Part III – Examination Process Templates

A. Templates

- Entity Profile
- Examination Report
- Examination Scope Summary
- Risk Assessment
- Supervision Plan
- Supervisory Letter

Disclaimer

Please note: This Supervision and Examination Manual provides internal guidance to our supervisory staff. It does not bind the CFPB and does not create any rights, benefits, or defenses, substantive or procedural, that are enforceable by any party in any manner. While every effort has been made to ensure accuracy, examination procedures should not be relied on as a legal reference.

Background

Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Act)[1] established the Consumer Financial Protection Bureau (CFPB) and authorizes it to supervise certain consumer financial services companies and large depository institutions and their affiliates for consumer protection purposes.[2] The Bureau's purpose is set forth by Section 1021 of the Act:

> (a) **PURPOSE.—The Bureau shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.**[3]

Federal consumer financial law

Subject to the provisions of the Act, the CFPB has responsibility to implement, examine for compliance with, and enforce "Federal consumer financial law."[4] Those laws include, among other things, Title X itself, which prohibits unfair, deceptive, or abusive acts and practices in connection with consumer financial products and services,[5] and the following "enumerated consumer laws"[6] and the implementing regulations.[7]

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[1] The Act can be found here: http://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf.

[2] Sec. 1024 of the Act authorizes CFPB to supervise certain entities and individuals that engage in offering or providing a consumer financial product or service and their service providers that are not covered by Secs. 1025 or 1026 of the Act. Specifically, Sec. 1024 applies to those entities and individuals who offer or provide mortgage-related products or services and payday and private student loans as well as larger participants of other consumer financial service or product markets as defined by a CFPB rule, among others, plus their service providers. Sec. 1025 authorizes CFPB to supervise those entities that are large insured depository institutions and credit unions with more than $10 billion in total assets and all their affiliates (including subsidiaries), as well as service providers for such entities. Sec. 1026 provides the prudential regulators with consumer compliance examination authority for smaller depository institutions ($10 billion or less in total assets) not covered by Sec. 1025. The Bureau may, under Sec. 1026, include its examiners on a sampling basis at examinations of smaller insured depository institutions to assess compliance with the requirements of Federal consumer financial law. Under Sec. 1026, the Bureau has supervisory authority over a service provider to a substantial number of smaller depository institutions. "Insured depository institutions" include banks and savings associations. Under Sec. 1029, the Bureau may not exercise any authority over certain dealers predominantly engaged in the servicing and sale or leasing of motor vehicles. For ease of reference for purposes of this manual, entities and individuals within the scope of Sec. 1024 are referred to as "non-depository consumer financial service companies," and those within the scope of Sec. 1025 are referred to as "large depository institutions and their affiliates." The following are referred to as "supervised entities": (1) non-depository consumer financial service companies and their service providers; (2) large insured depository institutions, large insured credit unions, and their affiliates, as well as service providers to these entities; and (3) service providers to a substantial number of small insured depository institutions or small insured credit unions.

[3] Emphasis added. See also Sec. 1021(b)(4).

[4] *See* Sec. 1002(14) for the definition of "Federal consumer financial law."

[5] *See* Sec. 1036; *see also* 1031.

[6] *See* Sec. 1002(12). Parts of Title XIV of the Act are also designated as enumerated consumer laws. *See* Sec. 1400(b).

[7] *See* Sec. 1002(12).

- Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.);
- Consumer Leasing Act of 1976 (15 U.S.C. 1667 et seq.);
- Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.), except with respect to Section 920 of that Act;
- Equal Credit Opportunity Act (15 U.S.C. 1691et seq.);
- Fair Credit Billing Act (15 U.S.C. 1666 et seq.);
- Fair Credit Reporting Act (15 U.S.C. 1681et seq.), except with respect to Sections 615(e) and 628 of that Act (15 U.S.C. 1681m(e), 1681w);
- Home Owners Protection Act of 1998 (12 U.S.C. 4901 et seq.);
- Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.);
- Subsections (b) through (f) of Section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t(b)–(f));
- Sections 502 through 509 of the Gramm-Leach-Bliley Act of 2009 [Privacy of Consumer Financial Information](15 U.S.C. 6802–6809) except for Section 505 as it applies to Section 501(b);
- Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.);
- Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note);
- Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.);
- S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.);
- Truth in Lending Act (15 U.S.C. 1601 et seq.);
- Truth in Savings Act (12 U.S.C. 4301 et seq.);
- Section 626 of the Omnibus Appropriations Act of 2009, Public Law 111–8; and
- Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701).

In addition, the CFPB may enforce the following rules issued by the Federal Trade Commission:

- Telemarketing Sales Rule (16 CFR Part 310);[8]
- Use of Prenotification Negative Option Plans (16 CFR Part 425);
- Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations (16 CFR Part 429);
- Preservation of Consumers' Claims and Defenses (16 CFR Part 433);
- Credit Practices (16 CFR Part 444);
- Mail or Telephone Order Merchandise (16 CFR Part 435);
- Disclosure Requirements and Prohibitions Concerning Franchising (16 CFR Part 436);
- Disclosure Requirements and Prohibitions Concerning Business Opportunities (16 CFR Part 437).

Supervision and examination

The statutory frameworks for supervision of large depository institutions and their affiliates and for non-depository consumer financial service companies are largely the same,[9] although the supervision authority for each is found in separate sections of the Act. The frameworks include:

- The purpose of supervision, including examination, to:
  - assess compliance with Federal consumer financial laws,
  - obtain information about activities and compliance systems or procedures, and
  - detect and assess risks to consumers and to markets for consumer financial products and services;
- The requirement to coordinate with other Federal and state regulators; and
- The requirement to use where possible publicly available information and existing reports to Federal or state regulators pertaining to supervised entities.

