response to substantiated 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.

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 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 poor 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 very poor 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).

Overall Intermediate Small Institution CRA Rating

1. Group the analyses of the assessment areas examined by MSA 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.[5]
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 "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.
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

[5] The reference to MSA may also reference MD.

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 and Appendix B.

Large Bank[1]

The large institution performance criteria – the Lending, Investment, and Service Tests – cover institutions that meet large bank threshold criteria 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.

Although large institutions are subject to CRA data collection requirements, they cannot be examined under the large institution examination procedures until they have at least one full year of data collected. In addition, any size institution may opt to be examined as a large institution provided it has collected and reported the required CRA loan data.

Examination Procedures for Large Institutions[2]

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
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[3] based on (a) rates of poverty, unemployment, and population loss or (b) population size, density, and dispersion;[4]
   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 in CRA examinations of other institutions and prior community contacts in the institution's assessment areas or similar assessment areas.

[1] Detailed in section XI - 1.1 are the asset threshold criteria used to determine the type of examination procedures that will be used for evaluating the institution's ability to meet the needs of its community.
[2] These reflect the interagency examination procedures in their entirety.
[3] The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency.
[4] A list of distressed or underserved nonmetropolitan middle-income geographies is available on the Federal Financial Institutions Examination Council (FFIEC) web site at www.ffiec.gov.

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), Uniform Bank Performance Reports (UBPR), annual reports, supervisory reports, and prior CRA evaluations of the institution 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 performance 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 (Automated Teller Machines (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 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 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 Loan Application Register (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 multifamily 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 multifamily loans in each geography compared to the number of multifamily 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 that are 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 number and amount of community development loans in:

        i. The institution's assessment area(s); or

        ii. The broader statewide or regional area that includes the assessment area(s) that support organizations or activities with a purpose, mandate, or function that includes serving the geographies or individuals located within the institution's assessment area(s).

    b. The extent to which community development lending opportunities have been available to the institution;

    c. The institution's responsiveness to the opportunities for community development lending; and

    d. The extent of leadership the institution has demonstrated in community development lending; and

    e. The innovativeness or complexity involved.

11. If the institution has been responsive to community development needs and opportunities in its assessment area(s) based on the analysis in step number 10, consider:

    a. The number and dollar amount of community development loans in the broader statewide or regional area that includes the assessment area(s), but:

        i. Will not benefit the assessment area(s); and

        ii. Do not support organizations or activities with a purpose, mandate, or function that includes serving geographies or individuals located within the institution's assessment area(s).

    b. The extent to which these loans enhance the institution's performance.

    NOTE: Refer to the appendix for additional guidance on addressing activities at the state or multistate MSA, or institution level.

12. 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.

13. Discuss with management the preliminary findings in this section.

14. 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.

15. Prepare comments for the performance evaluation and the compliance examination report. Refer to the appendix for guidance on addressing community development activities in the performance evaluation.

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) and the geographic area(s) or population(s) served. This review should encompass qualified investments, including investments in a broader statewide or

regional area and in nationwide funds, 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. Determine:

a. Whether the investments have been considered under the lending or service tests; and

b. Whether an affiliate's investments, if considered, have been claimed by another institution.

2. Evaluate investment performance using information obtained in the performance context procedures, especially with regard to community needs and institutional capacity. Determine:

   a. The number and amount of qualified investments in:

      i. The institution's assessment area(s); or

      ii. The broader statewide or regional area that includes the assessment area(s) that support organizations or activities with a purpose, mandate, or function that includes serving the geographies or individuals located within the institution's assessment area(s).

      NOTE: A large institution with a nationwide branch footprint typically has many assessment areas in many states. Investments in nationwide funds are likely to benefit such an institution's assessment area(s), or the broader statewide or regional area that includes its assessment area(s), and provide that institution with the opportunity to match its investments with the geographic scope of its business.

   b. The extent to which qualified investment opportunities have been available to the institution;

   c. The institution's responsiveness to opportunities for qualified investments;

   d. The use of any innovative or complex investments, in particular those that are not routinely provided by other investors; and

   e. 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 the available opportunities for qualified investments.

3. If the institution has been responsive to community development needs and opportunities in its assessment area(s) based on the analysis in step number 2, consider:

   a. The number and dollar amount of qualified investments in the broader statewide or regional area that includes the assessment area(s), but:

      i. Will not benefit the assessment area(s); and

      ii. Do not support organizations or activities with a purpose, mandate, or function that includes serving geographies or individuals located within the institution's assessment area(s).

      iii. The extent to which these investments enhance the institution's performance.

      NOTE: Refer to the appendix for additional guidance on addressing activities at the state or multistate MSA, or institution level.

4. Discuss with management the preliminary findings in this section.

5. 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 qualified investments are not routinely provided by other private investors; and

   d. The responsiveness of qualified investments to available opportunities.

6. Prepare comments for the performance evaluation and the compliance examination report. Refer to the appendix for guidance on addressing community development activities in the performance evaluation.

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. Hold discussions with management and review materials. Determine:

   a. Whether services have been considered under the lending or investment tests; and

   b. If provided by affiliates of the institution, services are not claimed by other affiliated institutions.

7. Evaluate performance using information obtained in the performance context procedures especially with regard to community needs and institutional capacity. Determine:

   a. The extent of community development services provided in:

      i. The institution's assessment area(s); or

      ii. The broader statewide or regional area that includes the assessment area(s) that support organizations or activities with a purpose, mandate, or function that includes serving the geographies or individuals located within the institution's assessment area(s).

   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. If the institution has been responsive to community development needs and opportunities in its assessment area(s) based on the analysis in step number 7, consider:

   a. The extent of community development services in the broader statewide or regional area that includes the assessment area(s), but:

      i. Will not benefit the assessment area(s); and

      ii. Do not support organizations or activities with a purpose, mandate, or function that includes serving geographies or individuals located within the institution's assessment area(s).

   b. The extent to which these services enhance the institution's performance.

   NOTE: Refer to the appendix for additional guidance on addressing activities at the state or multistate MSA, or institution level.

9. Discuss with management the preliminary findings.

10. 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.

11. Prepare comments for the performance evaluation and the compliance examination report. Refer to the appendix for guidance on addressing community development activities in the performance evaluation.

Ratings

1. Group the analyses of the assessment areas examined by MSA[5] 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 with an assessment area that 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:

        i. The institution's overall activities;

        ii. The number of other institutions and the extent of their activities; and

        iii. The lending, investment, and service opportunities in each.

    b. 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 area(s) not examined using the full scope procedures is consistent with the conclusions based on the assessment area(s) examined in step 2, above. Select one of the following options for inclusion in the performance 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/nonmetropolitan 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 evaluation; 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.

6. Also, select one of the following options for inclusion in the performance 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.

7. 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 than one state). Consider:

[5] The reference to MSA may also reference MD

a. The significance of the institution's lending, qualified investments, and lending-related services in each compared to:

i. The institution's overall activities;

ii. The number of other institutions and the extent of their activities; and

iii. The lending, investment, and service opportunities in each.

b. Demographic and economic conditions in each.

8. When determining the state or multistate MSA rating, as applicable, consider:

a. Community development loans and services and qualified investments in the institution's assessment area(s) in the state or multistate MSA;

b. Community development loans and services and qualified investments:

i. In the broader statewide or regional area that includes the institution's assessment area(s) in the state or multistate MSA; and

ii. That support organizations or activities with a purpose, mandate, or function that includes serving individuals or geographies in the institution's assessment area(s); and

c. If the institution has been responsive to community development needs and opportunities in its assessment area(s) based on the analysis in steps 8a and 8b, consider any community development loans and services and qualified investments in the broader statewide or regional area that includes the institution's assessment area(s) in the state or multistate MSA that:

i. Will not benefit the assessment area(s); and

ii. Do not support organizations or activities with a purpose, mandate, or function that includes serving geographies or individuals located within the institution's assessment area(s).

9. 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
Substantial Noncompliance	0 points	0 points	0 points

10. 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
Substantial Noncompliance	0 through 4 points

11. 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.

12. For institutions with branches in more than one state or multistate MSA, assign a preliminary overall rating.

a. To determine the relative importance of each state and multistate MSA to the institution's overall rating, consider:

i. The significance of the institution's lending, qualified investments, and lending-related services in each compared to:

1. The institution's overall activities;

2. The number of other institutions and the extent of their activities in each; and

3. The lending, investment, and service opportunities in each.

ii. Demographic and economic conditions in each.

b. Consider the community development loans and services and qualified investments that meet the geographic requirements and that have not been considered in assigning state or multistate MSA ratings. For example, a qualified investment in a regional or nationwide fund that meets the geographic requirements and benefits more than one state, but was not considered because the benefits are not attributable to a particular state or multistate MSA, would be considered at the overall institution level.

13. 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.[6] 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.

14. Assign final overall rating to the institution. Consider:

a. The preliminary rating; and

b. Any evidence of discriminatory or other illegal credit practices, and discuss conclusions with management.

15. 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 performance evaluation.

16. 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 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

[6] "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.

description of any material differences in the availability or cost of services between these locations;

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 in its most recent CRA performance evaluation;

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 performance 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 and Appendix B.

Appendix to Large Bank CRA Examination Procedures

Community Development Loans and Services and Qualified Investments		
	Qualified community development (CD) activities in the assessment area (AA) or the broader statewide or regional area that includes the AA(s)	
Initial level activity is considered during the evaluation:	**Has a purpose, mandate, or function that includes serving the AA**	**Does not have a purpose, mandate, or function that includes serving the AA**
	Specific AA when an activity benefits and is targeted to the AA. State/Multistate MSA when an activity benefits or is targeted to two or more AAs, or the state or multistate MSA. Institution level when an activity benefits or is targeted to: • A regional area of two or more states not in a multi-state MSA, or • A regional area that includes, but is larger than one multistate MSA.	If the institution has been responsive to CD needs and opportunities in its AA(s), these activities may enhance performance at the state, multistate MSA, or institution level as applicable. State/Multistate MSA when the activity benefits geographies or individuals located in a state or multistate MSA where the bank has one or more defined AA(s). Institution level when the activity is in the broader regional area that includes the bank's AA(s).
	Note: It is not appropriate to assign activities to a specific AA or state unless the bank can demonstrate the activity benefitted, and was targeted to, the AA or state.	
PE comments:	Specific AA – Discuss conclusions regarding evaluation of the level of activity. Comment on the quantitative measure of the loan/investment/service and the qualitative aspects that augmented performance levels. State/Multistate MSA – Discuss conclusions regarding evaluation of the level of activity. Comment on the quantitative measure of all loans, investments, and services in all the AA(s) in the state or multistate MSA combined. Include statewide and regional activities that contribute to the state/multistate MSA's overall assessment and indicate if related amounts are in addition to or included in specific AA discussions or tables. Explain if loans, investments, and/or services for any AA were given greater weight than others and why. Comment generally on qualitative aspects that augmented performance, such as responsiveness to need, degree of innovation, or complexity. Institution level – Discuss conclusions regarding evaluation of the level of activity. Comment on the quantitative measure of all loans, investments, and services in all states and multistate MSAs combined. Include regional and nationwide activities that contribute to the institution's overall assessment and indicate if related amounts are in addition to or included in the specific state or multistate MSA discussions or tables. Explain if loans, investments, and/or services for any state or multistate MSA were given greater weight than others and why. Comment generally on qualitative aspects that augmented performance, such as responsiveness to need, degree of innovation, or complexity.	
Show in tables (when used):	Specific AA - Include qualified activities the bank can demonstrate directly benefit or target the AA. State/Multistate MSA – Separate line for qualified activities that support an organization or activity that covers an area that is larger than, but includes the institution's AA, and has not been attributed to a specific AA. Include regional activities and nationwide investments that benefit, or are targeted, to a specific state or multistate MSA. Institution level – Separate lines for 1) regional and 2) nationwide activities that were not otherwise attributed to	

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. As such, examiners should analyze the bank's operations to determine whether or not any significant changes result in the institution no longer satisfying the criteria for designation.

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

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.

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.

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 and Appendix B.

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 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).

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. A strategic plan enables the institution to tailor its CRA goals and objectives to address the needs of its community consistent with its business strategy, operational focus, and capacity and constraints. The required contents of the strategic plan and the FDIC's criteria for evaluating a strategic plan submission are set forth in Part 345 of the FDIC's regulations; specifically, at 12 C.F.R. §345.27.

Public Review and Comment

An important component in preparing a strategic plan is the requirement that the process include public review and comment. The plan must include a copy of the public notice and the name(s) of the newspaper of general circulation in which the notice was published for each assessment area covered by the plan. The institution should provide verification in the plan that comments were solicited for a minimum period of 30 days. Copies of all written comments received during the formal comment period must be submitted. If the final plan submitted to the FDIC is different from the initial plan released for comment, a copy of that initial plan must also be submitted with the request. During the FDIC's review process, the institution may need to revise the plan to respond to agency requests for additional information. These changes do not need to be released again for public comment unless they significantly alter the content of the original submission.

The institution can obtain public input in a variety of ways, such as holding meetings with community groups and other interested parties, seeking comments from customers through branch notifications, and mailing statement stuffers to customers.

The institution should also include copies of its response to the public comments. The public comments and the institution's response(s) will be reviewed by the FDIC to determine whether the institution considered the input from the community, the degree of support for the institutions goals, and the appropriateness of the goals.

Assessment Area

An institution must define assessment area(s) and list them in the plan. Only whole geographies should be included: census tracts, block numbering areas or block groups. The assessment area should consist of one or more metropolitan statistical areas (MSAs) or one or more contiguous political subdivisions (e.g., counties, cities or towns); however, the assessment area may be adjusted if including the political subdivision would create a larger area than the institution can be reasonably expected to serve. Whole census tracts and block numbering areas should be included even if these geographies cross MSA and political subdivision boundaries.

The institution should include those geographies in which it has its main office, branches and deposit-taking remote service facilities such as ATMs and point-of-sale terminals. The institution should also include the surrounding geographies in which it has originated or purchased a substantial amount of its loan portfolio, including home mortgage, small business and small farm loans, as well as any consumer loans, on which the institution chooses to have its performance assessed.

Measurable Goals

Each institution must determine not only which goals to include in the plan but also the levels at which these goals must be set to justify the proposed ratings. When an institution selects the strategic plan option, it should refer to both the examination procedures and those portions of the CRA regulations that establish the performance criteria for lending, investments, and services.

Examiners evaluate a strategic plan's measurable goals on the following criteria:

- Extent and breadth of lending or lending-related activities, including geographic and borrower distribution of loans.
- Extent of community development lending.
- Use of innovative or flexible lending practices.
- Amount, innovativeness, complexity and responsiveness of qualified investments.
- Availability and effectiveness of retail services and the extent and innovativeness of community development services.

The regulations state that the plan should include specific measurable goals to meet the credit needs of the assessment area, particularly the needs of low- and moderate-income geographies and individuals, through lending, investments and services. Generally, the plan should emphasize lending and lending-related activity. Nonetheless, a different emphasis may still be appropriate, provided that this emphasis is clearly explained and substantiated based on the characteristics and needs of the assessment area and the institution's financial capacity, product offerings and business focus. For example, there may be demonstrable intense loan competition within an assessment area, so the institution is concentrating its efforts on making qualified investments and providing community development services.

With respect to affiliates, the plan must include the names of each institution joining in the plan and a description of how it is affiliated with the submitting institution. The FDIC will approve a joint plan only if the plan provides measurable goals for each depository institution. Activities may be allocated among institutions, at their option, provided that the same activities are not counted for more than one institution. A joint

plan must appropriately address the credit needs of each institution's assessment area(s).

If a proposed strategic plan is submitted on behalf of more than one institution, each institution must receive the approval of its own supervisory agency for those portions of the plan relating to that institution's CRA responsibilities. If a strategic plan covering multiple institutions must be approved by more than one regulatory agency, each agency will issue a decision approving or denying the request with respect to the institution(s) for which that agency has primary supervisory responsibility.

Determining the adequacy of the projected goals necessitates that they be well-supported by facts and information presented in the performance context portion of the plan. Although past performance does indicate the institution's ability to attain a certain goal, it does not necessarily denote whether the goal reflects the specific needs of the assessment area or is consistent with economic or market forecasts for the geographic area served by the institution.

Once an institution decides which goals should be included in its plan, it must establish levels for each of these goals. The balance is a delicate one: the goals must be realistic and achievable, yet sufficiently high to warrant the proposed Satisfactory or Outstanding ratings. In determining whether the goals are consistent with the ratings, the institution should take into account the factors typically considered during a CRA examination.

Performance Context

Essentially, this section of the plan should include any information developed in the institutions normal business planning that it would like the FDIC to consider regarding lending, investment and service opportunities for each assessment area covered by the plan. This information should include a description of any legal constraints or limitations that affect the type of loans, investments or services that the institution offers. Information submitted by the institution will be considered along with data that the FDIC has obtained from community, government, civic and other sources

Term

The institution must set a term, not to exceed five years, during which the plan will be in effect. If the term is longer than one year, interim goals must be established for each year of the plan. These interim goals should reflect yearly adjustments based on information furnished in the performance context of the plan, which describes both the financial institutions capacity and local economic and demographic conditions. There should also be a reasonable relationship between past performance by the institution in the categories of lending, investments and services, and the proposed goals.

Other Considerations

Effective Date

The plan should include a proposed effective date, which should be at least 90 days after the plan is submitted to the FDIC. The institution will not be evaluated under the strategic plan option until it has been operating under an approved plan that has been in effect for at least one year.

Confidentiality

Under the provisions of the Freedom of Information Act (FOIA), a strategic plan submitted to the FDIC is a public document that is available to the public upon request. This may include any written correspondence between the institution and the FDIC during the process of reviewing a proposed strategic plan.

An institution may request confidential treatment of information that would be exempt from public disclosure under FOIA. The request must be submitted in writing concurrently with the filing of the strategic plan and must discuss in detail the justification for confidentiality. The institution should explain the harm that would result from public release of the information. Examples of the types of information that the institution may deem confidential include potential product offerings, marketing strategies and merger, acquisition or expansion plans. The FDIC will advise an institution of a decision to make information labeled Confidential available to the public.

Alternative Evaluation

The institution may elect in its plan to be evaluated under an alternative assessment method (e.g., the lending, investment and service tests for large institutions, the small institution performance standards or the community development test, as appropriate) if it fails to substantially meet the strategic plan goals for a Satisfactory rating.

Amendments

During the term of the plan, mergers, acquisitions, branch expansions and closings or other events may occur that significantly change the context in which the institution operates. Moreover, there may be adverse impacts on the economic or market climate of the assessment area that hamper the institutions ability to meet the projected goals and activities in the plan. Consequently, an institution may request an amendment if material changes develop that were not anticipated in the initial performance context. Depending on the magnitude of these proposed changes, the amended plan may be required to undergo the public comment process.

Timing

The FDIC will act upon a plan within 60 calendar days after the FDIC receives the complete plan and other material required under the regulation. If the FDIC fails to act within this

time period, the plan shall be deemed approved unless the FDIC extends the review period for good cause.

The 60-day processing period will be suspended on the date that the FDIC requests that additional information be provided. If the institution cannot satisfactorily respond to the FDIC's questions or cannot otherwise supply sufficient information to form a recommendation, the strategic plan submission may be returned to the institution as incomplete. Returning the strategic plan does not preclude a financial institution from submitting another request at a later date; however, this will start a new 60-day processing period. The FDIC will determine on a case-by-case basis whether additional public comment is needed. Generally, the submission of another plan would necessitate another public comment period.

If the plan is denied, the institution may request that the FDIC reconsider its decision within 30 days of its receipt of the notice of denial. The FDIC will determine whether the request for reconsideration sets forth substantive information that was not submitted for good cause in the original submission and whether there is justification to reverse the denial.

Evaluation

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.

The examination procedures permit an institution to receive a Satisfactory rating even if it has not fully met each of the goals in the plan. The examiners will consider whether the goals have been substantially met when assigning a rating. In determining whether an institution has substantially met its plan goals, the FDIC will consider circumstances beyond the control of the institution, such as economic conditions or other significant market factors or events that have adversely affected the institutions ability to perform. Examiners will review updated performance context and assessment area information to ascertain whether the institution's performance is commensurate with either a Satisfactory or Outstanding rating.

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[1]

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[2] based on (a) rates of poverty, unemployment, and population loss or (b) population size, density, and dispersion[3];
   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.

[1] These reflect the interagency examination procedures in their entirety.

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.

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.

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[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. 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

4 The reference to MSA may also reference metropolitan division (MD).

   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 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.[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 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;
   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;

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.

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 and Appendix B.

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 of loans are made in the institution's assessment area(s).	A high percentage of loans are made in the institution's 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 institution's 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 areas(s).
Borrowers' Profile	The distribution of borrowers reflects, given the product lines offered 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.
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.

Lending Test Matrix — cont.					
Characteristic	**Outstanding**	**High Satisfactory**	**Low Satisfactory**	**Needs to Improve**	**Substantial Non-Compliance**
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 area(s).	Delivery systems are inaccessible to significant portions of the assessment area(s), particularly institution's assessment 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 of 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 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.

CRA Sunshine – Disclosure and Reporting of CRA-Related Agreements

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 t$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 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]

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.

[1] These reflect the interagency examination procedures in their entirety.

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 4/1/02.	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**
Which 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. You 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(d).

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 judgments 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.

Guidance for Full and Limited Scope Community Reinvestment Act Assessment Areas

Introduction

The Interagency Community Reinvestment Act (CRA) Examination Procedures (interagency procedures) provide instructions for examiners to follow when determining which assessment areas(s) should receive a full scope review and provide guidance on how to address assessment areas not selected for full scope review within a CRA performance evaluation. Assessment areas that are not reviewed using the full examination procedures are referred to as limited scope assessment areas.

This document clarifies the guidance provided in the interagency procedures to improve consistency in FDIC CRA examinations. Although Large Institution CRA Examination Procedures were used to develop this guidance, examiners should use this guidance when evaluating small or intermediate small banks and adjust as appropriate. For example, if community development activities are not considered in a small bank evaluation, examiners should not consider such activities in their review.

Selection of Full Scope Assessment Areas

Minimum Requirements

In accordance with the interagency procedures, examiners identify assessment areas for a full scope review where the performance evaluation involves interstate and intrastate institutions with more than one assessment area. A full scope review is accomplished when examiners complete all of the steps outlined in the interagency 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.

Consideration of Factors

Examiners review several sources of information when considering which assessment areas receive a full or limited scope review, including prior CRA performance evaluations; available community contact materials; Home Mortgage Disclosure Act (HMDA) and CRA data; the institution's lending, investment, and service activities, as applicable, by assessment area; the lending of other lenders in those markets; and demographic and economic information from those markets. The interagency procedures provide a list of factors for examiners to consider when selecting full scope assessment areas. It is expected that examiners consider each of these factors in the CRA scoping process. Guidance for each factor from the Large Institution CRA Examination Procedures is provided 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;

Examiners should consider readily-available information from sources such as discussions with bank management; a review of demographics and economic conditions; community contacts; other banks' CRA evaluations; and community groups in the area. For example, a review of local community group websites could yield important information on lending, investment, and service opportunities in the area. Assessment areas with greater needs and opportunities should receive greater consideration as full scope reviews.

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]

In addition to the level of lending, investment, and service activity, examiners also should consider significant changes in the level of activity in the different assessment areas since the last performance evaluation. For example, if a particular assessment area has experienced a significant increase in lending since the previous evaluation due to the bank offering a new product that met an identified credit need, that assessment area may receive increased consideration for a full scope review. If the bank has conducted any CRA self-assessments, examiners should consider the results of the assessments and any actions taken by the bank.

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;

Areas where the bank has a high concentration of its activity or maintains high market share should be strongly considered for a full scope review. In evaluating the importance of the institution in the area, examiners are encouraged to consider

[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 Federal Financial Institutions Examination Council (FFIEC) web site at www.ffiec.gov.

summary of deposits, market share data, and CRA and HMDA data to determine the relative impact of the institution in its different assessment areas. The level of an institution's lending activity in a particular assessment area should be weighed against the overall level of lending activity in the area, not solely against the overall lending activity of the subject bank. For example, a relatively small institution may capture a significant share of the deposits or make a significant portion of the HMDA loans in the area. Similarly, a large institution may have a small share of its overall deposits or loans within a particular area but the relative level of deposits and loans in the area may cause it to be a market leader.

d. Comments and feedback received from community groups and the public regarding the institution's CRA performance;

Comments and feedback received from community groups and the public regarding the institution's CRA performance are an essential factor to consider in the selection of full scope assessment areas. Special attention should be given to assessment area(s) that are the focus of non-frivolous CRA protests and comments about the institution, as well as the institution's response. In the event that affected assessment areas are not selected for a full scope review, examiners should document in the "Scope of Evaluation" section of the performance evaluation their reasons for not selecting the assessment areas for a full scope review. For example, "A CRA comment identified concerns with the bank's activities in seven assessment areas. Of the five assessment areas selected for full scope review, three were referenced in the CRA comment regarding the institution and will provide sufficient information to evaluate concerns raised."

e. The size of the population;

When considering the size of the population, examiners should consider the number of potential customers within an assessment area relative to other assessment areas. However, examiners should not overlook assessment areas for full scope consideration solely due to small populations.

f. The existence of apparent anomalies in the reported CRA or HMDA data for any particular assessment area(s);

Where applicable, examiners should consider apparent anomalies in reported CRA or HMDA data for any assessment area. Special attention should be given to assessment areas that are being evaluated for potential redlining or other fair lending risk factors. If a focal point review is under way for an assessment area(s) (e.g., redlining or marketing), examiners are strongly encouraged to select that same area for a full scope CRA review.

g. The length of time since the assessment area(s) was last examined using a full scope review;

In considering this factor, examiners should give greater weight to selecting established assessment areas that were not recently evaluated with the full scope examination procedures. Conversely, new or recently added (in less than twelve months) assessment areas are typically not weighted as heavily.

h. The institution's prior CRA performance in different assessment areas;

Examiners should consider the institution's prior CRA performance in different assessment areas. Assessment areas where the institution has shown weak performance in the past should receive greater consideration for full scope review relative to those assessment areas with reasonable performance at the previous evaluation.

i. Examiners' knowledge of the same or similar assessment areas; and

Examiners should consider their knowledge of the same or similar assessment areas in the selection of full scope assessment areas. After considering all the other factors, an examiner's knowledge of an assessment area(s) may influence his/her decision whether to select that or a similar assessment area for full scope review. For example, if an examiner was aware of concerns (minimal mortgage lending) within a specific assessment area, an examiner might be more likely to select that assessment area for full scope consideration.

j. Issues raised in CRA performance evaluations of other institutions and prior community contacts in the institution's assessment areas or similar assessment areas.

Examiners are encouraged to consider issues in CRA performance evaluations of other institutions and prior community contacts in the institution's assessment areas or similar assessment areas. Known concerns in particular assessment areas may be relevant to assessing the current institution's CRA performance. These assessment areas may receive greater consideration for full scope review.

Assessment Areas Infrequently Reviewed under Full Scope Examination Procedures

Due to resources, examiners may not be able to review all assessment areas using the full scope examination procedures at each examination. After considering the factors discussed above, it is possible that certain assessment areas will be infrequently selected for a full scope review. In an effort to ensure that an institution's CRA performance in these infrequently reviewed assessment areas is regularly evaluated, examiners must conduct one additional full scope assessment area review unless examiners already selected an assessment area that did not receive a full scope review during the previous two CRA evaluations based on the factors discussed above. If an addi-

tional full scope assessment area must be selected, it would be selected at random from the pool of assessment areas that have not received a full scope review during the previous two CRA evaluations.

For example, an institution has seven assessment areas which have not been evaluated using full scope procedures for the last two CRA evaluation periods. The examiner must randomly select one of these seven for full scope review unless one of the assessment areas already selected for review using the factors above had not been assessed using full scope procedures at the previous two CRA evaluations. Random selection ensures that any infrequently reviewed assessment area has an equal chance for full scope review. This encourages institutions to consider the needs of all their assessment areas, rather than concentrating on those most likely to be reviewed as full scope.

Documentation

Full Scope Assessment Areas

Justification for the selection of an assessment area for a full scope review should be documented in the "Scope of the Examination" section of the CRA performance evaluation. For example, "Bank of Anytown has 12 assessment areas within Anystate. Assessment areas A and B were chosen for full scope review due to the greatest level of lending, deposits, and branches in these assessment areas. Assessment area C was chosen due to a CRA comment that raised issues with the bank's lending in this assessment area. During the scope of the examination, it was identified that some of Bank of Anytown's assessment areas were not reviewed using the full scope examination procedures in the last two examinations. In an effort to ensure that an institution's CRA performance in these infrequently reviewed assessment areas is regularly evaluated, assessment area D was selected at random from a list of those assessment areas infrequently reviewed under the full scope examination procedures."

Limited Scope Assessment Areas

Examiners should follow the interagency procedures to document their conclusions regarding limited scope assessment areas. Specific templates are provided in the procedures, and examiners should use the prescribed language to present their conclusions. The relevant portion of the "Ratings" section from the Large Institution CRA Examination Procedures is summarized below:

1. Where one or more assessment areas were examined using full scope procedures within an MSA or nonmetropolitan portion of the state:

Examiners should ensure that performance in the assessment area(s) not examined using the full scope procedures is consistent with the conclusions based on the assessment area(s) examined using full scope procedures within that same MSA or nonmetropolitan portion of the state.

In these situations, examiners should select one of the following options for inclusion in the performance 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/nonmetropolitan portion of the state] that were reviewed using the full scope examination procedures.

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 full scope examination procedures; however, it does not change the conclusion for the [MSA/nonmetropolitan portion of the state].

2. Where no assessment area was examined using full scope procedures within an MSA or nonmetropolitan portion of the state

Examiners should 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:

- The significance of the institution's lending, qualified investments, and lending-related services in each compared to the institution's overall activities.
- Demographic and economic conditions in each.

Using this information, examiners should select one of the following options for inclusion in the performance 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].

b. The institution's [lending/investment/service] performance in [the assessment area/these assessment areas] [exceeds/is below] the [lend-

ing/investment/service] performance for the [institution/state], however, it does not change the [institution's/state] rating.

As discussed above, limited scope assessment areas that are inconsistent with lending/ investment/service performance in the applicable area should be documented in accordance with the interagency procedures. In cases where an examiner considers the performance in a limited scope reviewed assessment area to be materially inconsistent with the lending/investment/service performance in the applicable area, examiners should expand their review to full scope examination procedures for that assessment area. Materially inconsistent differences are those that are considered significant enough to affect the overall rating for a rated area (i.e., state) of the institution.

Assessment areas not examined under the full scope procedures are essential to the performance evaluation of an institution under the CRA. The primary difference between full scope and limited scope assessment area reviews is the inclusion of qualitative factors and presentation of full performance context in the performance evaluation for full scope assessment areas. As discussed in the interagency procedures, for limited scope assessment area(s), examiners should review sufficient information about each assessment area to ascertain whether performance is consistent with the institution's performance at the rated area level (state or multi-state MSA). In most cases, a review of the demographics and the quantitative information regarding the lending, investment, and service activity will be sufficient to make this evaluation. However, examiners should be aware of any significant differences pertaining to products, services, and investments along with any key or unique performance context information within the limited scope assessment area.

Additionally, according to the CRA, the FDIC is required to provide conclusions for each assessment factor identified in the regulation. Each conclusion must be supported by facts and data and, in turn, support overall conclusions for each assessment area. The FDIC must also provide a rating for each state or multistate MSA area and a description of the basis for the rating.

Examiners should document the facts and data supporting conclusions within the CRA performance evaluation (CRA PE) for limited scope assessment area reviews. In some cases, the information provided for limited scope assessment areas may be brief. For example, quantitative analysis could be presented in a brief narrative in the performance evaluation (for example, a few sentences) versus a full table. At a minimum, the following should be included either in a table format or in narrative under the appropriate heading in the CRA PE:

- Lending:
  - Volume/activity
  - Borrower & Geographic Distribution
  - Community development lending (numbers & dollars only)
  - The products used for evaluation in the assessment area if different than those reviewed in full scope areas.
- Investments
  - Volume/activity (including trends)
- Services
  - Branch and ATM distribution
  - Branch openings and closings
  - Community development services (quantitative)
- Any key or unique performance context information (if applicable)

An example of how to document a limited scope assessment area within the CRA PE is attached to this guidance. Additional facts and data should be presented in tables or in narrative, as needed.

For reference, below is a chart that highlights the differences between a full and limited scope review in the CRA Performance Evaluation for a large institution.

ATTACHMENT 1: Differences between Full and Limited Scope Reviews in the CRA Performance Evaluation

Full Scope Review	Limited Scope Review
Performance Context ‣ Analysis considering full performance context	Performance Context ‣ Analysis of performance in light of relevant comparable demographics ‣ Key and unique performance context information
Lending Test ‣ Volume/activity ‣ Borrower & geographic distribution ‣ Community development lending ‣ Conspicuous gaps ‣ Qualitative factors (innovation, complexity, leadership, flexibility)	Lending Test ‣ Volume/activity ‣ Borrower & geographic distribution ‣ Community development lending (numbers & dollars only)
Investment Test ‣ Level and trend ‣ Qualitative factors (innovation, complexity)	Investment Test ‣ Level and trend only
Service Test ‣ Branch distribution ‣ Branch openings and closings ‣ Hours of operations ‣ Gaps in operations and services ‣ Community development services ‣ Qualitative factors (responsiveness)	Service Test ‣ Branch distribution ‣ Branch openings and closings ‣ Community development services (volume only)
Narrative in PE ‣ Analyze numerical data – evaluate anomalies ‣ Discuss qualitative factors	Narrative in PE ‣ Analyze numerical data – evaluate anomalies ‣ State whether performance is “consistent with”, “stronger than”, or “weaker than” the rated area

ATTACHMENT 2: EXAMPLE OF A LIMITED SCOPE ASSESSMENT AREA

METROPOLITAN AREA USING LIMITED SCOPE EXAMINATION PROCEDURES

DESCRIPTION OF INSTITUTION'S OPERATIONS IN ASSESSMENT AREA

The assessment area contains 4 of the bank's 28 branch offices and 7 of the bank's 35 ATMs. This assessment area accounted for 11.8 percent of total loans, 12.6 percent of total deposits, and 14.0 percent of the bank's branches.

