Supervisory Insights

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Supervisory Insights

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Economic data suggest the U.S. economy is growing again, and there are signs that banking industry earnings may be on the point of resuming an upward trend. However, bankers and regulators continue to deal with the workload generated by the financial crisis. We are seeing additional bank failures, and the number of insured institutions on the FDIC's problem bank list is rising, although more slowly than in past quarters. This issue of ***Supervisory Insights*** looks at one resolution and supervisory strategy that has helped the Corporation lower resolution costs and strengthen its liquidity position.

The FDIC is making greater use of loss-sharing agreements which not only allow the Corporation to sell failed bank assets at the time of failure, but also provide the opportunity to recover prior asset losses when market conditions improve. From January 1, 2009, through May 14, 2010, the FDIC entered into these agreements for about three-fourths of the 212 bank failures.

These agreements affect not only the resolution of failing banks, but also the examination process for acquiring banks. "FDIC Loss-Sharing Agreements: A Primer" provides an overview of the loss-sharing process, addresses the regulatory treatment of assets subject to these agreements, and discusses the accounting rules and capital implications for the acquisition of failed bank assets.

The financial crisis has highlighted the need for greater transparency and strengthened consumer protections in the financial system. The Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act) was enacted to ensure fair treatment of consumers and transparent practices for open-end consumer credit plans, including credit cards. This issue's "From the Examiner's Desk" feature explains how the provisions of the Credit CARD Act and amendments to Regulation Z—including new disclosure requirements and billing and payment practice restrictions—result in changes in bank compliance requirements. This article offers suggestions for how examiners may assess compliance with these changes.

We hope you take the time to read these articles, and we encourage our readers to continue to provide feedback on articles and suggest topics for future issues. Please e-mail your comments and questions to **SupervisoryJournal@fdic.gov.**

Sandra L. Thompson
Director
Division of Supervision and Consumer Protection

FDIC Loss-Sharing Agreements: A Primer

Through decades of experience acting as the receiver of failed financial institutions, the FDIC has developed a variety of resolution structures designed to reduce the Deposit Insurance Fund's costs and enhance the attractiveness of closed bank franchises. As the current banking crisis has evolved, the Corporation has increasingly used a resolution structure known as a loss-sharing agreement (LSA).

LSAs were first introduced into selected failed institution acquisitions in 1991. The FDIC's goal when using an LSA is to sell the majority of a failed institution's assets to an acquiring institution and have the purchaser manage the assets in a manner that benefits itself and the FDIC. LSAs reduce the FDIC's immediate cash needs, are operationally simpler and more seamless to customers of failed institutions, and move assets quickly into the private sector. Acquirers of failed institutions view the LSA structure as attractive because the FDIC's loss coverage provides substantial downside protection against losses on covered assets. The terms of a loss-sharing transaction are set forth in the LSA, which supplements the FDIC's Purchase and Assumption Agreement with the acquiring institution.

Although the accounting and examination issues concerning LSAs are complex, from a supervisory perspective there is no credit risk arising from the portion of assets covered by the FDIC's protection except as noted below. In the context of rendering a credit risk assessment, covered assets can generally be compared to other federal loan guarantee programs. Accordingly, examiners generally will not subject the portion of assets covered by an LSA to adverse classification or other criticism provided the acquiring institution complies with the terms of the LSA.

This article discusses the key supervisory considerations for LSAs, including a summary of loss-sharing structures, an overview of examination procedures for reviewing assets covered by LSAs, important accounting and loan loss allowance issues, and guidelines for establishing adverse classifications.

Typical Loss-Sharing Agreement Structures

LSAs come in two forms, with both types covering credit losses and reimbursement of certain types of expenses (such as advances for taxes and insurance, sales expenses, and foreclosure costs) associated with troubled assets. The first form is for commercial assets and the second for residential mortgages. For commercial assets, LSAs typically cover an eight-year period with the first five years for losses and recoveries and the final three years for recoveries only. For single-family mortgages, LSAs normally run 10 years. The FDIC provides loss coverage on three primary single-family mortgage loss events: modification, short sale, and foreclosure; for certain second liens, loss coverage is also provided for charge-offs. For losses on covered commercial assets, the acquiring institution is paid by the FDIC when the assets are charged off in accordance with the banking agencies' supervisory standards for the classification of assets, or when the assets are sold.[1] Under both agreements, losses from bulk sales are allowed only if the FDIC approves the sale ahead of time (i.e., sales are not allowed unless the FDIC provides its consent).

[1] Details on FDIC LSAs can be found at http://www.fdic.gov/bank/individual/failed/lossshare/index.html.

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Although bidding procedures have varied over time, a primary component of each bid is the asset premium (discount) bid. For most transactions, three factors determine the size of the initial FDIC cash payment to the acquirer: the asset premium (discount) bid, the franchise value bid for the failed institution's deposit base, and the difference between the book values of the assets acquired and the liabilities assumed from the failed institution. If the combination of these items is negative, the FDIC makes an offsetting up-front payment to the acquirer. For recent transactions, if the combination of these items is positive, the acquirer makes an up-front payment to the FDIC for that amount. For many earlier transactions, a positive number would result in a "first loss tranche." The first loss tranche is essentially a deductible, where FDIC loss coverage is provided only after losses exceed the amount of the first loss tranche. Due to changes in bidding procedures over time, a few recent transactions have a first loss tranche even though the acquirer received an up-front cash payment from the FDIC.

In most transactions to date, the FDIC reimburses 80 percent of the losses incurred by the acquirer on covered assets, with the acquiring institution absorbing 20 percent (once the first loss tranche, if any, is exhausted). However, there have been a few transactions where the FDIC has provided a lower level of coverage.

For transactions that occurred before April 2010, 80 percent loss coverage is provided up to a stated threshold amount (generally the FDIC's dollar estimate of the total projected losses on covered assets).[2] Once losses exceed the stated threshold amount, the FDIC provides 95 percent loss coverage.

Considerations for Reviewing LSAs During Bank Examinations

Examinations of banks that have acquired assets of failed institutions under an LSA will take into account the implications and benefits of loss sharing. Examiners will consider the impact of LSAs when performing the asset review, assessing accounting entries, assigning adverse classifications, and determining CAMELS ratings and examination conclusions. In many cases, examiners may discuss and review LSA issues with acquiring institutions prior to the next regularly scheduled examination through visitations or other interim supervisory contact points.

During the pre-examination planning phase of on-site reviews, examiners will obtain a copy of any loss-sharing agreement and closely review the terms.[3] The examination asset review will include a sample of commercial assets covered by LSAs, the volume of which will provide the examiner-in-charge with sufficient information to assess whether the acquiring institution applies its loan administration processes, credit risk management policies (including its loan review

[2] On March 26, 2010, the FDIC indicated that it would no longer offer 95 percent loss coverage for losses above a stated threshold, but generally would offer 80 percent reimbursement for all losses, as defined in the LSA, on covered assets. Thus, in some cases, the FDIC may enter into an LSA that provides reimbursement for losses at a percentage other than 80 percent (e.g., 50 percent). These changes do not alter the terms of earlier LSAs that provide for 95 percent loss coverage above a stated threshold.

[3] If a copy of an LSA between the bank being examined and the FDIC has not already been obtained, the LSA can be accessed via the "Failed Bank List" at http://www.fdic.gov/bank/individual/failed/banklist.html. Click on the name of the failed institution acquired by the bank being examined, and the LSA is included as part of the "Purchase and Assumption Agreement" shown on the list of information available for the failed institution.

and credit grading policies), and loss recognition and charge-off standards to covered commercial assets in a manner consistent with its treatment of commercial assets not covered by LSAs.[4] For covered single-family residential mortgages, the scope of asset reviews will be similar to a regular examination of such assets. The LSA and the covered assets are not being examined per se. LSAs are a risk mitigant and will be considered when assigning classifications and determining examination conclusions. However, if nonconformance with the terms of an LSA is apparent during an examination, examiners should contact the appropriate regional office which will advise the FDIC's Division of Resolutions and Receiverships of identified issues.