[8] The CFPB may enforce the Telemarketing and Consumer Fraud and Abuse Prevention Act.

[9] Most of the differences in the grants of supervision and examination authority will not be relevant for examiners in their daily work; supervised entities will be examined consistent with the applicable statutory provision.

Supervision and Examination Principles

Three main principles guide the CFPB supervision process.

Focus on consumers

The CFPB will focus on risks to consumers when it evaluates the policies and practices of a financial institution. We expect that institutions will offer consumer financial products and services in accordance with Federal consumer financial laws and will maintain effective systems and controls to manage their compliance responsibilities. As we conduct our reviews, we will focus on an institution's ability to detect, prevent, and correct practices that present a significant risk of violating the law and causing consumer harm.[10]

Data Driven

Like all CFPB activities, the supervision function rests firmly on analysis of available data about the activities of entities it supervises, the markets in which they operate, and risks to consumers posed by activities in these markets. Supervision staff (examiners and analysts) will use data from a wide range of sources: data obtained from the entity and through direct observation during monitoring and examination; information provided by the CFPB's Research, Markets and Regulations and Consumer Education and Engagement divisions, the Office of Fair Lending and Equal Opportunity, the Enforcement division, Consumer Response Center, and Offices addressing the special needs of students, Older Americans, Service members, and the underserved; and other state and Federal regulatory agencies.

Consistency

The CFPB will supervise both depository institutions that offer a wide variety of consumer financial products and services and non-depository consumer financial services companies that offer one or more such products. In order to fulfill its statutory mandate to consistently enforce Federal consumer financial law, the CFPB will apply consistent standards in its supervision of both types of entities, to the extent possible. To help accomplish this, the CFPB will use the same procedures to examine all supervised entities that offer the same types of consumer financial products or services, or conduct similar activities.

Such consistency, however, does not dictate uniformity in supervisory expectations. While all of the firms under our jurisdiction must follow the law, we understand that the means that they employ to achieve that goal will – and likely should – differ. We recognize that large, complex entities necessarily have different compliance oversight and management systems than smaller entities or those offering a more limited number of products or services.

[10] The discussion of the Risk Assessment under Pre-examination Planning in this Manual describes more fully what the CFPB means by risks or potential risks of consumer harm.

Examination Scheduling

Non-depository consumer financial services companies will be identified for examination on the basis of risks to consumers, including consideration of the company's asset size, volume of consumer financial transactions, extent of state oversight, and other factors determined relevant by CFPB. Examinations will be coordinated with State and prudential regulators as applicable.[11]

Regular examination schedules for large depository institutions and affiliates will depend on two considerations: (1) an assessment of risks to consumers and (2) ensuring consistency with statutory requirements that CFPB and prudential regulators coordinate the scheduling of examinations of large depository institutions and affiliates and conduct "simultaneous" examinations of depository institutions, as well as coordinating examinations with State regulators.[12]

Supervised entities will generally be notified in advance of an upcoming examination.

General Description of Examinations

Examiners will coordinate throughout the supervision and examination process with Supervision managers, and analysts, experts, and attorneys from Supervision, Research, Markets and Regulations, the Office of General Counsel, and other CFPB divisions at Headquarters. Supervision will work especially closely with the Office of Fair Lending and Equal Opportunity (OFLEO) and the Enforcement division when reviewing fair lending compliance and evaluating other potential violations of Federal consumer financial laws. In this Manual the coordination process will generally be referred to as "consulting internally." Alternatively, "Headquarters" will be used to signify the involvement of multiple divisions or offices in addition to Supervision.

Specific examination procedures will be similar to those of the prudential and, in some instances, State regulators.[13]As appropriate and in accordance with CFPB policy, examiners and Supervision managers will generally do the following in the course of an examination:

- Collect and review available information (from within the CFPB, from other Federal and state agencies, and from public sources), consistent with statutory requirements;
- Request and review supplementary documents and information from the entity to be examined;
- Develop and obtain internal approval for a preliminary risk focus and scope for the onsite portion of the examination;
- Go onsite to observe, conduct interviews, and review additional documents and information;

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[11] *See* Sec. 1024(b)(3).

[12] *See* Sec. 1025(e).

[13] Prudential regulators refer to the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Association, and Office of the Comptroller of the Currency.

- Consult internally if the examination indicates potential unfair, deceptive, or abusive acts or practices; discrimination; or other violations of law;
- Draw preliminary conclusions about the regulated entity's compliance management and its statutory and regulatory compliance;
- Consult internally about follow-up corrective actions that the institution should take, whether through informal agreement or a formal enforcement action, if warranted by findings;
- Draft the examination report;
- Obtain appropriate internal review and approval for the examination work and draft examination report;
- Share the draft report with the prudential regulator and obtain and consider any comments they may offer, consistent with statutory requirements; and
- After final internal clearance, finalize and transmit the report to the supervised entity.

During the examination, the Examiner in Charge will communicate with appropriate supervised entity personnel about preliminary findings and conclusions. CFPB will seek cooperation from the entity to correct any problems identified.

The CFPB considers all supervisory information, including examination reports and ratings, highly confidential. Requirements for the handling of supervisory information not only by CFPB employees, but also by supervised institutions are described in its regulation on the *Disclosure of Records and Information*.[14]

Detailed examination procedures are located in Part II of this Manual.