The below table shows demographic information for the assessment area:

Demographic Information of the Assessment Area						
Demographic Characteristics	**#**	**Low % of #**	**Moderate % of #**	**Middle % of #**	**Upper % of #**	**NA* % of #**
Geographies (Census Tracts)	151	4.0	31.1	31.1	31.1	2.7
Population by Geography	839,631	3.4	32.6	28.8	33.1	2.1
Housing Units by Geography	278,239	3.6	30.1	30.5	35.8	0.0
Owner-Occupied Units by Geography	152,284	2.0	23.2	30.8	44.0	0.0
Occupied Rental Units by Geography	95,773	6.2	40.7	28.5	24.6	0.0
Vacant Units by Geography	30,182	3.8	31.3	35.7	29.2	0.0
Businesses by Geography	42,134	3.7	20.6	30.4	45.3	0.0
Farms by Geography	1,837	1.3	28.7	30.4	39.6	0.0
Family Distribution by Income Level	185,559	23.0	17.2	18.0	41.8	0.0
Household Distribution by Income Level	248,057	24.5	16.0	17.4	42.1	0.0
Median Family Income		$56,571	Median Housing Value			$212,6381
FFIEC-Estimated Median Family Income for 2014		$51,700	Median Gross Rent			$842
			Families Below Poverty Level			17.7%
Source: 2010 U.S. Census, 2014 D&B Data, and FFIEC-Estimated Median Family Income; (*) The NA category consists of geographies that have not been assigned an income classification.						

The assessment area's median housing value is $212,638 and the median family income is $56,571, which makes housing affordability a challenge in this assessment area. The unemployment rate for the county encompassing this assessment area (Any County) for the 3rd quarter of 2015 is 8.4 percent, which is above the state average of 5.9 percent. The assessment area's largest employers include Air Force Base, Someone's Farms, Whose Farms, ABC Production Company, ARB Incorporated, State Farm Insurance Company, Sun World Incorporated, and Chevron Texaco Corporation.

CONCLUSIONS ON PERFORMANCE CRITERIA IN ASSESSMENT AREA

LENDING TEST

The institution's Lending Test performance in the assessment area is consistent with the performance in the full scope assessment area. For 2013, 2014, and YTD 2015, AnyBank originated 165 small business loans totaling approximately $51.6 million, 24 home mortgage loans totaling approximately $6.3 million, and 15 small farm loans totaling approximately $4.1 million. Tables demonstrating the bank's geographic and borrower distribution performance for this lending are in Appendix D.

AnyBank's community development lending (CDL) performance in the assessment area is consistent with its performance in the full scope assessment area. During the review period, the institution originated five CDLs totaling $10.5 million within the assessment area.

INVESTMENT TEST

AnyBank's Investment Test performance in the assessment area is below the bank's performance in the full scope assessment area. While the performance was considered, it does not change the conclusions for the state. During the review period, the institution purchased two qualified investments totaling $100,000 within the assessment area, and made $5,000 in qualified donations.

SERVICE TEST

AnyBank's Service Test performance in the assessment area is consistent with its performance in the full scope assessment area. Products, services, and business hours are similar to those offered within the full scope assessment area. Employees provided 230 hours of financial and technical assistance to various qualified community development organizations in this assessment area.

CRA Data Review Timeframes and Sampling Guidelines

Introduction

This section provides guidelines to assist examiners in determining the timeframes within which to review loan products and other activities for a CRA evaluation, and how such information should be presented in the Performance Evaluation. Additionally, this section discusses when and how to select a sample of loans for review.

Background

Large institutions are required to collect and report CRA data, whereas small institutions (including intermediate small banks) are not required to collect data for CRA evaluation purposes. In addition, certain institutions are required to collect and report home mortgage loans for purposes of the Home Mortgage Disclosure Act (HMDA). Other institutions may choose to provide data regarding their loans, including the census tract locations and borrower incomes or business revenues, similar to the data requirement for large institutions and HMDA reporters.

Examiners use an institution's data to analyze:

- Loans inside and outside an institution's assessment area(s);
- Loans in low-, moderate-, middle-, and upper-income geographies in an assessment area;
- Home mortgage or consumer loans to low-, moderate-, middle-, and upper-income borrowers, and/or small business or small farm loans to businesses/farms of different revenue sizes within an assessment area; and
- Community development activities.

Review Timeframes

Lending Data that is Collected/Reported

For institutions required to report HMDA and/or CRA data, and in other cases when the institution collects but is not required to report the data (collected/reported), examiners must validate the accuracy of the data. For all loan types, the HMDA validation procedures should be followed, including for the scope of validation. When validating loan data for CRA purposes only, examiners should validate the necessary fields needed for CRA analysis which include loan type, loan amount, location, and income/revenue.

If loan data is considered accurate, all collected/reported data for each full calendar year since the previous CRA examination should be analyzed. This would include the year of the last examination. There is an exception for small institutions, which typically have a 48-72 month evaluation cycle (timeframe from date of previous CRA evaluation to date of current CRA evaluation). In this instance, examiners should analyze the most recent two full calendar years of HMDA and/or collected CRA data. In all cases, a separate analysis should be conducted for each year. It would only be appropriate to analyze partial calendar year data when there is a short evaluation cycle, such as a previous adverse CRA rating or a de novo institution. In these cases, a separate analysis should be conducted for each partial year.

Presentation of Data

At a minimum, examiners should present the latest full calendar year of data for which aggregate data is available for geographic distribution and borrower profile. Presentation of additional years of data may be necessary to support conclusions and rating(s) and should be considered in cases such as a borderline overall rating, a significant overall ratings change, an unfavorable rating at any level, lending anomalies between years, CRA complaints or comments, or upon the request of bank management. Examiners should use their judgment when and for which assessment area(s) additional years of data should be presented. If only one year of data is being presented, the scope comment should make it clear that all applicable years were analyzed. Examiners should provide the rationale for including only one year, such as consistent performance between years.

Even though each assessment area must be analyzed separately, in some cases the presentation of multiple assessment areas may be combined within the CRA performance evaluation. For example, in instances where two or more assessment areas consist of non-contiguous portions in the non-metropolitan area of one state and no anomalies are present, these assessment areas may be combined for presentation purposes. This also applies in cases where there are multiple assessment areas in the same MSA or CSA. These guidelines apply to all institutions, not just institutions that have collected CRA and/or HMDA data.

Lending Data that is Not Collected/Reported

For institutions where data is not collected for a particular product under review and sampling must be performed, the analysis should cover the lending activity in the previous full calendar year that is prior to the start of the examination. Reasons to analyze and present additional years of data are a borderline overall rating, a significant overall ratings change, an unfavorable rating at any level, or CRA complaints. In addition, examiners should confirm with bank management that a one-year sample of a loan product would be representative of the entire evaluation period. In cases where more than one year will be analyzed, a separate analysis should be conducted for each year.

Exceptions may exist to analyzing data by full calendar year, particularly for institutions that purge their loan system of paid off loans. In situations where the paid off loans are purged and using the previous full calendar year data would not capture the bank's actual lending performance, a universe comprised of the most recent 12 months may be appropriate. Examiners should understand the nature of the bank's lending when making this determination. If analyzing data that encompasses more than one calendar year, examiners should use the most recent available demographic data. If changes occur between years (for example, the release of American Community Survey Census data every five years), it is important to see how geographies are affected. In these situations, it would not be appropriate to combine lending between years if there are significant changes to the geographies because geographic and demographic data are different for each year.

Community Development Data

Community development data (loans, investments, and services) should be reviewed for the entire CRA evaluation cycle. The extent of validation that the activities qualify will depend on the number of activities. With large volumes, often the process of validation will include reviewing the process the bank goes through to qualify a particular activity and validating a sample following the CRA Sample Size table. If the number of activities is smaller, often the entire universe should be reviewed to ensure the activities qualify as community development.

Sampling Guidelines

Small institutions (including intermediate small institutions) are not required to collect small business and small farm data for CRA evaluation purposes. In addition, not all institutions collect and report home mortgage loan data for purposes of HMDA. In these cases, it may be impractical or impossible to review all loan files when evaluating a particular loan product, especially if there is a large volume of lending. Examiners should use sampling to draw conclusions from a random subset of a universe for each loan type and apply such conclusions for the population as a whole. Generally, samples are selected on a bankwide basis.

Examiners should also sample at large institutions if data for a specific loan product has not been collected. For example, if a large institution has chosen not to collect consumer loan information, yet it comprises over 50 percent of the bank's lending by both dollar and number, an examiner should review consumer loans and would need to sample.

In instances where collected data is found to be invalid, and the bank is unable to correct the data prior to the examination, examiners will need to rely on sampling to evaluate the institution's CRA performance. In these cases, examiners should separately sample and analyze the most recent two full calendar years.

Generally, if the data is readily available, examiners should validate and geocode the entire universe of loans for the loan products and timeframe under review. Examiners should analyze this data for the assessment area concentration, geographic distribution, and borrower profile lending criteria. When sufficient information is not available, or addresses do not geocode, examiners should use judgment in determining when sampling will have to be conducted. Using readily available data for analysis can result in a different number of loans analyzed for different criteria. One example is where borrower income is not available on the electronic data download and the geographic data is available and valid. In this case, the universe for assessment area concentration would be all loans originated or purchased during the review timeframe; the universe for the geographic distribution would be the number of loans inside the assessment area; and sampling would have to be conducted for borrower profile. The differences in number of loans analyzed should be adequately explained in the Scope of Examination comments. In these instances, examiners should use the review timeframes noted for lending data that is not collected/reported for all of the lending criteria for that product.

Sampling Process

For small institutions (including intermediate small institutions), examiners should determine major product lines from which to select a sample. Examiners should take into account factors such as total volume of lending, the institution's business strategy, and its areas of expertise when selecting product lines to sample. Initially, examiners may select for review from among the same categories of loans that are to be used when reviewing large institutions (home mortgage, small business loans, small farm loans, and consumer loans).

In order to determine the number of loans for the sample (known as the sample size), examiners should determine the total number of loans in the universe for each product category by year.

NOTE: The universe of loans is defined as the total number of loans, both originated and purchased by the institution in a calendar year, for a major product category. This should include outstanding and paid-off loans, including renewals. The definition of the loan category should dictate the universe of that lending product (i.e., small business loans are $1 million or less).

Next, examiners should determine the number of loans to be sampled for each year and product category by using the Sample Size Table below. Generally, sampling should be conducted at the institution level and not for each assessment area.

CRA Sample Size Table		
Number of Originations or Purchases	**Sample Size Based on Precision Level**	
	5%	**10%**
≤30	Entire Universe	
31-50	42*	30
51-75	59*	36
76-100	73	41
101-150	97	47
151-200	115	51
201-300	143	55
301-400	162	58
401-500	176	60
501-1,000	213	63
> 1,000	257	67

*or the entire universe if less than the sample size

The table indicates the sample size based on the universe of loans for each product at a 90 percent confidence level and the desired precision level. Initially, examiners should select samples based on a 10 percent precision level. This means that there is a 90 percent chance that the results from the sample will be within 10 percentage points of the true proportion for the criterion evaluated.

For loan products requiring further investigation or greater scrutiny for any reason, a larger sample may be necessary because examiners may need results with a higher degree of reliability. Examples of circumstances when increased sample sizes should be chosen include: the receipt of CRA comments or complaints or if management states the selected sample is not indicative of its true lending performance. Examiners should use their judgment to determine which sample size to use based on the initial scoping of the examination and subsequent findings onsite.

In addition, although examiners may draw conclusions based on a statistically valid sample, they may choose to consider a larger sample in cases where the institution has several assessment areas in order to avoid the result that only a few loans are selected from certain assessment areas in the sample. Increasing the level of precision will result in an expanded sample. Examiners may increase the sample to include additional loans up to the 5 percent precision level when a larger sample is necessary to ensure a sufficient number of loans per assessment area for geographic and borrower analysis. Alternatively, a sample could be chosen for each assessment area using a 10 percent precision.

Regardless of sampling requirements, samples must be large enough to analyze and to draw meaningful conclusions. Therefore, analyze the entire universe when the number of loans is less than or equal to 30.

Sample Selection from Electronic Data Download or Loan Trial

Once the number of loans in the sample is determined, examiners should select loans from the financial institution's electronic data download or a loan trial as opposed to making a general request for loans and allowing bank management to select the loans for review. If an electronic data download is not available, examiners should select the sample using the financial institution's loan trial. The Sampling Job Aid explains the procedures for selecting loan samples from the electronic data download or loan trial.

Examiners should follow random selection methods as compared to those based on judgmental sampling. The use of random selection methods removes the potential for bias in results associated with the loan selection process.

Data to Collect when Sampling

Once the loans for each sample are identified, examiners should record relevant loan information. 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;
- For the home mortgage 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 gross annual revenue. When income information used in the analysis of the applicant is not readily apparent and tax returns are present, this information can usually be obtained from the "gross receipts;"

or “gross farm rental income” and “gross income” fields, respectively.

When data is missing, examiners should 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.

Interagency Questions and Answers Regarding Community Reinvestment

Background

The OCC, Board, and FDIC (Agencies) implement the Community Reinvestment Act (CRA) (12 U.S.C. 2901 et seq.) through their CRA regulations. See 12 CFR parts 25, 195, 228, and 345. The CRA is designed to encourage regulated financial institutions to help meet the credit needs of their entire communities. The CRA regulations establish the framework and criteria by which the Agencies assess an institution's record of helping to meet the credit needs of its community, including low- and moderate-income neighborhoods, consistent with safe and sound operations. The regulations provide different evaluation standards for institutions of different asset sizes and types.

The Agencies publish the Questions and Answers[1] to provide guidance on the interpretation and application of the CRA regulations to agency personnel, financial institutions, and the public. The Agencies first published the Questions and Answers under the auspices of the Federal Financial Institutions Examination Council (FFIEC) in 1996 (61 FR 54647). The Questions and Answers were most recently updated in July 2016 (81 FR 48505).

The Questions and Answers are grouped by the provision of the CRA regulations that they discuss, are presented in the same order as the regulatory provisions, and employ an abbreviated method of citing to the regulations. For example, for thrifts, the small savings association performance standards appear at 12 CFR 195.26; for national banks, the small bank performance standards appear at 12 CFR 25.26; for Federal Reserve System member banks supervised by the Board, they appear at 12 CFR 228.26; and for state nonmember banks, they appear at 12 CFR 345.26. Accordingly, the citation would be to 12 CFR __.26. Each Q&A is numbered using a system that consists of the regulatory citation and a number, connected by a dash. For example, the first Q&A addressing 12 CFR __.26 would be identified as § __.26 – 1.

Although a particular Q&A may provide guidance on one regulatory provision, e.g., 12 CFR __.22, which relates to the lending test applicable to large institutions, its content may also be applicable to, for example, small institutions, which are evaluated pursuant to small institution performance standards found at 12 CFR __.26. Thus, readers with a particular interest in small institution issues, for example, should review Q&As relevant to other financial institutions as well.

[1] Throughout this document, "Questions and Answers" refers to the "Interagency Questions and Answers Regarding Community Reinvestment" in its entirety; "Q&A" refers to an individual question and answer within the Questions and Answers.

Interagency Questions and Answers Regarding Community Reinvestment

§ __.11--Authority, purposes, and scope

§ __.11(c) Scope

§§ __.11(c)(3) & 195.11(c)(2) Certain special purpose institutions

§§ __.11(c)(3) & 195.11(c)(2) – 1: Is the list of special purpose institutions exclusive?

A1. No, there may be other examples of special purpose institutions. These institutions engage in specialized activities that do not involve granting credit to the public in the ordinary course of business. Special purpose institutions typically serve as correspondent banks, trust companies, or clearing agents or engage only in specialized services, such as cash management controlled disbursement services. A financial institution, however, does not become a special purpose institution merely by ceasing to make loans and, instead, making investments and providing other retail banking services.

§§ __.11(c)(3) & 195.11(c)(2) – 2: To be a special purpose institution, must an institution limit its activities in its charter?

A2. No. A special purpose institution may, but is not required to, limit the scope of its activities in its charter, articles of association, or other corporate organizational documents. An institution that does not have legal limitations on its activities, but has voluntarily limited its activities, however, would no longer be exempt from Community Reinvestment Act (CRA) requirements if it subsequently engaged in activities that involve granting credit to the public in the ordinary course of business. An institution that believes it is exempt from CRA as a special purpose institution should seek confirmation of this status from its supervisory Agency.

§ __.12--Definitions

§ __.12(a) Affiliate

§ __.12(a) – 1: Does the definition of "affiliate" include subsidiaries of an institution?

A1. Yes, "affiliate" includes any company that controls, is controlled by, or is under common control with another company. An institution's subsidiary is controlled by the institution and is, therefore, an affiliate.

§ __.12(f) Branch

§ __.12(f) – 1: Do the definitions of "branch," "automated teller machine (ATM)," and "remote service facility (RSF)" include mobile branches, ATMs, and RSFs?

A1. Yes. Staffed mobile offices that are authorized as branches are considered "branches," and mobile ATMs and RSFs are considered "ATMs" and "RSFs."

§ __.12(f) – 2: Are loan production offices (LPO) branches for purposes of the CRA?

A2. LPOs and other offices are not "branches" unless they are authorized as branches of the institution through the regulatory approval process of the institution's supervisory Agency.

§ __.12(g) Community development

§ __.12(g) – 1: Are community development activities limited to those that promote economic development?

A1. No. Although the definition of "community development" includes activities that promote economic development by financing small businesses or farms, the rule does not limit community development loans and services and qualified investments to those activities. Community development also includes community- or tribal-based child care, educational, health, social services, or workforce development or job training programs targeted to low- or moderate-income persons, affordable housing for low- or moderate-income individuals, and activities that revitalize or stabilize low- or moderate-income areas, designated disaster areas, or underserved or distressed nonmetropolitan middle-income geographies.

§ __.12(g) – 2: Must a community development activity occur inside a low- or moderate-income area, designated disaster area, or underserved or distressed nonmetropolitan middle-income area in order for an institution to receive CRA consideration for the activity?

A2. No. Community development includes activities, regardless of their location, that provide affordable housing for, or community services targeted to, low- or moderate-income individuals and activities that promote economic development by financing small businesses and farms. Activities that stabilize or revitalize particular low- or moderate-income areas, designated disaster areas, or underserved or distressed nonmetropolitan middle-income areas (including by creating, retaining, or improving jobs for low- or moderate-income persons) also qualify as community development, even if the activities are not located in these areas. One example is financing a supermarket that serves as an anchor store in a small strip mall located at the edge of a middle-income area, if the mall stabilizes the adjacent low-income community by providing needed shopping services that are not otherwise available in the low-income community.

§ __.12(g) – 3: Does the regulation provide flexibility in considering performance in high-cost areas?

A3. Yes, the flexibility of the performance standards allows examiners to account in their evaluations for conditions in high-cost areas. Examiners consider lending and services to individuals and geographies of all income levels and businesses of all sizes and revenues. In addition, the flexibility in the requirement that community development loans, community development services, and qualified investments have as their "primary" purpose community development allows examiners to account for conditions in high-cost areas. For example, examiners could take into account the fact that activities address a credit shortage among middle-income people or areas caused by the disproportionately high cost of building, maintaining or acquiring a house when determining whether an institution's loan to or investment in an organization that funds affordable housing for middle-income people or areas, as well as low- and moderate-income people or areas, has as its primary purpose community development. See also Q&A § __.12(h) – 8 for more information on "primary purpose."

§ ___.12(g) – 4: Can examples of community development activities discussed in a particular Q&A also apply to other types of community development activities not specifically discussed in that Q&A if they have a similar community development purpose?

A4. Yes. The Interagency Questions and Answers Regarding Community Reinvestment (Questions and Answers) provide examples of particular activities that may receive consideration as community development activities. Because a particular Q&A often describes a single type of community development activity, such as a community development loan, the corresponding examples are of community development loans. However, because community development loans, qualified investments, and community development services all must have a primary purpose of community development, a qualified investment or community development service that supports a community development purpose similar to the activity described in the context of the community development loan would likely receive consideration under the applicable test. The same would be true if the community development activity described in a particular Q&A were a qualified investment or community development service. For example, Q&A § __.12(h) – 1 provides an example of a community development loan to a not-for-profit organization supporting primarily low- or moderate-income housing needs. Similarly, a grant to the same not-for-profit organization would be considered a qualified investment or technical assistance, such as writing a grant proposal for the not-for-profit organization, would be considered as a community development service. Further if a financial institution engaged in all of these activities, each would be considered under the applicable test. See Q&A § __.23(b) – 1.

Moreover, lists of examples included throughout the Questions and Answers are not exhaustive. A Q&A may include examples to demonstrate activities that may qualify under that Q&A, but the examples are not the only activities that might qualify. Financial institutions may submit information about activities they believe meet the definition of

community development loan, qualified investment, or community development service to examiners for consideration.

§ .12(g)(1) Affordable housing (including multifamily rental housing) for low- or moderate-income individuals

§ __.12(g)(1) – 1: When determining whether a project is "affordable housing for low- or moderate-income individuals," thereby meeting the definition of "community development," will it be sufficient to use a formula that relates the cost of ownership, rental, or borrowing to the income levels in the area as the only factor, regardless of whether the users, likely users, or beneficiaries of that affordable housing are low- or moderate-income individuals?

A1. The concept of "affordable housing" for low- or moderate-income individuals does hinge on whether low- or moderate-income individuals benefit, or are likely to benefit, from the housing. It would be inappropriate to give consideration to a project that exclusively or predominately houses families that are not low- or moderate-income simply because the rents or housing prices are set according to a particular formula.

For projects that do not yet have occupants, and for which the income of the potential occupants cannot be determined in advance, or in other projects where the income of occupants cannot be verified, examiners will review factors such as demographic, economic, and market data to determine the likelihood that the housing will "primarily" accommodate low- or moderate-income individuals. For example, examiners may look at median rents of the assessment area and the project; the median home value of either the assessment area, low- or moderate-income geographies or the project; the low- or moderate-income population in the area of the project; or the past performance record of the organization(s) undertaking the project. Further, such a project could receive consideration if its express, bona fide intent, as stated, for example, in a prospectus, loan proposal, or community action plan, is community development.

§ .12(g)(2) Community services targeted to low- or moderate-income individuals

§ __.12(g)(2) – 1: Community development includes community services targeted to low- or moderate-income individuals. What are examples of ways that an institution could determine that community services are offered to low- or moderate-income individuals?

A1. Examples of ways in which an institution could determine that community services are targeted to low- or moderate-income persons include, but are not limited to:

- The community service is targeted to the clients of a nonprofit organization that has a defined mission of serving low- and moderate-income persons, or, because of government grants, for example, is limited to offering services only to low- or moderate-income persons.
- The community service is offered by a nonprofit organization that is located in and serves a low- or moderate-income geography.
- The community service is conducted in a low- or moderate-income area and targeted to the residents of the area.
- The community service is a clearly defined program that benefits primarily low- or moderate-income persons, even if it is provided by an entity that offers other programs that serve individuals of all income levels.
- The community service is offered at a workplace to workers who are low- and moderate-income, based on readily available data for the average wage for workers in that particular occupation or industry (see, e.g., http://www.bls.gov/bls/blswage.htm (Bureau of Labor Statistics)).
- The community service is provided to students or their families from a school at which the majority of students qualify for free or reduced-price meals under the U.S. Department of Agriculture's National School Lunch Program.
- The community service is targeted to individuals who receive or are eligible to receive Medicaid.
- The community service is provided to recipients of government assistance programs that have income qualifications equivalent to, or stricter than, the definitions of low- and moderate-income as defined by the CRA Regulations. Examples include U.S. Department of Housing and Urban Development's section 8, 202, 515, and 811 programs or U.S. Department of Agriculture's section 514, 516, and Supplemental Nutrition Assistance programs.

§ .12(g)(3) Activities that promote economic development by financing businesses or farms that meet certain size eligibility standards

§ __.12(g)(3) – 1: "Community development" includes activities that promote economic development by financing businesses or farms that meet certain size eligibility standards. Are all activities that finance businesses and farms that meet the size eligibility standards considered to be community development?

A1. No. The concept of ''community development'' under 12 CFR __.12(g)(3) involves both a ''size'' test and a ''purpose'' test that clarify what economic development activities are considered under CRA. An institution's loan, investment, or service meets the ''size'' test if it finances, either directly, or through an intermediary, businesses or farms that either meet the size eligibility standards of the Small Business Administration's Development Company (SBDC) or Small Business Investment Company (SBIC) programs, or have gross annual revenues of $1 million or less. For consideration under the "size test," the term financing is considered broadly and includes technical assistance that readies a business that meets the size eligibility

standards to obtain financing. To meet the ''purpose test,'' the institution's loan, investment, or service must promote economic development. These activities are considered to promote economic development if they support

- permanent job creation, retention, and/or improvement
  - for low- or moderate-income persons;
  - in low- or moderate-income geographies;
  - in areas targeted for redevelopment by Federal, state, local, or tribal governments;
  - by financing intermediaries that lend to, invest in, or provide technical assistance to start-ups or recently formed small businesses or small farms; or
  - through technical assistance or supportive services for small businesses or farms, such as shared space, technology, or administrative assistance; or
- Federal, state, local, or tribal economic development initiatives that include provisions for creating or improving access by low- or moderate-income persons to jobs or to job training or workforce development programs.

The agencies will presume that any loan or service to or investment in a SBDC, SBIC, Rural Business Investment Company, New Markets Venture Capital Company, New Markets Tax Credit-eligible Community Development Entity, or Community Development Financial Institution that finances small businesses or small farms, promotes economic development. (See also Q&As § __.42(b)(2) – 2, § __.12(h) – 2, and § __.12(h) – 3 for more information about which loans may be considered community development loans.)

Examiners will employ appropriate flexibility in reviewing any information provided by a financial institution that reasonably demonstrates that the purpose, mandate, or function of the activity meets the "purpose test." Examiners will also consider the qualitative aspects of performance. For example, activities will be considered more responsive to community needs if a majority of jobs created, retained, and/or improved benefit low- or moderate-income individuals.

§ __.12(g)(4) Activities that revitalize or stabilize certain geographies

§ __.12(g)(4) – 1: Is the definition of "community development" applicable to all institutions?

A1. The definition of "community development" is applicable to all institutions, regardless of a particular institution's size or the performance criteria under which it is evaluated.

§ __.12(g)(4) – 2: Will activities that provide housing for middle-income and upper-income persons qualify for favorable consideration as community development activities when they help to revitalize or stabilize a distressed or underserved nonmetropolitan middle-income geography or designated disaster areas?

A2. An activity that provides housing for middle- or upper-income individuals qualifies as an activity that revitalizes or stabilizes a distressed nonmetropolitan middle-income geography or a designated disaster area if the housing directly helps to revitalize or stabilize the community by attracting new, or retaining existing, businesses or residents and, in the case of a designated disaster area, is related to disaster recovery. The Agencies generally will consider all activities that revitalize or stabilize a distressed nonmetropolitan middle-income geography or designated disaster area, but will give greater weight to those activities that are most responsive to community needs, including needs of low- or moderate-income individuals or neighborhoods. Thus, for example, a loan solely to develop middle- or upper-income housing in a community in need of low- and moderate-income housing would be given very little weight if there is only a short-term benefit to low- and moderate-income individuals in the community through the creation of temporary construction jobs. (Except in connection with intermediate small institutions, a housing-related loan is not evaluated as a "community development loan" if it has been reported or collected by the institution or its affiliate as a home mortgage loan, unless it is a multifamily dwelling loan. See 12 CFR __.12(h)(2)(i) and Q&As § __.12(h) – 2 and § __.12(h) – 3.) An activity will be presumed to revitalize or stabilize such a geography or area if the activity is consistent with a bona fide government revitalization or stabilization plan or disaster recovery plan. See Q&As § __.12(g)(4)(i) – 1 and § __.12(h) – 5.

In underserved nonmetropolitan middle-income geographies, activities that provide housing for middle- and upper-income individuals may qualify as activities that revitalize or stabilize such underserved areas if the activities also provide housing for low- or moderate-income individuals. For example, a loan to build a mixed-income housing development that provides housing for middle- and upper-income individuals in an underserved nonmetropolitan middle-income geography would receive positive consideration if it also provides housing for low- or moderate-income individuals.

§ __.12(g)(4)(i) Activities that revitalize or stabilize low- or moderate-income geographies

§ __.12(g)(4)(i) – 1: What activities are considered to "revitalize or stabilize" a low- or moderate-income geography, and how are those activities considered?

A1. Activities that revitalize or stabilize a low- or moderate-income geography are activities that help to attract new, or retain existing, businesses or residents. Examiners will presume that an activity revitalizes or stabilizes a low- or moderate-income geography if the activity has been approved by the governing board of an Enterprise Community or Empowerment Zone (designated pursuant to 26 U.S.C. § 1391) and is consistent with the board's strategic plan. They will make the same presumption if the activity has received similar official designation as consistent with a Federal, state, local, or tribal government plan for the revitalization or stabilization of the low- or moderate-income geography. For

example, foreclosure prevention programs with the objective of providing affordable, sustainable, long-term loan restructurings or modifications to homeowners in low- or moderate-income geographies, consistent with safe and sound banking practices, may help to revitalize or stabilize those geographies.

To determine whether other activities revitalize or stabilize a low- or moderate-income geography, examiners will evaluate the activity's actual impact on the geography, if information about this is available. If not, examiners will determine whether the activity is consistent with the community's formal or informal plans for the revitalization and stabilization of the low- or moderate-income geography. For more information on what activities revitalize or stabilize a low- or moderate-income geography, see Q&As § __.12(g) – 2 and § __.12(h) – 5.

§ __.12(g)(4)(ii) Activities that revitalize or stabilize designated disaster areas

§ __.12(g)(4)(ii) – 1: What is a "designated disaster area" and how long does it last?

A1. A "designated disaster area" is a major disaster area designated by the Federal government. Such disaster designations include, in particular, Major Disaster Declarations administered by the Federal Emergency Management Agency (FEMA) (http://www.fema.gov), but excludes counties designated to receive only FEMA Public Assistance Emergency Work Category A (Debris Removal) and/or Category B (Emergency Protective Measures).

Examiners will consider institution activities related to disaster recovery that revitalize or stabilize a designated disaster area for 36 months following the date of designation. Where there is a demonstrable community need to extend the period for recognizing revitalization or stabilization activities in a particular disaster area to assist in long-term recovery efforts, this time period may be extended.

§ __.12(g)(4)(ii) – 2: What activities are considered to "revitalize or stabilize" a designated disaster area, and how are those activities considered?

A2. The Agencies generally will consider an activity to revitalize or stabilize a designated disaster area if it helps to attract new, or retain existing, businesses or residents and is related to disaster recovery. An activity will be presumed to revitalize or stabilize the area if the activity is consistent with a bona fide government revitalization or stabilization plan or disaster recovery plan. The Agencies generally will consider all activities relating to disaster recovery that revitalize or stabilize a designated disaster area, but will give greater weight to those activities that are most responsive to community needs, including the needs of low- or moderate-income individuals or neighborhoods. Qualifying activities may include, for example, providing financing to help retain businesses in the area that employ local residents, including low- and moderate-income individuals; providing financing to attract a major new employer that will create long-term job opportunities, including for low- and moderate-income individuals; providing financing or other assistance for essential community-wide infrastructure, community services, and rebuilding needs; and activities that provide housing, financial assistance, and services to individuals in designated disaster areas and to individuals who have been displaced from those areas, including low- and moderate-income individuals (see, e.g., Q&As § __.12(i) – 3; § __.12(t) – 4; § __.22(b)(2) & (3) – 4; § __.22(b)(2) & (3) – 5; and § __.24(d)(3) – 1).

§ __.12(g)(4)(iii) Activities that revitalize or stabilize distressed or underserved nonmetropolitan middle-income geographies

§ __.12(g)(4)(iii) – 1: What criteria are used to identify distressed or underserved nonmetropolitan, middle-income geographies?

A1. Eligible nonmetropolitan middle-income geographies are those designated by the Agencies as being in distress or that could have difficulty meeting essential community needs (underserved). A particular geography could be designated as both distressed and underserved. As defined in 12 CFR __.12(k), a geography is a census tract delineated by the U.S. Bureau of the Census.

A nonmetropolitan middle-income geography will be designated as distressed if it is in a county that meets one or more of the following triggers: (1) an unemployment rate of at least 1.5 times the national average, (2) a poverty rate of 20 percent or more, or (3) a population loss of 10 percent or more between the previous and most recent decennial census or a net migration loss of five percent or more over the five-year period preceding the most recent census.

A nonmetropolitan middle-income geography will be designated as underserved if it meets criteria for population size, density, and dispersion that indicate the area's population is sufficiently small, thin, and distant from a population center that the tract is likely to have difficulty financing the fixed costs of meeting essential community needs. The Agencies will use as the basis for these designations the "urban influence codes," numbered "7," "10," "11," and "12," maintained by the Economic Research Service of the U.S. Department of Agriculture.

The Agencies publish data source information along with the list of eligible nonmetropolitan census tracts on the Federal Financial Institutions Examination Council (FFIEC) Web site (http://www.ffiec.gov).

§ __.12(g)(4)(iii) – 2: How often will the Agencies update the list of designated distressed and underserved nonmetropolitan middle-income geographies?