Assets covered by an LSA can potentially expose an acquiring institution to partial loss (similar to some government-guaranteed loan programs). However, the portion of assets that the FDIC would cover under an LSA generally will not be subject to criticism (unless the contractual terms of the LSA have not been met by the acquirer) because loss sharing represents a conditional guarantee from the FDIC. Acquiring institutions should recognize that examiners will review banks' efforts to implement the homeownership preservation initiatives specified in the LSA and the October 2009 interagency *Policy Statement on Prudent Commercial Real Estate Loan Workouts.*[5]

Accounting Treatment for Acquisitions with LSAs

The acquisition of a failed institution should be accounted for as a business combination in accordance with generally accepted accounting principles (GAAP).[6] The accounting for acquisitions of such institutions with FDIC assistance in the form of LSAs is complex, particularly because of the fair values that must be estimated (with limited exceptions) for the assets acquired, including an indemnification asset,[7] and liabilities assumed as of the acquisition date of the failed institution. In addition, the acquired covered assets and the indemnification asset, despite the linkage between them, are treated as separate units of account. Because an acquiring institution will have had limited time to perform due diligence with respect to these assets and liabilities before the acquisition, initially it will need to record provisional fair value estimates as of the acquisition date. As a consequence, the acquiring institution will need to retrospectively adjust the provisional amounts booked as of the acquisition date as it obtains the information

[4] Because an LSA subjects an acquiring institution to a number of contractual requirements, the institution must implement effective internal processes over covered assets (including consistency in the treatment of covered and non-covered assets) to maintain the loss-sharing guaranty, which underpins the indemnification asset. An acquiring institution's failure to comply with the contractual requirements of an LSA may lead to the revocation of the agreement, which would necessitate the write-off of the related indemnification asset.

[5] *Policy Statement on Prudent Commercial Real Estate Loan Workouts*, October 30, 2009, http://www.fdic.gov/news/news/financial/2009/fil09061.html.

[6] See Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) Topic 805, Business Combinations, which was formerly referred to as FASB Statement No. 141(R), *Business Combinations*. General guidance on the application of the acquisition method of accounting under ASC Topic 805 is presented in "Accounting News: Accounting for Business Combinations" in the Winter 2008 issue of ***Supervisory Insights*** (http://www.fdic.gov/regulations/examinations/supervisory/insights/siwin08/si_win08.pdf).

[7] An "indemnification asset" represents an acquiring institution's right to receive payments from the FDIC for losses on assets covered under an LSA. This indemnification asset is measured at an amount that takes into account the institution's estimate, on a present value basis, of the amount and timing of the expected future cash flows to be received from the FDIC as reimbursable losses occur on the covered assets.

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necessary to appropriately measure the acquisition-date fair values during the accounting measurement period (of not more than one year) after acquisition that is set forth in GAAP.

Under GAAP, no entries to the allowance for loan and lease losses (ALLL) should be recorded for the covered loans as of the acquisition date; however, the ALLL will subsequently be affected by any credit deterioration in covered held-for-investment loans after acquisition. Subsequent (post-acquisition) entries also are needed to reflect the effect of transactions and other events on the covered assets and the indemnification asset.

At the first examination after a failed institution's assets are acquired, examiners will determine the status of the acquiring institution's efforts to complete the accounting for the acquisition, including required fair value measurements. The acquirer's records will be reviewed to determine the appropriateness of the accounting for the acquisition, including whether the fair value measurement process for the covered assets and the related indemnification asset has been completed and, if so, whether these assets have been booked at reasonable fair value estimates that have been properly documented and supported. This review also will include any entry that increased earnings and, hence, capital as a result of a gain on bargain purchase. Examiners also will verify that the acquiring institution has instituted procedures to ensure subsequent LSA-related entries conform to GAAP. Accounting for LSAs will be reviewed during visitations and subsequent examinations to ensure the acquiring institution's financial and regulatory reporting for the covered assets and the indemnification asset remains appropriate. The extent of these reviews of the acquiring institution's accounting will be determined based on the materiality of the acquisition, including any gain on bargain purchase recognized in earnings and capital.

Given the complex nature of accounting for LSAs, acquiring institutions are encouraged to consult with their accountants to ensure that initial and ongoing entries are measured and recorded properly. In addition, examiners may wish to contact internal regulatory accounting resources for support, particularly if significant accounting issues are evident.

Capital Implications from Bargain-Purchase Accounting Rules for Business Combinations

In a failed institution acquisition, the fair value of the identifiable assets acquired less the fair value of the liabilities assumed may exceed the fair value of any consideration that the acquiring institution transferred to the FDIC as receiver to effect the business combination. In this situation, the excess, previously referred to as "negative goodwill," should be recognized immediately as a bargain purchase gain in earnings, thereby resulting in an increase in both GAAP equity capital and regulatory capital.

The FDIC's capital standards do not contain any limitation on the regulatory capital recognition of a gain on a bargain purchase arising from a business combination. However, an acquiring institution's regulatory capital is vulnerable to retrospective adjustments made during the measurement period of up to one year from the acquisition date. During this period, the institution is expected to promptly obtain the information necessary to appropriately measure the acquisition-date fair values of the identifiable assets acquired and liabilities assumed in the failed institution acquisition that give rise to the bargain purchase gain. Accordingly, the FDIC may not fully consider a bargain purchase gain as

having the permanence necessary for a tier 1 capital component when making supervisory decisions about an acquiring institution until the measurement period has ended and examiners or external auditors have reviewed the reasonableness of its fair value measurements, including the inputs, assumptions, and valuation techniques used. For example, the FDIC may require an acquiring institution to exclude any gain on bargain purchase from the calculation of its dividend-paying capacity pending the completion of the measurement period and the examiners' or external auditors' review. Therefore, an acquiring institution should be attentive to the initial accounting for the failed bank acquisition and the efforts to be undertaken during the measurement period and seek appropriate advice from their accountants and valuation experts.

Adverse Classification of Assets Covered by an LSA

Importantly, the FDIC's reimbursement for losses on assets covered by an LSA is measured in relation to the asset's book value on the books of the failed institution on the date of its failure, not in relation to the acquisition-date fair value at which the covered asset must be booked by the acquiring bank. When the acquiring bank initially recognizes the indemnification asset at its fair value as of the acquisition date, the fair value estimate will take into account the expected amount of losses on covered assets for which the FDIC will reimburse the bank under the LSA. If the acquiring bank determines there is further credit deterioration on covered assets after acquisition, which will increase the losses on these assets compared to the losses estimated as of the acquisition date, it will increase the carrying amount of the indemnification asset to recognize the effect (on a present value basis) of the increased payments to be received from the FDIC for the percentage of losses for which the acquiring bank will be reimbursed under the LSA. Thus, because of the unique accounting that applies to the indemnification asset, the LSA provides protection from a classification standpoint only for additional losses on covered assets beyond those the acquiring bank already has considered when measuring the carrying amount of the indemnification asset.

When evaluating a covered asset for classification purposes, examiners will assess whether the asset should be classified without regard to the protection afforded by the LSA. Examiners evaluate the collectibility of the amount at which the covered asset is reported on the balance sheet, not its unpaid principal balance. If adverse classification of a covered asset is warranted, examiners then will consider the extent of the protection provided by the LSA when determining the portion of the covered asset to be classified. In general, the amount that would otherwise be adversely classified should be reduced by the currently applicable loss coverage rate (normally 80 percent or 95 percent) provided by the FDIC under the LSA.[8]

In addition, as the end of the five- or ten-year LSA reimbursement period nears, examiners need to consider whether any loss on a covered asset is likely to arise before the end of this period. If not, the LSA would not provide protection and should not affect any adverse classification to be assigned to the covered asset.

[8] In cases where a first loss tranche has not yet been exhausted as of the examination date, examiners should also take into account the remaining amount of losses that the acquiring institution must absorb before FDIC loss coverage is provided.

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Risk Weighting of Assets Subject to LSAs

The FDIC's general risk-based capital rules[9] recognize third-party guarantees provided by central governments, U.S. government-sponsored entities, public-sector entities in OECD countries, multilateral lending institutions and regional development banks, depository institutions, and qualifying securities firms in OECD countries. The general risk-based capital rules allow a bank to apply the risk weight of the guarantor, instead of the underlying obligor, in determining the institution's risk-based capital requirements. If a claim is partially guaranteed, the portion of the claim that is not fully covered by the guarantee is assigned to the risk category appropriate to the obligor or, if relevant, the collateral.

LSAs are unique in terms of structure and guarantor. The guarantee amount is based on the book value of the covered assets on the failed institution's books on the date of failure. By contrast, the risk-based capital rules' treatment of guaranteed assets generally is based on the carrying amount of the assets. As mentioned above, business combination accounting standards under GAAP require that a bank record the identifiable assets acquired at their acquisition-date fair values. In many cases, covered assets such as loans are written down to fair values that are substantially lower than their unpaid principal balances to reflect expected credit losses and current market conditions. In contrast, the LSA is based on the failed institution's book value for these assets (which may be the unpaid principal balance of covered loans); therefore, the LSA may cover most or all of the balance sheet losses to the acquirer.