Examination Follow-up

How the CFPB addresses negative examination findings will depend, among other things, on the individual facts and circumstances at issue. Whether informal supervisory measures or formal enforcement action is necessary will depend on the type of problem(s) found and the severity of harm to consumers. Self-correction will be encouraged, but some circumstances may nevertheless be sufficiently serious to warrant a public enforcement action. With respect to large depository institutions and their affiliates, CFPB will share draft examination reports and consult with prudential regulators regarding supervisory action, consistent with statutory requirements.[15]

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[14] 12 CFR Part 1070 (76 FR 45372) (July 28, 2011)).

[15] *See* Sec.1025(e).

Target and Horizontal Reviews

In addition to regularly scheduled examinations, CFPB expects to conduct Target and Horizontal Reviews. Target Reviews will generally involve a single entity and will focus on a particular situation such as significant volume of particular customer complaints or a specific concern that has come to CFPB's attention. Horizontal Reviews will look across multiple entities to examine issues arising from particular products or practices and determine whether supervisory measures or enforcement actions are needed.

Enforcement Authority

CFPB is authorized to conduct investigations to determine whether any person is, or has, engaged in conduct that violates Federal consumer financial law.[16] Investigations may be conducted jointly with other regulators,[17] and may include subpoenas or civil investigative demands for testimony, responses to written questions, documents, or other materials.[18]

CFPB may bring administrative enforcement proceedings[19] or civil actions in Federal district court.[20] The Bureau can obtain "any appropriate legal or equitable relief with respect to a violation of Federal consumer financial law," including, but not limited to:

- Rescission or reformation of contracts.
- Refund of money or return of real property.
- Restitution.
- Disgorgement or compensation for unjust enrichment.
- Payment of damages or other monetary relief.
- Public notification regarding the violation.
- Limits on the activities or functions of the person against whom the action is brought.
- Civil monetary penalties (which can go either to victims or to financial education).

CFPB has no criminal enforcement authority.

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[16] Sec. 1051

[17] Sec. 1052(a)

[18] Sec. 1052(b) and (c)

[19] Sec. 1053

[20] Sec. 1054

Referral of Matters or Information to Other Agencies

Criminal Activity

In the course of their work, examiners may obtain evidence that a regulated entity or a customer has engaged in conduct that may constitute a violation of Federal criminal law. The CFPB is required by the Act[21] to refer such findings to the Department of Justice (DOJ) for further review and action. Examiners who, during the course of conducting their examination duties, believe they have found evidence of criminal conduct should consult internally to discuss their findings and the appropriate next steps. Headquarters will handle referral of appropriate matters to DOJ.

Some examples of fact scenarios that may necessitate a referral to the DOJ include, but are not limited to, the following:

- Based on documented information that the examiner has obtained, a regulated entity's financial records are comprised of data that appear to be false.
- A regulated entity's records or files show that it has direct business relationships with individuals or businesses based in a country that is the target of one or more types of United States government sanctions. (See sanctioned country lists at www.treasury.gov and www.state.gov.)
- A loan file or other type of file or record concerning a customer of a regulated entity contains one or more of the following documents that may indicate that the customer has engaged in potentially criminal conduct:
    - Bank statements that show that the customer has one or more bank accounts in a country that is a target of United States government sanctions. (*See* sanctioned country lists at www.treasury.gov and www.state.gov.)
    - Based on documented information in a loan file, (1) a loan application appears to contain false information, (2) an appraisal for real property appears to contain false information, or (3) a document used to verify loan eligibility appears to contain false information. (Documents used to verify loan eligibility include but are not limited to bank statements, Forms 1099, Forms W-2, and/or federal income tax returns.)

Tax Law Non-Compliance

The CFPB is also required under the Act to refer information identifying possible tax law non-compliance to the Internal Revenue Service (IRS).[22] Examiners who, during the course of conducting their examination duties, believe they have found evidence of tax law non-compliance should consult internally about the appropriate next steps. Headquarters will handle referral of matters to the IRS.

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[21] *See* Sec. 1056

[22] *See* Secs. 1024(b)(6) and 1025(b)(5).

Some examples of fact scenarios that may necessitate a referral to the IRS include, but are not limited to, the following:

- Based on documented information that the examiner has obtained, a regulated entity's tax returns are comprised of data that appear false.
- A loan file or other type of file or record concerning a customer of a regulated entity contains one or more of the following documents that may indicate that the customer has failed to comply with the tax laws:
  - Documents used to verify loan eligibility that clearly document that the customer has substantially greater income than the income that the customer reported on Federal income tax returns. Documents used to verify loan eligibility include statements showing a customer's investment portfolio, bank statements, and/or Forms 1099.

ECOA/pattern or practice

The Equal Credit Opportunity Act (ECOA) requires the CFPB to refer matters to DOJ whenever the CFPB "has reason to believe that one or more creditors has engaged in a pattern or practice of discouraging or denying applications for credit in violation of Section 1691(a)" of ECOA, which states ECOA's basic prohibitions against discrimination.[23] In matters that do not involve a pattern or practice of discouragement or denial, the CFPB may refer the matter to the DOJ whenever the agency has reason to believe that one or more creditors has violated Section 1691(a).[24] Headquarters will handle referral of appropriate matters to DOJ.

Matters not within the CFPB's authority

When examiners find information that may indicate violations of law that are not within the CFPB's authority, the information will be passed on to the appropriate prudential, other Federal, or state regulator. These situations will generally be handled by the Examiner in Charge, after consulting internally.

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[23] 15 U.S.C. § 1691e(g).

[24] *Id.*

Supervision Examination Cycle

As shown in the graphic and described in this section, CFPB supervision operates as a continuous cycle.