A2. The Agencies will review and update the list annually. The list is published on the FFIEC Web site (http://www.ffiec.gov).

To the extent that changes to the designated census tracts occur, the Agencies have determined to adopt a one-year

"lag period." This lag period will be in effect for the 12 months immediately following the date when a census tract that was designated as distressed or underserved is removed from the designated list. Revitalization or stabilization activities undertaken during the lag period will receive consideration as community development activities if they would have been considered to have a primary purpose of community development if the census tract in which they were located were still designated as distressed or underserved.

§ __.12(g)(4)(iii) – 3: What activities are considered to "revitalize or stabilize" a distressed nonmetropolitan middle-income geography, and how are those activities evaluated?

A3. An activity revitalizes or stabilizes a distressed nonmetropolitan middle-income geography if it helps to attract new, or retain existing, businesses or residents. An activity will be presumed to revitalize or stabilize the area if the activity is consistent with a bona fide government revitalization or stabilization plan. The Agencies generally will consider all activities that revitalize or stabilize a distressed nonmetropolitan middle-income geography, but will give greater weight to those activities that are most responsive to community needs, including needs of low- or moderate-income individuals or neighborhoods. Qualifying activities may include, for example, providing financing to attract a major new employer that will create long-term job opportunities, including for low- and moderate-income individuals, and activities that provide financing or other assistance for essential infrastructure or facilities necessary to attract or retain businesses or residents. See Q&As § __.12(g)(4)(i) – 1 and § __.12(h) – 5.

§ __.12(g)(4)(iii) – 4: What activities are considered to "revitalize or stabilize" an underserved nonmetropolitan middle-income geography, and how are those activities evaluated?

A4. The regulation provides that activities revitalize or stabilize an underserved nonmetropolitan middle-income geography if they help to meet essential community needs, including needs of low- or moderate-income individuals. Activities, such as financing for the construction, expansion, improvement, maintenance, or operation of essential infrastructure or facilities for health services, education, public safety, public services, industrial parks, affordable housing, or communication services, will be evaluated under these criteria to determine if they qualify for revitalization or stabilization consideration. Examples of the types of projects that qualify as meeting essential community needs, including needs of low- or moderate-income individuals, would be

- a new or expanded hospital that serves the entire county, including low- and moderate-income residents;
- an industrial park for businesses whose employees include low- or moderate-income individuals;
- a new or rehabilitated sewer line that serves community residents, including low- or moderate-income residents;
- a mixed-income housing development that includes affordable housing for low- and moderate-income families;
- a renovated elementary school that serves children from the community, including children from low- and moderate-income families;
- a new or rehabilitated communications infrastructure, such as broadband internet service, that serves the community, including low- and moderate-income residents; or
- a new or rehabilitated flood control measure, such as a levee or storm drain, that serves the community, including low- and moderate-income residents.

Other activities in the area, such as financing a project to build a sewer line spur that connects services to a middle- or upper-income housing development while bypassing a low- or moderate-income development that also needs the sewer services, generally would not qualify for revitalization or stabilization consideration in geographies designated as underserved. If an underserved geography is also designated as a distressed or a disaster area, additional activities may be considered to revitalize or stabilize the geography, as explained in Q&As § __.12(g)(4)(ii) – 2 and § __.12(g)(4)(iii) – 3.

§ __.12(h) Community development loan

§ __.12(h) – 1: What are examples of community development loans?

A1. Examples of community development loans include, but are not limited to, loans to

- borrowers for affordable housing rehabilitation and construction, including construction and permanent financing of multifamily rental property serving low- and moderate-income persons;
- not-for-profit organizations serving primarily low- and moderate-income housing or other community development needs;
- borrowers to construct or rehabilitate community facilities that are located in low- and moderate-income areas or that serve primarily low- and moderate-income individuals;
- financial intermediaries including Community Development Financial Institutions (CDFI), New Markets Tax Credit-eligible Community Development Entities, Community Development Corporations (CDC), minority- and women-owned financial institutions, community loan funds or pools, and low-income or community development credit unions that primarily lend or facilitate lending to promote community development;
- local, state, and tribal governments for community development activities;
- borrowers to finance environmental clean-up or redevelopment of an industrial site as part of an effort to revitalize the low- or moderate-income community in which the property is located;
- businesses, in an amount greater than $1 million, when made as part of the Small Business Administration's 504 Certified Development Company program; and
- borrowers to finance renewable energy, energy-efficient,

or water conservation equipment or projects that support the development, rehabilitation, improvement, or maintenance of affordable housing or community facilities, such as a health clinic that provides services for low- or moderate-income individuals. For example, the benefit to low- or moderate-income individuals may result in either a reduction in a tenant's utility cost or the cost of providing utilities to common areas in an affordable housing development. Further, a renewable energy facility may be located on-site or off-site, so long as the benefit from the energy generated is provided to an affordable housing project or a community facility that has a community development purpose.

The rehabilitation and construction of affordable housing or community facilities, referred to above, may include the abatement or remediation of, or other actions to correct, environmental hazards, such as lead-based paint, asbestos, mold, or radon that are present in the housing, facilities, or site.

§ __.12(h) – 2: If a retail institution that is not required to report under the Home Mortgage Disclosure Act (HMDA) makes affordable home mortgage loans that would be HMDA-reportable home mortgage loans if it were a reporting institution, or if a small institution that is not required to collect and report loan data under the CRA makes small business and small farm loans and consumer loans that would be collected and/or reported if the institution were a large institution, may the institution have these loans considered as community development loans?

A2. No. Although small institutions are not required to report or collect information on small business and small farm loans and consumer loans, and some institutions are not required to report information about their home mortgage loans under HMDA, if these institutions are retail institutions, the Agencies will consider in their CRA evaluations the institutions' originations and purchases of loans that would have been collected or reported as small business, small farm, consumer or home mortgage loans, had the institution been a collecting and reporting institution under the CRA or the HMDA. Therefore, these loans will not be considered as community development loans, unless the small institution is an intermediate small institution (see Q&A § __.12(h) – 3). Multifamily dwelling loans, however, may be considered as community development loans as well as home mortgage loans. See also Q&A § __.42(b)(2) –2.

§ __.12(h) – 3: May an intermediate small institution that is not subject to HMDA reporting have home mortgage loans considered as community development loans? Similarly, may an intermediate small institution have small business and small farm loans and consumer loans considered as community development loans?

A3. Yes. In instances where intermediate small institutions are not required to report HMDA or small business or small farm loans, these loans may be considered, at the institution's option, as community development loans, provided they meet the regulatory definition of "community development." If small business or small farm loan data have been reported to the Agencies to preserve the option to be evaluated as a large institution, but the institution ultimately chooses to be evaluated under the intermediate small institution examination standards, then the institution would continue to have the option to have such loans considered as community development loans. However, if the institution opts to be evaluated under the lending, investment, and service tests applicable to large institutions, it may not choose to have home mortgage, small business, small farm, or consumer loans considered as community development loans.

Loans other than multifamily dwelling loans may not be considered under both the lending test and the community development test for intermediate small institutions. Thus, if an institution elects to have certain loans considered under the community development test, those loans may not also be considered under the lending test, and would be excluded from the lending test analysis.

Intermediate small institutions may choose individual loans within their portfolio for community development consideration. Examiners will evaluate an intermediate small institution's community development activities within the context of the responsiveness of the activity to the community development needs of the institution's assessment area(s).

§ __.12(h) – 4: Do secured credit cards or other credit card programs targeted to low- or moderate-income individuals qualify as community development loans?

A4. No. Credit cards issued to low- or moderate-income individuals for household, family, or other personal expenditures, whether as part of a program targeted to such individuals or otherwise, do not qualify as community development loans because they do not have as their primary purpose any of the activities included in the definition of "community development."

§ __.12(h) – 5: The regulation indicates that community development includes "activities that revitalize or stabilize low- or moderate-income geographies." Do all loans in a low- to moderate-income geography have a stabilizing effect?

A5. No. Some loans may provide only indirect or short-term benefits to low- or moderate-income individuals in a low- or moderate-income geography. These loans are not considered to have a community development purpose. For example, a loan for upper-income housing in a low- or moderate-income area is not considered to have a community development purpose simply because of the indirect benefit to low- or moderate-income persons from construction jobs or the increase in the local tax base that supports enhanced services to low- and moderate-income area residents. On the other hand, a loan for an anchor business in a low- or moderate-income area (or a nearby area) that employs or serves residents of the area and, thus, stabilizes the area, may be considered to have a community development purpose. For example, in a low-income area, a loan for a pharmacy that

employs and serves residents of the area promotes community development.

§ __.12(h) – 6: Must there be some immediate or direct benefit to the institution's assessment area(s) to satisfy the regulations' requirement that qualified investments and community development loans or services benefit an institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s)?

A6. No. The regulations recognize that community development organizations and programs are efficient and effective ways for institutions to promote community development. These organizations and programs often operate on a statewide or even multistate basis. Therefore, an institution's activity is considered a community development loan or service or a qualified investment if it supports an organization or activity that covers an area that is larger than, but includes, the institution's assessment area(s). The institution's assessment area(s) need not receive an immediate or direct benefit from the institution's participation in the organization or activity, provided that the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located within the institution's assessment area(s).

In addition, a retail institution will receive consideration for certain other community development activities. These activities must benefit geographies or individuals located somewhere within a broader statewide or regional area that includes the institution's assessment area(s). Examiners will consider these activities even if they will not benefit the institution's assessment area(s), as long as the institution has been responsive to community development needs and opportunities in its assessment area(s).

§ __.12(h) – 7: What is meant by the term "regional area"?

A7. A "regional area" may be an intrastate area or a multistate area that includes the financial institution's assessment area(s). Regional areas typically have some geographic, demographic, and/or economic interdependencies and may conform to commonly accepted delineations, such as "the tri-county area" or the "mid-Atlantic states." Regions are often defined by the geographic scope and specific purpose of a community development organization or initiative.

§ __.12(h) – 8: What is meant by the term "primary purpose" as that term is used to define what constitutes a community development loan, a qualified investment, or a community development service?

A8. A loan, investment, or service has as its primary purpose community development when it is designed for the express purpose of revitalizing or stabilizing low- or moderate-income areas, designated disaster areas, or underserved or distressed nonmetropolitan middle-income areas, providing affordable housing for, or community services targeted to, low- or moderate-income persons, or promoting economic development by financing small businesses or farms that meet the requirements set forth in 12 CFR __.12(g). To determine whether an activity is designed for an express community development purpose, the agencies apply one of two approaches. First, if a majority of the dollars or beneficiaries of the activity are identifiable to one or more of the enumerated community development purposes, then the activity will be considered to possess the requisite primary purpose. Alternatively, where the measurable portion of any benefit bestowed or dollars applied to the community development purpose is less than a majority of the entire activity's benefits or dollar value, then the activity may still be considered to possess the requisite primary purpose, and the institution may receive CRA consideration for the entire activity, if (1) the express, bona fide intent of the activity, as stated, for example, in a prospectus, loan proposal, or community action plan, is primarily one or more of the enumerated community development purposes; (2) the activity is specifically structured (given any relevant market or legal constraints or performance context factors) to achieve the expressed community development purpose; and (3) the activity accomplishes, or is reasonably certain to accomplish, the community development purpose involved.

Generally, a loan, investment, or service will be determined to have a "primary purpose" of community development only if it meets the criteria described above. However, an activity involving the provision of affordable housing also may be deemed to have a "primary purpose" of community development in certain other limited circumstances in which these criteria have not been met. Specifically, activities related to the provision of mixed-income housing, such as in connection with a development that has a mixed-income housing component or an affordable housing set-aside required by Federal, state, or local government, also would be eligible for consideration as an activity that has a "primary purpose" of community development at the election of the institution. In such cases, an institution may receive pro rata consideration for the portion of such activities that helps to provide affordable housing to low- or moderate-income individuals. For example, if an institution makes a $10 million loan to finance a mixed-income housing development in which 10 percent of the units will be set aside as affordable housing for low- and moderate-income individuals, the institution may elect to treat $1 million of such loan as a community development loan. In other words, the pro rata dollar amount of the total activity will be based on the percentage of units set-aside for affordable housing for low- or moderate-income individuals.

The fact that an activity provides indirect or short-term benefits to low- or moderate-income persons does not make the activity community development, nor does the mere presence of such indirect or short-term benefits constitute a primary purpose of community development. Financial institutions that want examiners to consider certain activities should be prepared to demonstrate the activities' qualifications.

§ __.12(i) Community development service

§ __.12(i) – 1: In addition to meeting the definition of "community development" in the regulation, community development services must also be related to the provision of financial services. What is meant by "provision of financial services"?

A1. Providing financial services means providing services of the type generally provided by the financial services industry. Providing financial services often involves informing community members about how to get or use credit or otherwise providing credit services or information to the community. For example, service on the board of directors of an organization that promotes credit availability or finances affordable housing is related to the provision of financial services. Providing technical assistance about financial services to community-based groups, local or tribal government agencies, or intermediaries that help to meet the credit needs of low- and moderate-income individuals or small businesses and farms is also providing financial services. By contrast, activities that do not take advantage of the employees' financial expertise, such as neighborhood cleanups, do not involve the provision of financial services.

§ __.12(i) – 2: Are personal charitable activities provided by an institution's employees or directors outside the ordinary course of their employment considered community development services?

A2. No. Services must be provided as a representative of the institution. For example, if a financial institution's director, on her own time and not as a representative of the institution, volunteers one evening a week at a local community development corporation's financial counseling program, the institution may not consider this activity a community development service.

§ __.12(i) – 3: What are examples of community development services?

A3. Examples of community development services include, but are not limited to, the following:

- Providing technical assistance on financial matters to nonprofit, tribal, or government organizations serving low- and moderate-income housing or economic revitalization and development needs;
- Providing technical assistance on financial matters to small businesses or community development organizations, including organizations and individuals who apply for loans or grants under the Federal Home Loan Banks' (FHLB) Affordable Housing Program;
- Lending employees to provide financial services for organizations facilitating affordable housing construction and rehabilitation or development of affordable housing;
- Providing credit counseling, home-buyer and home maintenance counseling, financial planning or other financial services education to promote community development and affordable housing, including credit counseling to assist low- or moderate-income borrowers in avoiding foreclosure on their homes;
- Establishing school savings programs or developing or teaching financial education or literacy curricula for low- or moderate-income individuals; and
- Providing foreclosure prevention programs to low- or moderate-income homeowners who are facing foreclosure on their primary residence with the objective of providing affordable, sustainable, long-term loan modifications and restructurings.

Examples of technical assistance activities that are related to the provision of financial services and that might be provided to community development organizations include

- serving on the board of directors;
- serving on a loan review committee;
- developing loan application and underwriting standards;
- developing loan-processing systems;
- developing secondary market vehicles or programs;
- assisting in marketing financial services, including development of advertising and promotions, publications, workshops and conferences;
- furnishing financial services training for staff and management;
- contributing accounting/bookkeeping services;
- assisting in fund raising, including soliciting or arranging investments; and
- providing services reflecting a financial institution's employees' areas of expertise at the institution, such as human resources, information technology, and legal services.

Refer to Q&A § __.24(a) – 1 for information about how retail services are evaluated under the large institution service test.

§ __.12(j) Consumer loan

§ __.12(j) – 1: Are home equity loans considered "consumer loans"?

A1. Home equity loans made for purposes other than home purchase, home improvement, or refinancing home purchase or home improvement loans are consumer loans if they are extended to one or more individuals for household, family, or other personal expenditures.

§ __.12(j) – 2: May a home equity line of credit be considered a "consumer loan" even if part of the line is for home improvement purposes?

A2. If the predominant purpose of the line is home improvement, the line may only be reported under HMDA and may not be considered a consumer loan. However, the full amount of the line may be considered a "consumer loan" if its predominant purpose is for household, family, or other personal expenditures, and to a lesser extent home improvement, and the full amount of the line has not been reported under HMDA. This is the case even though there may be "double counting" because part of the line may also have been reported under HMDA.

§ __.12(j) – 3: How should an institution collect or report information on loans the proceeds of which will be used for multiple purposes?

A3. If an institution makes a single loan or provides a line of credit to a customer to be used for both consumer and small business purposes, consistent with the instructions for the Consolidated Reports of Condition and Income (Call Report), the institution should determine the major (predominant) component of the loan or the credit line and collect or report the entire loan or credit line in accordance with the regulation's specifications for that loan type.

§ __.12(l) Home mortgage loan

§ __.12(l) – 1: Does the term "home mortgage loan" include loans other than "home purchase loans"?

A1. Yes. "Home mortgage loan" includes "home improvement loan," "home purchase loan," and "refinancing," as defined in the HMDA regulation, Regulation C, 12 CFR part 1003. This definition also includes multifamily (five-or-more families) dwelling loans, and loans for the purchase of manufactured homes. See also Q&A § __.22(a)(2) – 7.

§ __.12(l) – 2: Some financial institutions broker home mortgage loans. They typically take the borrower's application and perform other settlement activities; however, they do not make the credit decision. The broker institutions may also initially fund these mortgage loans, then immediately assign them to another lender. Because the broker institution does not make the credit decision, under Regulation C (HMDA), they do not record the loans on their HMDA loan application registers (HMDA-LAR), even if they fund the loans. May an institution receive any consideration under CRA for its home mortgage loan brokerage activities?

A2. Yes. A financial institution that funds home mortgage loans but immediately assigns the loans to the lender that made the credit decisions may present information about these loans to examiners for consideration under the lending test as "other loan data." Under Regulation C, the broker institution does not record the loans on its HMDA-LAR because it does not make the credit decisions, even if it funds the loans. An institution electing to have these home mortgage loans considered must maintain information about all of the home mortgage loans that it has funded in this way. Examiners will consider these other loan data using the same criteria by which home mortgage loans originated or purchased by an institution are evaluated.

Institutions that do not provide funding but merely take applications and provide settlement services for another lender that makes the credit decisions will receive consideration for this service as a retail banking service. Examiners will consider an institution's mortgage brokerage services when evaluating the range of services provided to low-, moderate-, middle- and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies. Alternatively, an institution's mortgage brokerage service may be considered a community development service if the primary purpose of the service is community development. An institution wishing to have its mortgage brokerage service considered as a community development service must provide sufficient information to substantiate that its primary purpose is community development and to establish the extent of the services provided.

§ __.12(m) Income level

§ __.12(m) – 1: Where do institutions find income level data for geographies and individuals?

A1. The median family income (MFI) levels for geographies, i.e., census tracts, are calculated using income data from the U.S. Census Bureau's American Community Survey (ACS) and geographic definitions from the Office of Management and Budget (OMB), and are updated approximately every five years. Geographic income data, along with detailed information about the FFIEC's calculation of geographic MFI data, are available on the FFIEC Web site at http://www.ffiec.gov/cra.htm.

The income levels for individuals are calculated annually by the FFIEC using geographic definitions from the OMB, income data from the ACS, and the Consumer Price Index from the Congressional Budget Office. Individual MFI data for metropolitan statistical areas (MSA) and statewide nonmetropolitan areas, along with detailed information about the FFIEC's calculation of individual MFI data, are available on the FFIEC Web site at http://www.ffiec.gov/cra.htm.

§ __.12(n) Limited purpose institution

§ __.12(n) – 1: What constitutes a "narrow product line" in the definition of "limited purpose institution"?

A1. An institution offers a narrow product line by limiting its lending activities to a product line other than a traditional retail product line required to be evaluated under the lending test (i.e., home mortgage, small business, and small farm loans). Thus, an institution engaged only in making credit card or motor vehicle loans offers a narrow product line, while an institution limiting its lending activities to home mortgages is not offering a narrow product line.

§ __.12(n) – 2: What factors will the Agencies consider to determine whether an institution that, if limited purpose, makes loans outside a narrow product line, or, if wholesale, engages in retail lending, will lose its limited purpose or wholesale designation because of too much other lending?

A2. Wholesale institutions may engage in some retail lending without losing their designation if this activity is incidental and done on an accommodation basis. Similarly, limited purpose institutions continue to meet the narrow product line requirement if they provide other types of loans on an infrequent basis. In reviewing other lending activities

by these institutions, the Agencies will consider the following factors:

- Is the retail lending provided as an incident to the institution's wholesale lending?
- Are the retail loans provided as an accommodation to the institution's wholesale customers?
- Are the other types of loans made only infrequently to the limited purpose institution's customers?
- Does only an insignificant portion of the institution's total assets and income result from the other lending?
- How significant a role does the institution play in providing that type(s) of loan(s) in the institution's assessment area(s)?
- Does the institution hold itself out as offering that type(s) of loan(s)?
- Does the lending test or the community development test present a more accurate picture of the institution's CRA performance?

§ __.12(n) – 3: Do "niche institutions" qualify as limited purpose (or wholesale) institutions?

A3. Generally, no. Institutions that are in the business of lending to the public, but specialize in certain types of retail loans (for example, home mortgage or small business loans) to certain types of borrowers (for example, to high-end income level customers or to corporations or partnerships of licensed professional practitioners) ("niche institutions") generally would not qualify as limited purpose (or wholesale) institutions.

§ __.12(t) Qualified investment

§ __.12(t) – 1: Does the CRA regulation provide authority for institutions to make investments?

A1. No. The CRA regulation does not provide authority for institutions to make investments that are not otherwise allowed by Federal law.

§ __.12(t) – 2: Are mortgage-backed securities or municipal bonds "qualified investments"?

A2. As a general rule, mortgage-backed securities and municipal bonds are not qualified investments because they do not have as their primary purpose community development, as defined in the CRA regulations. Nonetheless, mortgage-backed securities or municipal bonds designed primarily to finance community development generally are qualified investments. Municipal bonds or other securities with a primary purpose of community development need not be housing-related. For example, a bond to fund a community facility or park or to provide sewage services as part of a plan to redevelop a low-income neighborhood is a qualified investment. Certain municipal bonds in underserved nonmetropolitan middle-income geographies may also be qualified investments. See Q&A § __.12(g)(4)(iii) – 4. Housing-related bonds or securities must primarily address affordable housing (including multifamily rental housing) needs of low- or moderate-income individuals in order to qualify. See also Q&A § __.23(b) – 2.

§ __.12(t) – 3: Are FHLB stocks or unpaid dividends and membership reserves with the Federal Reserve Banks "qualified investments"?

A3. No. FHLB stocks or unpaid dividends, and membership reserves with the Federal Reserve Banks do not have a sufficient connection to community development to be qualified investments. However, FHLB member institutions may receive CRA consideration as a community development service for technical assistance they provide on behalf of applicants and recipients of funding from the FHLB's Affordable Housing Program. See Q&A § __.12(i) – 3.

§ __.12(t) – 4: What are examples of qualified investments?

A4. Examples of qualified investments include, but are not limited to, investments, grants, deposits, or shares in or to:

- Financial intermediaries (including CDFIs, New Markets Tax Credit-eligible Community Development Entities, CDCs, minority- and women-owned financial institutions, community loan funds, and low-income or community development credit unions) that primarily lend or facilitate lending in low- and moderate-income areas or to low- and moderate-income individuals in order to promote community development, such as a CDFI that promotes economic development on an Indian reservation;
- Organizations engaged in affordable housing rehabilitation and construction, including multifamily rental housing;
- Organizations, including, for example, SBICs, specialized SBICs, and Rural Business Investment Companies (RBIC) that promote economic development by financing small businesses;
- Community development venture capital companies that promote economic development by financing small businesses;
- Facilities that promote community development by providing community services for low- and moderate-income individuals, such as youth programs, homeless centers, soup kitchens, health care facilities, battered women's centers, and alcohol and drug recovery centers;
- Projects eligible for low-income housing tax credits;
- State and municipal obligations, such as revenue bonds, that specifically support affordable housing or other community development;
- Not-for-profit organizations serving low- and moderate-income housing or other community development needs, such as counseling for credit, home-ownership, home maintenance, and other financial literacy programs; and
- Organizations supporting activities essential to the capacity of low- and moderate-income individuals or geographies to utilize credit or to sustain economic development, such as, for example, day care operations and job training programs or workforce development programs that enable low- or moderate-income individuals to work.

See also Q&As § __.12(g)(4)(ii) – 2; § __.12(g)(4)(iii) – 3; § __.12(g)(4)(iii) – 4.

§ __.12(t) – 5: Will an institution receive consideration for charitable contributions as "qualified investments"?

A5. Yes, provided they have as their primary purpose community development as defined in the regulations. A charitable contribution, whether in cash or an in-kind contribution of property, is included in the term "grant." A qualified investment is not disqualified because an institution receives favorable treatment for it (for example, as a tax deduction or credit) under the Internal Revenue Code.

§ __.12(t) – 6: An institution makes or participates in a community development loan. The institution provided the loan at below-market interest rates or "bought down" the interest rate to the borrower. Is the lost income resulting from the lower interest rate or buy-down a qualified investment?

A6. No. The Agencies will, however, consider the responsiveness, innovativeness, and complexity of the community development loan within the bounds of safe and sound banking practices.

§ __.12(t) – 7: Will the Agencies consider as a qualified investment the wages or other compensation of an employee or director who provides assistance to a community development organization on behalf of the institution?

A7. No. However, the Agencies will consider donated labor of employees or directors of a financial institution as a community development service if the activity meets the regulatory definition of "community development service."

§ __.12(t) – 8: When evaluating a qualified investment, what consideration will be given for prior-period investments?

A8. When evaluating an institution's qualified investment record, examiners will consider investments that were made prior to the current examination, but that are still outstanding. Qualitative factors will affect the weight given to both current period and outstanding prior-period qualified investments. For example, a prior-period outstanding investment with a multi-year impact that addresses assessment area community development needs may receive more consideration than a current period investment of a comparable amount that is less responsive to area community development needs.

§ __.12(t) – 9: How do examiners evaluate loans or investments to organizations that, in turn, invest in instruments that do not have a community development purpose, and use only the income, or a portion of the income, from those investments to support their community development purpose?

A9. Examiners will give quantitative consideration for the dollar amount of funds that benefit an organization or activity that has a primary purpose of community development. If an institution invests in (or lends to) an organization that, in turn, invests those funds in instruments that do not have as their primary purpose community development, such as Treasury securities, and uses only the income, or a portion of the income, from those investments to support the organization's community development purposes, the Agencies will consider only the amount of the investment income used to benefit the organization or activity that has a community development purpose for CRA purposes. Examiners will, however, provide consideration for such instruments when the organization invests solely as a means of securing capital for leveraging purposes, securing additional financing, or in order to generate a return with minimal risk until funds can be deployed toward the originally intended community development activity. The organization must express a bona fide intent to deploy the funds from investments and loans in a manner that primarily serves a community development purpose in order for the institution to receive consideration under the applicable test.

§ __.12(u) Small institution

§ __.12(u) – 1: How are Federal and state branch assets of a foreign bank calculated for purposes of the CRA?

A1. A Federal or state branch of a foreign bank is considered a small institution if the Federal or state branch has assets less than the asset threshold delineated in 12 CFR __.12(u)(1) for small institutions.

§ __.12(u)(2) Small institution adjustment

§ __.12(u)(2) – 1: How often will the asset size thresholds for small institutions and intermediate small institutions be changed, and how will these adjustments be communicated?

A1. The asset size thresholds for "small institutions" and "intermediate small institutions" will be adjusted annually based on changes to the Consumer Price Index. More specifically, the dollar thresholds will be adjusted annually based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted for each 12-month period ending in November, with rounding to the nearest million. Any changes in the asset size thresholds will be published in the Federal Register. Historical and current asset-size threshold information may be found on the FFIEC's Web site at http://www.ffiec.gov/cra.

§ __.12(v) Small business loan

§ __.12(v) – 1: Are loans to nonprofit organizations considered small business loans or are they considered community development loans?

A1. To be considered a small business loan, a loan must meet the definition of "loans to small businesses" in the instructions in the Call Report. In general, a loan to a nonprofit organization, for business or farm purposes, where the loan is secured by nonfarm nonresidential property and the original amount of the loan is $1 million or less, if a business

loan, or $500,000 or less, if a farm loan, would be reported in the Call Report as a small business or small farm loan. If a loan to a nonprofit organization is reportable as a small business or small farm loan, it cannot also be considered as a community development loan, except by a wholesale or limited purpose institution. Loans to nonprofit organizations that are not small business or small farm loans for Call Report purposes may be considered as community development loans if they meet the regulatory definition of "community development."

§ __.12(v) – 2: Are loans secured by commercial real estate considered small business loans?

A2. Yes, depending on their principal amount. Small business loans include loans secured by "nonfarm nonresidential properties," as defined in the Call Report, in amounts of $1 million or less.

§ __.12(v) – 3: Are loans secured by nonfarm residential real estate to finance small businesses "small business loans"?

A3. Typically not. Loans secured by nonfarm residential real estate that are used to finance small businesses are not included as "small business" loans for Call Report purposes unless the security interest in the nonfarm residential real estate is taken only as an abundance of caution. (See Call Report Glossary definition of "Loan Secured by Real Estate.") The Agencies recognize that many small businesses are financed by loans that would not have been made or would have been made on less favorable terms had they not been secured by residential real estate. If these loans promote community development, as defined in the regulation, they may be considered as community development loans. Otherwise, at an institution's option, the institution may collect and maintain data separately concerning these loans and request that the data be considered in its CRA evaluation as "Other Secured Lines/Loans for Purposes of Small Business." See also Q&A § __.22(a)(2) – 7.

§ __.12(v) – 4: Are credit cards issued to small businesses considered "small business loans"?

A4. Credit cards issued to a small business or to individuals to be used, with the institution's knowledge, as business accounts are small business loans if they meet the definitional requirements in the Call Report instructions.

§ __.12(x) Wholesale institution

§ __.12(x) – 1: What factors will the Agencies consider in determining whether an institution is in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers?

A1. The Agencies will consider whether

- the institution holds itself out to the retail public as providing such loans.
- the institution's revenues from extending such loans are significant when compared to its overall operations, including off-balance sheet activities.

A wholesale institution may make some retail loans without losing its wholesale designation as described above in Q&A § __.12(n) – 2.

§ __.21--Performance tests, standards, and ratings, in general

§ __.21(a) Performance tests and standards

§ __.21(a) – 1: How will examiners apply the performance criteria?

A1. Examiners will apply the performance criteria reasonably and fairly, in accord with the regulations, the examination procedures, and this guidance. In doing so, examiners will disregard efforts by an institution to manipulate business operations or present information in an artificial light that does not accurately reflect an institution's overall record of lending performance.

§ __.21(a) – 2: Are all community development activities weighted equally by examiners?

A2. No. Examiners will consider the responsiveness to credit and community development needs, as well as the innovativeness and complexity, if applicable, of an institution's community development lending, qualified investments, and community development services. These criteria include consideration of the degree to which they serve as a catalyst for other community development activities. The criteria are designed to add a qualitative element to the evaluation of an institution's performance. ("Innovativeness" and "complexity" are not factors in the community development test applicable to intermediate small institutions.)

§ __.21(a) – 3: "Responsiveness" to credit and community development needs is either a criterion or otherwise a consideration in all of the performance tests. How do examiners evaluate whether a financial institution has been "responsive" to credit and community development needs?

A3. There are three important factors that examiners consider when evaluating responsiveness: quantity, quality, and performance context. Examiners evaluate the volume and type of an institution's activities, i.e., retail and community development loans and services and qualified investments, as a first step in evaluating the institution's responsiveness to credit and community development needs. In addition, an assessment of "responsiveness" encompasses the qualitative aspects of performance, including the effectiveness of the activities. For example, some community development activities require specialized expertise or effort on the part of the institution or provide a benefit to the community that would not otherwise be made available. In some cases, a smaller loan may have more benefit to a community than a larger loan. In other words, when evaluated qualitatively, some activities are more responsive than others. Activities are more responsive if they are successful in meeting identified credit and community development needs. For example, investing in a community development organization that

specializes in originating home mortgage loans to low- or moderate-income individuals would be considered more responsive than an investment of the same amount in a single-family mortgage-backed security in which the majority of the loans are to low- or moderate-income borrowers. Although both of these activities may receive consideration as a qualified investment, the former example would be considered to be more responsive than the latter.

Examiners evaluate the responsiveness of an institution's activities to credit and community development needs in light of the institution's performance context. That is, examiners consider the institution's capacity, its business strategy, the needs of the community, and the opportunities for lending, investments, and services in the community. To inform their assessment, examiners may consider information about credit and community development needs and opportunities from many sources, including

- demographic and other information compiled by local, state, and Federal government entities;
- public comments received by the Agency, for example, in response to its publication of its planned examination schedule;
- information from community leaders or organizations;
- studies and reports from academic institutions and other research bodies;
- consumer complaint information; and
- any relevant information provided to examiners by the financial institution that is maintained by the institution in its ordinary course of business.

Responsiveness to community development needs and opportunities in an institution's assessment area(s) is also a key consideration when an institution plans to engage in community development activities that benefit areas outside of its assessment area(s). Q&A § __.12(h) – 6 states that an institution will receive consideration for activities that benefit geographies or individuals located somewhere within a broader statewide or regional area that includes the institution's assessment area(s) even if they will not benefit the institution's assessment area(s), as long as the institution has been responsive to community development needs and opportunities in its assessment area(s). When considering whether an institution has been responsive to community development needs and opportunities in its assessment area(s), examiners will consider all of the institution's community development activities in its assessment area(s). Examiners will also consider as responsive to assessment area needs community development activities that support an organization or activity that covers an area that is larger than, but includes, the institution's assessment area(s). This is true if the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located within the institution's assessment area(s), even though the institution's assessment area(s) did not receive an immediate or direct benefit from the institution's participation in the organization or activity. For example, suppose an institution were to invest in a statewide community development fund that was organized with the purpose of providing community development loans throughout the state in which the institution is located. Examiners would consider this investment when evaluating the institution's responsiveness to community development needs and opportunities in its assessment area(s) even if the fund had not provided a loan within the institution's assessment area(s).