An LSA typically contains various conditions an acquiring institution must adhere to for a claim submitted to the FDIC to be paid. For example, restrictions may exist on the advancement of funds for an unfunded loan commitment or on how a loan may be modified or restructured. To maintain the loss-sharing guarantee, the acquiring institution must also apply its loan administration processes, credit risk management policies (including its loan review and credit grading policies), and loss recognition and charge-off standards to covered commercial assets in a manner consistent with its treatment of commercial assets not covered by LSAs. Thus, LSAs are considered conditional guarantees for risk-based capital purposes due to the contractual conditions that acquirers must meet.

Accordingly, an acquiring institution may apply a 20 percent risk weight to the guaranteed portion of assets subject to an LSA.[10] Because the structural arrangements for these agreements vary depending on the specific terms of each agreement, institutions should consult with their primary federal regulator to determine the appropriate risk-based capital treatment for specific LSAs.

Determining CAMELS Ratings and Overall Conclusions at Institutions Covered by an LSA

Assigned CAMELS ratings should represent an institution's overall condition, with consideration given to the LSA. Depending on the volume of covered assets relative to the institution's total assets, the indemnification provided by the FDIC may have a favorable impact on its CAMELS ratings, especially on the asset qual-

[9] 12 CFR part 325, appendix A.

[10] 12 CFR part 325, appendix A, section II.C.

ity and capital component ratings. The management component could also be impacted by the effectiveness of LSA-related accounting processes and oversight of acquired assets from a risk management and credit administration standpoint. Compliance with the terms of the LSA may be a consideration for component and composite ratings if management's actions have jeopardized the indemnification's continued coverage.

Examination conclusions at institutions with covered assets should provide a balanced view of the institution and recognize the benefits derived from the FDIC's loss indemnification. Comments regarding asset quality and capital may include a discussion of the FDIC's indemnification depending on the materiality of LSA-related assets, including the indemnification asset. Any deficiencies involving the management and administration of covered assets (such as accounting and credit administration) will be commented on in the Report of Examination.

Conclusion

Supervisory issues involving LSAs will be encountered over the next several years as acquirers of failed institution assets utilize the FDIC's loss protection for existing and prospective bank resolution cases. From a supervisory perspective, LSAs provide significant risk mitigation for acquirers while the agreement remains in force because credit losses on covered assets can result in substantial reimbursements from the FDIC. However, examiners will expect acquiring institutions to employ effective accounting, asset management, financial reporting, and risk-grading processes for LSA-related assets, including indemnification assets, given their complexity and ongoing measurement issues. The existence of these FDIC indemnification agreements should be viewed favorably in the supervisory process as the acquirer's credit risk on covered assets is contained, borrowers have an opportunity to work cooperatively with a new lender, and the Corporation and public benefit from quickly transitioning receivership assets into the private sector.

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From the Examiner's Desk: Amendments to Regulation Z: Compliance Challenges for Bankers and Examiners

This regular feature focuses on developments that affect the bank examination function. We welcome ideas for future columns. Readers are encouraged to e-mail suggestions to ***SupervisoryJournal@fdic.gov.***

Consumer protection took an important step forward with the enactment of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act). The Credit CARD Act and the implementing changes to Regulation Z strengthen protections for consumer credit card holders by establishing new disclosure requirements and restricting potentially abusive practices. Although the Credit CARD Act primarily focuses on credit cards, some of the consumer protections also affect other open-end credit products. This article identifies key changes affecting bank product offerings and operations and offers the author's suggestions for how examiners may approach the evaluation of a bank's compliance with these new requirements and restrictions.

It is critical that an institution offering open-end credit products allocates sufficient time and resources to determine the applicability and impact of the Regulation Z amendments and implement necessary changes. Coordination across departmental lines, particularly marketing, compliance, and information technology, is essential to successful implementation and compliance. As is the case with any regulation, examiners will evaluate an institution's processes for ensuring effective compliance.

Examiner Takeaway

To create a risk profile and identify potential gaps in compliance, examiners should look for evidence of a comprehensive, well-developed plan that involves all levels of management and functional departments. Plans should include a sensible timeline to ensure compliance by the effective dates. As part of this process, examiners may review these documents, as well as others:

- Product reviews identifying the potential impact of the changes;
- Development plans, particularly if significant changes will be required;
- Prototype periodic statements and change-in-terms notices and (particularly for credit card banks) updated cardholder agreements and initial disclosures;
- Implementation logs (for activities performed by bank personnel as well as services performed by third parties);
- Training records; and
- Board or other committee minutes.

Examiners also should evaluate ongoing, post-implementation monitoring and quality control procedures, including audits where appropriate. Monitoring procedures are particularly important in the case of third-party service provider operations as the institution retains the legal, reputational, and regulatory risk and responsibility.

Depending on the impact of the Regulation Z changes on an institution's products and operations, examiners may conduct interviews with senior management and compliance, information technology, marketing, and customer service personnel to gain a complete understanding of what changes were necessary and how these changes were implemented.

Examiners also may review specific software application settings/parameters to assess whether information technology systems designed to carry out critical functions, such as balance calculations, rate changes, and fee imposition, were properly updated.[1] Reviewing the settings in conjunction with information contained within initial disclosures, periodic statements, and any change-in-terms notices helps identify any breakdowns in compliance.

Bankers and examiners should carefully review consumer complaints as a source of information about how the new open-end credit requirements were implemented and whether information was properly communicated to customers. Complaints may be received by the FDIC, other supervisory agencies, the bank or a third party performing services for the bank. The Better Business Bureau, State Attorneys General, and Web site blogs are additional sources of consumer complaint information.

Bank management should expect examiners to conduct transaction testing based on an institution's risk profile; recommendations for transaction testing are included in this article.

Statutory and Regulatory Background

On May 22, 2009, the Credit CARD Act was signed into law,[2] establishing new protections for credit card holders and, in some instances, consumers using other types of open-end credit plans, as well.[3]

[1] Recent IT examination results and Shared Application Software Review reports also may contain relevant information.

[2] Pub. L. 111-24 (May 22, 2009).

[3] In January 2009, before enactment of the Credit CARD Act, the Federal Reserve Board (FRB) issued changes to Regulation Z and Regulation AA that were to take effect July 1, 2010. http://edocket.access.gpo.gov/2009/pdf/E8-31185.pdf. http://edocket.access.gpo.gov/2009/pdf/E8-31186.pdf. Many of the consumer protection concerns addressed in the January 2009 amendments were then addressed by the Credit CARD Act, such as the allocation of payments that exceed the minimum payment amount, time to make payments, increasing interest rates, double-cycle billing, and limitations of fees during the first year an account is open.

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The consumer protections included in the Credit CARD Act take effect over time. Rules that took effect August 20, 2009, governed the:

- timing of periodic statements for open-end credit plans;[4] and
  - All creditors offering any type of open-end credit *that features a grace period* must mail or deliver periodic statements at least 21 days before the expiration of the grace period.[5]
  - Regardless of whether there is a grace period, periodic statements for *all credit card accounts* under an open-end (not home-secured) consumer credit plan must be mailed or delivered at least 21 days before the payment due date disclosed on the statement.[6]
- timing and content of new requirements for advance notice of interest rate increases and other significant changes for credit cards.

The most sweeping set of changes took effect February 22, 2010.[7] Consumer protections include:

- limits on interest rate increases on existing balances generally and during the first year an account is open;
- requirements to analyze a consumer's ability to pay, including special rules for young consumers;
- limits on marketing to college students;
- restrictions on fees during the first year an account is open;
- restrictions on over-limit transactions and fees;
- limits on payment due dates;
- requirements for payment allocation;
- required minimum payment warnings;
- elimination of double-cycle billing;
- limits on use of the term "fixed";
- limits on fees for making payments other than certain expedited payments;
- the establishment of a cut-off time for crediting payments on payment due dates;
- time limits for responding to requests related to settlement of decedent cardholder estates; and
- requirements for Internet posting of credit card agreements.

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[4] In November 2009, the Credit CARD Technical Corrections Act of 2009 (Technical Corrections Act) amended the Truth in Lending Act (TILA) to narrow the application of the new periodic statement requirement (mailing or delivery 21 days before the payment due date) of Section 163(a) of TILA to credit card accounts. *See* FIL-74-2009 – Regulation Z – Open-End Consumer Credit Changes Notice of Statutory Amendment; Additional Guidance. http://www.fdic.gov/news/news/financial/2009/fil09074.html.