Pre-Examination / Scoping

- Review and analyze available information to identify risks, areas of inquiry, and focus.
- Request and review documents and information needed to begin examination (e.g., internal policies, audit reports, training materials, recent data)
- Make initial plan for on-site testing and review

Examination (offsite and onsite)

- Interview senior managers, loan officers, compliance officers, and account personnel as appropriate
- Observe operations (e.g., call center, branches)
- Compare policies and procedures to actual practices by reviewing a sample of transactions
- Compare conduct to legal requirements and policy guidance

Communicate conclusions and required corrective action

- Communicate findings and expected corrective actions to management and Board of Directors
- Pursue appropriate supervisory agreement or formal enforcement action as needed

Monitoring

- Product / Market analysis
- Periodic checks on institution activities; calls and meetings
- Review reports and information
- Review status of corrective actions
- Scoping for the next exam

Examination Prioritization: Given the large number, size, and complexity of entities falling under its supervisory authority, the CFPB uses a "prioritization" approach to examining. The CFPB's prioritization approach focuses on risks to consumers rather than risks to institutions. The prioritization approach focuses on individual product lines at an institution rather than on a comprehensive focus of all products and services offered by an institution. This approach allows the CFPB to assess the likely risk to consumers across the consumer financial marketplace in all product lines at all stages of a product's life cycle, including product development and implementation.

The prioritization process begins by analyzing an institution's products and services and breaking the institution down into its distinct product lines that are offered to consumers. For example, a large depository institution might have several product lines – auto lending, credit cards, deposit accounts, international money transfers, mortgage origination, and mortgage servicing – while a nonbank mortgage company might have just two – mortgage origination and servicing. We refer to each distinct product line at a regulated entity as an "Institution Product Line." These are the basic units of analysis for the CFPB's prioritization approach.

Once broken down into institution product lines, the product lines are compared across entities, charters, or licenses. This approach promotes an evaluation of each product line not by the provider's form of organization but by the product line activity within an organization. Each product line is evaluated on the potential consumer harm related to a particular market; the size of the product market; the regulated entity's market share; and risks inherent to the regulated entity's operations and offering of financial consumer products within that market.

The prioritization framework assesses risks to the consumer at two levels: the market level and the institution level. At the market-wide level, the CFPB assesses the risk to the consumer from the products and practices being offered in a particular market. In addition, the prioritization approach considers the relative product market size in the overall consumer finance marketplace.

At the institution level, the prioritization framework distinguishes that some institutions' business models within a market pose greater risks of harm to consumers than do others. Accordingly, prioritization efforts assess the relative risks to consumers from each institution's activity within any given market. This process takes into account a broad range of factors that bear upon the likelihood of consumer harm. The process starts with a regulated entity's market share within an individual product line, which corresponds to the number of consumers affected. Relatively large entities with a more dominant presence have a greater ability to impact more consumers, thus are prioritized over relatively small entities.

The prioritization approach augments this size consideration significantly with "field and market intelligence." Field and market intelligence includes both qualitative and quantitative factors for each institution product line, such as the strength of compliance management systems, findings from prior examinations, metrics gathered from public reports, and the number and severity of consumer complaints the CFPB receives. In addition, given the CFPB's mandate to ensure fair, equitable, and nondiscriminatory access to credit for all consumers, fair-lending-focused information supplements general field and market intelligence in order to ensure that fair lending risks are identified and prioritized as well.

Taken together, the information about each institution product line, both at the market level and at the institutional level, allows the CFPB to focus on areas where consumers have the greatest potential to be harmed, specifically, on relatively higher risk institution product lines within relatively higher risk markets.

Central Point of Contact Duties: The CFPB may assign a staff member to perform central point of contact (CPC) duties at an institution to monitor the institution's on-going compliance efforts and to serve as the primary communication conduit between the company and the CFPB. CPC duties may be assigned to a field manager, an examiner or an analyst. CPC duties will vary from institution to institution based upon the company's risk profile and the examination schedule developed pursuant to the examination prioritization process described above.

Monitoring: The primary purpose of institution monitoring is to maintain current information about the institution's activities in order to determine whether changes in risks to consumers or markets warrant a change in the CFPB's prioritization strategy. Monitoring also allows the CFPB to assess institutional compliance with previously established corrective action and to evaluate on-going efforts by institution management to improve the company's compliance program. The frequency and scope of monitoring will vary depending on the organization's risk profile and will be established by CFPB management.

Examples of monitoring activities include:

- Reviewing supervisory and public information about the entity, such as:
  - Prudential and state regulator examination reports;
  - Community Reinvestment Act performance evaluations;
  - Current enforcement actions;
  - Call report data;
  - Complaint data;
  - Home Mortgage Disclosure Act data;
  - Home Affordable Modification Program Data;
  - SEC filings;
  - Licensing or registration information;
  - Reports from the entity to prudential or state regulators, if any;
  - CFPB research analyst reports;
  - Institution website; and
  - CFPB consumer complaints.

- Contacting the appropriate officer of the institution to discuss new products or services, events that may impact compliance management, and any questions raised by information reviewed by the CPC.
- Contacting the federal prudential regulator and relevant state regulators to discuss any recent events and any questions raised by supervisory or public information about the institution.
- Consulting internally.

Information developed through monitoring will be used to regularly assess the institution's risk profile and will be incorporated into the examination prioritization as described above.

Supervision Plan: A Supervision Plan is created and revised periodically for large depository institutions and certain nonbank institutions depending on the organization's risk profile. The Supervision Plan summarizes the plan for monitoring and examining the institution and its affiliates. It describes the priorities for CFPB supervision activities to assist in allocating and scheduling examiner resources. The Plan should be updated at least annually and may be updated at any time as a result of changes in the risk profile of the entity.