§ __.21(a) – 4: <u>What is meant by "innovativeness"?</u>

A4. "Innovativeness" is one of several qualitative considerations under the lending, investment, and service tests. The community development test for wholesale and limited purpose institutions similarly considers "innovative" loans, investments, and services in the evaluation of performance. Under the CRA regulations, all innovative practices or activities will be considered when an institution implements meaningful improvements to products, services, or delivery systems that respond more effectively to customer and community needs, particularly those segments enumerated in the definition of community development.

Institutions should not innovate simply to meet this criterion of the applicable test, particularly if, for example, existing products, services, or delivery systems effectively address the needs of all segments of the community. <u>See</u> Q&A § __.28 – 1. Innovative activities are especially meaningful when they emphasize serving, for example, low- or moderate-income consumers or distressed or underserved nonmetropolitan middle-income geographies in new or more effective ways. Innovativeness may also include products, services, or delivery systems already present in the assessment area by institutions that are not leaders in innovation—due, for example, to the lack of available financial resources or technological expertise—when they subsequently introduce those products, services, or delivery systems to their low- or moderate-income customers or segments of consumers or markets not previously served. Practices that cease to be innovative may still receive qualitative consideration for being flexible, complex, or responsive.

<u>§ __.21(b) Performance context</u>

§ __.21(b) – 1: <u>What is the performance context?</u>

A1. The performance context is a broad range of economic, demographic, and institution- and community-specific information that an examiner reviews to understand the context in which an institution's record of performance should be evaluated. The Agencies will provide examiners with some of this information. The performance context is not a formal assessment of community credit needs.

<u>§ __.21(b)(2) Information maintained by the institution or obtained from community contacts</u>

§ __.21(b)(2) – 1: <u>Will examiners consider performance context information provided by institutions?</u>

A1. Yes. An institution may provide examiners with any information it deems relevant, including information on the lending, investment, and service opportunities in its assessment area(s). This information may include data on the business opportunities addressed by lenders not subject to the CRA. Institutions are not required, however, to prepare a formal needs assessment. If an institution provides information to examiners, the Agencies will not expect information other than what the institution normally would develop to prepare a business plan or to identify potential markets and customers, including low- and moderate-income persons and geographies in its assessment area(s). The Agencies will not evaluate an institution's efforts to ascertain community credit needs or rate an institution on the quality of any information it provides.

§ __.21(b)(2) – 2: Will examiners conduct community contact interviews as part of the examination process?

A2. Yes. Examiners will consider information obtained from interviews with local community, civic, and government leaders. These interviews provide examiners with knowledge regarding the local community, its economic base, and community development initiatives. To ensure that information from local leaders is considered – particularly in areas where the number of potential contacts may be limited – examiners may use information obtained through an interview with a single community contact for examinations of more than one institution in a given market. In addition, the Agencies may consider information obtained from interviews conducted by other Agency staff and by the other Agencies. In order to augment contacts previously used by the Agencies and foster a wider array of contacts, the Agencies may share community contact information.

§ .21(b)(4) Institutional capacity and constraints

§ __.21(b)(4) – 1: Will examiners consider factors outside of an institution's control that prevent it from engaging in certain activities?

A1. Yes. Examiners will take into account statutory and supervisory limitations on an institution's ability to engage in any lending, investment, and service activities. For example, a savings association that has made few or no qualified investments due to its limited investment authority may still receive a low satisfactory rating under the investment test if it has a strong lending record.

§ .21(b)(5) Institution's past performance and the performance of similarly situated lenders

§ __.21(b)(5) – 1: Can an institution's assigned rating be adversely affected by poor past performance?

A1. Yes. The Agencies will consider an institution's past performance in its overall evaluation. For example, an institution that received a rating of "needs to improve" in the past may receive a rating of "substantial noncompliance" if its performance has not improved.

§ __.21(b)(5) – 2: How will examiners consider the performance of similarly situated lenders?

A2. The performance context section of the regulation permits the performance of similarly situated lenders to be considered, for example, as one of a number of considerations in evaluating the geographic distribution of an institution's loans to low-, moderate-, middle-, and upper-income geographies. This analysis, as well as other analyses, may be used, for example, where groups of contiguous geographies within an institution's assessment area(s) exhibit abnormally low penetration. In this regard, the performance of similarly situated lenders may be analyzed if such an analysis would provide accurate insight into the institution's lack of performance in those areas. The regulation does not require the use of a specific type of analysis under these circumstances. Moreover, no ratio developed from any type of analysis is linked to any lending test rating.

§ .21(f) Activities in cooperation with minority- or women-owned financial institutions and low-income credit unions

§ __.21(f) – 1: The CRA provides that, in assessing the CRA performance of nonminority- and non-women-owned (majority-owned) financial institutions, examiners may consider as a factor capital investments, loan participations, and other ventures undertaken by the institutions in cooperation with minority- or women-owned financial institutions and low-income credit unions (MWLI), provided that these activities help meet the credit needs of local communities in which the MWLIs are chartered. Must such activities also benefit the majority-owned financial institution's assessment area(s)?

A1. No. Although the regulations generally provide that an institution's CRA activities will be evaluated for the extent to which they benefit the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s), the Agencies apply a broader geographic criterion when evaluating capital investments, loan participations, and other ventures undertaken by that institution in cooperation with MWLIs, as provided by the CRA. Thus, such activities will be favorably considered in the CRA performance evaluation of the institution (as loans, investments, or services, as appropriate), even if the MWLIs are not located in, or such activities do not benefit, the assessment area(s) of the majority-owned institution or the broader statewide or regional area that includes its assessment area(s). The activities must, however, help meet the credit needs of the local communities in which the MWLIs are chartered. The impact of a majority-owned institution's activities in cooperation with MWLIs on the majority-owned institution's CRA rating will be determined in conjunction with its overall performance in its assessment area(s).

Examples of activities undertaken by a majority-owned financial institution in cooperation with MWLIs that would receive CRA consideration may include

- making a deposit or capital investment;
- purchasing a participation in a loan;
- loaning an officer or providing other technical expertise to assist an MWLI in improving its lending policies and practices;
- providing financial support to enable an MWLI to partner with schools or universities to offer financial literacy education to members of its local community; or
- providing free or discounted data processing systems, or office facilities to aid an MWLI in serving its customers.

§ __.22--Lending test

§ .22(a) Scope of test

§ __.22(a) – 1: Are there any types of lending activities that help meet the credit needs of an institution's assessment area(s) and that may warrant favorable consideration as activities that are responsive to the needs of the institution's assessment area(s)?

A1. Credit needs vary from community to community. However, there are some lending activities that are likely to be responsive in helping to meet the credit needs of many communities. These activities include

- providing loan programs that include a financial education component about how to avoid lending activities that may be abusive or otherwise unsuitable;
- establishing loan programs that provide small, unsecured consumer loans in a safe and sound manner (i.e., based on the borrower's ability to repay) and with reasonable terms;
- offering lending programs, which feature reporting to consumer reporting agencies, that transition borrowers from loans with higher interest rates and fees (based on credit risk) to lower-cost loans, consistent with safe and sound lending practices. Reporting to consumer reporting agencies allows borrowers accessing these programs the opportunity to improve their credit histories and thereby improve their access to competitive credit products; and
- establishing loan programs with the objective of providing affordable, sustainable, long-term relief, for example, through loan refinancings, restructures, or modifications, to homeowners who are facing foreclosure on their primary residences.

Examiners may consider favorably such lending activities, which have features augmenting the success and effectiveness of the small, intermediate small, or large institution's lending programs.

§ __.22(a)(1) Types of loans considered

§ __.22(a)(1) – 1: If a large retail institution is not required to collect and report home mortgage data under the HMDA, will the Agencies still evaluate the institution's home mortgage lending performance?

A1. Yes. The Agencies will sample the institution's home mortgage loan files in order to assess its performance under the lending test criteria.

§ __.22(a)(1) – 2: When will examiners consider consumer loans as part of an institution's CRA evaluation?

A2. Consumer loans will be evaluated if the institution so elects and has collected and maintained the data; an institution that elects not to have its consumer loans evaluated will not be viewed less favorably by examiners than one that does. However, if consumer loans constitute a substantial majority of the institution's business, the Agencies will evaluate them even if the institution does not so elect. The Agencies interpret "substantial majority" to be so significant a portion of the institution's lending activity by number and dollar volume of loans that the lending test evaluation would not meaningfully reflect its lending performance if consumer loans were excluded.

§ .22(a)(2) Loan originations and purchases/other loan data

§ __.22(a)(2) – 1: How are lending commitments (such as letters of credit) evaluated under the regulation?

A1. The Agencies consider lending commitments (such as letters of credit) only at the option of the institution, regardless of examination type. Commitments must be legally binding between an institution and a borrower in order to be considered. Information about lending commitments will be used by examiners to enhance their understanding of an institution's performance, but will be evaluated separately from the loans.

§ __.22(a)(2) – 2: Will examiners review application data as part of the lending test?

A2. Application activity is not a performance criterion of the lending test. However, examiners may consider this information in the performance context analysis because this information may give examiners insight on, for example, the demand for loans.

§ __.22(a)(2) – 3: May a financial institution receive consideration under CRA for home mortgage loan modification, extension, and consolidation agreements (MECA), in which it obtains home mortgage loans from other institutions without actually purchasing or refinancing the home mortgage loans, as those terms have been interpreted under CRA and HMDA, as implemented by 12 CFR part 1003?

A3. Yes. In some states, MECAs, which are not considered loan refinancings because the existing loan obligations are not satisfied and replaced, are common. Although these transactions are not considered to be purchases or refinancings, as those terms have been interpreted under CRA, they do achieve the same results. A small, intermediate small, or large institution may present information about its

MECA activities with respect to home mortgages to examiners for consideration under the lending test as "other loan data."

§ __.22(a)(2) – 4: In addition to MECAs, what are other examples of "other loan data"?

A4. Other loan data include, for example,

- loans funded for sale to the secondary markets that an institution has not reported under HMDA;
- unfunded loan commitments and letters of credit;
- commercial and consumer leases;
- loans secured by nonfarm residential real estate, not taken as an abundance of caution, that are used to finance small businesses or small farms and that are not reported as small business/small farm loans or reported under HMDA; and
- an increase to a small business or small farm line of credit if the increase would cause the total line of credit to exceed $1 million, in the case of a small business line; or $500,000, in the case of a small farm line.

§ __.22(a)(2) – 5: Do institutions receive consideration for originating or purchasing loans that are fully guaranteed?

A5. Yes. For all examination types, examiners evaluate an institution's record of helping to meet the credit needs of its assessment area(s) through the origination or purchase of specified types of loans. Examiners do not take into account whether or not such loans are guaranteed.

§ __.22(a)(2) – 6: Do institutions receive consideration for purchasing loan participations?

A6. Yes. Examiners will consider the amount of loan participations purchased when evaluating an institution's record of helping to meet the credit needs of its assessment area(s) through the origination or purchase of specified types of loans, regardless of examination type. As with other loan purchases, examiners will evaluate whether loan participations purchased by an institution, which have been sold and purchased a number of times, artificially inflate CRA performance. See, e.g., Q&A § __.21(a) – 1.

§ __.22(a)(2) – 7: How are refinancings of small business loans, which are secured by a one-to-four family residence and that have been reported under HMDA as a refinancing, evaluated under CRA?

A7. A loan of $1 million or less with a business purpose that is secured by a one-to-four family residence is considered a small business loan for CRA purposes only if the security interest in the residential property was taken as an abundance of caution and where the terms have not been made more favorable than they would have been in the absence of the lien. (See Call Report Glossary definition of "Loan Secured by Real Estate.") If this same loan is refinanced and the new loan is also secured by a one-to-four family residence, but only through an abundance of caution, this loan is reported not only as a refinancing under HMDA, but also as a small business loan under CRA. (Note that small farm loans are similarly treated.)

It is not anticipated that "double-reported" loans will be so numerous as to affect the typical institution's CRA rating. In the event that an institution reports a significant number or amount of loans as both home mortgage and small business loans, examiners will consider that overlap in evaluating the institution's performance and generally will consider the "double-reported" loans as small business loans for CRA consideration.

The origination of a small business or small farm loan that is secured by a one-to-four family residence is not reportable under HMDA, unless the purpose of the loan is home purchase or home improvement. Nor is the loan reported as a small business or small farm loan if the security interest is not taken merely as an abundance of caution. Any such loan may be provided to examiners as "other loan data" ("Other Secured Lines/Loans for Purposes of Small Business") for consideration during a CRA evaluation. See Q&A § __.12(v) – 3. The refinancings of such loans would be reported under HMDA.

§ __.22(b) Performance criteria

§ __.22(b)(1) Lending activity

§ __.22(b)(1) – 1: How will the Agencies apply the lending activity criterion to discourage an institution from originating loans that are viewed favorably under CRA in the institution itself and referring other loans, which are not viewed as favorably, for origination by an affiliate?

A1. Examiners will review closely institutions with (1) a small number and amount of home mortgage loans with an unusually good distribution among low- and moderate-income areas and low- and moderate-income borrowers and (2) a policy of referring most, but not all, of their home mortgage loans to affiliated institutions. If an institution is making loans mostly to low- and moderate-income individuals and areas and referring the rest of the loan applicants to an affiliate for the purpose of receiving a favorable CRA rating, examiners may conclude that the institution's lending activity is not satisfactory because it has inappropriately attempted to influence the rating. In evaluating an institution's lending, examiners will consider legitimate business reasons for the allocation of the lending activity.

§ __.22(b)(2) & (3) Geographic distribution and borrower characteristics

§ __.22(b)(2) & (3) – 1: How do the geographic distribution of loans and the distribution of lending by borrower characteristics interact in the lending test applicable to either large or small institutions?

A1. Examiners generally will consider both the distribution of an institution's loans among geographies of different income levels, and among borrowers of different income levels and businesses and farms of different sizes. The importance of the borrower distribution criterion, particularly in relation to the geographic distribution criterion, will depend on the performance context. For example, distribution among

borrowers with different income levels may be more important in areas without identifiable geographies of different income categories. On the other hand, geographic distribution may be more important in areas with the full range of geographies of different income categories.

§ __.22(b)(2) & (3) – 2: Must an institution lend to all portions of its assessment area?

A2. The term "assessment area" describes the geographic area within which the agencies assess how well an institution, regardless of examination type, has met the specific performance tests and standards in the rule. The Agencies do not expect that simply because a census tract is within an institution's assessment area(s), the institution must lend to that census tract. Rather the Agencies will be concerned with conspicuous gaps in loan distribution that are not explained by the performance context. Similarly, if an institution delineated the entire county in which it is located as its assessment area, but could have delineated its assessment area as only a portion of the county, it will not be penalized for lending only in that portion of the county, so long as that portion does not reflect illegal discrimination or arbitrarily exclude low- or moderate-income geographies. The capacity and constraints of an institution, its business decisions about how it can best help to meet the needs of its assessment area(s), including those of low- and moderate-income neighborhoods, and other aspects of the performance context, are all relevant to explain why the institution is serving or not serving portions of its assessment area(s).

§ __.22(b)(2) & (3) – 3: Will examiners take into account loans made by affiliates when evaluating the proportion of an institution's lending in its assessment area(s)?

A3. Examiners will not take into account loans made by affiliates when determining the proportion of an institution's lending in its assessment area(s), even if the institution elects to have its affiliate lending considered in the remainder of the lending test evaluation. However, examiners may consider an institution's business strategy of conducting lending through an affiliate in order to determine whether a low proportion of lending in the assessment area(s) should adversely affect the institution's lending test rating.

§ __.22(b)(2) & (3) – 4: When will examiners consider loans (other than community development loans) made outside an institution's assessment area(s)?

A4. Consideration will be given for loans to low- and moderate-income persons and small business and farm loans outside of an institution's assessment area(s), provided the institution has adequately addressed the needs of borrowers within its assessment area(s). The Agencies will apply this consideration not only to loans made by large retail institutions being evaluated under the lending test, but also to loans made by small and intermediate small institutions being evaluated under their respective performance standards. Loans to low- and moderate-income persons and small businesses and farms outside of an institution's assessment area(s), however, will not compensate for poor lending performance within the institution's assessment area(s).

§ __.22(b)(2) & (3) – 5: Under the lending test applicable to small, intermediate small, or large institutions, how will examiners evaluate home mortgage loans to middle- or upper-income individuals in a low- or moderate-income geography?

A5. Examiners will consider these home mortgage loans under the performance criteria of the lending test, i.e., by number and amount of home mortgage loans, whether they are inside or outside the financial institution's assessment area(s), their geographic distribution, and the income levels of the borrowers. Examiners will use information regarding the financial institution's performance context to determine how to evaluate the loans under these performance criteria. Depending on the performance context, examiners could view home mortgage loans to middle-income individuals in a low-income geography very differently. For example, if the loans are for homes or multifamily housing located in an area for which the local, state, tribal, or Federal government or a community-based development organization has developed a revitalization or stabilization plan (such as a Federal enterprise community or empowerment zone) that includes attracting mixed-income residents to establish a stabilized, economically diverse neighborhood, examiners may give more consideration to such loans, which may be viewed as serving the low- or moderate-income community's needs as well as serving those of the middle- or upper-income borrowers. If, on the other hand, no such plan exists and there is no other evidence of governmental support for a revitalization or stabilization project in the area and the loans to middle- or upper-income borrowers significantly disadvantage or primarily have the effect of displacing low- or moderate-income residents, examiners may view these loans simply as home mortgage loans to middle- or upper-income borrowers who happen to reside in a low- or moderate-income geography and weigh them accordingly in their evaluation of the institution.

§ __.22(b)(4) Community development lending

§ __.22(b)(4) – 1: When evaluating an institution's record of community development lending under the lending test applicable to large institutions, may an examiner distinguish among community development loans on the basis of the actual amount of the loan that advances the community development purpose?

A1. Yes. When evaluating the institution's record of community development lending under 12 CFR __.22(b)(4), it is appropriate to give greater weight to the amount of the loan that is targeted to the intended community development purpose. For example, consider two $10 million projects (with a total of 100 units each) that have as their express primary purpose affordable housing and are located in the same community. One of these projects sets aside 40 percent of its units for low-income residents and the other project allocates

65 percent of its units for low-income residents. An institution would report both loans as $10 million community development loans under the 12 CFR __.42(b)(2) aggregate reporting obligation. However, transaction complexity, innovation and all other relevant considerations being equal, an examiner should also take into account that the 65 percent project provides more affordable housing for more people per dollar expended.

Under 12 CFR __.22(b)(4), the extent of CRA consideration an institution receives for its community development loans should bear a direct relation to the benefits received by the community and the innovation or complexity of the loans required to accomplish the activity, not simply to the dollar amount expended on a particular transaction. By applying all lending test performance criteria, a community development loan of a lower dollar amount could meet the credit needs of the institution's community to a greater extent than a community development loan with a higher dollar amount, but with less innovation, complexity, or impact on the community.

§ __.22(b)(4) – 2: How do examiners consider community development loans in the evaluation of an institution's record of lending under the lending test applicable to large institutions?

A2. An institution's record of making community development loans may have a positive, neutral, or negative impact on the lending test rating. Community development lending is one of five performance criteria in the lending test criteria and, as such, it is considered at every examination. As with all lending test criteria, examiners evaluate an institution's record of making community development loans in the context of an institution's business model, the needs of its community, and the availability of community development opportunities in its assessment area(s) or the broader statewide or regional area(s) that includes the assessment area(s). For example, in some cases community development lending could have either a neutral or negative impact when the volume and number of community development loans are not adequate, depending on the performance context, while in other cases, it would have a positive impact when the institution is a leader in community development lending. Additionally, strong performance in retail lending may compensate for weak performance in community development lending, and conversely, strong community development lending may compensate for weak retail lending performance.

§ .22(b)(5) Innovative or flexible lending practices

§ __.22(b)(5) – 1: What do examiners consider in evaluating the innovativeness or flexibility of an institution's lending under the lending test applicable to large institutions?

A1. In evaluating the innovativeness or flexibility of an institution's lending practices (and the complexity and innovativeness of its community development lending), examiners will not be limited to reviewing the overall variety and specific terms and conditions of the credit product themselves. Examiners also consider whether, and the extent to which, innovative or flexible terms or products augment the success and effectiveness of the institution's community development loan programs or, more generally, of its loan programs that address the credit needs of low- or moderate-income geographies or individuals. Historically, many institutions have used innovative and flexible lending practices to customize loans to their customers' specific needs in a safe and sound manner. However, an innovative or flexible lending practice is not required in order to obtain a specific CRA rating. See Q&A § __.28 – 1. Examples of lending practices that are considered innovative or flexible include:

- In connection with a community development loan program, an institution may establish a technical assistance program under which the institution, directly or through third parties, provides affordable housing developers and other loan recipients with financial consulting services. Such a technical assistance program may, by itself, constitute a community development service eligible for consideration under the service test of the CRA regulations. In addition, the technical assistance may be considered as an innovative or flexible practice that augments the success and effectiveness of the related community development loan program.
- In connection with a small business lending program in a low- or moderate-income area and consistent with safe and sound lending practices, an institution may implement a program under which, in addition to providing financing, the institution also contracts with the small business borrowers. Such a contracting arrangement would not, itself, qualify for CRA consideration. However, it may be considered as an innovative or flexible practice that augments the loan program's success and effectiveness, and improves the program's ability to serve community development needs by helping to promote economic development through support of small business activities and revitalization or stabilization of low- or moderate-income geographies.
- In connection with a small dollar loan program with reasonable terms and offered in a safe and sound manner, which includes evaluating an individual's ability to repay, an institution may establish outreach initiatives or financial counseling targeted to low- or moderate-income individuals or communities. The institution's efforts to encourage the availability, awareness, and use of the small dollar loan program to meet the credit needs of low- and moderate-income individuals, in lieu of higher-cost credit, should augment the success and effectiveness of the lending program. Such loans may be considered responsive under Q&A § __.22(a) – 1, and the use of such outreach initiatives in conjunction with financial literacy education or linked savings programs also may be considered as an innovative or flexible practice to the extent that they augment the success and effectiveness of the related loan program. Such initiatives may receive consideration under other performance criteria as well. For example, an initiative to partner with a nonprofit organization

to provide financial counseling that encourages responsible use of credit may, by itself, constitute a community development service eligible for consideration under the service test.

- In connection with a mortgage or consumer lending program targeted to low- or moderate-income geographies or individuals, consistent with safe and sound lending practices, an institution may establish underwriting standards that utilize alternative credit histories, such as utility or rent payments, in an effort to evaluate low- or moderate-income individuals who lack sufficient conventional credit histories and who would be denied credit under the institution's traditional underwriting standards. The use of alternative credit histories in this manner to demonstrate that consumers have a timely and consistent record of paying their obligations may be considered as an innovative or flexible practice that augments the success and effectiveness of the lending program.

§ __.22(c) Affiliate lending
§ __.22(c)(1) In general

§ __.22(c)(1) – 1: If an institution, regardless of examination type, elects to have loans by its affiliate(s) considered, may it elect to have only certain categories of loans considered?

A1. Yes. An institution may elect to have only a particular category of its affiliate's lending considered. The basic categories of loans are home mortgage loans, small business loans, small farm loans, community development loans, and the five categories of consumer loans (motor vehicle loans, credit card loans, home equity loans, other secured loans, and other unsecured loans).

§ __.22(c)(2) Constraints on affiliate lending
§ __.22(c)(2)(i) No affiliate may claim a loan origination or loan purchase if another institution claims the same loan origination or purchase

§ __.22(c)(2)(i) – 1: Regardless of examination type, how is this constraint on affiliate lending applied?

A1. This constraint prohibits one affiliate from claiming a loan origination or purchase claimed by another affiliate. However, an institution can count as a purchase a loan originated by an affiliate that the institution subsequently purchases, or count as an origination a loan later sold to an affiliate, provided the same loans are not sold several times to inflate their value for CRA purposes. For example, assume that two institutions are affiliated. Institution A originates a loan and claims it as a loan origination. Institution B later purchases the loan. Institution B may count the loan as a purchased loan.

The same institution may not count both the origination and purchase. Thus, for example, if an institution claims loans made by an affiliated mortgage company as loan originations, the institution may not also count the loans as purchased loans if it later purchases the loans from its affiliate. See also Q&As § __.22(c)(2)(ii) – 1 and § __.22(c)(2)(ii) – 2.

§ __.22(c)(2)(ii) If an institution elects to have its supervisory Agency consider loans within a particular lending category made by one or more of the institution's affiliates in a particular assessment area, the institution shall elect to have the Agency consider all loans within that lending category in that particular assessment area made by all of the institution's affiliates

§ __.22(c)(2)(ii) – 1: Regardless of examination type, how is this constraint on affiliate lending applied?

A1. This constraint prohibits "cherry-picking" affiliate loans within any one category of loans. The constraint requires an institution that elects to have a particular category of affiliate lending in a particular assessment area considered to include all loans of that type made by all of its affiliates in that particular assessment area. For example, assume that an institution has several affiliates, including a mortgage company that makes loans in the institution's assessment area. If the institution elects to include the mortgage company's home mortgage loans, it must include all of its affiliates' home mortgage loans made in its assessment area. In addition, the institution cannot elect to include only those low- and moderate-income home mortgage loans made by its affiliates and not home mortgage loans to middle- and upper-income individuals or areas.

§ __.22(c)(2)(ii) – 2: Regardless of examination type, how is this constraint applied if an institution's affiliates are also insured depository institutions subject to the CRA?

A2. Strict application of this constraint against "cherry-picking" to loans of an affiliate that is also an insured depository institution covered by the CRA would produce the anomalous result that the other institution would, without its consent, not be able to count its own loans. Because the Agencies did not intend to deprive an institution subject to the CRA of receiving consideration for its own lending, the Agencies read this constraint slightly differently in cases involving a group of affiliated institutions, some of which are subject to the CRA and share the same assessment area(s). In those circumstances, an institution that elects to include all of its mortgage affiliate's home mortgage loans in its assessment area would not automatically be required to include all home mortgage loans in its assessment area of another affiliate institution subject to the CRA. However, all loans of a particular type made by any affiliate in the institution's assessment area(s) must either be counted by the lending institution or by another affiliate institution that is subject to the CRA. This reading reflects the fact that a holding company may, for business reasons, choose to transact different aspects of its business in different subsidiary institutions. However, the method by which loans are allocated among the institutions for CRA purposes must

reflect actual business decisions about the allocation of banking activities among the institutions and should not be designed solely to enhance their CRA evaluations.

§ .22(d) Lending by a consortium or a third party

§ __.22(d) – 1: Will equity and equity-type investments in a third party receive consideration under the lending test?

A1. If an institution has made an equity or equity-type investment in a third party, community development loans made by the third party may be considered under the lending test. On the other hand, asset-backed and debt securities that do not represent an equity-type interest in a third party will not be considered under the lending test unless the securities are booked by the purchasing institution as a loan. For example, if an institution purchases stock in a CDC that primarily lends in low- and moderate-income areas or to low- and moderate-income individuals in order to promote community development, the institution may claim a pro rata share of the CDC's loans as community development loans. The institution's pro rata share is based on its percentage of equity ownership in the CDC. Q&A § __.23(b) – 1 provides information concerning consideration of an equity or equity-type investment under the investment test and both the lending and investment tests. (Note that in connection with an intermediate small institution's CRA performance evaluation, community development loans, including pro rata shares of community development loans, are considered only in the community development test.)

§ __.22(d) – 2: Regardless of examination type, how will examiners evaluate loans made by consortia or third parties?

A2. Loans originated or purchased by consortia in which an institution participates or by third parties in which an institution invests will be considered only if they qualify as community development loans and will be considered only under the community development criterion. However, loans originated directly on the books of an institution or purchased by the institution are considered to have been made or purchased directly by the institution, even if the institution originated or purchased the loans as a result of its participation in a loan consortium. These loans would be considered under the lending test or community development test criteria appropriate to them depending on the type of loan and type of examination.

§ __.22(d) – 3: In some circumstances, an institution may invest in a third party, such as a community development bank, that is also an insured depository institution and is thus subject to CRA requirements. If the investing institution requests its supervisory Agency to consider its pro rata share of community development loans made by the third party, as allowed under 12 CFR .22(d), may the third party also receive consideration for these loans?

A3. Yes, regardless of examination type, as long as the financial institution and the third party are not affiliates. The regulations state, at 12 CFR __.22(c)(2)(i), that two affiliates may not both claim the same loan origination or loan purchase. However, if the financial institution and the third party are not affiliates, the third party may receive consideration for the community development loans it originates, and the financial institution that invested in the third party may also receive consideration for its pro rata share of the same community development loans under 12 CFR __.22(d).

§ __.23--Investment test

§ .23(a) Scope of test

§ __.23(a) – 1: May an institution, regardless of examination type, receive consideration under the CRA regulations if it invests indirectly through a fund, the purpose of which is community development, as that is defined in the CRA regulations?

A1. Yes, the direct or indirect nature of the qualified investment does not affect whether an institution will receive consideration under the CRA regulations because the regulations do not distinguish between "direct" and "indirect" investments. Thus, an institution's investment in an equity fund that, in turn, invests in projects that, for example, provide affordable housing to low- and moderate-income individuals, would receive consideration as a qualified investment under the CRA regulations, provided the investment benefits one or more of the institution's assessment area(s) or a broader statewide or regional area(s) that includes one or more of the institution's assessment area(s). Similarly, an institution may receive consideration for a direct qualified investment in a nonprofit organization that, for example, supports affordable housing for low- and moderate-income individuals in the institution's assessment area(s) or a broader statewide or regional area(s) that includes the institution's assessment area(s).

§ __.23(a) – 2: In order to receive CRA consideration, what information may an institution provide that would demonstrate that an investment in a nationwide fund with a primary purpose of community development will directly or indirectly benefit one or more of the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s)?

A2. There may be several ways to demonstrate that the institution's investment in a nationwide fund meets the geographic requirements, and the Agencies will employ appropriate flexibility in this regard in reviewing information the institution provides that reasonably supports this determination.

In making this determination, the Agencies will consider any information provided by a financial institution that reasonably demonstrates that the purpose, mandate, or

function of the fund includes serving geographies or individuals located within the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s). Typically, information about where a fund's investments are expected to be made or targeted will be found in the fund's prospectus, or other documents provided by the fund prior to or at the time of the institution's investment, and the institution, at its option, may provide such documentation in connection with its CRA evaluation.

Nationwide funds are important sources of investments in low- and moderate-income and underserved communities throughout the country and can be an efficient vehicle for institutions in making qualified investments that help meet community development needs. Nationwide funds may be suitable investment opportunities, particularly for large financial institutions with a nationwide branch footprint. Other financial institutions, including those with a nationwide business focus, may find such funds to be efficient investment vehicles to help meet community development needs in their assessment area(s) or the broader statewide or regional area that includes their assessment area(s). Prior to investing in such a fund, an institution should consider reviewing the fund's investment record to see if it is generally consistent with the institution's investment goals and the geographic considerations in the regulations. Examiners will consider investments in nationwide funds that benefit the institution's assessment area(s). Examiners will also consider investments in nationwide funds that benefit the broader statewide or regional area that includes the institution's assessment area(s) consistent with the treatment detailed in Q&A § __.12(h) – 6.

§ __.23(b) Exclusion

§ __.23(b) – 1: Even though the regulations state that an activity that is considered under the lending or service tests cannot also be considered under the investment test, may parts of an activity be considered under one test and other parts be considered under another test?

A1. Yes, in some instances the nature of an activity may make it eligible for consideration under more than one of the performance tests. For example, certain investments and related support provided by a large retail institution to a CDC may be evaluated under the lending, investment, and service tests. Under the service test, the institution may receive consideration for any community development services that it provides to the CDC, such as service by an executive of the institution on the CDC's board of directors. If the institution makes an investment in the CDC that the CDC uses to make community development loans, the institution may receive consideration under the lending test for its pro rata share of community development loans made by the CDC. Alternatively, the institution's investment may be considered under the investment test, assuming it is a qualified investment. In addition, an institution may elect to have a part of its investment considered under the lending test and the remaining part considered under the investment test. If the investing institution opts to have a portion of its investment evaluated under the lending test by claiming its pro rata share of the CDC's community development loans, the amount of investment considered under the investment test will be offset by that portion. Thus, the institution would receive consideration under the investment test for only the amount of its investment multiplied by the percentage of the CDC's assets that meet the definition of a qualified investment.

§ __.23(b) – 2: If home mortgage loans to low- and moderate-income borrowers have been considered under an institution's lending test, may the institution that originated or purchased them also receive consideration under the investment test if it subsequently purchases mortgage-backed securities that are primarily or exclusively backed by such loans?

A2. No. Because the institution received lending test consideration for the loans that underlie the securities, the institution may not also receive consideration under the investment test for its purchase of the securities. Of course, an institution may receive investment test consideration for purchases of mortgage-backed securities that are backed by loans to low- and moderate-income individuals as long as the securities are not backed primarily or exclusively by loans that the same institution originated or purchased.

§ __.23(e) Performance criteria

§ __.23(e) – 1: When applying the four performance criteria of 12 CFR __.23(e), may an examiner distinguish among qualified investments based on how much of the investment actually supports the underlying community development purpose?

A1. Yes. By applying all the criteria, a qualified investment of a lower dollar amount may be weighed more heavily under the investment test than a qualified investment with a higher dollar amount that has fewer qualitative enhancements. The criteria permit an examiner to qualitatively weight certain investments differently or to make other appropriate distinctions when evaluating an institution's record of making qualified investments. For instance, an examiner should take into account that a targeted mortgage-backed security that qualifies as an affordable housing issue that has only 60 percent of its face value supported by loans to low- or moderate-income borrowers would not provide as much affordable housing for low- and moderate-income individuals as a targeted mortgage-backed security with 100 percent of its face value supported by affordable housing loans to low- and moderate-income borrowers. The examiner should describe any differential weighting (or other adjustment), and its basis in the Performance Evaluation. See also Q&A § __.12(t) – 8 for a discussion about the qualitative consideration of prior-period investments.