[5] "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. Although the regulation requires that creditors adopt reasonable procedures to mail or deliver periodic statements for all open-end plans before the expiration of the grace period, the Preamble to the February 2010 Final Rule notes that the requirement to mail or deliver a periodic statement 21 days before the expiration of the grace period is largely inapplicable to products such as overdraft and home equity lines of credit as these products do not usually have a grace period.

[6] In addition, payments may not be treated as late for any purpose if received within 21 days after mailing or delivery of the periodic statement. See Official Staff Commentary Section 226.5(b)(2)(ii).

[7] The comprehensive rule published on that date incorporates new Credit CARD Act provisions, rules issued in January 2009 (Regulation Z and Regulation AA) that were not superseded by the Credit CARD Act, and the Credit CARD Act provisions that took effect in August 2009. This rule also incorporated the Technical Corrections Act provisions and amended the August 2009 provisions regarding the advance notice of interest rate. http://www.federalreserve.gov/newsevents/press/bcreg/20100112a.htm.

The final Credit CARD Act rule, effective August 22, 2010, will implement the requirement that penalty fees and charges be reasonable and proportional in relation to the violation of the account terms. In addition, credit card issuers must begin reevaluating interest rate increases implemented on or after January 1, 2009.

Regulation Z amendments, outside those resulting from the Credit CARD Act, that will take effect July 1, 2010,[8] relate to disclosures and format requirements for credit card applications and solicitations, account opening disclosures, periodic statements, change-in-terms notices, and advertisements.

Several provisions of the Credit CARD Act, such as those relating to the use of the term "fixed" and crediting of payments, apply to all open-end credit products. However, others apply only to certain types of open-end credit. Regulation Z has been amended to include a new term, *credit card account under an open-end (not home-secured) consumer credit plan*. Descriptions of significant changes to Regulation Z as a result of the enactment of the Credit CARD Act follow, and a tabular summary of Regulation Z amendments and the affected open-end products appears at the conclusion of this article.

Unless otherwise noted, the remainder of this article focuses on changes effective February 22, 2010, dealing with credit card accounts under an open-end (not home-secured) consumer credit plan and features examiner takeaways in response to each change.

Advance Notice

For all open-end (not home-secured) plans, creditors must provide a 45-day advance notice before a significant change in account terms occurs or when increasing the required minimum payment.[9] Even if the notice is being provided for an increase in rate following a delinquency, default, or as a penalty, the notice must be provided at least 45 days before the effective date of the increase.

Limits on Increases in Annual Percentage Rates (APRs)[10]

Card issuers are prohibited from *increasing the APR on existing balances* except when:

- a temporary rate of at least six months expires;
- the increase is due to an increase in the variable rate controlled by an index outside the creditor's control;
    - A variable rate index is not considered outside a lender's control if the lender imposes a floor. For example, the card issuer may disclose that the periodic rate and APR are based on a publicly available index plus a margin, but the issuer also may state the rate may not be less than a specified percentage. As the lender established a floor, the rate is within the lender's control and, therefore, does not meet the variable rate exceptions to increase rates on existing balances. However, a lender can use a variable rate index with a ceiling and qualify for the vari-

[8] These Regulation Z amendments are the portions of the January 2009 amendments to Regulation Z and Regulation AA not superseded by the Credit CARD Act. They were incorporated in the February 2010 rule with an effective date of July 1.

[9] Refer to Section 226.9(c)(2) for additional information on significant changes in terms and when a notice is not required.

[10] Section 226.55.

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able exception because a variable interest rate ceiling was determined by the Federal Reserve Board to be universally beneficial to consumers.[11]

- the minimum payment has not been received within 60 days;[12] or
- the consumer successfully completes, or fails to comply with the terms of, a workout arrangement.

For accounts where the interest rate has been reduced to the statutory maximum pursuant to the Servicemembers Civil Relief Act, the rate can be increased (for transactions incurred before the rate decrease) to the rate in effect before the period of active duty once 50 U.S.C. app. 527 no longer applies.[13] However, a 45-day advance notice of the increase is required.

Lenders must provide notices regarding *rate increases on future transactions* at least 45 days before the effective date.[14] Although a card issuer may apply the higher rate to transactions occurring more than 14 days after the notice was sent, the issuer may not apply the higher rate (i.e., accrue interest) until the 45th day. This restriction applies whether the bank uses the daily balance or average daily balance calculation method.

For example, a card issuer mails or delivers the notice on May 1, indicating the rate will increase from 15 percent to 18 percent on June 15. For transactions occurring on May 16 and after, the card issuer can begin accruing interest at the higher rate on these transactions starting on June 15. The creditor cannot apply the higher rate to days before June 15[15] (see inset box below).

Creditors also are prohibited from *increasing interest rates during the first year of a credit card*, except under limited circumstances.

To illustrate: Assume the billing cycle starts on the first day of a month and ends on the last, and the change in terms notice was mailed or delivered on May 1. A consumer makes a $50 purchase on May 10 and a $100 purchase on May 18. Although the May 18 purchase is subject to the higher rate of 18 percent, the card issuer cannot begin accruing interest at 18 percent until June 15. Therefore, the rate applicable to purchases in the May billing cycle is 15 percent. During the June billing cycle, the 15 percent rate applies to balances from June 1 to June 14. From June 15 (the 45th day after the change in terms notice) to the end of the billing cycle, the 15 percent rate applies to the May 10 $50 purchase (as this transaction was made within 14 days of provision of the notice), and the 18 percent rate applies to the May 18 $100 purchase (this transaction occurred more than 14 days after the provision of the notice and, therefore, is subject to the rate increase on the 45th day).[16]

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[11] This applies to all open-end (not home-secured) consumer credit plans.

[12] See Section 226.9(c)(2)(iv)(C) and Section 226.55(b)(4). Although the card issuer may raise rates and fees on existing and new transactions, a 45-day advance notice must be provided. This notice may not be provided until the triggering event. Therefore, the card issuer cannot increase the rate based on this delinquency exception for 105 days.

[13] See Official Staff Commentary Section 226.55(b)(6).

[14] Sections 226.55(b) & 226.9(b), (c) or (g).

[15] See Official Staff Commentary Section 226.55(b) – 2.

[16] The card issuer is permitted to delay the rate increase on the applicable new transactions until the next billing cycle without relinquishing the right to impose the higher rate on applicable transactions in future billing cycles.

Examiner Takeaway

Examiners should review how rate increases are handled as detailed below:

- Compare information collected from interviews and review of software settings with information contained in disclosures and periodic statements.
- Review the timing and content of change-in-terms notices and compare the effective dates and balances to which the increases apply (as disclosed within the notice) to actual practices displayed on periodic statements covering the same time frame.
- Determine whether any APR increases on existing balances fall within the exceptions listed at the beginning of this section. (Review initial disclosures to determine if the account is variable and operating under an index outside the lender's control.)

Periodic Statements[17]

Mailing and Delivery

Card issuers must establish reasonable procedures to ensure periodic statements are mailed or delivered at least 21 days before the payment due date, and that payments are not treated as late if received within 21 days after mailing or delivery of the periodic statement. The time it takes to generate and mail the periodic statements should be added to the 21 days.[18]

Examiner Takeaway

To determine compliance with the timing requirement, examiners should compare the card issuer's performance standards for mailing periodic statements to both the billing cycle close date and payment due date shown on periodic statements.

Payment Due Dates

For credit card accounts, the payment due date must now be the same numerical date, for example, the 4th, and generally cannot be the same relative date, such as the second Tuesday. There is an exception if the creditor states the payment due date is the last day of the month, as this is consistently identifiable to the consumer, whether the numerical day is the 28th, 30th, or 31st day.

For *all* open-end credit plans, if the due date falls on a date the creditor does not receive or accept payments by mail, the creditor shall treat the payment as timely if it is received the next business day. However, if a creditor accepts or receives payments by other means (such as electronic or telephone) on the due date, payments received via these methods on the business day following the due date are not required to be considered timely. Finally, the payment due date cut-off time cannot be earlier than 5 p.m. on the due date, with some exceptions.[19]

[17] Sections 226.5(b)(2)(ii) & 226.7(b).