Examinations and Targeted Reviews

Pre-Review Planning

The goal of a risk-focused review is to direct resources toward areas with higher degrees of risk. The Consumer Financial Protection Bureau's (CFPB or Bureau) reviews focus on risks of harm to consumers, including the risk that a supervised entity will not comply with Federal consumer financial law. The overall objective of pre-review planning is to collect information necessary to determine the review's scope, resource needs, and work plan. This information allows the Examiner in Charge (EIC) or designee and the examination team to plan and conduct its work both offsite and onsite during the review. The information available, timing, and order in which steps are performed may vary by the type of review or supervised entity.

Pre-review planning consists of gathering available information and documents and preparing an Information Request. The Information Request is a tailored list of information and documents that the supervised entity is asked to forward to the Bureau for offsite review or make available when the examiners arrive onsite. It may include a request for an electronic data upload. The pre-review planning process will vary depending on the size, complexity, business strategy, products, systems, and risk profile of a particular supervised entity. This section provides a general overview of the process.

Gather Available Information

The EIC and examination team members collect information about a supervised entity from both internal and external sources to aid in constructing the risk focus and scope of a review. Examiners should gather as much information as possible from within the Bureau, other regulatory agencies, and third-party public sources, because the Bureau is required by statute to use, to the fullest extent possible, information available from other agencies or reported publicly.[1]

The following key documents and information are relevant to understanding a supervised entity and its ability to manage its compliance responsibilities and risks to consumers. Not all documents will necessarily be available for a particular entity.

From Bureau Internal Sources and Other Regulatory Agencies

- Monitoring information
- Any recent risk assessments
- Prior Scope Summary, Supervision Plan, or similar document produced by state or prudential regulators

[1] *See* Dodd-Frank Act, Secs. 1024(b)(4) and 1025(a)(3).

- Prior Examination Reports/Supervisory Letters and supporting workpapers (internal and from prudential regulator(s), state regulator(s), or other agencies)
- Information about prior supervisory actions, consumer remediation, and responses to Examination Reports/Supervisory Letters
- Information on enforcement or other public actions (if applicable)
- Correspondence from prudential or state regulator(s) and Bureau correspondence files
- State licensing information for the entity
- The CFPB Consumer Complaint database
- FTC Consumer Sentinel database
- Uniform Bank Performance Report (UBPR) and Call Reports
- Previous years' FFIEC Home Mortgage Disclosure Act Loan Application Registers (HMDA LARs)
- Home Affordable Modification Program data
- Fair lending analysis
- Office of the Comptroller of the Currency (OCC) Federal Housing Home Loan Data System (FHHLDS) report
- Mortgage Call Report (MCR) from the Nationwide Mortgage Licensing System (NMLS)
- Registration or licensing information for mortgage originators (Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act)

From Public Information or Third Parties

- Institution securities filings, its offered securitizations, and similar public records
- Industry publications showing credit ratings, product performance, and areas of profitability
- Newspaper articles, web postings, or blogs that raise examination related issues
- Neighborhood Watch: https://entp.hud.gov/sfnw/public/
- Service provider programs

- Content of the supervised entity's website

Before contacting the supervised entity to gather additional information, the EIC (or designee(s)) reviews the material gathered from these sources to help avoid duplicative requests. Of course, it may still be necessary to verify or update the information or documents with the supervised entity, but the burden of production will be reduced.

Develop a Scope Summary

Consistent with the Bureau's risk-based prioritization process, the EIC prepares the Scope Summary, which provides all members of the examination team with a central point of reference throughout the examination. The initial Scope Summary is based on internal consultation and a review of available information and documents gathered prior to sending the Information Request to the supervised entity.

The initial Scope Summary addresses the following:

- Key dates;
- Composition of the examination team;
- Contact information for the entity and any applicable prudential and state regulators;
- Communication plan;
- Activities to be undertaken to review:
  - The compliance management system (CMS);
  - Examination Procedures to be completed;
  - Areas selected for transaction testing, including estimated sampling sizes and methodology used to select the sample;
  - Areas where potential legal violations may exist, including those involving unfair, deceptive, or abusive acts or practices;
  - Fair lending compliance, if applicable.
  - Issues arising from complaints; and
  - Specific regulatory compliance issues.

At the conclusion of the examination, the EIC updates the initial Scope Summary with the following:

- Description of changes to the scope during the course of the review, and reasons for such changes; and

- Recommendations for the scope of subsequent reviews.

The initial Scope Summary, as well as any material changes to the scope during the review, should be approved in accordance with current Bureau requirements. The Scope Summary is maintained with the review records in the Supervision and Examination System.

The customizable Scope Summary template is available in the Supervision and Examination System.

Contact the Entity

For most reviews, the EIC, or designee, contacts the supervised entity's management no later than 60 days prior to the scheduled onsite date for the examination to arrange either a telephone or in-person discussion of the Information Request. The principal purpose of the discussion is to gather current information to ensure that the request is tailored to what is necessary to properly conduct the review of that particular institution.

The EIC or designee should also use the discussion to help determine whether certain information needed for the review should be sent to the examination team for review offsite or held for onsite review. The discussion should include the timing of production and the subsequent onsite review. The EIC should use the discussions to apprise management about who should be available to be interviewed during the onsite portion of the review. If not already known, the EIC should obtain information about the organization of the entity and where it maintains certain operations for the purpose of deciding which operation centers and/or branches the team will review.

Prepare and Send the Information Request

After conducting the review and discussion outlined above, the EIC or designee will use the monitoring information and any other relevant information to customize an Information Request that includes only items that are pertinent to the review of a particular entity. Not all items will be relevant to every review. In addition, the Information Request must specify the review period when it requests information or documentation such as periodic reports, ledgers, policies and procedures, and administrative changes, to avoid receiving data not relevant to the review.