§ __.23(e) – 2: How do examiners evaluate an institution's qualified investment in a fund, the primary purpose of which is community development, as defined in the CRA regulations?

A2. When evaluating qualified investments that benefit an institution's assessment area(s) or a broader statewide or regional area that includes its assessment area(s), examiners will look at the following four performance 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.

With respect to the first criterion, examiners will determine the dollar amount of qualified investments by relying on the figures recorded by the institution according to generally accepted accounting principles (GAAP). Although institutions may exercise a range of investment strategies, including short-term investments, long-term investments, investments that are immediately funded, and investments with a binding, up-front commitment that are funded over a period of time, institutions making the same dollar amount of investments over the same number of years, all other performance criteria being equal, would receive the same level of consideration. Examiners will include both new and outstanding investments in this determination. The dollar amount of qualified investments also will include the dollar amount of legally binding commitments recorded by the institution according to GAAP.

The extent to which qualified investments receive consideration, however, depends on how examiners evaluate the investments under the remaining three performance criteria -- innovativeness and complexity, responsiveness, and degree to which the investment is not routinely provided by private investors. Examiners also will consider factors relevant to the institution's CRA performance context, such as the effect of outstanding long-term qualified investments, the pay-in schedule, and the amount of any cash call, on the capacity of the institution to make new investments.

§ __.24--Service test

§ __.24(a) Scope of test

§ __.24(a) – 1: How do examiners evaluate retail banking services and community development services under the large institution service test?

A1. Retail banking services and community development services are the two components of the service test and are both important in evaluating a large institution's performance. In evaluating retail banking services, examiners consider the availability and effectiveness of an institution's systems for delivering banking services, particularly in low- and moderate-income geographies and to low- and moderate income individuals; 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. Examples of retail banking services that improve access to financial services, or decrease costs, for low- or moderate-income individuals include

- low-cost deposit accounts;
- electronic benefit transfer accounts and point of sale terminal systems;
- individual development accounts;
- free or low-cost government, payroll, or other check cashing services; and
- reasonably priced international remittance services.

In evaluating community development services, examiners consider the extent to which the institution provides such services and their innovativeness and responsiveness to community needs. Examples of community development services are listed in Q&A § __.12(i) – 3. Examiners will consider any information provided by the institution that demonstrates community development services benefit low- or moderate-income individuals or are responsive to community development needs.

§ __.24(d) Performance criteria – retail banking services

§ __.24(d) – 1: How do examiners evaluate the availability and effectiveness of an institution's systems for delivering retail banking services?

A1. Convenient access to full service branches within a community is an important factor in determining the availability of credit and non-credit services. Therefore, the service test performance standards place primary emphasis on full service branches while still considering alternative systems. The principal focus is on an institution's current distribution of branches and its record of opening and closing branches, particularly branches located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals. However, an institution is not required to expand its branch network or operate unprofitable branches. Under the service test, alternative systems for delivering retail banking services are considered only to the extent that they are effective alternatives in providing needed services to low- and moderate-income areas and individuals.

§ __.24(d) – 2: How do examiners evaluate an institution's activities in connection with Individual Development Accounts (IDA)?

A2. Although there is no standard IDA program, IDAs typically are deposit accounts targeted to low- and moderate-income families that are designed to help them accumulate savings for education or job-training, down-payment and closing costs on a new home, or start-up capital for a small business. Once participants have successfully funded an IDA, their personal IDA savings are matched by a public or private entity. Financial institution participation in IDA programs comes in a variety of forms, including

providing retail banking services to IDA accountholders, providing matching dollars or operating funds to an IDA program, designing or implementing IDA programs, providing consumer financial education to IDA accountholders or prospective accountholders, or other means. The extent of financial institutions' involvement in IDAs and the products and services they offer in connection with the accounts will vary. Thus, subject to 12 CFR __.23(b), examiners evaluate the actual services and products provided by an institution in connection with IDA programs as one or more of the following: community development services, retail banking services, qualified investments, home mortgage loans, small business loans, consumer loans, or community development loans. See, e.g., Q&A § __.12(i) – 3.

Note that all types of institutions may participate in IDA programs. Their IDA activities are evaluated under the performance criteria of the type of examination applicable to the particular institution.

§ __.24(d)(3) Availability and effectiveness of alternative systems for delivering retail banking services

§ __.24(d)(3) – 1: How do examiners evaluate alternative systems for delivering retail banking services?

A1. There are a number of alternative systems used by financial institutions to deliver retail banking services to customers. Non-branch delivery systems, such as ATMs, online and mobile banking, and other means by which institutions provide services to their customers evolve over time. No matter the means of delivery, examiners evaluate the extent to which the alternative delivery systems are available and effective in providing financial services to low- and moderate-income geographies and individuals. For example, a system may be determined to be effective based on the accessibility of the system to low- and moderate-income geographies and individuals. To determine whether a financial institution's alternative delivery system is an available and effective means of delivering retail banking services in low- and moderate-income geographies and to low- and moderate-income individuals, examiners may consider a variety of factors, including

- the ease of access, whether physical or virtual;
- the cost to consumers, as compared with the institution's other delivery systems;
- the range of services delivered;
- the ease of use;
- the rate of adoption and use; and
- the reliability of the system.

Examiners will consider any information an institution maintains and provides to examiners demonstrating that the institution's alternative delivery systems are available to, and used by, low- or moderate-income individuals, such as data on customer usage or transactions.

§ __.24(d)(3) – 2: Are debit cards considered under the service test as an alternative delivery system?

A2. By themselves, no. However, if debit cards are a part of a larger combination of products, such as a comprehensive electronic banking service, that allows an institution to deliver needed services to low- and moderate-income areas and individuals in its community, the overall delivery system that includes the debit card feature would be considered an alternative delivery system.

§ __.24(d)(4) Range of services provided in geographies of different incomes

§ __.24(d)(4) – 1: How do examiners evaluate the range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which those services are tailored to meet the needs of those geographies?

A1. Examiners review both information from the institution's public file and other information provided related to the range of services offered and how they are tailored to meet the particular needs of low- and moderate-income geographies. Examiners always review the information that institutions must maintain in their public files: a list of services generally offered at their branches, including their hours of operation; available loan and deposit products; transaction fees, as well as descriptions, where applicable, of material differences in the availability or cost of services at particular branches. See 12 CFR __.43(a)(5). The information provided by the financial institution to identify the types of services offered and any differences in services among its branches in different geographies may indicate how 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. See 12 CFR __ app. A(b)(3). Examiners also review any other information provided by the institution, such as data regarding the costs and features of loan and deposit products, account usage and retention, geographic location of accountholders, the availability of information in languages other than English, and any other relevant information demonstrating that its services are tailored to meet the needs of its customers in the various geographies in its assessment area(s). Any information that institutions may maintain regarding services offered through alternative delivery systems (see Q&A § __.24(d)(3) –1) and through collaborations with government, community, educational or employer organizations to offer or expand the range of services or access to services, particularly designed to meet the needs of their assessment area(s), including low- and moderate-income communities will also be considered. Examiners will also review information provided by the public through comments or community contacts.

§ __.24(e) Performance criteria – community development services

§ __.24(e) – 1: Under what conditions may an institution receive consideration for community development services offered by affiliates or third parties?

A1. At an institution's option, the Agencies will consider services performed by an affiliate or by a third party on the institution's behalf under the service test if the services provided enable the institution to help meet the credit needs of its community. Indirect services that enhance an institution's ability to deliver credit products or deposit services within its community and that can be quantified may be considered under the service test, if those services have not been considered already under the lending or investment test. See Q&A § __.23(b) – 1. For example, an institution that contracts with a community organization to provide home ownership counseling to low- and moderate-income home buyers as part of the institution's mortgage program may receive consideration for that indirect service under the service test. In contrast, donations to a community organization that offers financial services to low- or moderate-income individuals may be considered under the investment test, but would not also be eligible for consideration under the service test. Services performed by an affiliate will be treated the same as affiliate loans and investments made in the institution's assessment area and may be considered if the service is not claimed by any other institution. See 12 CFR __.22(c) and __.23(c).

§ __.24(e) – 2: In evaluating community development services, what quantitative and qualitative factors do examiners review?

A2. The community development services criteria are important factors in the evaluation of a large institution's service test performance. According to the regulation, the Agencies evaluate the extent to which the financial institution provides community development services as well as the innovativeness and responsiveness of such services. Examiners consider both quantitative and qualitative aspects of community development services during the evaluation. Examiners assess quantitative factors to determine the extent to which community development services are offered and used. The review is not limited to a single quantitative factor. For example, quantitative factors may include the number of

- low- or moderate-income participants;
- organizations served;
- sessions sponsored; or
- financial institution staff hours devoted.

Examiners will also consider qualitative factors by assessing the degree to which community development services are innovative or responsive to community needs. See Q&As § __.21(a) – 4 and § __.21(a) – 3. These performance criteria recognize that community development services sometimes require special expertise and effort on the part of the institution and provide benefit to the community that would not otherwise be possible. Such an assessment will depend on the impact of a particular activity on community needs and the benefits received by a community. See Q&A § __.28(b) – 1. For example, a financial institution employee's unique expertise and service on the board of a community organization may demonstrate these qualitative factors when the employee's ongoing engagement significantly improves the products, services or operations of the community development organization.

Examiners will consider any relevant information provided by the institution and from third parties that documents the extent, innovativeness, and responsiveness of community development services.

§ __.25 Community development test for wholesale or limited purpose institutions

§ __.25(a) Scope of test

§ __.25(a) – 1: How can certain credit card banks help to meet the credit needs of their communities without losing their exemption from the definition of "bank" in the Bank Holding Company Act (BHCA), as amended by the Competitive Equality Banking Act of 1987 (CEBA)?

A1. Although the BHCA restricts institutions known as CEBA credit card banks to credit card operations, a CEBA credit card bank can engage in community development activities without losing its exemption under the BHCA. A CEBA credit card bank could provide community development services and investments without engaging in operations other than credit card operations. For example, the bank could provide credit card counseling, or the financial expertise of its executives, free of charge, to community development organizations. In addition, a CEBA credit card bank could make qualified investments, as long as the investments meet the guidelines for passive and noncontrolling investments provided in the BHCA and the Board's Regulation Y. Finally, although a CEBA credit card bank cannot make any loans other than credit card loans, under 12 CFR __.25(d)(2) (community development test – indirect activities), the bank could elect to have part of its qualified passive and noncontrolling investments in a third-party lending consortium considered as community development lending, provided that the consortium's loans otherwise meet the requirements for community development lending. When assessing a CEBA credit card bank's CRA performance under the community development test, examiners will take into account the bank's performance context. In particular, examiners will consider the legal constraints imposed by the BHCA on the bank's activities, as part of the bank's performance context in 12 CFR __.21(b)(4).

§ __.25(d) Indirect activities

§ __.25(d) – 1: How are investments in third-party community development organizations considered under the community development test?

A1. Similar to the lending test for retail institutions, investments in third-party community development organizations may be considered as qualified investments or as community development loans or both (provided there is no double counting), at the institution's option, as described above in the discussion regarding 12 CFR __.22(d) and __.23(b).

§ __.25(e) Benefit to assessment area(s)

§ __.25(e) – 1: How do examiners evaluate a wholesale or limited purpose institution's qualified investment in a fund that invests in projects nationwide and which has a primary purpose of community development, as that is defined in the regulations?

A1. If examiners find that a wholesale or limited purpose institution has adequately addressed the needs of its assessment area(s), they will give consideration to qualified investments, as well as community development loans and community development services, by that institution nationwide. In determining whether an institution has adequately addressed the needs of its assessment area(s), examiners will consider qualified investments that benefit a broader statewide or regional area that includes the institution's assessment area(s).

§ __.25(f) Community development performance rating

§ __.25(f) – 1: Must a wholesale or limited purpose institution engage in all three categories of community development activities (lending, investment, and service) to perform well under the community development test?

A1. No, a wholesale or limited purpose institution may perform well under the community development test by engaging in one or more of these activities.

§ __.26--Small institution performance standards

§ __.26 – 1: When evaluating a small or intermediate small institution's performance, will examiners consider, at the institution's request, retail and community development loans originated or purchased by affiliates, qualified investments made by affiliates, or community development services provided by affiliates?

A1. Yes. However, a small institution that elects to have examiners consider affiliate activities must maintain sufficient information that the examiners may evaluate these activities under the appropriate performance criteria and ensure that the activities are not claimed by another institution. The constraints applicable to affiliate activities claimed by large institutions also apply to small and intermediate small institutions. See Q&As addressing 12 CFR __.22(c)(2) and related guidance provided to large institutions regarding affiliate activities. Examiners will not include affiliate lending in calculating the percentage of loans and, as appropriate, other lending-related activities located in an institution's assessment area(s).

§ __.26(a) Performance criteria
§ __.26(a)(2) Intermediate small institutions

§ __.26(a)(2) – 1: When is an institution examined as an intermediate small institution?

A1. When a small institution has met the intermediate small institution asset threshold delineated in 12 CFR __.12(u)(1) for two consecutive calendar year-ends, the institution may be examined under the intermediate small institution examination procedures. The regulation does not specify an additional lag period between becoming an intermediate small institution and being examined as an intermediate small institution, as it does for large institutions, because an intermediate small institution is not subject to CRA data collection and reporting requirements. Institutions should contact their primary regulator for information on examination schedules.

§ __.26(b) Lending test

§ __.26(b) – 1: May examiners consider, under one or more of the performance criteria of the small institution performance standards, lending-related activities, such as community development loans and lending-related qualified investments, when evaluating a small institution?

A1. Yes. Examiners can consider "lending-related activities," including community development loans and lending-related qualified investments, when evaluating the first four performance criteria of the small institution performance test. Although lending-related activities are specifically mentioned in the regulation in connection with only the first three criteria (i.e., loan-to-deposit ratio, percentage of loans in the institution's assessment area(s), and lending to borrowers of different incomes and businesses of different sizes), examiners can also consider these activities when they evaluate the fourth criteria – geographic distribution of the institution's loans.

Although lending-related community development activities are evaluated under the community development test applicable to intermediate small institutions, these activities may also augment the loan-to-deposit ratio analysis (12 CFR __.26(b)(1)) and the percentage of loans in the intermediate small institution's assessment area(s) analysis (12 CFR __.26(b)(2)), if appropriate.

§ __.26(b) – 2: What is meant by "as appropriate" when referring to the fact that lending-related activities will be considered, "as appropriate," under the various small institution performance criteria?

A2. "As appropriate" means that lending-related activities will be considered when it is necessary to determine whether an institution meets or exceeds the standards for a satisfactory rating. Examiners will also consider other

lending-related activities at an institution's request, provided they have not also been considered under the community development test applicable to intermediate small institutions.

§ __.26(b) – 3: When evaluating a small institution's lending performance, will examiners consider, at the institution's request, community development loans originated or purchased by a consortium in which the institution participates or by a third party in which the institution has invested?

A3. Yes. However, a small institution that elects to have examiners consider community development loans originated or purchased by a consortium or third party must maintain sufficient information on its share of the community development loans so that the examiners may evaluate these loans under the small institution performance criteria.

§ __.26(b) – 4: Under the small institution lending test performance standards, will examiners consider both loan originations and purchases?

A4. Yes, consistent with the other assessment methods in the regulation, examiners will consider both loans originated and purchased by the institution. Likewise, examiners may consider any other loan data the small institution chooses to provide, including data on loans outstanding, commitments, and letters of credit.

§ __.26(b) – 5: Under the small institution lending test performance standards, how will qualified investments be considered for purposes of determining whether a small institution receives a satisfactory CRA rating?

A5. The small institution lending test performance standards focus on lending and other lending-related activities. Therefore, examiners will consider only lending-related qualified investments for the purpose of determining whether a small institution that is not an intermediate small institution receives a satisfactory CRA rating.

§ __.26(b)(1) Loan-to-deposit ratio

§ __.26(b)(1) – 1: How is the loan-to-deposit ratio calculated?

A1. A small institution's loan-to-deposit ratio is calculated in the same manner that the Uniform Bank Performance Report (UBPR) determines the ratio. It is calculated by dividing the institution's net loans and leases by its total deposits. The ratio is found in the Liquidity and Investment Portfolio section of the UBPR. Examiners will use this ratio to calculate an average since the last examination by adding the quarterly loan-to-deposit ratios and dividing the total by the number of quarters.

§ __.26(b)(1) – 2: How is the "reasonableness" of a loan-to-deposit ratio evaluated?

A2. No specific ratio is reasonable in every circumstance, and each small institution's ratio is evaluated in light of information from the performance context, including the institution's capacity to lend, demographic and economic factors present in the assessment area(s), and the lending opportunities available in the assessment area(s). If a small institution's loan-to-deposit ratio appears unreasonable after considering this information, lending performance may still be satisfactory under this criterion taking into consideration the number and the dollar volume of loans sold to the secondary market or the number and amount and innovativeness or complexity of community development loans and lending-related qualified investments.

§ __.26(b)(1) – 3: If an institution makes a large number of loans off-shore, will examiners segregate the domestic loan-to-deposit ratio from the foreign loan-to-deposit ratio?

A3. No. Examiners will look at the institution's net loan-to-deposit ratio for the whole institution, without any adjustments.

§ __.26(b)(2) Percentage of lending within assessment area(s)

§ __.26(b)(2) – 1: Must a small institution have a majority of its lending in its assessment area(s) to receive a satisfactory performance rating?

A1. No. The percentage of loans and, as appropriate, other lending-related activities located in the institution's assessment area(s) is but one of the performance criteria upon which small institutions are evaluated. If the percentage of loans and other lending-related activities in an institution's assessment area(s) is less than a majority, then the institution does not meet the standards for satisfactory performance only under this criterion. The effect on the overall performance rating of the institution, however, is considered in light of the performance context, including information regarding economic conditions; loan demand; the institution's size, financial condition, business strategies, and branching network; and other aspects of the institution's lending record.

§ __.26(b)(3) & (4) Distribution of lending within assessment area(s) by borrower income and geographic location

§ __.26(b)(3) & (4) – 1: How will a small institution's performance be assessed under these lending distribution criteria?

A1. Distribution of loans, like other small institution performance criteria, is considered in light of the performance context. For example, a small institution is not required to lend evenly throughout its assessment area(s) or in any particular geography. However, in order to meet the standards for satisfactory performance under this criterion, conspicuous gaps in a small institution's loan distribution must be adequately explained by performance context factors such as lending opportunities in the institution's assessment area(s), the institution's product offerings and business strategy, and institutional capacity and constraints. In addition, it may be impracticable to review the geographic distribution of the lending of an institution with very few demographically

distinct geographies within an assessment area. If sufficient information on the income levels of individual borrowers or the revenues or sizes of business borrowers is not available, examiners may use loan size as a proxy for estimating borrower characteristics, where appropriate.

§ __.26(c) Intermediate small institution community development test

§ __.26(c) – 1: How will the community development test be applied flexibly for intermediate small institutions?

A1. Generally, intermediate small institutions engage in a combination of community development loans, qualified investments, and community development services. An institution may not simply ignore one or more of these categories of community development, nor do the regulations prescribe a required threshold for community development loans, qualified investments, and community development services. Instead, based on the institution's assessment of community development needs in its assessment area(s), it may engage in different categories of community development activities that are responsive to those needs and consistent with the institution's capacity.

An intermediate small institution has the flexibility to allocate its resources among community development loans, qualified investments, and community development services in amounts that it reasonably determines are most responsive to community development needs and opportunities. Appropriate levels of each of these activities would depend on the capacity and business strategy of the institution, community needs, and number and types of opportunities for community development.

§ __.26(c)(3) Community development services

§ __.26(c)(3) – 1: What will examiners consider when evaluating the provision of community development services by an intermediate small institution?

A1. In addition to the examples listed in Q&A § __.12(i) – 3, examiners will consider retail banking services as community development services if they provide benefit to low- or moderate-income individuals. Examples include:

- low-cost deposit accounts;
- electronic benefit transfer accounts and point of sale terminal systems;
- individual development accounts;
- free or low-cost government, payroll, or other check cashing services; and
- reasonably priced international remittance services.

In addition, providing services to low- and moderate-income individuals through branches and other facilities located in low- and moderate-income, designated disaster, or distressed or underserved nonmetropolitan middle-income areas is considered. Generally, the presence of branches located in low- and moderate-income geographies will help to demonstrate the availability of banking services to low- and moderate-income individuals.

§ __.26(c)(4) Responsiveness to community development needs

§ __.26(c)(4) – 1: When evaluating an intermediate small institution's community development record, what will examiners consider when reviewing the responsiveness of community development lending, qualified investments, and community development services to the community development needs of the area?

A1. When evaluating an intermediate small institution's community development record, examiners will consider not only quantitative measures of performance, such as the number and amount of community development loans, qualified investments, and community development services, but also qualitative aspects of performance. In particular, examiners will evaluate the responsiveness of the institution's community development activities in light of the institution's capacity, business strategy, the needs of the community, and the number and types of opportunities for each type of community development activity (its performance context). Examiners also will consider the results of any assessment by the institution of community development needs, and how the institution's activities respond to those needs.

An evaluation of the degree of responsiveness considers the following factors: the volume, mix, and qualitative aspects of community development loans, qualified investments, and community development services. Consideration of the qualitative aspects of performance recognizes that community development activities sometimes require special expertise or effort on the part of the institution or provide a benefit to the community that would not otherwise be made available. (However, "innovativeness" and "complexity" – factors examiners consider when evaluating a large institution under the lending, investment, and service tests – are not criteria in the intermediate small institutions' community development test.) In some cases, a smaller loan may have more qualitative benefit to a community than a larger loan. Activities are considered particularly responsive to community development needs if they benefit low- and moderate-income individuals in low- or moderate-income geographies, designated disaster areas, or distressed or underserved nonmetropolitan middle-income geographies. Activities are also considered particularly responsive to community development needs if they benefit low- or moderate-income geographies.

§ __.26(d) Performance rating

§ __.26(d) –1: How can a small institution that is not an intermediate small institution achieve an "outstanding" performance rating?

A1. A small institution that is not an intermediate small institution that meets each of the standards in the lending test for a "satisfactory" rating and exceeds some or all of those standards may warrant an "outstanding" performance rating. In assessing performance at the "outstanding" level, the Agencies consider the extent to which the institution exceeds each of the performance standards and, at the institution's option, its performance in making qualified investments and providing services that enhance credit availability in its assessment area(s). In some cases, a small institution may qualify for an "outstanding" performance rating solely on the basis of its lending activities, but only if its performance materially exceeds the standards for a "satisfactory" rating, particularly with respect to the penetration of borrowers at all income levels and the dispersion of loans throughout the geographies in its assessment area(s) that display income variation. An institution with a high loan-to-deposit ratio and a high percentage of loans in its assessment area(s), but with only a reasonable penetration of borrowers at all income levels or a reasonable dispersion of loans throughout geographies of differing income levels in its assessment area(s), generally will not be rated "outstanding" based only on its lending performance. However, the institution's 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) may augment the institution's satisfactory rating to the extent that it may be rated "outstanding."

§ __.26(d) – 2: Will a small institution's qualified investments, community development loans, and community development services be considered if they do not directly benefit its assessment area(s)?

A2. Yes. These activities are eligible for consideration if they benefit a broader statewide or regional area that includes a small institution's assessment area(s), as discussed more fully in Q&As § __.12(h) – 6 and § __.12(h) – 7.

§ __.27--Strategic plan

§ __.27(c) Plans in general

§ __.27(c) – 1: To what extent will the Agencies provide guidance to an institution during the development of its strategic plan?

A1. An institution will have an opportunity to consult with and provide information to the Agencies on a proposed strategic plan. Through this process, an institution is provided guidance on procedures and on the information necessary to ensure a complete submission. For example, the Agencies will provide guidance on whether the level of detail as set out in the proposed plan would be sufficient to permit Agency evaluation of the plan. However, the Agencies' guidance during plan development and, particularly, prior to the public comment period, will not include commenting on the merits of a proposed strategic plan or on the adequacy of measurable goals.

§ __.27(c) – 2: How will a joint strategic plan be reviewed if the affiliates have different primary Federal supervisors?

A2. The Agencies will coordinate review of and action on the joint plan. Each Agency will evaluate the measurable goals for those affiliates for which it is the primary regulator.

§ __.27(f) Plan content
§ __.27(f)(1) Measurable goals

§ __.27(f)(1) – 1: How should annual measurable goals be specified in a strategic plan?

A1. Annual measurable goals (e.g., number of loans, dollar amount, geographic location of activity, and benefit to low- and moderate-income areas or individuals) must be stated with sufficient specificity to permit the public and the Agencies to quantify what performance will be expected. However, institutions are provided flexibility in specifying goals. For example, an institution may provide ranges of lending amounts in different categories of loans. Measurable goals may also be linked to funding requirements of certain public programs or indexed to other external factors as long as these mechanisms provide a quantifiable standard.

§ __.27(g) Plan approval
§ __.27(g)(2) Public participation

§ __.27(g)(2) – 1: How will the public receive notice of a proposed strategic plan?

A1. An institution submitting a strategic plan for approval by the Agencies is required to solicit public comment on the plan for a period of 30 days after publishing notice of the plan at least once in a newspaper of general circulation. The notice should be sufficiently prominent to attract public attention and should make clear that public comment is desired. An institution may, in addition, provide notice to the public in any other manner it chooses.

§ __.28--Assigned ratings

§ __.28 – 1: Are innovative lending practices, innovative or complex qualified investments, and innovative community development services required for a "satisfactory" or "outstanding" CRA rating?

A1. No. The performance criterion of "innovativeness" applies only under the lending, investment, and service tests applicable to large institutions and the community development test applicable to wholesale and limited purpose institutions. Moreover, even under these tests, the lack of innovative lending practices, innovative or complex qualified investments, or innovative community development services alone will not result in a "needs to improve" CRA

rating. However, under these tests, the use of innovative lending practices, innovative or complex qualified investments, and innovative community development services may augment the consideration given to an institution's performance under the quantitative criteria of the regulations, resulting in a higher performance rating. See also Q&A § __.26(c)(4) – 1 for a discussion about responsiveness to community development needs under the community development test applicable to intermediate small institutions.

§ __.28(a) Ratings in general

§ __.28(a) – 1: How are institutions with domestic branches in more than one state assigned a rating?

A1. The evaluation of an institution that maintains domestic branches in more than one state ("multistate institution") will include a written evaluation and rating of its CRA record of performance as a whole and in each state in which it has a domestic branch. The written evaluation will contain a separate presentation on a multistate institution's performance for each MSA and the nonmetropolitan area within each state, if it maintains one or more domestic branch offices in these areas. This separate presentation will contain conclusions, supported by facts and data, on performance under the performance tests and standards in the regulation. The evaluation of a multistate institution that maintains a domestic branch in two or more states in a multistate metropolitan area will include a written evaluation (containing the same information described above) and rating of its CRA record of performance in the multistate metropolitan area. In such cases, the statewide evaluation and rating will be adjusted to reflect performance in the portion of the state not within the multistate MSA.

§ __.28(a) – 2: How are institutions that operate within only a single state assigned a rating?

A2. An institution that operates within only a single state ("single-state institution") will be assigned a rating of its CRA record based on its performance within that state. In assigning this rating, the Agencies will separately present a single-state institution's performance for each metropolitan area in which the institution maintains one or more domestic branch offices. This separate presentation will contain conclusions, supported by facts and data, on the single-state institution's performance under the performance tests and standards in the regulation.

§ __.28(a) – 3: How do the Agencies weight performance under the lending, investment, and service tests for large retail institutions?

A3. A rating of "outstanding," "high satisfactory," "low satisfactory," "needs to improve," or "substantial noncompliance," based on a judgment supported by facts and data, will be assigned under each performance test. Points will then be assigned to each rating as described in the first matrix set forth below. A large retail institution's overall rating under the lending, investment and service tests will then be calculated in accordance with the second matrix set forth below, which incorporates the rating principles in the regulation.

POINTS ASSIGNED FOR PERFORMANCE UNDER LENDING, INVESTMENT AND SERVICE TESTS

	Lending	Service	Investment
Outstanding	12	6	6
High Satisfactory	9	4	4
Low Satisfactory	6	3	3
Needs to Improve	3	1	1
Substantial Noncompliance	0	0	0

COMPOSITE RATING POINT REQUIREMENTS (Add points from three tests)

Rating	Total Points
Outstanding	20 or over
Satisfactory	11 through 19
Needs to Improve	5 through 10
Substantial Noncompliance	0 through 4

Note: There is one exception to the Composite Rating matrix. An institution may not receive a rating of "satisfactory" unless it receives at least "low satisfactory" on the lending test. Therefore, the total points are capped at three times the lending test score.

§ __.28(b) Lending, investment, and service test ratings

§ __.28(b) – 1: How is performance under the quantitative and qualitative performance criteria weighed when examiners assign a CRA rating?

A1. The lending, investment, and service tests each contain a number of performance criteria designed to measure whether an institution is effectively helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, in a safe and sound manner. Some of these performance criteria are quantitative, such as number and amount, and others, such as the use of innovative or flexible lending practices, the innovativeness or complexity of qualified investments, and the innovativeness and responsiveness of community development services, are qualitative. The performance criteria that deal with these qualitative aspects of performance recognize that these loans, qualified investments, and community development services sometimes require special expertise and effort on the part of the institution and provide a benefit to the community that would not otherwise be possible. As such, the Agencies consider the qualitative aspects of an institution's activities when measuring the benefits received by a community. An

institution's performance under these qualitative criteria may augment the consideration given to an institution's performance under the quantitative criteria of the regulations, resulting in a higher level of performance and rating.

§ __.28(c) Effect of evidence of discriminatory or other illegal credit practices

§ __.28(c) – 1: What is meant by "discriminatory or other illegal credit practices"?

A1. An institution engages in discriminatory credit practices if it discourages or discriminates against credit applicants or borrowers on a prohibited basis, in violation, for example, of the Fair Housing Act or the Equal Credit Opportunity Act (as implemented by Regulation B). Examples of other illegal credit practices inconsistent with helping to meet community credit needs include violations of

- the Truth in Lending Act regarding rescission of certain mortgage transactions and regarding disclosures and certain loan term restrictions in connection with credit transactions that are subject to the Home Ownership and Equity Protection Act;
- the Real Estate Settlement Procedures Act regarding the giving and accepting of referral fees, unearned fees, or kick-backs in connection with certain mortgage transactions; and
- the Federal Trade Commission Act regarding unfair or deceptive acts or practices.

Examiners will determine the effect of evidence of illegal credit practices as set forth in examination procedures and § __.28(c) of the regulation.

Violations of other provisions of the consumer protection laws generally will not adversely affect an institution's CRA rating, but may warrant the inclusion of comments in an institution's performance evaluation. These comments may address the institution's policies, procedures, training programs, and internal assessment efforts.

§ __.29--Effect of CRA performance on applications

§ __.29(a) CRA performance

§ __.29(a) – 1: What weight is given to an institution's CRA performance examination in reviewing an application?

A1. In reviewing applications in which CRA performance is a relevant factor, information from a CRA examination of the institution is a particularly important consideration. The examination is a detailed evaluation of the institution's CRA performance by its supervisory Agency. In this light, an examination is an important, and often controlling, factor in the consideration of an institution's record. In some cases, however, the examination may not be recent, or a specific issue raised in the application process, such as progress in addressing weaknesses noted by examiners, progress in implementing commitments previously made to the reviewing Agency, or a supported allegation from a commenter, is relevant to CRA performance under the regulation and was not addressed in the examination. In these circumstances, the applicant should present sufficient information to supplement its record of performance and to respond to the substantive issues raised in the application proceeding.

§ __.29(a) – 2: What consideration is given to an institution's commitments for future action in reviewing an application by those Agencies that consider such commitments?

A2. Commitments for future action are not viewed as part of the CRA record of performance. In general, institutions cannot use commitments made in the applications process to overcome a seriously deficient record of CRA performance. However, commitments for improvements in an institution's performance may be appropriate to address specific weaknesses in an otherwise satisfactory record or to address CRA performance when a financially troubled institution is being acquired.

§ __.29(b) Interested parties

§ __.29(b) – 1: What consideration is given to comments from interested parties in reviewing an application?

A1. Materials relating to CRA performance received during the application process can provide valuable information. Written comments, which may express either support for or opposition to the application, are made a part of the record in accordance with the Agencies' procedures, and are carefully considered in making the Agencies' decisions. Comments should be supported by facts about the applicant's performance and should be as specific as possible in explaining the basis for supporting or opposing the application. These comments must be submitted within the time limits provided under the Agencies' procedures.

§ __.29(b) – 2: Is an institution required to enter into agreements with private parties?

A2. No. Although communications between an institution and members of its community may provide a valuable method for the institution to assess how best to address the credit needs of the community, the CRA does not require an institution to enter into agreements with private parties. The Agencies do not monitor compliance with nor enforce these agreements.

§ __.41--Assessment area delineation

§ __.41(a) In general

§ __.41(a) – 1: How do the Agencies evaluate "assessment areas" under the CRA regulations?

A1. The rule focuses on the distribution and level of an institution's lending, investments, and services rather than on how and why an institution delineated its assessment

area(s) in a particular manner. Therefore, the Agencies will not evaluate an institution's delineation of its assessment area(s) as a separate performance criterion. Rather, the Agencies will only review whether the assessment area(s) delineated by the institution complies with the limitations set forth in the regulations at 12 CFR __.41(e).