[18] See the Official Staff Commentary. For example, if the creditor has established reasonable procedures to generate and mail periodic statements within three days of the closing date, the creditor should add the three days to the 21-day requirement, and payments should not be due before the 24th day.

[19] See Section 226.10.

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Examiner Takeaway

Examiners are encouraged to review when payments are received and credited to the account. To determine that a payment was not incorrectly treated as late, an examiner may review periodic statements where the payment was made on the business day following the due date.

Disclosures

Additional periodic statement requirements for credit cards include, but are not limited to:

- minimum repayment warnings,
- a repayment estimate, and
- a toll-free number for credit counseling services.

Periodic statements now must include information on how long it would take a consumer to repay the balance, assuming no additional advances, if the consumer makes only the minimum payment.[20] Under most circumstances, periodic statements also must reflect a minimum payment estimate based on a 36-month repayment schedule and a savings estimate. If negative or no amortization will occur, a specific warning is required. Exceptions to the minimum payment warnings include accounts where the previous two consecutive billing cycles were paid in full, had a zero outstanding balance, or had a credit balance; and situations where the minimum payment will pay-off the outstanding balance shown on the billing statement, including charged-off accounts where the entire balance is due immediately.[21] These minimum payment warnings were designed to prominently display the effects of making only minimum payments.

Effective July 1, 2010, use of the term "finance-charge" and disclosure of an "effective APR" are eliminated for open-end (not home-secured) consumer credit plans.[22] However, creditors now must disclose the charges imposed, grouped together, in proximity to the related transactions, substantially as illustrated in the model form shown on page 17.[23] Creditors must show the information for the statement period as well as calendar year-to-date totals.

Examiner Takeaway

Examiners are encouraged to review documentation that supports how a bank's software system calculates the required minimum payment disclosures. After July 1, 2010, examiners also should verify the cycle and year-to-date interest and fee calculations. In addition, examiners may need to review periodic statements and verify the calculations on a sample of statements.

[20] How this information must be illustrated depends on how many years it will take to pay-off the account. See Section 226.7(b)(12).

[21] Section 226.7(b)(12)(v) also outlines an exception related to charge cards.

[22] Section 226.7(a) outlines rules for home-equity plans subject to Section 226.5b. See footnote 8.

[23] See Regulation Z - Appendix G-18(A).

MODEL FORM

G-18(A) Periodic Statement Transactions: Interest Charges: Fees Sample

Reference Number	Trans Date	Post Date	Description of Transaction or Credit	Amount
			Transactions	
5884186PS0388W6YM	2/22	2/23	Store #1	$2.05
054400060ZLV72VL	2/24	2/25	Store #2	$12.11
854338203FS8OO0Z5	2/25	2/25	Pymt Thank You	$450.00-
55541860705RDYD0X	2/25	2/26	Store #3	$4.63
554328608008W90M0	2/25	2/26	Store #4	$114.95
054830709LYMRPT4L	2/25	2/26	Store #5	$7.35
564891561545KOSHD	2/25	2/26	Store #6	$14.35
841517877845AKOJIO	2/25	2/26	Store #7	$40.35
895848561561894KOH	2/26	2/27	Store #8	$27.68
1871556189456SAMKL	2/26	2/27	Store #9	$124.76
1542202074TWWZV48	2/26	2/26	Cash Advance	$121.50
2564894185189LKDFID	2/27	2/28	Store #10	$32.87
4545754784KOHUIOS	2/27	3/1	Balance Transfer	$785.00
2564561023184102315	2/28	3/1	Store #11	$14.78
14547847586KDDL564	2/28	2/28	Cash Advance	$196.50
55542818705RASD0X	3/1	3/2	Store #12	$3.76
289189194ASDS8744	3/1	3/3	Store #13	$13.45
178105417841045784	3/2	3/4	Store #14	$2.35
045148714518979874	3/4	3/5	Store #13	$13.45-
8456152156181SDSA	3/5	3/6	Store #15	$25.00
31289105205648AWD	3/11	3/12	Store #16	$7.34
04518478415615ASD	3/11	3/16	Store #17	$10.56
0547810544898718AF	3/15	3/17	Store #18	$24.50
0564894132168480P	3/16	3/17	Store #19	$8.76
054894561564ASDW	3/17	3/18	Store #20	$14.23
5648974891AD98156	3/19	3/20	Store #21	$23.76
			Fees	
9525156489SFD4545Q	2/23	2/23	Late Fee	$35.00
564156156470JSNDS	2/26	2/26	Cash Advance Fee	$5.00
84151564SADS8745H	2/27	2/27	Balance Transfer Fee	$23.55
2564891561894515I6L	2/28	2/28	Cash Advance Fee	$5.90
			TOTAL FEES FOR THIS PERIOD	$69.45
			Interest Charged	
			Interest Charged on Purchases	$6.31
			Interest Charged on Cash Advances	$4.58
			TOTAL INTEREST FOR THIS PERIOD	$10.89

2012 Totals Year-to-Date	
Total fees charged in 2012	$90.14
Total interest charged in 2012	$18.27

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Double-Cycle Billing[24]

Card issuers no longer may use the "double-cycle billing" or "two-cycle billing" balance calculation method on credit card accounts under an open-end (not home-secured) consumer credit plan.[25] Although variations exist, this calculation method generally involved assessing interest on balances for the current billing cycle as well as balances on days in the preceding billing cycle, even those portions that were repaid.

In addition, card issuers are prohibited from imposing a finance charge on any portion of a balance subject to a grace period that is repaid before the expiration of the grace period. When a balance on a credit card account is eligible for a grace period and the card issuer receives payment for some, but not all, of that balance *before the grace period expires*, the card issuer *may not impose* finance charges on the paid portion of the balance[26] (see inset box below).

Examiner Takeaway

Examiners may determine compliance by reviewing the balance calculation methods in the application and initial disclosures as well as the software settings. Examiners also should ensure the balances used to assess the finance charges are not attributable to a prior billing cycle. And finally, to ensure finance charges were appropriately assessed, examiners may review a series of periodic statements where the account was subject to a grace period, and the consumer did not pay the balance in full by the payment due date.

Fees for Exceeding the Credit Limit[27]

Over-limit fees may not be imposed for a consumer exceeding his or her limit on a credit card unless the consumer has been provided notice and opted-in to the program. A card issuer may approve transactions that exceed a cardholder's credit limit; however, a fee cannot be imposed unless the consumer has opted-in. In addition, an over-limit fee may not

To illustrate: Assume an account is eligible for a grace period, and the billing cycle is from the first day of the month to the last, with payment due on the 25th of the following month. If the consumer makes purchases totaling $300 in April and makes a $200 payment by May 25th, the card issuer may not assess interest during the May billing cycle on the $200 repaid by the payment due date that was eligible for a grace period. Before this change was implemented, creditors often would have imposed finance charges on the entire outstanding balance during the May billing cycle.

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[24] Section 226.54.

[25] Exceptions to this rule for billing disputes or returned payments are outlined in Section 226.54(b).

[26] See Official Staff Commentary Section 226.54(a)(1) – 5.

[27] Section 226.56.

be imposed more than once in a billing cycle and not for more than three consecutive cycles for the same occurrence. Even if a cardholder has opted-in, a card issuer cannot impose an over-limit fee solely as a result of the imposition of a fee or finance charge.

Examiner Takeaway

Examiners may review initial disclosures, applications/solicitations, and marketing materials to determine the institution's over-limit practices. Examiners also should review opt-in procedures and periodic statements that may reflect an over-limit fee.

Allocation of Payments[28]

Card issuers may apply minimum payments on credit card accounts as outlined in cardholder agreements. However, creditors must first allocate any amount in excess of the minimum payment to the balance with the highest APR and any remaining portion to the other balances in descending order based on the applicable APR. Special rules apply to a deferred interest or similar program during the last two billing cycles immediately preceding the expiration of the specified period.

Examiner Takeaway

Examiners are encouraged to review initial disclosures for any changes regarding payment allocations. Examiners may review periodic statements for accounts with balances at different APRs and where payments exceeded the minimum payment. If deferred interest or similar plans are offered, examiners also may review applicable periodic statements, including the two billing cycles before the expiration of the program, to determine if payments in excess of the minimum amount were handled properly.

Limitations on Fees[29]

The total amount of fees that a consumer may be charged during the first year after an account is opened may not exceed 25 percent of the credit limit.[30] If the card issuer increases the consumer's credit limit during the first year, the consumer cannot be required to pay additional fees that would otherwise be prohibited. However, if a card issuer decreases the consumer's credit limit during the first year, the card issuer may be required to remove or waive fees that would be in excess of 25 percent of the reduced credit limit.