The EIC or designee may provide the Information Request to entity management in either hard copy or electronic format, although electronic is preferred, indicating where the materials should be delivered and in what format. If at all possible, the requested materials should be delivered to the Bureau electronically. Examiners should consult with their field managers about what system should be used for secure requests and transmission of electronic examination files. The timing of the request and the response date must ensure that entity staff has sufficient time to assemble the requested information and the examination team has sufficient time to adequately review the materials.

Contacting the supervised entity at least 60 days prior to the onsite date, whenever feasible, and sending the Information Request as soon as possible thereafter will generally ensure that staff of the supervised entity have sufficient time to properly gather and submit the response, and that the examination team has time to conduct its offsite review. To the extent possible and consistent with statutory requirements, examiners should coordinate the information request with the prudential and state regulator(s) and keep them abreast of monitoring efforts, correspondence with the supervised entity, and schedule planning.

The customizable Information Request templates are available in the Supervision and Examination System.

Conduct the Review

After receiving and reviewing the information and documents requested from the entity, the EIC will determine how to deploy the examination team to complete the examination procedures identified in the Scope Summary, conduct interviews, make observations, conduct transaction testing, and oversee other processes. Available examination procedures are part of this Supervision and Examination Manual. Templates should be downloaded from the Supervision and Examination System and used to create workpapers.

Upon determining the onsite start date, the EIC should arrange an entrance meeting with the appropriate member(s) of the supervised entity's management. At the meeting, the EIC can introduce the examination team, discuss generally the expected activities, clarify any questions about arrangements for being onsite at the entity (such as building security, work space, etc.), and set the tone for the examination.

Thereafter, the EIC should meet regularly with the entity point of contact to discuss interim findings and progress of the review. The EIC should also communicate regularly with his or her point of contact at the entity's prudential or state regulator(s). Throughout the examination, the EIC should follow current Bureau procedures for providing updates to regional and headquarters stakeholders

Close the Review

Closing Meeting

When all onsite activities and internal Bureau consultations are complete, the EIC should meet with the supervised entity's management to discuss the preliminary examination findings; expected Matters Requiring Attention or Supervisory Recommendations; recommended rating (if applicable); and next steps, if any. Management should be reminded that supervisory information, including ratings, is confidential and should not be shared except as allowed by Bureau regulation. Depending on the severity of the findings, other Bureau representatives may attend this meeting as well. Management should be alerted if a meeting with the board of directors or principals of the supervised entity will be required.

Entity management must be informed that examination findings, including compliance ratings, are not final until internal Bureau reviews are conducted and, in the case of an insured depository institution or affiliate, the prudential regulator has had the opportunity to review and comment on the draft report.

Determine the Compliance Rating

When an Examination Report is issued, it will include a compliance rating that reflects the Bureau's assessment of the effectiveness of the institution's compliance management system to ensure compliance with consumer protection laws and regulations and reduce the risk of harm to consumers. The Bureau has adopted and uses the FFIEC Uniform Consumer Compliance Rating System (CC Rating System)[2] to determine compliance ratings. The 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, and therefore, the highest degree of supervisory concern. Ratings of "1" or "2" represent satisfactory or better performance. Ratings of "3," "4," or "5" indicate performance that is less than satisfactory.

- The highest rating of "1" is assigned to a financial institution that maintains a strong compliance management system (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

[2] This description of the rating system is adapted for Bureau purposes from the revised Uniform Interagency Consumer Compliance Rating System (CC Rating System) effective March 31, 2017. *See* ffiec.gov/press/pr110716.htm. The revisions update the original CC Rating System adopted by the FFIEC in 1980.

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[3] 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.

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.

[3]For the purposes of assessing compliance ratings, the FFIEC refers to these relationships as being with "third parties." Because the Bureau has adopted the FFIEC's CC Rating System, the Bureau is using that terminology in this section of the manual. However, the Bureau generally uses the term "service provider" in its supervisory documents. For more information, see Bureau Bulletin 2016-02.

Consumer Compliance Rating Definitions

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:

- 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 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, whether or not there is resulting financial harm.

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

1. **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.

2. **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.

3. **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.

4. **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.

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 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 Consumer Compliance 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 Consumer Compliance 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.

Consumer Compliance Rating Definitions

ASSESSMENT FACTORS TO BE CONSIDERED	1	2	3	4	5
Board and Management Oversight Board and management oversight factors should be evaluated commensurate with the institution's size, complexity, and risk profile. Compliance expectations below extend to third-party relationships.					
Oversight and Commitment	Board and management demonstrate strong commitment and oversight to the financial institution's compliance management system. Substantial compliance resources are provided, including systems, capital, and human resources commensurate with the institution's size, complexity, and risk profile. Staff is knowledgeable, empowered and held accountable for compliance with consumer laws and regulations. Management conducts comprehensive and ongoing due diligence and oversight of third parties consistent with agency expectations to ensure that the financial institution complies with consumer protection laws, and exercises strong oversight of third parties' policies, procedures, internal controls, and training to ensure consistent oversight of compliance responsibilities.	Board and management provide satisfactory oversight of the financial institution's compliance management system. Compliance resources are adequate and staff is generally able to ensure the financial institution is in compliance with consumer laws and regulations. Management conducts adequate and ongoing due diligence and oversight of third parties to ensure that the financial institution complies with consumer protection laws, and adequately oversees third parties' policies, procedures, internal controls, and training to ensure appropriate oversight of compliance responsibilities.	Board and management oversight of the financial institution's compliance management system is deficient. Compliance resources and staff are inadequate to ensure the financial institution is in compliance with consumer laws and regulations. Management does not adequately conduct due diligence and oversight of third parties to ensure that the financial institution complies with consumer protection laws, nor does it adequately oversee third parties' policies, procedures, internal controls, and training to ensure appropriate oversight of compliance responsibilities.	Board and management oversight, resources, and attention to the compliance management system are seriously deficient. Compliance resources and staff are seriously deficient and are ineffective at ensuring the financial institution's compliance with consumer laws and regulations. Management oversight and due diligence over third-party performance, as well as management's ability to adequately identify, measure, monitor, or manage compliance risks, is seriously deficient.	Board and management oversight, resources, and attention to the compliance management system are critically deficient. Compliance resources are critically deficient in supporting the financial institution's compliance with consumer laws and regulations, and management and staff are unwilling or incapable of operating within the scope of consumer protection laws and regulations. Management oversight and due diligence of third-party performance is critically deficient.