§ __.41(a) – 2: If an institution elects to have the Agencies consider affiliate lending, will this decision affect the institution's assessment area(s)?

A2. If an institution elects to have the lending activities of its affiliates considered in the evaluation of the institution's lending, the geographies in which the affiliate lends do not affect the institution's delineation of assessment area(s).

§ __.41(a) – 3: Can a financial institution identify a specific racial or ethnic group rather than a geographic area as its assessment area?

A3. No, assessment areas must be based on geography. The only exception to the requirement to delineate an assessment area based on geography is that an institution, the business of which predominantly consists of serving the needs of military personnel or their dependents who are not located within a defined geographic area, may delineate its entire deposit customer base as its assessment area.

§ __.41(c) Geographic area(s) for institutions other than wholesale or limited purpose institutions
§ __.41(c)(1) Generally consist of one or more MSAs or metropolitan divisions or one or more contiguous political subdivisions

§ __.41(c)(1) – 1: Besides cities, towns, and counties, what other units of local government are political subdivisions for CRA purposes?

A1. Townships and Indian reservations are political subdivisions for CRA purposes. Institutions should be aware that the boundaries of townships and Indian reservations may not be consistent with the boundaries of the census tracts (i.e., geographies) in the area. In these cases, institutions must ensure that their assessment area(s) consists only of whole geographies by adding any portions of the geographies that lie outside the political subdivision to the delineated assessment area(s).

§ __.41(c)(1) – 2: Are wards, school districts, voting districts, and water districts political subdivisions for CRA purposes?

A2. No. However, an institution that determines that it predominantly serves an area that is smaller than a city, town, or other political subdivision may delineate as its assessment area the larger political subdivision and then, in accordance with 12 CFR __.41(d), adjust the boundaries of the assessment area to include only the portion of the political subdivision that it reasonably can be expected to serve. The smaller area that the institution delineates must consist of entire geographies, may not reflect illegal discrimination, and may not arbitrarily exclude low- or moderate-income geographies.

§ __.41(d) Adjustments to geographic area(s)

§ __.41(d) – 1: When may an institution adjust the boundaries of an assessment area to include only a portion of a political subdivision?

A1. Institutions must include whole geographies (i.e., census tracts) in their assessment areas and generally should include entire political subdivisions. Because census tracts are the common geographic areas used consistently nationwide for data collection, the Agencies require that assessment areas be made up of whole geographies. If including an entire political subdivision would create an area that is larger than the area the institution can reasonably be expected to serve, an institution may, but is not required to, adjust the boundaries of its assessment area to include only portions of the political subdivision. For example, this adjustment is appropriate if the assessment area would otherwise be extremely large, of unusual configuration, or divided by significant geographic barriers (such as a river, mountain, or major highway system). When adjusting the boundaries of their assessment areas, institutions must not arbitrarily exclude low- or moderate-income geographies or set boundaries that reflect illegal discrimination.

§ __.41(e) Limitations on delineation of an assessment area
§ __.41(e)(3) May not arbitrarily exclude low- or moderate-income geographies

§ __.41(e)(3) – 1: How will examiners determine whether an institution has arbitrarily excluded low- or moderate-income geographies?

A1. Examiners will make this determination on a case-by-case basis after considering the facts relevant to the institution's assessment area delineation. Information that examiners will consider may include

- income levels in the institution's assessment area(s) and surrounding geographies;
- locations of branches and deposit-taking ATMs;
- loan distribution in the institution's assessment area(s) and surrounding geographies;
- the institution's size;
- the institution's financial condition; and
- the business strategy, corporate structure, and product offerings of the institution.

§ __.41(e)(4) May not extend substantially beyond an MSA boundary or beyond a state boundary unless located in a multistate MSA

§ __.41(e)(4) – 1: What are the maximum limits on the size of an assessment area?

A1. An institution may not delineate an assessment area extending substantially across the boundaries of an MSA unless the MSA is in a combined statistical area (CSA)). Although more than one MSA in a CSA may be delineated as a single assessment area, an institution's CRA performance in individual MSAs in those assessment areas will be evaluated using separate median family incomes and other relevant information at the MSA level rather than at the CSA level.

An assessment area also may not extend substantially across state boundaries unless the assessment area is located in a multistate MSA. An institution may not delineate a whole state as its assessment area unless the entire state is contained within an MSA. These limitations apply to wholesale and limited purpose institutions as well as other institutions.

An institution must delineate separate assessment areas for the areas inside and outside an MSA if the area served by the institution's branches outside the MSA extends substantially beyond the MSA boundary. Similarly, the institution must delineate separate assessment areas for the areas inside and outside of a state if the institution's branches extend substantially beyond the boundary of one state (unless the assessment area is located in a multistate MSA). In addition, the institution should also delineate separate assessment areas if it has branches in areas within the same state that are widely separate and not at all contiguous. For example, an institution that has its main office in New York City and a branch in Buffalo, New York, and each office serves only the immediate areas around it, should delineate two separate assessment areas.

§ __.41(e)(4) – 2: <u>May an institution delineate one assessment area that consists of an MSA and two large counties that abut the MSA but are not adjacent to each other?</u>

A2. As a general rule, an institution's assessment area should not extend substantially beyond the boundary of an MSA. Therefore, the MSA would be a separate assessment area, and because the two abutting counties are not adjacent to each other and, in this example, extend substantially beyond the boundary of the MSA, the institution would delineate each county as a separate assessment area, assuming branches or deposit-taking ATMs are located in each county and the MSA. So, in this example, there would be three assessment areas. However, if the MSA and the two counties were in the same CSA, then the institution could delineate only one assessment area including them all. But, the institution's CRA performance in the MSAs and the non-MSA counties in that assessment area would be evaluated using separate median family incomes and other relevant information at the MSA and state, non-MSA level, rather than at the CSA level.

§ __.42--Data collection, reporting, and disclosure

§ __.42 – 1: <u>When must an institution collect and report data under the CRA regulations?</u>

A1. All institutions except small institutions are subject to data collection and reporting requirements. ("Small institution" is defined in the Agencies' CRA regulations at 12 CFR __.12(u).) Examples describing the data collection requirements of institutions, in particular those that have just surpassed the asset-size threshold of a small institution, may be found on the FFIEC Web site at http://www.ffiec.gov/cra. All institutions that are subject to the data collection and reporting requirements must report the data for a calendar year (CY) by March 1 of the subsequent year. For example, data for CY 2015 would be reported by March 1, 2016.

The Board of Governors of the Federal Reserve System processes the reports for all of the primary regulators. Data may be submitted on diskette, CD-ROM, or via Internet e-mail.

CRA respondents are encouraged to use the free FFIEC Data Entry Software to send their CRA data. "Submission via Web" is the preferred option. CRA respondents may also send a properly encrypted CRA file (using the "Export to Federal Reserve Board via Internet e-mail" option) to CRASUB@FRB.GOV.

Please mail diskette or CD-ROM submissions to:

Federal Reserve Board
Attention: CRA Processing
20th & Constitution Avenue, NW
MS N402
Washington, DC 20551-0001.

For questions about submitting or resubmitting CRA data, please contact the FFIEC at CRAHELP@FRB.GOV.

§ __.42 – 2: <u>Should an institution develop its own program for data collection, or will the regulators require a certain format?</u>

A2. An institution may use the free software that is provided by the FFIEC to reporting institutions for data collection and reporting or develop its own program. Those institutions that develop their own programs may create a data submission using the File Specifications and Edit Validation Rules that have been set forth to assist with electronic data submissions. For information about specific electronic formatting procedures, contact CRAHELP@FRB.GOV.

§ __.42 – 3: <u>How should an institution report data on lines of credit?</u>

A3. Institutions must collect and report data on lines of credit in the same way that they provide data on loan originations. Lines of credit are considered originated at the time the line is approved or increased; and an increase is considered a new origination. Generally, the full amount of the credit line is the amount that is considered originated. In the case of an increase to an existing line, the amount of the increase is the amount that is considered originated and that amount should be reported. However, consistent with the Call Report instructions, institutions would not report an increase to a small business or small farm line of credit if the increase would cause the total line of credit to exceed $1 million, in the case of a small business line, or $500,000, in the case of a small farm line. Of course, institutions may provide

information about such line increases to examiners as "other loan data."

§ __.42 – 4: Should renewals of lines of credit be collected and/or reported?

A4. Renewals of lines of credit for small business, small farm, consumer, or community development purposes should be collected and reported, if applicable, in the same manner as renewals of small business or small farm loans. See Q&A § __.42(a) – 5. Institutions that are HMDA reporters continue to collect and report home equity lines of credit at their option in accordance with the requirements of 12 CFR part 1003.

§ __.42 – 5: When should merging institutions collect data?

A5. Three scenarios of data collection responsibilities for the calendar year of a merger and subsequent data reporting responsibilities are described below.

- Two institutions are exempt from CRA collection and reporting requirements because of asset size. The institutions merge. No data collection is required for the year in which the merger takes place, regardless of the resulting asset size. Data collection would begin after two consecutive years in which the combined institution had year-end assets at least equal to the small institution asset-size threshold amount described in 12 CFR __.12(u)(1).
- Institution A, an institution required to collect and report the data, and Institution B, an exempt institution, merge. Institution A is the surviving institution. For the year of the merger, data collection is required for Institution A's transactions. Data collection is optional for the transactions of the previously exempt institution. For the following year, all transactions of the surviving institution must be collected and reported.
- Two institutions that each are required to collect and report the data merge. Data collection is required for the entire year of the merger and for subsequent years so long as the surviving institution is not exempt. The surviving institution may file either a consolidated submission or separate submissions for the year of the merger but must file a consolidated report for subsequent years.

§ __.42 – 6: Can small institutions get a copy of the data collection software even though they are not required to collect or report data?

A6. Yes. Any institution that is interested in receiving a copy of the software may download it from the FFIEC Web site at http://www.ffiec.gov/cra. For assistance, institutions may send an e-mail to CRAHELP@FRB.GOV.

§ __.42 – 7: If a small institution is designated a wholesale or limited purpose institution, must it collect data that it would not otherwise be required to collect because it is a small institution?

A7. No. However, small institutions that are designated as wholesale or limited purpose institutions must be prepared to identify those loans, investments, and services to be evaluated under the community development test.

§ __.42(a) Loan information required to be collected and maintained

§ __.42(a) – 1: Must institutions collect and report data on all commercial loans of $1 million or less at origination?

A1. No. Institutions that are not exempt from data collection and reporting are required to collect and report only those commercial loans that they capture in Call Report Schedule RC-C, Part II. Small business loans are defined as those whose original amounts are $1 million or less and that were reported as either "Loans secured by nonfarm or nonresidential real estate" or "Commercial and industrial loans" in Call Report Schedule RC-C, Part I.

§ __.42(a) – 2: For loans defined as small business loans, what information should be collected and maintained?

A2. Institutions that are not exempt from data collection and reporting are required to collect and maintain, in a standardized, machine-readable format, information on each small business loan originated or purchased for each calendar year:

- A unique number or alpha-numeric symbol that can be used to identify the relevant loan file.
- The loan amount at origination.
- The loan location.
- An indicator whether the loan was to a business with gross annual revenues of $1 million or less.

The location of the loan must be maintained by census tract. In addition, supplemental information contained in the file specifications includes a date associated with the origination or purchase and whether a loan was originated or purchased by an affiliate. The same requirements apply to small farm loans.

§ __.42(a) – 3: Will farm loans need to be segregated from business loans?

A3. Yes.

§ __.42(a) – 4: Should institutions collect and report data on all agricultural loans of $500,000 or less at origination?

A4. Institutions are to report those farm loans that they capture in Call Report Schedule RC-C, Part II. Small farm loans are defined as those whose original amounts are $500,000 or less and were reported as either "Loans to finance agricultural production and other loans to farmers" or "Loans secured by farmland" in Call Report Schedule RC-C, Part I.

§ __.42(a) – 5: Should institutions collect and report data about small business and small farm loans that are refinanced or renewed?

A5. An institution should collect information about small business and small farm loans that it refinances or renews as loan originations. (A refinancing generally occurs when the existing loan obligation or note is satisfied and a new note is written, while a renewal refers to an extension of the term of a loan. However, for purposes of small business and small farm CRA data collection and reporting, it is not

necessary to distinguish between the two.) When reporting small business and small farm data, however, an institution may only report one origination (including a renewal or refinancing treated as an origination) per loan per year, unless an increase in the loan amount is granted. However, a demand loan that is merely reviewed annually is not reported as a renewal because the term of the loan has not been extended.

If an institution increases the amount of a small business or small farm loan when it extends the term of the loan, it should always report the amount of the increase as a small business or small farm loan origination. The institution should report only the amount of the increase if the original or remaining amount of the loan has already been reported one time that year. For example, a financial institution makes a term loan for $25,000; principal payments have resulted in a present outstanding balance of $15,000. In the next year, the customer requests an additional $5,000, which is approved, and a new note is written for $20,000. In this example, the institution should report both the $5,000 increase and the renewal or refinancing of the $15,000 as originations for that year. These two originations may be reported together as a single origination of $20,000.

§ __.42(a) – 6: Does a loan to the "fishing industry" come under the definition of a small farm loan?

A6. Yes. Instructions for Call Report Schedule RC-C, Part I include loans "made for the purpose of financing fisheries and forestries, including loans to commercial fishermen" as a component of the definition for "Loans to finance agricultural production and other loans to farmers." Call Report Schedule RC-C, Part II, which serves as the basis of the definition for small business and small farm loans in the regulation, captures both "Loans to finance agricultural production and other loans to farmers" and "Loans secured by farmland."

§ __.42(a) – 7: How should an institution report a home equity line of credit, part of which is for home improvement purposes and part of which is for small business purposes?

A7. When an institution originates a home equity line of credit that is for both home improvement and small business purposes, the institution has the option of reporting the portion of the home equity line that is for home improvement purposes as a home improvement loan under HMDA. Examiners would consider that portion of the line when they evaluate the institution's home mortgage lending. When an institution refinances a home equity line of credit into another home equity line of credit, HMDA reporting continues to be optional. If the institution opts to report the refinanced line, the entire amount of the line would be reported as a refinancing and examiners will consider the entire refinanced line when they evaluate the institution's home mortgage lending.

If an institution that has originated a home equity line of credit for both home improvement and small business purposes (or if an institution that has refinanced such a line into another line) chooses not to report a home improvement loan (or a refinancing) under HMDA, and if the line meets the regulatory definition of a "community development loan," the institution should collect and report information on the entire line as a community development loan. If the line does not qualify as a community development loan, the institution has the option of collecting and maintaining (but not reporting) the entire line of credit as "Other Secured Lines/Loans for Purposes of Small Business."

§ __.42(a) – 8: When collecting small business and small farm data for CRA purposes, may an institution collect and report information about loans to small businesses and small farms located outside the United States?

A8. At an institution's option, it may collect data about small business and small farm loans located outside the United States; however, it cannot report this data because the CRA data collection software will not accept data concerning loan locations outside the United States.

§ __.42(a) – 9: Is an institution that has no small farm or small business loans required to report under CRA?

A9. Each institution subject to data reporting requirements must, at a minimum, submit a transmittal sheet, definition of its assessment area(s), and a record of its community development loans. If the institution does not have community development loans to report, the record should be sent with "0" in the community development loan composite data fields. An institution that has not purchased or originated any small business or small farm loans during the reporting period would not submit the composite loan records for small business or small farm loans.

§ __.42(a) – 10: How should an institution collect and report the location of a loan made to a small business or farm if the borrower provides an address that consists of a post office box number or a rural route and box number?

A10. Prudent banking practices and Bank Secrecy Act regulations dictate that institutions know the location of their customers and loan collateral. Further, Bank Secrecy Act regulations specifically state that a post office box is not an acceptable address. Therefore, institutions typically will know the actual location of their borrowers or loan collateral beyond an address consisting only of a post office box.

Many borrowers have street addresses in addition to rural route and box numbers. Institutions should ask their borrowers to provide the street address of the main business facility or farm or the location where the loan proceeds otherwise will be applied. Moreover, in many cases in which the borrower's address consists only of a rural route number, the institution knows the location (i.e., the census tract) of the borrower or loan collateral. Once the institution has this information available, it should assign the census tract to that location (geocode) and report that information as required under the regulation.

However, if an institution cannot determine a rural borrower's street address, and does not know the census tract, the institution should report the borrower's state, county, MSA

or metropolitan division, if applicable, and "NA," for "not available," in lieu of a census tract code.

§ __.42(a)(2) Loan amount at origination

§ __.42(a)(2) – 1: When an institution purchases a small business or small farm loan, in whole or in part, which amount should the institution collect and report – the original amount of the loan or the amount at purchase?

A1. When collecting and reporting information on purchased small business and small farm loans, including loan participations, an institution collects and reports the amount of the loan at origination, not at the time of purchase. This is consistent with the Call Report's use of the "original amount of the loan" to determine whether a loan should be reported as a "loan to a small business" or a "loan to a small farm" and in which loan size category a loan should be reported. When assessing the volume of small business and small farm loan purchases for purposes of evaluating lending test performance under CRA, however, examiners will evaluate an institution's activity based on the amounts at purchase.

§ __.42(a)(2) – 2: How should an institution collect data about multiple loan originations to the same business?

A2. If an institution makes multiple originations to the same business, the loans should be collected and reported as separate originations rather than combined and reported as they are on the Call Report, which reflects loans outstanding, rather than originations. However, if institutions make multiple originations to the same business solely to inflate artificially the number or volume of loans evaluated for CRA lending performance, the Agencies may combine these loans for purposes of evaluation under the CRA.

§ __.42(a)(2) – 3: How should an institution collect data pertaining to credit cards issued to small businesses?

A3. If an institution agrees to issue credit cards to a business's employees, all of the credit card lines opened on a particular date for that single business should be reported as one small business loan origination rather than reporting each individual credit card line, assuming the criteria in the "small business loan" definition in the regulation are met. The credit card program's "amount at origination" is the sum of all of the employee/business credit cards' credit limits opened on a particular date. If subsequently issued credit cards increase the small business credit line, the added amount is reported as a new origination.

§ __.42(a)(3) The loan location

§ __.42(a)(3) – 1: Which location should an institution record if a small business loan's proceeds are used in a variety of locations?

A1. The institution should record the loan location by either the location of the small business borrower's headquarters or the location where the greatest portion of the proceeds are applied, as indicated by the borrower.

§ __.42(a)(4) Indicator of gross annual revenue

§ __.42(a)(4) – 1: When indicating whether a small business borrower had gross annual revenues of $1 million or less, upon what revenues should an institution rely?

A1. Generally, an institution should rely on the revenues that it considered in making its credit decision. For example, in the case of affiliated businesses, such as a parent corporation and its subsidiary, if the institution considered the revenues of the entity's parent or a subsidiary corporation of the parent as well, then the institution would aggregate the revenues of both corporations to determine whether the revenues are $1 million or less. Alternatively, if the institution considered the revenues of only the entity to which the loan is actually extended, the institution should rely solely upon whether gross annual revenues are above or below $1 million for that entity. However, if the institution considered and relied on revenues or income of a cosigner or guarantor that is not an affiliate of the borrower, such as a sole proprietor, the institution should not adjust the borrower's revenues for reporting purposes.

§ __.42(a)(4) – 2: If an institution that is not exempt from data collection and reporting does not request or consider revenue information to make the credit decision regarding a small business or small farm loan, must the institution collect revenue information in connection with that loan?

A2. No. In those instances, the institution should enter the code indicating "revenues not known" on the individual loan portion of the data collection software or on an internally developed system. Loans for which the institution did not collect revenue information may not be included in the loans to businesses and farms with gross annual revenues of $1 million or less when reporting this data.

§ __.42(a)(4) – 3: What gross revenue should an institution use in determining the gross annual revenue of a start-up business?

A3. The institution should use the actual gross annual revenue to date (including $0 if the new business has had no revenue to date). Although a start-up business will provide the institution with pro forma projected revenue figures, these figures may not accurately reflect actual gross revenue and, therefore, should not be used.

§ __.42(a)(4) – 4: When indicating the gross annual revenue of small business or small farm borrowers, do institutions rely on the gross annual revenue or the adjusted gross annual revenue of their borrowers?

A4. Institutions rely on the gross annual revenue, rather than the adjusted gross annual revenue, of their small business or small farm borrowers when indicating the revenue of small business or small farm borrowers. The purpose of this data collection is to enable examiners and the public to judge whether the institution is lending to small businesses and small farms or whether it is only making small loans to larger businesses and farms.

The regulation does not require institutions to request or consider revenue information when making a loan; however, if institutions do gather this information from their borrowers, the Agencies expect them to collect and rely upon the borrowers' gross annual revenue for purposes of CRA. The CRA regulations similarly do not require institutions to verify revenue amounts; thus, institutions may rely on the gross annual revenue amount provided by borrowers in the ordinary course of business. If an institution does not collect gross annual revenue information for its small business and small farm borrowers, the institution should enter the code "revenues not known." See Q&A § __.42(a)(4) – 2.

§ __.42(b) Loan information required to be reported
§ __.42(b)(1) Small business and small farm loan data

§ __.42(b)(1) – 1: For small business and small farm loan information that is collected and maintained, what data should be reported?

A1. Each institution that is not exempt from data collection and reporting is required to report in machine-readable form annually by March 1 the following information, aggregated for each census tract in which the institution originated or purchased at least one small business or small farm loan during the prior year:

- The number and amount of loans originated or purchased with original amounts of $100,000 or less.
- The number and amount of loans originated or purchased with original amounts of more than $100,000 but less than or equal to $250,000.
- The number and amount of loans originated or purchased with original amounts of more than $250,000 but not more than $1 million, as to small business loans, or $500,000, as to small farm loans.
- To the extent that information is available, the number and amount of loans to businesses and farms with gross annual revenues of $1 million or less (using the revenues the institution considered in making its credit decision).

§ __.42(b)(2) Community development loan data

§ __.42(b)(2) – 1: What information about community development loans must institutions report?

A1. Institutions subject to data reporting requirements must report the aggregate number and amount of community development loans originated and purchased during the prior calendar year.

§ __.42(b)(2) – 2: If a loan meets the definition of a home mortgage, small business, or small farm loan AND qualifies as a community development loan, where should it be reported? Can Federal Housing Administration, Veterans Affairs, and Small Business Administration loans be reported as community development loans?

A2. Except for multifamily affordable housing loans, which may be reported by retail institutions both under HMDA as home mortgage loans and as community development loans, in order to avoid double counting, retail institutions must report loans that meet the definition of "home mortgage loan," "small business loan," or "small farm loan" only in those respective categories even if they also meet the definition of "community development loan." As a practical matter, this is not a disadvantage for institutions evaluated under the lending, investment, and service tests because any affordable housing mortgage, small business, small farm, or consumer loan that would otherwise meet the definition of "community development loan" will be considered elsewhere in the lending test. Any of these types of loans that occur outside the institution's assessment area(s) can receive consideration under the borrower characteristic criteria of the lending test. See Q&A § __.22(b)(2) & (3) – 4.

Limited purpose and wholesale institutions that meet the size threshold for reporting purposes also must report loans that meet the definitions of home mortgage, small business, or small farm loans in those respective categories. However, these institutions must also report any loans from those categories that meet the regulatory definition of "community development loan" as community development loans. There is no double counting because wholesale and limited purpose institutions are not subject to the lending test and, therefore, are not evaluated on their level and distribution of home mortgage, small business, small farm, and consumer loans.

§ __.42(b)(2) – 3: When the primary purpose of a loan is to finance an affordable housing project for low- or moderate-income individuals, but, for example, only 40 percent of the units in question will actually be occupied by individuals or families with low or moderate incomes, should the entire loan amount be reported as a community development loan?

A3. It depends. As long as the primary purpose of the loan is a community development purpose as described in Q&A § __.12(h) – 8, the full amount of the institution's loan should be included in its reporting of aggregate amounts of community development lending. Even though the entire amount of the loan is reported, as noted in Q&A § __.22(b)(4) – 1, examiners may make qualitative distinctions among community development loans on the basis of the extent to which the loan advances the community development purpose.

In addition, if an institution that reports CRA data elects to request consideration for loans that provide mixed-income housing where only a portion of the loan has community development as its primary purpose, such as in connection with a development that has a mixed-income housing component or an affordable housing set-aside required by Federal, state, or local government, the institution must report only the pro rata dollar amount of the portion of the loan that provides affordable housing to low- or moderate-income individuals. The pro rata dollar amount of the total activity will be based on the percentage of units that are affordable. See Q&A § __.12(h) – 8 for a discussion of "primary purpose" of community development describing the

distinction between the types of loans that would be reported in full and those for which only the pro rata amount would be reported.

§ __.42(b)(2) – 4: When an institution purchases a participation in a community development loan, which amount should the institution report – the entire amount of the credit originated by the lead lender or the amount of the participation purchased?

A4. The institution reports only the amount of the participation purchased as a community development loan. However, the institution uses the entire amount of the credit originated by the lead lender to determine whether the original credit meets the definition of a "loan to a small business," "loan to a small farm," or "community development loan." For example, if an institution purchases a $400,000 participation in a business credit that has a community development purpose, and the entire amount of the credit originated by the lead lender is over $1 million, the institution would report $400,000 as a community development loan.

§ __.42(b)(2) – 5: Should institutions collect and report data about community development loans that are refinanced or renewed?

A5. Yes. Institutions should collect information about community development loans that they refinance or renew as loan originations. Community development loan refinancings and renewals are subject to the reporting limitations that apply to refinancings and renewals of small business and small farm loans. See Q&A § __.42(a) – 5.

§ __.42(b)(3) Home mortgage loans

§ __.42(b)(3) – 1: Must institutions that are not required to collect home mortgage loan data by the HMDA collect home mortgage loan data for purposes of the CRA?

A1. No. If an institution is not required to collect home mortgage loan data by the HMDA, the institution need not collect home mortgage loan data under the CRA. Examiners will sample these loans to evaluate the institution's home mortgage lending. If an institution wants to ensure that examiners consider all of its home mortgage loans, the institution may collect and maintain data on these loans.

§ __.42(c) Optional data collection and maintenance
§ __.42(c)(1) Consumer loans

§ __.42(c)(1) – 1: What are the data requirements regarding consumer loans?

A1. There are no data reporting requirements for consumer loans. Institutions may, however, opt to collect and maintain data on consumer loans. If an institution chooses to collect information on consumer loans, it may collect data for one or more of the following categories of consumer loans: motor vehicle, credit card, home equity, other secured, and other unsecured. If an institution collects data for loans in a certain category, it must collect data for all loans originated or purchased within that category. The institution must maintain these data separately for each category for which it chooses to collect data. The data collected and maintained should include for each loan

- a unique number or alpha-numeric symbol that can be used to identify the relevant loan file;
- the loan amount at origination or purchase;
- the loan location; and
- the gross annual income of the borrower that the institution considered in making its credit decision.

Generally, guidance given with respect to data collection of small business and small farm loans, including, for example, guidance regarding collecting loan location data, and whether to collect data in connection with refinanced or renewed loans, will also apply to consumer loans.

§ __.42(c)(1)(iv) Income of borrower

§ __.42(c)(1)(iv) – 1: If an institution does not consider income when making an underwriting decision in connection with a consumer loan, must it collect income information?

A1. No. Further, if the institution routinely collects, but does not verify, a borrower's income when making a credit decision, it need not verify the income for purposes of data maintenance.

§ __.42(c)(1)(iv) – 2: May an institution list "0" in the income field on consumer loans made to employees when collecting data for CRA purposes as the institution would be permitted to do under HMDA?

A2. Yes.

§ __.42(c)(1)(iv) – 3: When collecting the gross annual income of consumer borrowers, do institutions collect the gross annual income or the adjusted gross annual income of the borrowers?

A3. Institutions collect the gross annual income, rather than the adjusted gross annual income, of consumer borrowers. The purpose of income data collection in connection with consumer loans is to enable examiners to determine the distribution, particularly in the institution's assessment area(s), of the institution's consumer loans, based on borrower characteristics, including the number and amount of consumer loans to low-, moderate-, middle-, and upper-income borrowers, as determined on the basis of gross annual income.

The regulation does not require institutions to request or consider income information when making a loan; however, if institutions do gather this information from their borrowers, the Agencies expect them to collect the borrowers' gross annual income for purposes of CRA. The CRA regulations similarly do not require institutions to verify income amounts; thus, institutions may rely on the gross annual income amount provided by borrowers in the ordinary course of business.

§ __.42(c)(1)(iv) – 4: Whose income does an institution collect when a consumer loan is made to more than one borrower?

A4. An institution that chooses to collect and maintain information on consumer loans collects the gross annual income of all primary obligors for consumer loans, to the extent that the institution considered the income of the obligors when making the decision to extend credit. Primary obligors include co-applicants and co-borrowers, including co-signers. An institution does not, however, collect the income of guarantors on consumer loans, because guarantors are only secondarily liable for the debt.

§ __.42(c)(2) Other loan data

§ __.42(c)(2) – 1: Call Report Schedule RC-C, Part II does not allow institutions to report loans for commercial and industrial purposes that are secured by residential real estate, unless the security interest in the nonfarm residential real estate is taken only as an abundance of caution. (See Q&A § __.12(v) – 3.) Loans extended to small businesses with gross annual revenues of $1 million or less may, however, be secured by residential real estate. May an institution collect this information to supplement its small business lending data at the time of examination?

A1. Yes. If these loans promote community development, as defined in the regulation, the institution should collect and report information about the loans as community development loans. Otherwise, at the institution's option, it may collect and maintain data concerning loans, purchases, and lines of credit extended to small businesses and secured by nonfarm residential real estate for consideration in the CRA evaluation of its small business lending. An institution may collect this information as "Other Secured Lines/Loans for Purposes of Small Business" in the individual loan data. This information should be maintained at the institution but should not be submitted for central reporting purposes.

§ __.42(c)(2) – 2: Must an institution collect data on loan commitments and letters of credit?

A2. No. Institutions are not required to collect data on loan commitments and letters of credit. Institutions may, however, provide for examiner consideration information on letters of credit and commitments.

§ __.42(c)(2) – 3: Are commercial and consumer leases considered loans for purposes of CRA data collection?

A3. Commercial and consumer leases are not considered small business or small farm loans or consumer loans for purposes of the data collection requirements in 12 CFR __.42(a) & (c)(1). However, if an institution wishes to collect and maintain data about leases, the institution may provide this data to examiners as "other loan data" under 12 CFR __.42(c)(2) for consideration under the lending test.

§ __.42(d) Data on affiliate lending

§ __.42(d) – 1: If an institution elects to have an affiliate's home mortgage lending considered in its CRA evaluation, what data must the institution make available to examiners?

A1. If the affiliate is a HMDA reporter, the institution must identify those loans reported by its affiliate under 12 CFR part 1003 (Regulation C, implementing HMDA). At its option, the institution may provide examiners with either the affiliate's entire HMDA Disclosure Statement or just those portions covering the loans in its assessment area(s) that it is electing to consider. If the affiliate is not required by HMDA to report home mortgage loans, the institution must provide sufficient data concerning the affiliate's home mortgage loans for the examiners to apply the performance tests.

§ __.43--Content and availability of public file

§ __.43(a) Information available to the public

§ __.43(a)(1) Public comments related to an institution's CRA performance

§ __.43(a)(1) – 1: What happens to comments received by the Agencies?

A1. Comments received by an Agency will be on file at the Agency for use by examiners. Those comments are also available to the public unless they are exempt from disclosure under the Freedom of Information Act.

§ __.43(a)(1) – 2: Is an institution required to respond to public comments?

A2. No. All institutions should review comments and complaints carefully to determine whether any response or other action is warranted. A small institution subject to the small institution performance standards is specifically evaluated on its record of taking action, if warranted, in response to written complaints about its performance in helping to meet the credit needs in its assessment area(s). See 12 CFR __.26(b)(5). For all institutions, responding to comments may help to foster a dialogue with members of the community or to present relevant information to an institution's supervisory Agency. If an institution responds in writing to a letter in the public file, the response must also be placed in that file, unless the response reflects adversely on any person or placing it in the public file violates a law.

§ __.43(a)(2) CRA performance evaluation

§ __.43(a)(2) – 1: May an institution include a response to its CRA performance evaluation in its public file?

A1. Yes. However, the format and content of the evaluation, as transmitted by the supervisory Agency, may not be altered or abridged in any manner. In addition, an institution that received a less than satisfactory rating during it most recent examination must include in its public file a

description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. See 12 CFR __.43(b)(5). The institution must update the description on a quarterly basis.

§ __.43(b) Additional information available to the public
§ __.43(b)(1) Institutions other than small institutions

§ __.43(b)(1) – 1: Must an institution that elects to have affiliate lending considered include data on this lending in its public file?

A1. Yes. The lending data to be contained in an institution's public file covers the lending of the institution's affiliates, as well as of the institution itself, considered in the assessment of the institution's CRA performance. An institution that has elected to have mortgage loans of an affiliate considered must include either the affiliate's HMDA Disclosure Statements for the two prior years or the parts of the Disclosure Statements that relate to the institution's assessment area(s), at the institution's option.

§ __.43(b)(1) – 2: May an institution retain its CRA disclosure statement in electronic format in its public file, rather than printing a hard copy of the CRA disclosure statement for retention in its public file?

A2. Yes, if the institution can readily print out its CRA disclosure statement from an electronic medium (e.g., CD, DVD, or Internet Web site) when a consumer requests the public file. If the request is at a branch other than the main office or the one designated branch in each state that holds the complete public file, the institution should provide the CRA disclosure statement in a paper copy, or in another format acceptable to the requestor, within five calendar days, as required by 12 CFR __.43(c)(2)(ii).

§ __.43(c) Location of public information

§ __.43(c) – 1: What is an institution's "main office"?

A1. An institution's main office is the main, home, or principal office as designated in its charter.