Examiner Takeaway

Examiners are encouraged to review applications/solicitations and initial disclosures for fees that may be charged during the first year the account is opened. Examiners may review these documents along with periodic statements to determine what fees may be charged and how and when the fees are collected.

Card Issuers, Agents, Affinity Relationships

A bank may be involved in extending open-end consumer credit products directly or through agent relationships. Banks may participate in a "Rent-a-BIN" relationship with another party whereby the bank "rents" its right to offer credit card products and other services under

[28] Section 226.53.

[29] Section 226.52.

[30] Fees not subject to the limitation are outlined in Section 226.52(a)(2). Also see the Official Staff Commentary.

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an Association, commonly VISA® or MasterCard®, to a third party in return for a fee. Although these arrangements vary, the bank generally remains the creditor and card issuer and, therefore, is responsible for complying with applicable consumer protection regulations.

Banks also may participate in arrangements where the bank's name is on the credit card, but the card issuer is another entity. Even though the card issuer may be responsible for compliance with Regulation Z, the bank should be aware of the potential for third-party risk as highlighted in the FDIC's 2008 guidance.[31]

Examiner Takeaway

In light of the significant changes to Regulation Z, examiners are encouraged to discuss these arrangements with bank personnel, review available documentation, and consider whether the institution is appropriately mitigating any risks, including litigation and reputation risk.

Conclusion

Changes to Regulation Z as a result of the enactment of the Credit CARD Act strengthen consumer protections and seek to establish fair and transparent practices for open-end consumer credit plans. These changes, numerous and wide-ranging, will require careful scrutiny by bank management, particularly compliance professionals, and examiners to ensure effective implementation.

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[31] FIL-44-2008: *Third Party Risk: Guidance for Managing Third-Party Risk* at http://www.fdic.gov/news/news/financial/2008/fil08044.html. Kevin W. Hodson and Todd L. Hendrickson, "Third-Party Arrangements: Elevating Risk Awareness," ***Supervisory Insights***, Summer 2007 at http://www.fdic.gov/regulations/examinations/supervisory/insights/sisum07/sisum07.pdf.

Overview of Changes Effective February 22, 2010

Section of Regulation Z[32]	Description*	Coverage
§226.5(a)(2)(iii)	The term fixed, or a similar term, may not be used unless the creditor specifies a time period the rate will be fixed and the rate will not increase during that period or, if no time period is provided, the rate will not increase while the plan is open.	All open-end (not home-secured) consumer credit plans
§226.5(b)(2)(ii)	**Periodic statements** Reasonable procedures designed to ensure periodic statements are mailed or delivered at least 21 days before the payment due date disclosed on the statement, and payments are not treated as late for any purpose if received within 21 days after mailing or delivery of the periodic statement.	**§226.5(b)(2)(ii)(A)** – Credit card accounts under an open-end (not home-secured) consumer credit plan
	Interest grace periods Reasonable procedures designed to ensure periodic statements are mailed or delivered at least 21 days before the expiration of any interest grace period, and no finance charges are imposed if a payment satisfying the grace period is received within 21 days of mailing or delivery of the periodic statement.	**§226.5(b)(2)(ii)(B)** – All open-end consumer credit plans
§226.7(b)(11)	Due date same day of the month and disclosure of late payment costs, such as a late payment fee or increased periodic rate(s). Same day of the month can mean same calendar day (15th day) or the last day of the month.	Credit card accounts under an open-end (not home-secured) consumer credit plan
§226.7(b)(12)	Repayment disclosures such as minimum payment warnings, repayment estimate, and a toll-free number for credit counsel-ing services	Credit card accounts under an open-end (not home-secured) consumer credit plan
§226.7(b)(13)	Format requirements of due date, late payment fees, and penalty rates	All open-end (not home-secured) consumer credit plans, except require-ments relating to §226.7(b)(11) and (b)(12) which apply only to credit card accounts under an open-end (not home-secured) consumer credit plan
§226.9(c)(2)	Changes requiring advance notice (NOTE: the format require-ments in §226.9(c)(2)(iv)(D) are effective July 1, 2010)	All open-end (not home-secured) consumer credit plans
§226.9(e)	Renewal of credit or charge card	Credit or charge card accounts subject to §226.5a
§226.9(g)	Increase in rates due to delinquency or default or as a penalty (NOTE: §226.9(g)(3)(ii) which covers tabular format requirements is effective July 1, 2010)	All open-end (not home-secured) consumer credit plans
§226.9(h)	Right to reject certain significant changes in terms	Credit card accounts under an open-end (not home secured) consumer credit plan
§226.10	Payments including crediting, cut-off time, and payments due on dates the creditor does not receive or accept payments	All open-end consumer credit plans **§226.10(b)(3), (e), & (f)** - Credit card accounts under an open-end (not home-secured) consumer credit plan

*Refer to the regulation for a complete description and requirements.

[32] Although Subpart B – Open-End Credit contains most Regulation Z provisions governing open-end credit, Subpart G – Special Rules Applicable to Credit Card Accounts and Open-end Credit Offered to College Students includes additional provisions relating to credit card accounts.

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Overview of Changes Effective February 22, 2010		
Section of Regulation Z	**Description***	**Coverage**
§226.11(c)	Timely settlement of estates	Credit card accounts under an open-end (not home-secured) consumer credit plan
§226.16(f)	Use of the term "fixed" in advertising	All open-end consumer credit plans
§226.51	Ability to pay (opening and increasing credit limits) on credit cards	Credit card accounts under an open-end (not home-secured) consumer credit plan
§226.52	Limitations on fees during the first year after account opening	Credit card accounts under an open-end (not home-secured) consumer credit plan
§226.53	Allocation of payments in excess of the minimum payment	Credit card accounts under an open-end (not home-secured) consumer credit plan
§226.54	Limitations on the imposition of finance charges – "double-cycle" billing	Credit card accounts under an open-end (not home-secured) consumer credit plan
§226.55	Limitations on increasing APRs, fees, and charges	Credit card accounts under an open-end (not home-secured) consumer credit plan
§226.56	Opt-in requirements and other limitations regarding overlimit transactions	Credit card accounts under an open-end (not home-secured) consumer credit plan
§226.57(a), (b), & (d)	Reporting and marketing rules for college student open-end credit	Credit card accounts under an open-end (not home-secured) consumer credit plan
§226.57(c)	Restrictions on offering college students inducements to apply for an open-end consumer credit plan	All open-end consumer credit plans
§226.58	Internet posting of credit card agreements	Credit card accounts under an open-end (not home-secured) consumer credit plan

*Refer to the regulation for a complete description and requirements.

Overview of Selected Regulations and Supervisory Guidance

This section provides an overview of recently released regulations and supervisory guidance, arranged in reverse chronological order. Press Release (PR) and Financial Institution Letter (FIL) designations are included so the reader can obtain more information.

ACRONYMS and DEFINITIONS	
FDIC	Federal Deposit Insurance Corporation
FRB	Federal Reserve Board
FFIEC	Federal Financial Institutions Examination Council
OCC	Office of the Comptroller of the Currency
OTS	Office of Thrift Supervision
NCUA	National Credit Union Administration
Banking agencies	FDIC, FRB, and OCC
Federal bank and thrift regulatory agencies	FDIC, FRB, OCC, and OTS
Federal financial institution regulatory agencies	FDIC, FRB, OCC, OTS, and NCUA

Subject	Summary
Special Reporting, Analysis, and Contingent Resolution Plans at Certain Large Insured Depository Institutions Notice of Proposed Rulemaking (PR-111-2010, May 11, 2010; FIL-26-2010, May 12, 2010)	The FDIC issued a proposed rule that would require certain identified insured depository institutions that are affiliates of large and complex financial companies to submit to the FDIC analysis, information, and plans that address and demonstrate the insured institution's ability to be separated from its parent structure and be wound down or resolved in an orderly fashion. Following standards set forth in the proposed rule, and subject to the FDIC's review and validation, covered insured depository institutions would submit information and contingent resolution plans that would allow the FDIC to assess the risks posed to the deposit insurance fund and develop effective resolution strategies and conduct contingency planning for a period of severe financial distress. See http://www.fdic.gov/news/news/financial/2010/fil10026.html
Correspondent Concentration Risks Interagency Guidance (PR-93-2010, April 30, 2010; FIL-18-2010, April 30, 2010)	The federal financial institution regulatory agencies (agencies) issued guidance on Correspondent Concentration Risks (CCR Guidance) to outline the agencies' expectations for identifying, monitoring, and managing correspondent concentration risks between financial institutions. The CCR Guidance also addresses the agencies' expectations relative to performing appropriate due diligence on all credit exposures to and funding transactions with other financial institutions. See http://www.fdic.gov/news/news/financial/2010/fil10018.html
Revised Bank Secrecy Act/Anti-Money Laundering Examination Manual (PR-92-2010, April 29, 2010; FIL-17-2010, April 29, 2010)	The FFIEC released the revised Bank Secrecy Act/Anti-Money Laundering (BSA/AML) Examination Manual on April 29, 2010. See http://www.fdic.gov/news/news/financial/2010/fil10017.html