ASSESSMENT FACTORS TO BE CONSIDERED	1	2	3	4	5
Change Management	Management anticipates and responds promptly to changes in applicable laws and regulations, market conditions and products and services offered by evaluating the change and implementing responses across impacted lines of business. Management conducts due diligence in advance of product changes, considers the entire life cycle of a product or service in implementing change, and reviews the change after implementation to determine that actions taken have achieved planned results.	Management responds timely and adequately to changes in applicable laws and regulations, market conditions, products and services offered by evaluating the change and implementing responses across impacted lines of business. Management evaluates product changes before and after implementing the change.	Management does not respond adequately and/or timely in adjusting to changes in applicable laws and regulations, market conditions, and products and services offered.	Management's response to changes in applicable laws and regulations, market conditions, or products and services offered is seriously deficient.	Management fails to monitor and respond to changes in applicable laws and regulations, market conditions, or products and services offered.
Comprehension, Identification and Management of Risk	Management has a solid comprehension of and effectively identifies compliance risks, including emerging risks, in the financial institution's products, services, and other activities. Management actively engages in managing those risks, including through comprehensive self-assessments.	Management comprehends and adequately identifies compliance risks, including emerging risks, in the financial institution's products, services, and other activities. Management adequately manages those risks, including through self-assessments.	Management has an inadequate comprehension of and ability to identify compliance risks, including emerging risks, in the financial institution's products, services, and other activities.	Management exhibits a seriously deficient comprehension of and ability to identify compliance risks, including emerging risks, in the financial institution.	Management does not comprehend nor identify compliance risks, including emerging risks, in the financial institution.
Corrective Action and Self-Identification	Management proactively identifies issues and promptly responds to compliance risk management deficiencies and any violations of laws or regulations, including remediation.	Management adequately responds to and corrects deficiencies and/or violations, including adequate remediation, in the normal course of business.	Management does not adequately respond to compliance deficiencies and violations including those related to remediation.	Management response to deficiencies, violations and examination findings is seriously deficient.	Management is incapable, unwilling and/or fails to respond to deficiencies, violations or examination findings.

ASSESSMENT FACTORS TO BE CONSIDERED	1	2	3	4	5
Compliance Program Compliance Program factors should be evaluated commensurate with the institution's size, complexity, and risk profile. Compliance expectations below extend to third-party relationships.					
Policies and Procedures	Compliance policies and procedures and third-party relationship management programs are strong, comprehensive and provide standards to effectively manage compliance risk in the products, services and activities of the financial institution.	Compliance policies and procedures and third-party relationship management programs are adequate to manage the compliance risk in the products, services and activities of the financial institution.	Compliance policies and procedures and third-party relationship management programs are inadequate at managing the compliance risk in the products, services and activities of the financial institution.	Compliance policies and procedures and third-party relationship management programs are seriously deficient at managing compliance risk in the products, services and activities of the financial institution.	Compliance policies and procedures and third-party relationship management programs are critically absent.
Training	Compliance training is comprehensive, timely, and specifically tailored to the particular responsibilities of the staff receiving it, including those responsible for product development, marketing and customer service. The compliance training program is updated proactively in advance of the introduction of new products or new consumer protection laws and regulations to ensure that all staff are aware of compliance responsibilities before rolled out.	Compliance training outlining staff responsibilities is adequate and provided timely to appropriate staff. The compliance training program is updated to encompass new products and to comply with changes to consumer protection laws and regulations.	Compliance training is not adequately comprehensive, timely, updated, or appropriately tailored to the particular responsibilities of the staff.	Compliance training is seriously deficient in its comprehensiveness, timeliness, or relevance to staff with compliance responsibilities, or has numerous major inaccuracies.	Compliance training is critically absent.