§ __.43(c) – 2: May an institution maintain a copy of its public file on an intranet or the Internet?

A2. Yes, an institution may keep all or part of its public file on an intranet or the Internet, provided that the institution maintains all of the information, either in paper or electronic form, that is required in 12 CFR __.43. An institution that opts to keep part or all of its public file on an intranet or the Internet must follow the rules in 12 CFR __.43(c)(1) and (2) as to what information is required to be kept at a main office and at a branch. The institution also must ensure that the information required to be maintained at a main office and branch, if kept electronically, can be readily downloaded and printed for any member of the public who requests a hard copy of the information.

§ __.44--Public notice by institutions

§ __.44 – 1: Are there any placement or size requirements for an institution's public notice?

A1. The notice must be placed in the institution's public lobby, but the size and placement may vary. The notice should be placed in a location and be of a sufficient size that customers can easily see and read it.

§ __.45--Publication of planned examination schedule

§ __.45 – 1: Where will the Agencies publish the planned examination schedule for the upcoming calendar quarter?

A1. The Agencies may use the Federal Register, a press release, the Internet, or other existing Agency publications for disseminating the list of the institutions scheduled for CRA examinations during the upcoming calendar quarter. Interested parties should contact the appropriate Federal financial supervisory Agency for information on how the Agency is publishing the planned examination schedule.

§ __.45 – 2: Is inclusion on the list of institutions that are scheduled to undergo CRA examinations in the next calendar quarter determinative of whether an institution will be examined in that quarter?

A2. No. The Agencies attempt to determine as accurately as possible which institutions will be examined during the upcoming calendar quarter. However, whether an institution's name appears on the published list does not conclusively determine whether the institution will be examined during that quarter. The Agencies may need to defer a planned examination or conduct an unforeseen examination because of scheduling difficulties or other circumstances.

APPENDIX A to Part __ – Ratings

APPENDIX A to Part __ – 1: Must an institution's performance fit each aspect of a particular rating profile in order to receive that rating?

A1. No. Exceptionally strong performance in some aspects of a particular rating profile may compensate for weak performance in others. For example, a retail institution other than an intermediate small institution that uses non-branch delivery systems to obtain deposits and to deliver loans may have almost all of its loans outside the institution's assessment area(s). Assume that an examiner, after consideration of performance context and other applicable regulatory criteria, concludes that the institution has weak performance under the lending criteria applicable to lending activity, geographic distribution, and borrower characteristics within the assessment area(s). The institution may compensate for such weak performance by exceptionally strong performance in community development lending in its assessment area(s) or a

broader statewide or regional area that includes its assessment area(s).

APPENDIX B to Part __ – CRA Notice

APPENDIX B to Part __ – 1: What agency information should be added to the CRA notice form?

A1. The following information should be added to the form:

OCC-supervised institutions only: For all national banks and Federal savings associations (collectively, banks), in connection with the nationwide list of banks that are scheduled for CRA evaluation in a particular quarter, you may insert the following Web site along with the postal mailing address of the deputy comptroller: http://www.occ.treas.gov. In addition, in connection with the invitation for comments on the bank's performance in helping to meet community credit needs, you may insert the following e-mail address along with the postal mailing address of the deputy comptroller: CRACOMMENTS@OCC.TREAS.GOV.

For community banks, insert in the appropriate blank the postal mailing address of the deputy comptroller of the district in which the institution is located. These addresses can be found at http://www.occ.gov. For banks supervised under the large bank program, insert in the appropriate blank the following postal mailing address: "Large Bank Supervision, 400 7th Street, SW., Washington, DC 20219-0001." For banks supervised under the midsize/credit card bank program, insert in the appropriate blank the following postal mailing address: "Midsize and Credit Card Bank Supervision, 400 7th Street, SW., Washington, DC 20219-0001."

OCC-, FDIC-, and Board-supervised institutions: "Officer in Charge of Supervision" is the title of the responsible official at the appropriate Federal Reserve Bank.

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

Regulation: Community Investment Act, 12 CFR Part 345

Preamble to the 1995 CRA Regulation

Technical Changes to CRA Regulations to conform with OMB and Census Changes

Preamble to the 2005 Regulation Change

2010 Interagency Questions and Answers Regarding Community Reinvestment

2013 Supplementary Interagency Questions and Answers Regarding Community Reinvestment

Consolidated Guidance for Preparing CRA Examinations and Performance Evaluations

CRA Amendments in the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (IBBEA)

Explanation of the Community Reinvestment Act Asset-Size Threshold Change

Agencies Release Annual CRA Asset-Size Threshold Adjustments for Small and Intermediate Small Institutions

CRA Interpretive Letters

FFIEC CRA Interpretive Letters

CRA Qualified Investment Fund

Qualified Zone Academy Bonds (QZAB) Letter

CRA-Related Financial Institution Letters (FIL)

FIL 35-95: Revised Regulation Implementing the Community Reinvestment Act (Part 345); Revision to Regulation C

FIL 87-95: Technical Amendments to Correct and Clarify New Rules Implementing the Community Reinvestment Act (Part 345)

FIL 3-96: Designations as Wholesale or Limited Purpose Institutions; Submissions of Strategic Plans

FIL 26-98: Guidelines for Strategic Plan Submissions

FIL 10-2001: Final Rule on the Disclosure and Reporting of Community Reinvestment Act-Related Agreements

FIL 29-2005: Final Technical Amendments to CRA Regulations

FIL 79-2005: Community Reinvestment Act: Joint Final Rules

FIL 50-2007: Affordable Small-Dollar Loan Products

FIL 09-2010: Revisions to Interagency Questions and Answers

FIL 65-2010: Community Reinvestment Act: Joint Final Rule

Job Aids

FFIEC CRA Website: About CRA, How to File, Public Data

CRA Performance Ratings (FFIEC and FDIC website)

CRA Examination Schedule (FDIC website)

A Guide to CRA Data Collection and Reporting

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

Applications Subject to CRA and Public Comments

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
Underserved and Distressed Geographies

FDIC State Profiles

FDIC Bank Data Guide

Federal Reserve Economic Data

Bureau of Labor Statistics

Bureau of Economic Analysis

US Courts Administration

FFIEC Geocoding/Mapping System: 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

- 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.

XII. Community Reinvestment Act Performance Evaluation Templates

PUBLIC DISCLOSURE

Month XX, 20XX

COMMUNITY REINVESTMENT ACT PERFORMANCE EVALUATION

Bank Name
Certificate Number: 00000

Bank Address
City, State Zip

Federal Deposit Insurance Corporation
Division of Depositor and Consumer Protection
Regional Office Name

Regional Office Address
City, State Zip

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.

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INSTITUTION RATING

INSTITUTION'S CRA RATING: This institution is rated **Select a Rating.**

An institution in this group *Select a Rating Description*

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Lending Test

The Lending Test evaluates the bank's record of helping to meet the credit needs of its assessment area(s) by considering the following criteria:

1) The bank's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments;
2) The percentage of loans, and as appropriate, other lending-related activities located in the bank's assessment area(s);
3) The bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;
4) The geographic distribution of the bank's loans; and
5) The bank's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

GLOSSARY

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 nonmetropolitan median family income, if a person or geography is located outside an MSA.

Assessment Area: A geographic area delineated by the bank under the requirements of the Community Reinvestment Act.

Census Tract: A small, relatively permanent statistical subdivision of a county or equivalent entity. The primary purpose of census tracts is to provide a stable set of geographic units for the presentation of statistical data. Census tracts generally have a population size between 1,200 and 8,000 people, with an optimum size of 4,000 people. Census tract boundaries generally follow visible and identifiable features, but they may follow nonvisible legal boundaries in some instances. State and county boundaries always are census tract boundaries.

Combined Statistical Area (CSA): A combination of several adjacent metropolitan statistical areas or micropolitan statistical areas or a mix of the two, which are linked by economic ties.

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.

Core Based Statistical Area (CBSA): The county or counties or equivalent entities associated with at least one core (urbanized area or urban cluster) of at least 10,000 population, plus adjacent counties having a high degree of social and economic integration with the core as measured through commuting ties with the counties associated with the core. Metropolitan and Micropolitan Statistical Areas are the two categories of CBSAs.

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. Other family 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).

FFIEC-Estimated Income Data: The Federal Financial Institutions Examination Council (FFIEC) issues annual estimates which update median family income from the metropolitan and nonmetropolitan areas. The FFIEC uses American Community Survey data and factors in

information from other sources to arrive at an annual estimate that more closely reflects current economic conditions.

Full-Scope Review: A full-scope review is accomplished when examiners complete all applicable interagency examination procedures for an assessment area. Performance under applicable tests is analyzed considering performance context, quantitative factors (e.g., geographic distribution, borrower profile, and total number and dollar amount of investments), and qualitative factors (e.g., 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 applicants; the amount of loan requested; and the disposition of the application (approved, denied, and withdrawn).

Home Mortgage Loans: Includes closed-end mortgage loans or open-end line of credits as defined in the HMDA regulation that are not an excluded transaction per the HMDA regulation.

Housing Unit: Includes a house, an apartment, a mobile home, a group of rooms, or a single room that is occupied as separate living quarters.

Limited-Scope Review: A limited scope review is accomplished when examiners do not complete all applicable interagency examination procedures for an assessment area.
Performance under applicable tests is often analyzed using only quantitative factors (e.g., geographic distribution, borrower profile, 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.

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 Division (MD): A county or group of counties within a CBSA that contain(s) an urbanized area with a population of at least 2.5 million. A MD is one or more main/secondary counties representing an employment center or centers, plus adjacent counties associated with the main/secondary county or counties through commuting ties.

Metropolitan Statistical Area (MSA): CBSA associated with at least one urbanized area having a population of at least 50,000. The MSA comprises the central county or counties or equivalent entities containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county or counties as measured through commuting.

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 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 and less than 80 percent in the case of a geography.

Multi-family: Refers to a residential structure that contains five or more units.

Nonmetropolitan Area (also known as **non-MSA):** All areas outside of metropolitan areas. The definition of nonmetropolitan area is not consistent with the definition of rural areas. Urban and rural classifications cut across the other hierarchies. For example, there is generally urban and rural territory within metropolitan and nonmetropolitan areas.

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.

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.

Rural Area: Territories, populations, and housing units that are not classified as urban.

Small Business Loan: A loan included in "loans to small businesses" as defined in the Consolidated Report of Condition and Income (Call Report). These loans have original amounts of $1 million or less and are either secured by nonfarm nonresidential properties or are classified as commercial and industrial loans.

Small Farm Loan: 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, including farm residential and other improvements, or are classified as loans to finance agricultural production and other loans to farmers.

Upper-Income: Individual income that is 120 percent or more of the area median income, or a median family income that is 120 percent or more in the case of a geography.

Urban Area: All territories, populations, and housing units in urbanized areas and in places of 2,500 or more persons outside urbanized areas. More specifically, "urban" consists of territory, persons, and housing units in places of 2,500 or more persons incorporated as cities, villages, boroughs (except in Alaska and New York), and towns (except in the New England states, New York, and Wisconsin).

"Urban" excludes the rural portions of "extended cities"; census designated place of 2,500 or more persons; and other territory, incorporated or unincorporated, including in urbanized areas.

PUBLIC DISCLOSURE

Month XX, 20XX

COMMUNITY REINVESTMENT ACT PERFORMANCE EVALUATION

Bank Name
Certificate Number: 00000

Bank Address
City, State Zip

Federal Deposit Insurance Corporation
Division of Depositor and Consumer Protection
Regional Office Name

Regional Office Address
City, State Zip

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.

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INSTITUTION'S CRA RATING: This institution is rated **Select a Rating.**

An institution in this group *Select a Rating Description*

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SUMMARY OF RATINGS FOR RATED AREAS

Rated Area	Rating
[name]	[rating]
[name]	[rating]
[name]	[rating]

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"Urban" excludes the rural portions of "extended cities"; census designated place of 2,500 or more persons; and other territory, incorporated or unincorporated, including in urbanized areas.

PUBLIC DISCLOSURE

Month XX, 20XX

COMMUNITY REINVESTMENT ACT PERFORMANCE EVALUATION

Bank Name
Certificate Number: 00000

Bank Address
City, State Zip

Federal Deposit Insurance Corporation
Division of Depositor and Consumer Protection
Regional Office Name

Regional Office Address
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INSTITUTION RATING

INSTITUTION'S CRA RATING: This institution is rated **Select a Rating.**

An institution in this group *Select a Rating Description*

The Lending Test is rated Select a Rating.

The Community Development Test is rated Select a Rating.

Discriminatory of Other Illegal Credit Practices

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INTERMEDIATE SMALL BANK PERFORMANCE CRITERIA

Lending Test

The Lending Test evaluates the bank's record of helping to meet the credit needs of its assessment area(s) by considering the following criteria:

1) The bank's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments;
2) The percentage of loans, and as appropriate, other lending-related activities located in the bank's assessment area(s);
3) The bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;
4) The geographic distribution of the bank's loans; and
5) The bank's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

Community Development Test

The Community Development Test considers the following criteria:

1) The number and amount of community development loans;
2) The number and amount of qualified investments;
3) The extent to which the bank provides community development services; and
4) The bank's responsiveness through such activities to the area's community development needs considering the amount and combination of these activities, along with their qualitative aspects.

GLOSSARY

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 nonmetropolitan median family income, if a person or geography is located outside an MSA.

Assessment Area: A geographic area delineated by the bank under the requirements of the Community Reinvestment Act.

Census Tract: A small, relatively permanent statistical subdivision of a county or equivalent entity. The primary purpose of census tracts is to provide a stable set of geographic units for the presentation of statistical data. Census tracts generally have a population size between 1,200 and 8,000 people, with an optimum size of 4,000 people. Census tract boundaries generally follow visible and identifiable features, but they may follow nonvisible legal boundaries in some instances. State and county boundaries always are census tract boundaries.

Combined Statistical Area (CSA): A combination of several adjacent metropolitan statistical areas or micropolitan statistical areas or a mix of the two, which are linked by economic ties.

Community Development: For loans, investments, and services to qualify as community development activities, their primary purpose must:

(1) Support affordable housing for low- and moderate-income individuals;
(2) Target community services toward low- and moderate-income individuals;
(3) Promote economic development by financing small businesses or farms; or
(4) Provide activities that revitalize or stabilize low- and moderate-income geographies, designated disaster areas, or distressed or underserved nonmetropolitan middle-income geographies.

Community Development Corporation (CDC): A CDC allows banks and holding companies to make equity type of investments in community development projects. Institution CDCs can develop innovative debt instruments or provide near-equity investments tailored to the development needs of the community. Institution CDCs are also tailored to their financial and marketing needs. 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, micro enterprise funds, and community development venture capital funds.

A certified CDFI must meet eligibility requirements. These requirements include the following:

- 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;
- Not constituting an agency or instrumentality of the United States, of any state or political subdivision of a state.

Community Development Loan: A loan that:

(1) Has as its primary purpose community development; and
(2) Except in the case of a wholesale or limited purpose institution:
  (i) Has not been reported or collected by the institution or an affiliate for consideration in the institution's assessment area as a home mortgage, small business, small farm, or consumer loan, unless it is a multifamily dwelling loan (as described in Appendix A to Part 203 of this title); and
  (ii) Benefits the institution's assessment area(s) or a broader statewide or regional area including the institution's assessment area(s).

Community Development Service: A service that:

(1) Has as its primary purpose community development;
(2) Is related to the provision of <u>financial</u> services; and
(3) Has not been considered in the evaluation of the institution's retail banking services under § 345.24(d).

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.

Core Based Statistical Area (CBSA): The county or counties or equivalent entities associated with at least one core (urbanized area or urban cluster) of at least 10,000 population, plus adjacent counties having a high degree of social and economic integration with the core as measured through commuting ties with the counties associated with the core. Metropolitan and Micropolitan Statistical Areas are the two categories of CBSAs.

Distressed Middle-Income Nonmetropolitan Geographies: A nonmetropolitan middle-income geography will be designated as distressed if it is in a county that meets one or more of the following triggers:

(1) An unemployment rate of at least 1.5 times the national average;
(2) A poverty rate of 20 percent or more; or

(3) A population loss of 10 percent or more between the previous and most recent decennial census or a net migration loss of 5 percent or more over the 5-year period preceding the most recent census.

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. Other family 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).

FFIEC-Estimated Income Data: The Federal Financial Institutions Examination Council (FFIEC) issues annual estimates which update median family income from the metropolitan and nonmetropolitan areas. The FFIEC uses American Community Survey data and factors in information from other sources to arrive at an annual estimate that more closely reflects current economic conditions.

Full-Scope Review: A full-scope review is accomplished when examiners complete all applicable interagency examination procedures for an assessment area. Performance under applicable tests is analyzed considering performance context, quantitative factors (e.g, geographic distribution, borrower profile, and total number and dollar amount of investments), and qualitative factors (e.g, 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 applicants; the amount of loan requested; and the disposition of the application (approved, denied, and withdrawn).

Home Mortgage Loans: Includes closed-end mortgage loans or open-end line of credits as defined in the HMDA regulation that are not an excluded transaction per the HMDA regulation.

Housing Unit: Includes a house, an apartment, a mobile home, a group of rooms, or a single room that is occupied as separate living quarters.

Limited-Scope Review: A limited scope review is accomplished when examiners do not complete all applicable interagency examination procedures for an assessment area.
Performance under applicable tests is often analyzed using only quantitative factors (e.g, geographic distribution, borrower profile, 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 Credit: The Low-Income Housing Tax Credit Program is a housing program contained within the Internal Revenue Code of 1986, as amended. It is administered by the U.S. Department of the Treasury and the Internal Revenue Service. The U.S. Treasury Department distributes low-income housing tax credits to housing credit agencies through the Internal Revenue Service. 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, they may 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 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 Division (MD): A county or group of counties within a CBSA that contain(s) an urbanized area with a population of at least 2.5 million. A MD is one or more main/secondary counties representing an employment center or centers, plus adjacent counties associated with the main/secondary county or counties through commuting ties.

Metropolitan Statistical Area (MSA): CBSA associated with at least one urbanized area having a population of at least 50,000. The MSA comprises the central county or counties or equivalent entities containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county or counties as measured through commuting.

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 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 and less than 80 percent in the case of a geography.

Multi-family: Refers to a residential structure that contains five or more units.

Nonmetropolitan Area (also known as **non-MSA):** All areas outside of metropolitan areas. The definition of nonmetropolitan area is not consistent with the definition of rural areas. Urban and

rural classifications cut across the other hierarchies. For example, there is generally urban and rural territory within metropolitan and nonmetropolitan areas.

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 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.

Rural Area: Territories, populations, and housing units that are not classified as urban.

Small Business Investment Company (SBIC): SBICs are privately-owned investment companies which are licensed and regulated by the Small Business Administration (SBA). SBICs provide long-term loans and/or venture capital to small firms. Because money for venture or risk investments is difficult for small firms to obtain, SBA provides assistance to SBICs to stimulate and supplement the flow of private equity and long-term loan funds to small companies. Venture capitalists participate in the SBIC program to supplement their own private capital with funds borrowed at favorable rates through SBA's guarantee of SBIC debentures. These SBIC debentures are then sold to private investors. An SBIC's success is linked to the growth and profitability of the companies that it finances. Therefore, some SBICs primarily assist businesses with significant growth potential, such as new firms in innovative industries. SBICs finance small firms by providing straight loans and/or equity-type investments. This kind of financing gives them partial ownership of those businesses and the possibility of sharing in the companies' profits as they grow and prosper.

Small Business Loan: A loan included in "loans to small businesses" as defined in the Consolidated Report of Condition and Income (Call Report). These loans have original amounts of $1 million or less and are either secured by nonfarm nonresidential properties or are classified as commercial and industrial loans.

Small Farm Loan: 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, including farm residential and other improvements, or are classified as loans to finance agricultural production and other loans to farmers.

Underserved Middle-Income Nonmetropolitan Geographies: A nonmetropolitan middle-income geography will be designated as underserved if it meets criteria for population size, density, and dispersion indicating the area's population is sufficiently small, thin, and distant from a

population center that the tract is likely to have difficulty financing the fixed costs of meeting essential community needs.

Upper-Income: Individual income that is 120 percent or more of the area median income, or a median family income that is 120 percent or more in the case of a geography.

Urban Area: All territories, populations, and housing units in urbanized areas and in places of 2,500 or more persons outside urbanized areas. More specifically, "urban" consists of territory, persons, and housing units in places of 2,500 or more persons incorporated as cities, villages, boroughs (except in Alaska and New York), and towns (except in the New England states, New York, and Wisconsin).

"Urban" excludes the rural portions of "extended cities"; census designated place of 2,500 or more persons; and other territory, incorporated or unincorporated, including in urbanized areas.

PUBLIC DISCLOSURE

Month XX, 20XX

COMMUNITY REINVESTMENT ACT PERFORMANCE EVALUATION

Bank Name
Certificate Number: 00000

Bank Address
City, State Zip

Federal Deposit Insurance Corporation
Division of Depositor and Consumer Protection
Regional Office Name

Regional Office Address
City, State Zip

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.

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An institution in this group *Select a Rating Description*

The Lending Test is rated Select a Rating.

The Community Development Test is rated Select a Rating.

Discriminatory of Other Illegal Credit Practices

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The Lending Test is rated: Select a Rating
The Community Development Test is rated: Select a Rating

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(RATED AREA #2)

CRA RATING FOR (RATED AREA #2): *Select a Rating*

The Lending Test is rated: Select a Rating
The Community Development Test is rated: Select a Rating

DESCRIPTION OF INSTITUTION'S OPERATIONS IN (RATED AREA #2)

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Community Development Services

(NAME OF LIMITED-SCOPE ASSESSMENT AREA) – Limited-Scope Review

DESCRIPTION OF INSTITUTION'S OPERATIONS IN (ASSESSMENT AREA)

CONCLUSIONS ON PERFORMANCE CRITERIA IN (ASSESSMENT AREA)

LENDING TEST

COMMUNITY DEVELOPMENT TEST

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INTERMEDIATE SMALL BANK PERFORMANCE CRITERIA

Lending Test

The Lending Test evaluates the bank's record of helping to meet the credit needs of its assessment area(s) by considering the following criteria:

1) The bank's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments;
2) The percentage of loans, and as appropriate, other lending-related activities located in the bank's assessment area(s);
3) The bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;
4) The geographic distribution of the bank's loans; and
5) The bank's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

Community Development Test

The Community Development Test considers the following criteria:

1) The number and amount of community development loans;
2) The number and amount of qualified investments;
3) The extent to which the bank provides community development services; and
4) The bank's responsiveness through such activities to community development lending, investment, and service needs.

SUMMARY OF RATINGS FOR RATED AREAS

Rated Area	Lending Test	Community Development Test	Rating
[name]	[rating]	[rating]	[rating]
[name]	[rating]	[rating]	[rating]
[name]	[rating]	[rating]	[rating]

GLOSSARY

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 nonmetropolitan median family income, if a person or geography is located outside an MSA.

Assessment Area: A geographic area delineated by the bank under the requirements of the Community Reinvestment Act.

Census Tract: A small, relatively permanent statistical subdivision of a county or equivalent entity. The primary purpose of census tracts is to provide a stable set of geographic units for the presentation of statistical data. Census tracts generally have a population size between 1,200 and 8,000 people, with an optimum size of 4,000 people. Census tract boundaries generally follow visible and identifiable features, but they may follow nonvisible legal boundaries in some instances. State and county boundaries always are census tract boundaries.

Combined Statistical Area (CSA): A combination of several adjacent metropolitan statistical areas or micropolitan statistical areas or a mix of the two, which are linked by economic ties.

Community Development: For loans, investments, and services to qualify as community development activities, their primary purpose must:

(1) Support affordable housing for low- and moderate-income individuals;
(2) Target community services toward low- and moderate-income individuals;
(3) Promote economic development by financing small businesses or farms; or
(4) Provide activities that revitalize or stabilize low- and moderate-income geographies, designated disaster areas, or distressed or underserved nonmetropolitan middle-income geographies.

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. Bank CDCs are also tailored to their financial and marketing needs. 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, micro enterprise funds, and community development venture capital funds.

A certified CDFI must meet eligibility requirements. These requirements include the following:

- 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;
- Not constituting an agency or instrumentality of the United States, of any state or political subdivision of a state.

Community Development Loan: A loan that:

(1) Has as its primary purpose community development; and
(2) Except in the case of a wholesale or limited purpose bank:
  (i) Has not been reported or collected by the bank or an affiliate for consideration in the bank's assessment area as a home mortgage, small business, small farm, or consumer loan, unless it is a multifamily dwelling loan (as described in Appendix A to Part 203 of this title); and
  (ii) Benefits the bank's assessment area(s) or a broader statewide or regional area including the bank's assessment area(s).

Community Development Service: A service that:

(1) Has as its primary purpose community development;
(2) Is related to the provision of <u>financial</u> services; and
(3) Has not been considered in the evaluation of the bank's retail banking services under § 345.24(d).

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.

Core Based Statistical Area (CBSA): The county or counties or equivalent entities associated with at least one core (urbanized area or urban cluster) of at least 10,000 population, plus adjacent counties having a high degree of social and economic integration with the core as measured through commuting ties with the counties associated with the core. Metropolitan and Micropolitan Statistical Areas are the two categories of CBSAs.

Distressed Middle-Income Nonmetropolitan Geographies: A nonmetropolitan middle-income geography will be designated as distressed if it is in a county that meets one or more of the following triggers:

(1) An unemployment rate of at least 1.5 times the national average;
(2) A poverty rate of 20 percent or more; or

(3) A population loss of 10 percent or more between the previous and most recent decennial census or a net migration loss of 5 percent or more over the 5-year period preceding the most recent census.

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. Other family 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).

FFIEC-Estimated Income Data: The Federal Financial Institutions Examination Council (FFIEC) issues annual estimates which update median family income from the metropolitan and nonmetropolitan areas. The FFIEC uses American Community Survey data and factors in information from other sources to arrive at an annual estimate that more closely reflects current economic conditions.

Full-Scope Review: A full-scope review is accomplished when examiners complete all applicable interagency examination procedures for an assessment area. Performance under applicable tests is analyzed considering performance context, quantitative factors (e.g., geographic distribution, borrower profile, and total number and dollar amount of investments), and qualitative factors (e.g., 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 applicants; the amount of loan requested; and the disposition of the application (approved, denied, and withdrawn).

Home Mortgage Loans: Includes closed-end mortgage loans or open-end line of credits as defined in the HMDA regulation that are not an excluded transaction per the HMDA regulation.

Housing Unit: Includes a house, an apartment, a mobile home, a group of rooms, or a single room that is occupied as separate living quarters.

Limited-Scope Review: A limited-scope review is accomplished when examiners do not complete all applicable interagency examination procedures for an assessment area.
Performance under applicable tests is often analyzed using only quantitative factors (e.g., geographic distribution, borrower profile, 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 Credit: The Low-Income Housing Tax Credit Program is a housing program contained within the Internal Revenue Code of 1986, as amended. It is administered by the U.S. Department of the Treasury and the Internal Revenue Service. The U.S. Treasury Department distributes low-income housing tax credits to housing credit agencies through the Internal Revenue Service. 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, they may 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 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 Division (MD): A county or group of counties within a CBSA that contain(s) an urbanized area with a population of at least 2.5 million. A MD is one or more main/secondary counties representing an employment center or centers, plus adjacent counties associated with the main/secondary county or counties through commuting ties.

Metropolitan Statistical Area (MSA): CBSA associated with at least one urbanized area having a population of at least 50,000. The MSA comprises the central county or counties or equivalent entities containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county or counties as measured through commuting.

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 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 and less than 80 percent in the case of a geography.

Multi-family: Refers to a residential structure that contains five or more units.

Nonmetropolitan Area (also known as **non-MSA):** All areas outside of metropolitan areas. The definition of nonmetropolitan area is not consistent with the definition of rural areas. Urban and

rural classifications cut across the other hierarchies. For example, there is generally urban and rural territory within metropolitan and nonmetropolitan areas.

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 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.

Rural Area: Territories, populations, and housing units that are not classified as urban.

Small Business Investment Company (SBIC): SBICs are privately-owned investment companies which are licensed and regulated by the Small Business Administration (SBA). SBICs provide long-term loans and/or venture capital to small firms. Because money for venture or risk investments is difficult for small firms to obtain, SBA provides assistance to SBICs to stimulate and supplement the flow of private equity and long-term loan funds to small companies. Venture capitalists participate in the SBIC program to supplement their own private capital with funds borrowed at favorable rates through SBA's guarantee of SBIC debentures. These SBIC debentures are then sold to private investors. An SBIC's success is linked to the growth and profitability of the companies that it finances. Therefore, some SBICs primarily assist businesses with significant growth potential, such as new firms in innovative industries. SBICs finance small firms by providing straight loans and/or equity-type investments. This kind of financing gives them partial ownership of those businesses and the possibility of sharing in the companies' profits as they grow and prosper.

Small Business Loan: A loan included in "loans to small businesses" as defined in the Consolidated Report of Condition and Income (Call Report). These loans have original amounts of $1 million or less and are either secured by nonfarm nonresidential properties or are classified as commercial and industrial loans.

Small Farm Loan: 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, including farm residential and other improvements, or are classified as loans to finance agricultural production and other loans to farmers.

Underserved Middle-Income Nonmetropolitan Geographies: A nonmetropolitan middle-income geography will be designated as underserved if it meets criteria for population size, density, and dispersion indicating the area's population is sufficiently small, thin, and distant from a

population center that the tract is likely to have difficulty financing the fixed costs of meeting essential community needs.

Upper-Income: Individual income that is 120 percent or more of the area median income, or a median family income that is 120 percent or more in the case of a geography.

Urban Area: All territories, populations, and housing units in urbanized areas and in places of 2,500 or more persons outside urbanized areas. More specifically, "urban" consists of territory, persons, and housing units in places of 2,500 or more persons incorporated as cities, villages, boroughs (except in Alaska and New York), and towns (except in the New England states, New York, and Wisconsin).

"Urban" excludes the rural portions of "extended cities"; census designated place of 2,500 or more persons; and other territory, incorporated or unincorporated, including in urbanized areas.

PUBLIC DISCLOSURE

Month XX, 20XX

COMMUNITY REINVESTMENT ACT PERFORMANCE EVALUATION

Bank Name
Certificate Number: 00000

Bank Address
City, State Zip

Federal Deposit Insurance Corporation
Division of Depositor and Consumer Protection
Regional Office Name

Regional Office Address
City, State Zip

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.

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INSTITUTION RATING

INSTITUTION'S CRA RATING: This institution is rated **Select a Rating.**

An institution in this group *Select a Rating Description*

PERFORMANCE LEVELS	PERFORMANCE TESTS		
	Lending Test*	**Investment Test**	**Service Test**
Outstanding			
High Satisfactory			
Low Satisfactory			
Needs to Improve			
Substantial Noncompliance			
** The Lending Test is weighted more heavily than the Investment and Service Tests when arriving at an overall rating.*			

The Lending Test is rated Select a Rating.

The Investment Test is rated Select a Rating.

The Service Test is rated Select a Rating.

Discriminatory or Other Illegal Credit Practices

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Reasonableness of Business Hours and Services

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(Name of Limited-Scope Assessment Area)

Geographic Distribution and Borrower Profile

APPENDICES

LARGE BANK PERFORMANCE CRITERIA

Lending Test

The Lending Test evaluates the bank's record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering a bank's home mortgage, small business, small farm, and community development lending. If consumer lending constitutes a substantial majority of a bank's business, the FDIC will evaluate the bank's consumer lending in one or more of the following categories: motor vehicle, credit card, other secured, and other unsecured. The bank's lending performance is evaluated pursuant to the following criteria:

1) The number and amount of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, in the bank's assessment area;
2) The geographic distribution of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, based on the loan location, including:
   i. The proportion of the bank's lending in the bank's assessment area(s);
   ii. The dispersion of lending in the bank's assessment areas(s); and
   iii. The number and amount of loans in low-, moderate-, middle- and upper-income geographies in the bank's assessment area(s);
3) The distribution, particularly in the bank's assessment area(s), of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, based on borrower characteristics, including the number and amount of:
   i. Home mortgage loans low-, moderate-, middle- and upper-income individuals
   ii. Small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;
   iii. Small business and small farm loans by loan amount at origination; and
   iv. Consumer loans, if applicable, to low-, moderate-, middle- and upper-income individuals;
4) The bank's community development lending, including the number and amount of community development loans, and their complexity and innovativeness; and
5) The bank's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- and moderate-income individuals or geographies.

Investment Test

The Investment Test evaluates the institution's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s). Activities considered under the Lending or Service Test may not be considered under the investment test. The bank'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 available opportunities; and
4) The degree to which qualified investments are not routinely provided by private investors.

Service Test

The Service Test evaluates the bank's record of helping to meet the credit needs of its assessment area(s) by analyzing both the availability and effectiveness of the bank's systems for delivering retail banking services and the extent and innovativeness of its community development services.

The bank's retail banking services are evaluated pursuant to the following criteria:

1) The current distribution of the bank's branches among low-, moderate-, middle-, and upper-income geographies;
2) In the context of its current distribution of the bank's branches, the bank's record of opening and closing branches, particularly branches located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals;
3) The availability and effectiveness of alternative systems for delivering retail banking services (*e.g.*, RSFs, RSFs not owned or operated by or exclusively for the bank, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs) in low- and moderate-income geographies and to low- and moderate-income individuals; 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.

The bank's community development services are evaluated pursuant to the following criteria:

1) The extent to which the bank provides community development services; and
2) The innovativeness and responsiveness of community development services.

SCOPE OF EVALUATION

DESCRIPTION OF LIMITED-SCOPE ASSESSMENT AREAS

[Rated Area Name]

[Name of limited-scope assessment area]

GLOSSARY

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 nonmetropolitan median family income, if a person or geography is located outside an MSA.