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Subject	Summary
Deposit Insurance Coverage (FIL-16-2010, April 22, 2010)	The FDIC issued a new version of the Electronic Deposit Insurance Estimator (EDIE) which provides increased functionality and allows FDIC-insured institutions to customize and integrate EDIE into their Web sites. See http://www.fdic.gov/news/news/financial/2010/fil10016.html
Transaction Account Guarantee Extension Interim Final Rule (PR-75-2010, April 13, 2010; FIL-15-2010, April 13, 2010)	The FDIC adopted the interim final rule extending the Transaction Account Guarantee component of the Temporary Liquidity Guarantee Program through December 31, 2010, with the possibility of extending the program an additional 12 months without further rulemaking. See http://www.fdic.gov/news/news/financial/2010/fil10015.html
Assessments Notice of Proposed Rulemaking (PR-74-2010, April 13, 2010; FIL-14-2010, April 13, 2010)	The FDIC issued a Notice of Proposed Rulemaking which would revise the risk-based assessment system for all large insured depository institutions and alter the initial and total base assessment rates for all insured depository institutions. The proposed changes would be effective January 1, 2011. See http://www.fdic.gov/news/news/financial/2010/fil10014.html
Statement by FDIC Chairman Sheila C. Bair (Released April 7, 2010)	FDIC Chairman Bair issued a statement supporting the U.S. Securities and Exchange Commission's vote to propose new standards under the securities laws for asset-backed securities. The proposals include elements of reform which will help provide a more stable securitization market. See http://www.fdic.gov/news/news/press/2010/statement_chairman_bair.html
Funding and Liquidity Risk Management Interagency Guidance (PR-55-2010, March 17, 2010; FIL-13-2010, April 5, 2010)	The federal financial institution regulatory agencies issued guidance to provide sound practices for managing funding and liquidity risk and strengthening liquidity risk management practices. The policy statement emphasizes the importance of cash flow projections, diversified funding sources, stress testing, a cushion of liquid assets, and a formal contingency funding plan as primary tools for measuring and managing liquidity risk. Each financial institution is expected to manage funding and liquidity risk using processes and systems commensurate with the institution's complexity, risk profile, and scope of operations. See http://www.fdic.gov/news/news/financial/2010/fil10013.html
FDIC Advisory Committee Seeks Comment on Templates to Increase Supply of Safe Transactional and Savings Products (PR-72-2010, April 2, 2010)	The FDIC's Advisory Committee on Economic Inclusion met to discuss the design and distribution of safe transactional and savings accounts for low- and moderate-income consumers, many of whom are underserved. The Committee seeks public comment on criteria for templates for financial institutions to use to make these accounts more widely available to customers. See http://www.fdic.gov/news/news/press/2010/pr10072.html
Modernization of the Uniform Bank Performance Report (FIL-10-2010, March 25, 2010)	The banking agencies have modernized the production and distribution of the Uniform Bank Performance Report by moving these processes to the Central Data Repository (CDR). The CDR is an Internet-based system created to modernize and streamline how the agencies collect, validate, manage, and distribute financial data submitted by banks in the Consolidated Reports of Condition and Income. See http://www.fdic.gov/news/news/financial/2010/fil10010.html

Subject	Summary
Community Reinvestment Act Revisions to Interagency Questions and Answers (FIL-9-2010, March 11, 2010)	The federal bank and thrift regulatory agencies published revisions to the Interagency Questions and Answers Regarding Community Reinvestment (Q&As). After considering comments received on the proposed Q&As, the agencies adopted one new question and answer and two revised questions and answers. The revised Q&As enable consideration of a pro rata share of mixed-income affordable housing projects as community development projects. See http://www.fdic.gov/news/news/financial/2010/fil10009.html
Bank Secrecy Act Interagency Guidance on Beneficial Ownership (FIL-8-2010, March 5, 2010)	The banking agencies, the Financial Crimes Enforcement Network, and the U.S. Securities and Exchange Commission (in consultation with the U.S. Commodity Futures Trading Commission) issued guidance regarding beneficial ownership information. This guidance clarifies and consolidates existing regulatory expectations for obtaining beneficial ownership information as part of the customer due diligence and enhanced due diligence processes related to certain accounts and customer relationships to help prevent money laundering. See http://www.fdic.gov/news/news/financial/2010/fil10008.html
Regulatory Capital Standards Clarification of the Risk Weights for FDIC Claims and Guarantees (FIL-7-2010, February 26, 2010)	The federal bank and thrift regulatory agencies issued this guidance to clarify risk weights for claims on or guaranteed by the FDIC for purposes of risk-based capital requirements. See http://www.fdic.gov/news/news/financial/2010/fil10007.html
Meeting the Credit Needs of Creditworthy Small Business Borrowers (PR-29-2010, February 5, 2010; FIL-5-2010, February 12, 2010)	The federal financial institution regulatory agencies and the state banking supervisors issued this guidance to restate and elaborate supervisory views on prudent lending to creditworthy small business borrowers. The Statement builds on principles for prudent lending to creditworthy borrowers and strives to ensure that supervisory policies and actions do not curtail the availability of credit to sound small business borrowers. The Statement also emphasizes that financial institutions engaging in prudent small business lending will not be subject to criticism. See http://www.fdic.gov/news/news/financial/2010/fil10005.html
FDIC Symposium Focuses on Banks' Exposure to Interest-Rate Risk (PR-21-2010, January 29, 2010)	The FDIC held a symposium on January 29, 2010, to hear from experts and industry participants on issues that banks face from potential changes in interest rates. The goals of the FDIC symposium were to understand where interest-rate risk resides in the financial system and how best to prepare for risks arising from changes in interest rates. See http://www.fdic.gov/news/news/press/2010/pr10021.html
Revisions to the Consolidated Reports of Condition and Income for 2010 (FIL-4-2010, January 22, 2010)	The FFIEC has approved revisions to the reporting requirements for the Call Report for implementation in 2010. The Call Report revisions will provide data to assist the agencies in meeting safety-and-soundness and other public policy objectives by responding to such developments as a temporary increase in the deposit insurance limit, changes in accounting standards, and credit availability concerns. The reporting changes took effect March 31, 2010. See http://www.fdic.gov/news/news/financial/2010/fil10004.html