Assessment Area: A geographic area delineated by the bank under the requirements of the Community Reinvestment Act.

Census Tract: A small, relatively permanent statistical subdivision of a county or equivalent entity. The primary purpose of census tracts is to provide a stable set of geographic units for the presentation of statistical data. Census tracts generally have a population size between 1,200 and 8,000 people, with an optimum size of 4,000 people. Census tract boundaries generally follow visible and identifiable features, but they may follow nonvisible legal boundaries in some instances. State and county boundaries always are census tract boundaries.

Combined Statistical Area (CSA): A combination of several adjacent metropolitan statistical areas or micropolitan statistical areas or a mix of the two, which are linked by economic ties.

Community Development: For loans, investments, and services to qualify as community development activities, their primary purpose must:

(1) Support affordable housing for low- and moderate-income individuals;
(2) Target community services toward low- and moderate-income individuals;
(3) Promote economic development by financing small businesses or farms; or
(4) Provide activities that revitalize or stabilize low- and moderate-income geographies, designated disaster areas, or distressed or underserved nonmetropolitan middle-income geographies.

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. Bank CDCs are also tailored to their financial and marketing needs. 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, micro enterprise funds, and community development venture capital funds.

A certified CDFI must meet eligibility requirements. These requirements include the following:

- 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;
- Not constituting an agency or instrumentality of the United States, of any state or political subdivision of a state.

Community Development Loan: A loan that:

(1) Has as its primary purpose community development; and
(2) Except in the case of a wholesale or limited purpose bank:
  (i) Has not been reported or collected by the bank or an affiliate for consideration in the bank's assessment area as a home mortgage, small business, small farm, or consumer loan, unless it is a multifamily dwelling loan (as described in Appendix A to Part 203 of this title); and
  (ii) Benefits the bank's assessment area(s) or a broader statewide or regional area including the bank's assessment area(s).

Community Development Service: A service that:

(1) Has as its primary purpose community development;
(2) Is related to the provision of <u>financial</u> services; and
(3) Has not been considered in the evaluation of the bank's retail banking services under § 345.24(d).

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.

Core Based Statistical Area (CBSA): The county or counties or equivalent entities associated with at least one core (urbanized area or urban cluster) of at least 10,000 population, plus adjacent counties having a high degree of social and economic integration with the core as measured through commuting ties with the counties associated with the core. Metropolitan and Micropolitan Statistical Areas are the two categories of CBSAs.

Distressed Middle-Income Nonmetropolitan Geographies: A nonmetropolitan middle-income geography will be designated as distressed if it is in a county that meets one or more of the following triggers:

(1) An unemployment rate of at least 1.5 times the national average;
(2) A poverty rate of 20 percent or more; or

(3) A population loss of 10 percent or more between the previous and most recent decennial census or a net migration loss of 5 percent or more over the 5-year period preceding the most recent census.

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. Other family 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).

FFIEC-Estimated Income Data: The Federal Financial Institutions Examination Council (FFIEC) issues annual estimates which update median family income from the metropolitan and nonmetropolitan areas. The FFIEC uses American Community Survey data and factors in information from other sources to arrive at an annual estimate that more closely reflects current economic conditions.

Full-Scope Review: A full-scope review is accomplished when examiners complete all applicable interagency examination procedures for an assessment area. Performance under applicable tests is analyzed considering performance context, quantitative factors (e.g., geographic distribution, borrower profile, and total number and dollar amount of investments), and qualitative factors (e.g., 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 applicants; the amount of loan requested; and the disposition of the application (approved, denied, and withdrawn).

Home Mortgage Loans: Includes closed-end mortgage loans or open-end line of credits as defined in the HMDA regulation that are not an excluded transaction per the HMDA regulation.

Housing Unit: Includes a house, an apartment, a mobile home, a group of rooms, or a single room that is occupied as separate living quarters.

Limited-Scope Review: A limited scope review is accomplished when examiners do not complete all applicable interagency examination procedures for an assessment area.
Performance under applicable tests is often analyzed using only quantitative factors (e.g., geographic distribution, borrower profile, 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 Credit: The Low-Income Housing Tax Credit Program is a housing program contained within the Internal Revenue Code of 1986, as amended. It is administered by the U.S. Department of the Treasury and the Internal Revenue Service. The U.S. Treasury Department distributes low-income housing tax credits to housing credit agencies through the Internal Revenue Service. 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, they may 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 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 Division (MD): A county or group of counties within a CBSA that contain(s) an urbanized area with a population of at least 2.5 million. A MD is one or more main/secondary counties representing an employment center or centers, plus adjacent counties associated with the main/secondary county or counties through commuting ties.

Metropolitan Statistical Area (MSA): CBSA associated with at least one urbanized area having a population of at least 50,000. The MSA comprises the central county or counties or equivalent entities containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county or counties as measured through commuting.

Micropolitan Statistical Area: CBSA associated with at least one urbanized area having a population of at least 10,000, but less than 50,000.

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 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 and less than 80 percent in the case of a geography.

Multi-family: Refers to a residential structure that contains five or more units.

Nonmetropolitan Area (also known as **non-MSA):** All areas outside of metropolitan areas. The definition of nonmetropolitan area is not consistent with the definition of rural areas. Urban and rural classifications cut across the other hierarchies. For example, there is generally urban and rural territory within metropolitan and nonmetropolitan areas.

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 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.

Rural Area: Territories, populations, and housing units that are not classified as urban.

Small Business Investment Company (SBIC): SBICs are privately-owned investment companies which are licensed and regulated by the Small Business Administration (SBA). SBICs provide long-term loans and/or venture capital to small firms. Because money for venture or risk investments is difficult for small firms to obtain, SBA provides assistance to SBICs to stimulate and supplement the flow of private equity and long-term loan funds to small companies. Venture capitalists participate in the SBIC program to supplement their own private capital with funds borrowed at favorable rates through SBA's guarantee of SBIC debentures. These SBIC debentures are then sold to private investors. An SBIC's success is linked to the growth and profitability of the companies that it finances. Therefore, some SBICs primarily assist businesses with significant growth potential, such as new firms in innovative industries. SBICs finance small firms by providing straight loans and/or equity-type investments. This kind of financing gives them partial ownership of those businesses and the possibility of sharing in the companies' profits as they grow and prosper.

Small Business Loan: A loan included in "loans to small businesses" as defined in the Consolidated Report of Condition and Income (Call Report). These loans have original amounts of $1 million or less and are either secured by nonfarm nonresidential properties or are classified as commercial and industrial loans.

Small Farm Loan: 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, including farm residential and other improvements, or are classified as loans to finance agricultural production and other loans to farmers.

Underserved Middle-Income Nonmetropolitan Geographies: A nonmetropolitan middle-income geography will be designated as underserved if it meets criteria for population size, density, and dispersion indicating the area's population is sufficiently small, thin, and distant from a population center that the tract is likely to have difficulty financing the fixed costs of meeting essential community needs.

Upper-Income: Individual income that is 120 percent or more of the area median income, or a median family income that is 120 percent or more in the case of a geography.

Urban Area: All territories, populations, and housing units in urbanized areas and in places of 2,500 or more persons outside urbanized areas. More specifically, "urban" consists of territory, persons, and housing units in places of 2,500 or more persons incorporated as cities, villages, boroughs (except in Alaska and New York), and towns (except in the New England states, New York, and Wisconsin).

"Urban" excludes the rural portions of "extended cities"; census designated place of 2,500 or more persons; and other territory, incorporated or unincorporated, including in urbanized areas.

PUBLIC DISCLOSURE

Month XX, 20XX

COMMUNITY REINVESTMENT ACT PERFORMANCE EVALUATION

Bank Name
Certificate Number: 00000

Bank Address
City, State Zip

Federal Deposit Insurance Corporation
Division of Depositor and Consumer Protection
Regional Office Name

Regional Office Address
City, State Zip

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.

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INSTITUTION RATING

INSTITUTION'S CRA RATING: This institution is rated **Select a Rating.**

An institution in this group *Select a Rating Description*

PERFORMANCE LEVELS	PERFORMANCE TESTS		
	Lending Test*	**Investment Test**	**Service Test**
Outstanding			
High Satisfactory			
Low Satisfactory			
Needs to Improve			
Substantial Noncompliance			
** The Lending Test is weighted more heavily than the Investment and Service Tests when arriving at an overall rating.*			

The Lending Test is rated Select a Rating.

The Investment Test is rated Select a Rating.

The Service Test is rated Select a Rating.

Discriminatory or Other Illegal Credit Practices

DESCRIPTION OF INSTITUTION

DESCRIPTION OF ASSESSMENT AREAS

SCOPE OF EVALUATION

General Information

Activities Reviewed

CONCLUSIONS ON PERFORMANCE CRITERIA

LENDING TEST

Lending Activity

Assessment Area Concentration

Geographic Distribution

Borrower Profile

Innovative or Flexible Lending Practices

Community Development Loans

INVESTMENT TEST

Investment and Grant Activity

Responsiveness to Credit and Community Development Needs

Community Development Initiatives

SERVICE TEST

Accessibility of Delivery Systems

Changes in Branch Locations

Reasonableness of Business Hours and Services

Community Development Services

DISCRIMINATORY OR OTHER ILLEGAL CREDIT PRACTICES REVIEW

(RATED AREA #1) – Full-Scope Review

CRA RATING FOR (RATED AREA #1): *Select a Rating*

The Lending Test is rated: Select a Rating
The Investment Test is rated: Select a Rating
The Service Test is rated: Select a Rating

DESCRIPTION OF INSTITUTION'S OPERATIONS IN (RATED AREA #1)

Economic and Demographic Data

Competition

Community Contacts

Credit and Community Development Needs and Opportunities

SCOPE OF EVALUATION – (RATED AREA #1)

CONCLUSIONS ON PERFORMANCE CRITERIA IN (RATED AREA #1)

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Lending Activity

Geographic Distribution

Borrower Profile

Innovative or Flexible Lending Practices

Community Development Loans

INVESTMENT TEST

Investment and Grant Activity

Responsiveness to Credit and Community Development Needs

Community Development Initiatives

SERVICE TEST

Accessibility of Delivery Systems

Changes in Branch Locations

Reasonableness of Business Hours and Services

Community Development Services

(RATED AREA #2)

CRA RATING FOR (RATED AREA #2): *Select a Rating*

The Lending Test is rated: Select a Rating
The Investment Test is rated: Select a Rating
The Service Test is rated: Select a Rating

DESCRIPTION OF INSTITUTION'S OPERATIONS IN (RATED AREA #2)

SCOPE OF EVALUATION – (RATED AREA #2)

CONCLUSIONS ON PERFORMANCE CRITERIA IN (RATED AREA #2)

LENDING TEST

Lending Activity

Geographic Distribution

Borrower Profile

Innovative or Flexible Lending Practices

Community Development Loans

INVESTMENT TEST

Investment and Grant Activity

Responsiveness to Credit and Community Development Needs

Community Development Initiatives

SERVICE TEST

Accessibility of Delivery Systems

Changes in Branch Locations

Reasonableness of Business Hours and Services

Community Development Services

(NAME OF FULL SCOPE ASSESSMENT AREA) – Full-Scope Review

DESCRIPTION OF INSTITUTION'S OPERATIONS IN (ASSESSMENT AREA)

Economic and Demographic Data

Competition

Community Contacts

Credit and Community Development Needs and Opportunities

CONCLUSIONS ON PERFORMANCE CRITERIA IN (ASSESSMENT AREA)

LENDING TEST

Lending Activity

Geographic Distribution

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Innovative or Flexible Lending Practices

Community Development Loans

INVESTMENT TEST

Investment and Grant Activity

Responsiveness to Credit and Community Development Needs

Community Development Initiatives

SERVICE TEST

Accessibility of Delivery Systems

Changes in Branch Locations

Reasonableness of Business Hours and Services

Community Development Services

OTHER ASSESSMENT AREAS – Limited-Scope Review

CONCLUSIONS ON PERFORMANCE CRITERIA IN THE LIMITED-SCOPE ASSESSMENT AREAS

(Name of Limited-Scope Assessment Area)

Geographic Distribution and Borrower Profile

APPENDICES

LARGE BANK PERFORMANCE CRITERIA

Lending Test

The Lending Test evaluates the bank's record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering a bank's home mortgage, small business, small farm, and community development lending. If consumer lending constitutes a substantial majority of a bank's business, the FDIC will evaluate the bank's consumer lending in one or more of the following categories: motor vehicle, credit card, other secured, and other unsecured. The bank's lending performance is evaluated pursuant to the following criteria:

1) The number and amount of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, in the bank's assessment area;
2) The geographic distribution of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, based on the loan location, including:
   i. The proportion of the bank's lending in the bank's assessment area(s);
   ii. The dispersion of lending in the bank's assessment areas(s); and
   iii. The number and amount of loans in low-, moderate-, middle- and upper-income geographies in the bank's assessment area(s);
3) The distribution, particularly in the bank's assessment area(s), of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, based on borrower characteristics, including the number and amount of:
   i. Home mortgage loans low-, moderate-, middle- and upper-income individuals
   ii. Small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;
   iii. Small business and small farm loans by loan amount at origination; and
   iv. Consumer loans, if applicable, to low-, moderate-, middle- and upper-income individuals;
4) The bank's community development lending, including the number and amount of community development loans, and their complexity and innovativeness; and
5) The bank's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- and moderate-income individuals or geographies.

Investment Test

The Investment Test evaluates the institution's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s). Activities considered under the Lending or Service Test may not be considered under the investment test. The bank's investment performance is evaluated pursuant to the following criteria:

1) The dollar amount of qualified investments;
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Service Test

The Service Test evaluates the bank's record of helping to meet the credit needs of its assessment area(s) by analyzing both the availability and effectiveness of the bank's systems for delivering retail banking services and the extent and innovativeness of its community development services.

The bank's retail banking services are evaluated pursuant to the following criteria:

1) The current distribution of the bank's branches among low-, moderate-, middle-, and upper-income geographies;
2) In the context of its current distribution of the bank's branches, the bank's record of opening and closing branches, particularly branches located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals;
3) The availability and effectiveness of alternative systems for delivering retail banking services (*e.g.*, RSFs, RSFs not owned or operated by or exclusively for the bank, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs) in low- and moderate-income geographies and to low- and moderate-income individuals; 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.

The bank's community development services are evaluated pursuant to the following criteria:

1) The extent to which the bank provides community development services; and
2) The innovativeness and responsiveness of community development services.

SCOPE OF EVALUATION

SUMMARY OF RATINGS FOR RATED AREAS

Rated Area	Lending Test	Investment Test	Service Test	Rating

DESCRIPTION OF LIMITED-SCOPE ASSESSMENT AREAS

[Rated Area Name]

[Name of limited-scope assessment area]

GLOSSARY

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.

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(3) Promote economic development by financing small businesses or farms; or
(4) Provide activities that revitalize or stabilize low- and moderate-income geographies, designated disaster areas, or distressed or underserved nonmetropolitan middle-income geographies.

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. Bank CDCs are also tailored to their financial and marketing needs. 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.

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funds, community development credit unions, micro enterprise funds, and community development venture capital funds.

A certified CDFI must meet eligibility requirements. These requirements include the following:

- 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;
- Not constituting an agency or instrumentality of the United States, of any state or political subdivision of a state.

Community Development Loan: A loan that:

(1) Has as its primary purpose community development; and
(2) Except in the case of a wholesale or limited purpose bank:
  (i) Has not been reported or collected by the bank or an affiliate for consideration in the bank's assessment area as a home mortgage, small business, small farm, or consumer loan, unless it is a multifamily dwelling loan (as described in Appendix A to Part 203 of this title); and
  (ii) Benefits the bank's assessment area(s) or a broader statewide or regional area including the bank's assessment area(s).

Community Development Service: A service that:

(1) Has as its primary purpose community development;
(2) Is related to the provision of financial services; and
(3) Has not been considered in the evaluation of the bank's retail banking services under § 345.24(d).

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Distressed Middle-Income Nonmetropolitan Geographies: A nonmetropolitan middle-income geography will be designated as distressed if it is in a county that meets one or more of the following triggers:

(1) An unemployment rate of at least 1.5 times the national average;
(2) A poverty rate of 20 percent or more; or

(3) A population loss of 10 percent or more between the previous and most recent decennial census or a net migration loss of 5 percent or more over the 5-year period preceding the most recent census.

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. Other family 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).

FFIEC-Estimated Income Data: The Federal Financial Institutions Examination Council (FFIEC) issues annual estimates which update median family income from the metropolitan and nonmetropolitan areas. The FFIEC uses American Community Survey data and factors in information from other sources to arrive at an annual estimate that more closely reflects current economic conditions.

Full-Scope Review: A full-scope review is accomplished when examiners complete all applicable interagency examination procedures for an assessment area. Performance under applicable tests is analyzed considering performance context, quantitative factors (for example, geographic distribution, borrower profile, 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 applicants; the amount of loan requested; and the disposition of the application (approved, denied, and withdrawn).

Home Mortgage Loans: Includes closed-end mortgage loans or open-end line of credits as defined in the HMDA regulation that are not an excluded transaction per the HMDA regulation.

Housing Unit: Includes a house, an apartment, a mobile home, a group of rooms, or a single room that is occupied as separate living quarters.

Limited-Scope Review: A limited scope review is accomplished when examiners do not complete all applicable interagency examination procedures for an assessment area.
Performance under applicable tests is often analyzed using only quantitative factors (for example, geographic distribution, borrower profile, 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 Credit: The Low-Income Housing Tax Credit Program is a housing program contained within the Internal Revenue Code of 1986, as amended. It is administered by the U.S. Department of the Treasury and the Internal Revenue Service. The U.S. Treasury Department distributes low-income housing tax credits to housing credit agencies through the Internal Revenue Service. 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, they may 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 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 Division (MD): A county or group of counties within a CBSA that contain(s) an urbanized area with a population of at least 2.5 million. A MD is one or more main/secondary counties representing an employment center or centers, plus adjacent counties associated with the main/secondary county or counties through commuting ties.

Metropolitan Statistical Area (MSA): CBSA associated with at least one urbanized area having a population of at least 50,000. The MSA comprises the central county or counties or equivalent entities containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county or counties as measured through commuting.

Micropolitan Statistical Area: CBSA associated with at least one urbanized area having a population of at least 10,000, but less than 50,000.

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 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 and less than 80 percent in the case of a geography.

Multi-family: Refers to a residential structure that contains five or more units.

Nonmetropolitan Area (also known as **non-MSA):** All areas outside of metropolitan areas. The definition of nonmetropolitan area is not consistent with the definition of rural areas. Urban and rural classifications cut across the other hierarchies. For example, there is generally urban and rural territory within metropolitan and nonmetropolitan areas.

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 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.

Rural Area: Territories, populations, and housing units that are not classified as urban.

Small Business Investment Company (SBIC): SBICs are privately-owned investment companies which are licensed and regulated by the Small Business Administration (SBA). SBICs provide long-term loans and/or venture capital to small firms. Because money for venture or risk investments is difficult for small firms to obtain, SBA provides assistance to SBICs to stimulate and supplement the flow of private equity and long-term loan funds to small companies. Venture capitalists participate in the SBIC program to supplement their own private capital with funds borrowed at favorable rates through SBA's guarantee of SBIC debentures. These SBIC debentures are then sold to private investors. An SBIC's success is linked to the growth and profitability of the companies that it finances. Therefore, some SBICs primarily assist businesses with significant growth potential, such as new firms in innovative industries. SBICs finance small firms by providing straight loans and/or equity-type investments. This kind of financing gives them partial ownership of those businesses and the possibility of sharing in the companies' profits as they grow and prosper.

Small Business Loan: A loan included in "loans to small businesses" as defined in the Consolidated Report of Condition and Income (Call Report). These loans have original amounts of $1 million or less and are either secured by nonfarm nonresidential properties or are classified as commercial and industrial loans.

Small Farm Loan: 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, including farm residential and other improvements, or are classified as loans to finance agricultural production and other loans to farmers.

Underserved Middle-Income Nonmetropolitan Geographies: A nonmetropolitan middle-income geography will be designated as underserved if it meets criteria for population size, density, and dispersion indicating the area's population is sufficiently small, thin, and distant from a population center that the tract is likely to have difficulty financing the fixed costs of meeting essential community needs.

Upper-Income: Individual income that is 120 percent or more of the area median income, or a median family income that is 120 percent or more in the case of a geography.

Urban Area: All territories, populations, and housing units in urbanized areas and in places of 2,500 or more persons outside urbanized areas. More specifically, "urban" consists of territory, persons, and housing units in places of 2,500 or more persons incorporated as cities, villages, boroughs (except in Alaska and New York), and towns (except in the New England states, New York, and Wisconsin).

"Urban" excludes the rural portions of "extended cities"; census designated place of 2,500 or more persons; and other territory, incorporated or unincorporated, including in urbanized areas.

PUBLIC DISCLOSURE

Month XX, 20XX

COMMUNITY REINVESTMENT ACT PERFORMANCE EVALUATION

Bank Name
Certificate Number: 00000

Bank Address
City, State Zip

Federal Deposit Insurance Corporation
Division of Depositor and Consumer Protection
Regional Office Name

Regional Office Address
City, State Zip

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.

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INSTITUTION RATING

INSTITUTION'S CRA RATING: This institution is rated **Select a Rating.**

An institution in this group *Select a Rating Description*

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Community Development Lending (as applicable)

Community Development Investments (as applicable)

Community Development Services (as applicable)

Headings are dependent on the plan and should be revised accordingly.

DISCRIMINATORY OR OTHER ILLEGAL CREDIT PRACTICES REVIEW

GLOSSARY

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 nonmetropolitan median family income, if a person or geography is located outside an MSA.

Assessment Area: A geographic area delineated by the bank under the requirements of the Community Reinvestment Act.

Census Tract: A small, relatively permanent statistical subdivision of a county or equivalent entity. The primary purpose of census tracts is to provide a stable set of geographic units for the presentation of statistical data. Census tracts generally have a population size between 1,200 and 8,000 people, with an optimum size of 4,000 people. Census tract boundaries generally follow visible and identifiable features, but they may follow nonvisible legal boundaries in some instances. State and county boundaries always are census tract boundaries.

Combined Statistical Area (CSA): A combination of several adjacent metropolitan statistical areas or micropolitan statistical areas or a mix of the two, which are linked by economic ties.

Community Development: For loans, investments, and services to qualify as community development activities, their primary purpose must:

(1) Support affordable housing for low- and moderate-income individuals;
(2) Target community services toward low- and moderate-income individuals;
(3) Promote economic development by financing small businesses or farms; or
(4) Provide activities that revitalize or stabilize low- and moderate-income geographies, designated disaster areas, or distressed or underserved nonmetropolitan middle-income geographies.

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. Bank CDCs are also tailored to their financial and marketing needs. 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, micro enterprise funds, and community development venture capital funds.

A certified CDFI must meet eligibility requirements. These requirements include the following:

- 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;
- Not constituting an agency or instrumentality of the United States, of any state or political subdivision of a state.

Community Development Loan: A loan that:

(1) Has as its primary purpose community development; and
(2) Except in the case of a wholesale or limited purpose bank:
  (i) Has not been reported or collected by the bank or an affiliate for consideration in the bank's assessment area as a home mortgage, small business, small farm, or consumer loan, unless it is a multifamily dwelling loan (as described in Appendix A to Part 203 of this title); and
  (ii) Benefits the bank's assessment area(s) or a broader statewide or regional area including the bank's assessment area(s).

Community Development Service: A service that:

(1) Has as its primary purpose community development;
(2) Is related to the provision of <u>financial</u> services; and
(3) Has not been considered in the evaluation of the bank's retail banking services under § 345.24(d).

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.

Core Based Statistical Area (CBSA): The county or counties or equivalent entities associated with at least one core (urbanized area or urban cluster) of at least 10,000 population, plus adjacent counties having a high degree of social and economic integration with the core as measured through commuting ties with the counties associated with the core. Metropolitan and Micropolitan Statistical Areas are the two categories of CBSAs.

Distressed Middle-Income Nonmetropolitan Geographies: A nonmetropolitan middle-income geography will be designated as distressed if it is in a county that meets one or more of the following triggers:

(1) An unemployment rate of at least 1.5 times the national average;
(2) A poverty rate of 20 percent or more; or

(3) A population loss of 10 percent or more between the previous and most recent decennial census or a net migration loss of 5 percent or more over the 5-year period preceding the most recent census.

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. Other family 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).

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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 applicants; the amount of loan requested; and the disposition of the application (approved, denied, and withdrawn).

Home Mortgage Loans: Includes closed-end mortgage loans or open-end line of credits as defined in the HMDA regulation that are not an excluded transaction per the HMDA regulation.

Housing Unit: Includes a house, an apartment, a mobile home, a group of rooms, or a single room that is occupied as separate living quarters.

Limited-Scope Review: A limited scope review is accomplished when examiners do not complete all applicable interagency examination procedures for an assessment area. Performance under applicable tests is often analyzed using only quantitative factors (e.g., geographic distribution, borrower profile, 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 Credit: The Low-Income Housing Tax Credit Program is a housing program contained within the Internal Revenue Code of 1986, as amended. It is administered by the U.S. Department of the Treasury and the Internal Revenue Service. The U.S. Treasury Department distributes low-income housing tax credits to housing credit agencies through the Internal Revenue Service. 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, they may 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 throughout the compliance period, usually 30 years.

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Metropolitan Division (MD): A county or group of counties within a CBSA that contain(s) an urbanized area with a population of at least 2.5 million. A MD is one or more main/secondary counties representing an employment center or centers, plus adjacent counties associated with the main/secondary county or counties through commuting ties.

Metropolitan Statistical Area (MSA): CBSA associated with at least one urbanized area having a population of at least 50,000. The MSA comprises the central county or counties or equivalent entities containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county or counties as measured through commuting.

Micropolitan Statistical Area: CBSA associated with at least one urbanized area having a population of at least 10,000, but less than 50,000.

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 and less than 120 percent in the case of a geography.

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Multi-family: Refers to a residential structure that contains five or more units.

Nonmetropolitan Area (also known as **non-MSA):** All areas outside of metropolitan areas. The definition of nonmetropolitan area is not consistent with the definition of rural areas. Urban and rural classifications cut across the other hierarchies. For example, there is generally urban and rural territory within metropolitan and nonmetropolitan areas.

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Qualified Investment: A 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.

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Underserved Middle-Income Nonmetropolitan Geographies: A nonmetropolitan middle-income geography will be designated as underserved if it meets criteria for population size, density, and dispersion indicating the area's population is sufficiently small, thin, and distant from a population center that the tract is likely to have difficulty financing the fixed costs of meeting essential community needs.

Upper-Income: Individual income that is 120 percent or more of the area median income, or a median family income that is 120 percent or more in the case of a geography.

Urban Area: All territories, populations, and housing units in urbanized areas and in places of 2,500 or more persons outside urbanized areas. More specifically, "urban" consists of territory, persons, and housing units in places of 2,500 or more persons incorporated as cities, villages, boroughs (except in Alaska and New York), and towns (except in the New England states, New York, and Wisconsin).

"Urban" excludes the rural portions of "extended cities"; census designated place of 2,500 or more persons; and other territory, incorporated or unincorporated, including in urbanized areas.

PUBLIC DISCLOSURE

Month XX, 20XX

COMMUNITY REINVESTMENT ACT PERFORMANCE EVALUATION

Bank Name
Certificate Number: 00000

Bank Address
City, State Zip

Federal Deposit Insurance Corporation
Division of Depositor and Consumer Protection
Regional Office Name

Regional Office Address
City, State Zip

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.

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INSTITUTION RATING

INSTITUTION'S CRA RATING: This institution is rated **Select a Rating.**

An institution in this group *Select a Rating Description*

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DISCUSSION OF PERFORMANCE IN OTHER COMMUNITY DEVELOPMENT ACTIVITIES

DISCRIMINATORY OR OTHER ILLEGAL CREDIT PRACTICES REVIEW

GLOSSARY

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 nonmetropolitan median family income, if a person or geography is located outside an MSA.

Assessment Area: A geographic area delineated by the bank under the requirements of the Community Reinvestment Act.

Census Tract: A small, relatively permanent statistical subdivision of a county or equivalent entity. The primary purpose of census tracts is to provide a stable set of geographic units for the presentation of statistical data. Census tracts generally have a population size between 1,200 and 8,000 people, with an optimum size of 4,000 people. Census tract boundaries generally follow visible and identifiable features, but they may follow nonvisible legal boundaries in some instances. State and county boundaries always are census tract boundaries.

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Community Development: For loans, investments, and services to qualify as community development activities, their primary purpose must:

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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. Bank CDCs are also tailored to their financial and marketing needs. 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, micro enterprise funds, and community development venture capital funds.

A certified CDFI must meet eligibility requirements. These requirements include the following:

- Having a primary mission of promoting community development;
- Serving an investment area or target population;
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Community Development Loan: A loan that:

(1) Has as its primary purpose community development; and
(2) Except in the case of a wholesale or limited purpose bank:
  (i) Has not been reported or collected by the bank or an affiliate for consideration in the bank's assessment area as a home mortgage, small business, small farm, or consumer loan, unless it is a multifamily dwelling loan (as described in Appendix A to Part 203 of this title); and
  (ii) Benefits the bank's assessment area(s) or a broader statewide or regional area including the bank's assessment area(s).

Community Development Service: A service that:

(1) Has as its primary purpose community development;
(2) Is related to the provision of <u>financial</u> services; and
(3) Has not been considered in the evaluation of the bank's retail banking services under § 345.24(d).

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.

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(2) A poverty rate of 20 percent or more; or

(3) A population loss of 10 percent or more between the previous and most recent decennial census or a net migration loss of 5 percent or more over the 5-year period preceding the most recent census.

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. Other family 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).

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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 applicants; the amount of loan requested; and the disposition of the application (approved, denied, and withdrawn).

Home Mortgage Loans: Includes closed-end mortgage loans or open-end line of credits as defined in the HMDA regulation that are not an excluded transaction per the HMDA regulation.

Housing Unit: Includes a house, an apartment, a mobile home, a group of rooms, or a single room that is occupied as separate living quarters.

Limited-Scope Review: A limited scope review is accomplished when examiners do not complete all applicable interagency examination procedures for an assessment area. Performance under applicable tests is often analyzed using only quantitative factors (e.g., geographic distribution, borrower profile, 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 Credit: The Low-Income Housing Tax Credit Program is a housing program contained within the Internal Revenue Code of 1986, as amended. It is administered by the U.S. Department of the Treasury and the Internal Revenue Service. The U.S. Treasury Department distributes low-income housing tax credits to housing credit agencies through the Internal Revenue Service. 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, they may 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 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 Division (MD): A county or group of counties within a CBSA that contain(s) an urbanized area with a population of at least 2.5 million. A MD is one or more main/secondary counties representing an employment center or centers, plus adjacent counties associated with the main/secondary county or counties through commuting ties.

Metropolitan Statistical Area (MSA): CBSA associated with at least one urbanized area having a population of at least 50,000. The MSA comprises the central county or counties or equivalent entities containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county or counties as measured through commuting.

Micropolitan Statistical Area: CBSA associated with at least one urbanized area having a population of at least 10,000, but less than 50,000.

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 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 and less than 80 percent in the case of a geography.

Multi-family: Refers to a residential structure that contains five or more units.

Nonmetropolitan Area (also known as **non-MSA):** All areas outside of metropolitan areas. The definition of nonmetropolitan area is not consistent with the definition of rural areas. Urban and rural classifications cut across the other hierarchies. For example, there is generally urban and rural territory within metropolitan and nonmetropolitan areas.

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 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.

Rural Area: Territories, populations, and housing units that are not classified as urban.

Small Business Investment Company (SBIC): SBICs are privately-owned investment companies which are licensed and regulated by the Small Business Administration (SBA). SBICs provide long-term loans and/or venture capital to small firms. Because money for venture or risk investments is difficult for small firms to obtain, SBA provides assistance to SBICs to stimulate and supplement the flow of private equity and long-term loan funds to small companies. Venture capitalists participate in the SBIC program to supplement their own private capital with funds borrowed at favorable rates through SBA's guarantee of SBIC debentures. These SBIC debentures are then sold to private investors. An SBIC's success is linked to the growth and profitability of the companies that it finances. Therefore, some SBICs primarily assist businesses with significant growth potential, such as new firms in innovative industries. SBICs finance small firms by providing straight loans and/or equity-type investments. This kind of financing gives them partial ownership of those businesses and the possibility of sharing in the companies' profits as they grow and prosper.

Small Business Loan: A loan included in "loans to small businesses" as defined in the Consolidated Report of Condition and Income (Call Report). These loans have original amounts of $1 million or less and are either secured by nonfarm nonresidential properties or are classified as commercial and industrial loans.

Small Farm Loan: 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, including farm residential and other improvements, or are classified as loans to finance agricultural production and other loans to farmers.

Underserved Middle-Income Nonmetropolitan Geographies: A nonmetropolitan middle-income geography will be designated as underserved if it meets criteria for population size, density, and dispersion indicating the area's population is sufficiently small, thin, and distant from a population center that the tract is likely to have difficulty financing the fixed costs of meeting essential community needs.

Upper-Income: Individual income that is 120 percent or more of the area median income, or a median family income that is 120 percent or more in the case of a geography.

Urban Area: All territories, populations, and housing units in urbanized areas and in places of 2,500 or more persons outside urbanized areas. More specifically, "urban" consists of territory, persons, and housing units in places of 2,500 or more persons incorporated as cities, villages, boroughs (except in Alaska and New York), and towns (except in the New England states, New York, and Wisconsin).

"Urban" excludes the rural portions of "extended cities"; census designated place of 2,500 or more persons; and other territory, incorporated or unincorporated, including in urbanized areas.