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FDIC and Bank of England Announce Enhanced Cooperation in Resolving Troubled Cross-Border Financial Institutions (PR-13-2010, January 22, 2010)	The FDIC and the Bank of England announced an agreement to expand cooperation when they act as resolution authorities in resolving troubled financial institutions with activities in the United States and the United Kingdom. The agreement represents enhanced collaboration promoting greater coordination when a distressed bank is operating in the two countries. See http://www.fdic.gov/news/news/press/2010/pr10013.html
Final Rule Amending the Risk-Based Capital Rules to Reflect the Issuance of FAS 166 and FAS 167 (PR-12-2010, January 21, 2010; FIL-3-2010, January 21, 2010)	This final rule amends the federal bank and thrift regulatory agencies' general risk-based and advanced risk-based capital adequacy frameworks in recognition of the regulatory capital impact of two recently issued accounting standards. FAS 166 and FAS 167 remove the concept of a qualifying special purpose entity from U.S. generally accepted accounting principles (GAAP) and alter the consolidation analysis for variable interest entities (VIEs), thereby requiring banks to consolidate many VIEs not consolidated under GAAP. As a result, the categories of securitization and structured finance exposures currently off-balance sheet likely will be subject to consolidation on the balance sheet of the originating or servicing bank and may result in significantly higher regulatory capital requirements. See http://www.fdic.gov/news/news/financial/2010/fil10003.html
FDIC Hosts Telephone Seminar on Brokered Deposits and Interest-Rate Restrictions for Financial Institution Officers and Employees (FIL-70-2009, December 8, 2009, Updated: January 14, 2010)	The FDIC hosted a free telephone seminar on December 10, 2009, for financial institution officers and employees to discuss issues related to brokered deposits and the interest-rate restrictions under Section 337.6 of the FDIC's Rules and Regulations. The transcript and an audio recording of this seminar are available. See http://www.fdic.gov/news/news/financial/2009/fil09070.html
Financial Institution Management of Interest Rate Risk (PR-2-2010, January 7, 2010; FIL-2-2010, January 20, 2010)	The FFIEC issued guidance describing how the board of directors and senior bank management of depository institutions are responsible for the establishment, approval, implementation, oversight, and annual review of interest rate risk (IRR) management strategies, policies, procedures, and limits (or risk tolerances). Depository institutions are expected to manage IRR exposures using policies and procedures commensurate with their complexity, business model, risk profile, and scope of operations. See http://www.fdic.gov/news/news/financial/2010/fil10002.html
Employee Compensation: Advance Notice of Proposed Rulemaking (PR-5-2010, January 12, 2010; FIL-1-2010, January 14, 2010)	The FDIC issued an Advance Notice of Proposed Rulemaking seeking comment on ways the FDIC's risk-based deposit insurance assessment system could be changed to account for risks posed by certain employee compensation programs. The FDIC does not seek to limit the amount of employee compensation, but rather is concerned with adjusting risk-based deposit insurance assessment rates to adequately compensate the Deposit Insurance Fund for the risks inherent in the design of certain compensation programs. See http://www.fdic.gov/news/news/financial/2010/fil10001.html
RESPA (Regulation X): Revisions to Good Faith Estimate and HUD-1 Settlement Statement (FIL-75-2009, December 23, 2009)	The U.S. Department of Housing and Urban Development amended Regulation X, which implements the Real Estate Settlement Procedures Act. This FIL addresses the amendments which relate primarily to the Good Faith Estimate and HUD-1 Uniform Settlement Statement. Mandatory compliance began on January 1, 2010. See http://www.fdic.gov/news/news/financial/2009/fil09075.html

Subject	Summary
Regulation Z - Open-End Consumer Credit Changes: Notice of Statutory Amendment; Additional Guidance (FIL-74-2009, December 23, 2009)	The FDIC updated information provided in FIL-44-2009, "Regulation Z – Open-End Credit Changes," by notifying bankers of changes that occurred as a result of the implementation of The Credit CARD Technical Corrections Act of 2009. This FIL provides details on the new Act, which narrowed the scope of application. Creditors must now mail or deliver periodic statements at least 21 days before the payment due date. This rule only applies to credit card accounts. Previously, this requirement applied to all forms of open-end credit, including home equity lines of credit. See http://www.fdic.gov/news/news/financial/2009/fil09074.html
Community Reinvestment Act Annual Asset-Size Threshold Adjustment (PR-240-2009, December 22, 2009; FIL-73-2009, December 23, 2009)	The federal bank and thrift regulatory agencies have approved a joint final rule amending the Community Reinvestment Act to make the annual adjustment to the asset-size threshold used to define "small bank" and "intermediate small bank" under the Act. These asset-size threshold adjustments took effect January 1, 2010. See http://www.fdic.gov/news/news/financial/2009/fil09073.html
Joint Agency Statement Seeking Comment to the Basel Committee on Banking Supervision on New Proposals that Aim to Strengthen the Resiliency of the Banking Sector Through New Capital and Liquidity Standards (PR-232-2009, December 17, 2009)	The Basel Committee on Banking Supervision released for comment new proposals that aim to strengthen the resiliency of the banking sector through new capital and liquidity standards. Proposed changes include introduction of new standards for liquidity risk management, the addition of a leverage ratio to the Basel II framework, improvements to the quality and consistency of capital, and strengthening of capital requirements for counterparty credit risk. See http://www.fdic.gov/news/news/press/2009/pr09232.html
Bank Secrecy Act Interagency Guidance on Transparency for U.S. Banking Organizations Conducting Cross-Border Payment Messages (FIL-72-2009, December 17, 2009)	The federal banking agencies issued guidance corresponding to the release of a Basel Committee on Banking Supervision publication addressing transparency in cross-border payment messages. See http://www.fdic.gov/news/news/financial/2009/fil09072.html
FDIC Board Finalizes Regulatory Capital Rule for Statements of Financial Accounting Standards (PR-230-2009, December 16, 2009)	The FDIC Board finalized the regulatory capital rule related to the Financial Accounting Standards Board's adoption of Statements of Financial Accounting Standards Nos. 166 and 167. Beginning in 2010, these new accounting standards will make substantive changes to how banks account for securitized assets currently excluded from their balance sheets. See http://www.fdic.gov/news/news/press/2009/pr09230.html
Process for Determining if an Institution Subject to Interest-Rate Restrictions is Operating in a High-Rate Area (FIL-69-2009, December 4, 2009)	The FDIC is requiring institutions to use a "national rate" and making them subject to the interest-rate restrictions under Part 337.6 of the FDIC Rules and Regulations. The "national rate" is defined as a simple average of rates paid by insured depository institutions and branches for which data are available. This requirement took effect January 1, 2010. See http://www.fdic.gov/news/news/financial/2009/fil09069.html

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Subject	Summary
New FDIC Study Shows One in Four U.S. Households Currently Unbanked or Underbanked (PR-216-2009, December 2, 2009)	The FDIC released the findings of its FDIC National Survey of Unbanked and Underbanked Households, gaining understanding of which Americans remain outside the banking system. The study revealed that more than one quarter (25.6 percent) of all households in the United States are unbanked or underbanked, and those households are disproportionately low-income or minority. See http://www.fdic.gov/news/news/press/2009/pr09216.html
Joint Agency Release of Final Rule for Mortgage Loans Modified Under the "Making Home Affordable" Program (PR-204-2009, November 13, 2009; FIL-67-2009, November 27, 2009)	In March 2009, the U.S. Department of the Treasury announced guidelines under the Making Home Affordable Program (MHAP) to promote sustainable loan modifications for homeowners at risk of losing their homes to foreclosure. The final rule clarifies that a banking organization may retain the risk weight assigned to a mortgage loan before the loan was modified under the MHAP following modification of the mortgage loan. See http://www.fdic.gov/news/news/financial/2009/fil09067.html
Electronic Fund Transfer Act (Regulation E): Disclosures at Automated Teller Machines (FIL-66-2009, November 27, 2009)	The FDIC is reminding banks to ensure ATM fee disclosures fully comply with Regulation E. This regulation requires appropriate fee disclosures on or at automated teller machines and on either the screen of the machine or on a paper notice. See http://www.fdic.gov/news/news/financial/2009/fil09066.html
Joint Agency Release on Final Model Privacy Notice Form (PR-209-2009, November 17, 2009; FIL-65-2009, November 17, 2009)	The federal financial institution regulatory agencies, the U.S. Commodity Futures Trading Commission, the Federal Trade Commission, and the U.S. Securities and Exchange Commission released a final rule which contains a model privacy notice form making it easier for consumers to understand how financial institutions collect and share their personal information. See http://www.fdic.gov/news/news/financial/2009/fil09065.html
Secure and Fair Enforcement for Mortgage Licensing Act of 2008 – Final Rule on Registration of Residential Mortgage Loan Originators - Part 365, Subpart B (FIL-64-2009, November 13, 2009)	The FDIC Board approved the draft final rule implementing the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act). The SAFE Act improves the accountability and tracking of residential mortgage loan originators (MLOs), enhances consumer protection, reduces fraud, and provides consumers with easily accessible information regarding the professional background of MLOs by, among other things, requiring employees of insured state nonmember banks and their subsidiaries who act as MLOs to register with the Nationwide Mortgage Licensing System and Registry. See http://www.fdic.gov/news/news/financial/2009/fil09064.html
FDIC Board Approves Final Rule on Prepaid Assessments (PR-203-2009, November 12, 2009; FIL-63-2009, November 12, 2009)	The FDIC Board adopted the final rule amending the assessment regulations to require insured depository institutions to prepay quarterly risk-based assessments for fourth quarter 2009 and all of 2010, 2011, and 2012 on December 30, 2009, along with each institution's risk-based assessment for third quarter 2009. The pre-payment allows the FDIC to strengthen the cash position of the Deposit Insurance Fund immediately without impacting earnings of the industry. See http://www.fdic.gov/news/news/financial/2009/fil09063.html

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