ASSESSMENT FACTORS TO BE CONSIDERED	1	2	3	4	5
Monitoring and/or Audit	Compliance monitoring practices, management information systems, reporting, compliance audit, and internal control systems are comprehensive, timely, and successful at identifying and measuring material compliance risk management throughout the financial institution. Programs are monitored proactively to identify procedural or training weaknesses to preclude regulatory violations. Program modifications are made expeditiously to minimize compliance risk.	Compliance monitoring practices, management information systems, reporting, compliance audit, and internal control systems adequately address compliance risks throughout the financial institution.	Compliance monitoring practices, management information systems, reporting, compliance audit, and internal control systems do not adequately address risks involving products, services or other activities including timing and scope.	Compliance monitoring practices, management information systems, reporting, compliance audit, and internal controls are seriously deficient in addressing risks involving products, services or other activities.	Compliance monitoring practices, management information systems, reporting, compliance audit, or internal controls are critically absent.
Consumer Complaint Response	Processes and procedures for addressing consumer complaints are strong. Consumer complaint investigations and responses are prompt and thorough. Management monitors consumer complaints to identify risks of potential consumer harm, program deficiencies, and customer service issues and takes appropriate action.	Processes and procedures for addressing consumer complaints are adequate. Consumer complaint investigations and responses are generally prompt and thorough. Management adequately monitors consumer complaints and responds to issues identified.	Processes and procedures for addressing consumer complaints are inadequate. Consumer complaint investigations and responses are not thorough or timely. Management does not adequately monitor consumer complaints.	Processes and procedures for addressing consumer complaints and consumer complaint investigations are seriously deficient. Management monitoring of consumer complaints is seriously deficient.	Processes and procedures for addressing consumer complaints are critically absent. Meaningful investigations and responses are absent. Management exhibits a disregard for complaints or preventing consumer harm.
Violations of Law and Consumer Harm					
Root Cause	The violations are the result of minor weaknesses, if any, in the compliance risk management system.	Violations are the result of modest weaknesses in the compliance risk management system.	Violations are the result of material weaknesses in the compliance risk management system.	Violations are the result of serious deficiencies in the compliance risk management system.	Violations are the result of critical deficiencies in the compliance risk management system.
Severity	The type of consumer harm, if any, resulting from the violations would have a minimal impact on consumers.	The type of consumer harm resulting from the violations would have a limited impact on consumers.	The type of consumer harm resulting from the violations would have a considerable impact on consumers.	The type of consumer harm resulting from the violations would have a serious impact on consumers.	

ASSESSMENT FACTORS TO BE CONSIDERED	1	2	3	4	5
Duration	The violations and resulting consumer harm, if any, occurred over a brief period of time.	The violations and resulting consumer harm, if any, occurred over a limited period of time.	The violations and resulting consumer harm, if any, occurred over an extended period of time.	The violations and resulting consumer harm, if any, have been long standing or repeated.	
Pervasiveness	The violations and resulting consumer harm, if any, are isolated in number.	The violations and resulting consumer harm, if any, are limited in number.	The violations and resulting consumer harm, if any, are numerous.	The violations and resulting consumer harm, if any, are widespread or in multiple products or services.	

Draft the Examination Report or Supervisory Letter

Examinations that result in the assignment of a consumer compliance rating will be communicated to the entity through an Examination Report. Targeted reviews that do not result in a rating will be communicated through a Supervisory Letter. Examination Report and Supervisory Letter templates are provided in Part III.

The primary purpose of these reports and letters is to communicate findings to the board of directors or principals and senior executives of a supervised entity. The narratives should be concise, constructive, and direct. In general, the commentaries for stable entities with low consumer or compliance risk should be brief, while the commentaries for those with elevated or increasing risk should successively provide more support and detail.

Comments should clearly cite statutory or regulatory violations and describe the basis for the findings. This will ensure that the supervised entity understands the basis for the conclusions and so that enforcement actions, if required, are well supported.

For each specific area reviewed, the narrative sections of the report have two parts:

1. **Conclusion:** The Conclusion contains an overall conclusion followed by a concise summary of findings. The conclusion should match the tone and language of the rating definition. This section should include summary details or facts supporting the conclusion, including a summary of material deficiencies. Avoid an overly detailed conclusion section. Include details supporting the conclusion in the Comments and Supporting Analysis section. Do not include cross-references within the Conclusion section.

2. **Comments and Supporting Analysis**: Comments discuss major strengths and/or weaknesses to support the conclusions. Supporting Analysis is information that demonstrates conclusions.

Examination reports and Supervisory Letters may include two types of communication to convey supervisory expectations related to violations of Federal consumer financial law, consumer harm, or compliance management weaknesses:

1. **Matters Requiring Attention (MRAs)**: MRAs are used by the Bureau to communicate to an institution's Board of Directors, senior management, or both, specific goals to be accomplished in order to correct violations of Federal consumer financial law, remediate harmed consumers, and address related weaknesses in the CMS that the examiners found are directly related to violations of Federal consumer financial law. MRAs include timeframes for periodic reporting of efforts taken to address these matters, as well as expected timeframes for implementation.

2. **Supervisory Recommendations (SRs)**: SRs are used by the Bureau to recommend actions for management to consider taking if it chooses to address the Bureau's supervisory concerns related to CMS. SRs are used when the Bureau has not identified a violation of Federal consumer financial law, but has observed weaknesses in CMS. SRs do not include provisions for periodic reporting or expected timelines for implementation. However, the Bureau will review through monitoring the steps institutions have taken to address SRs, including any information that institutions may provide regarding actions taken.

Neither MRAs nor SRs are legally enforceable. The Bureau will, however, consider an institution's response in addressing identified violations of Federal consumer financial law, weaknesses in CMS, or other noted concerns when assessing an institution's Compliance rating, or otherwise considering the risks that an institution poses to consumers and to markets. These risk considerations may be used by the Bureau when prioritizing future supervisory work or assessing the need for potential enforcement action.

Submit Examination Report or Supervisory Letter for Review

After the Examination Report or Supervisory Letter draft is complete, the Region will obtain any reviews required by internal Bureau policy.

If an Examination Report concerns an insured depository institution, the draft must be shared with the institution's prudential regulator.[4] The regulator must be given a reasonable opportunity to review and comment (not less than 30 days after the date of receipt of the report by the prudential regulator). The Bureau must take into consideration any concerns raised by the prudential regulator prior to issuing a final Examination Report or taking supervisory action. The interagency comment process will be managed by the Bureau's regional offices, with input from Bureau headquarters as appropriate. If a conflict arises between the Bureau and the prudential regulator regarding a proposed supervisory determination, regional and headquarters management will seek to resolve the issue as expeditiously as possible, with due regard for each agency's supervisory responsibilities. If the Bureau's review of an insured depository institution results in a Supervisory Letter, the final Supervisory Letter will be shared with the institution's

[4] Dodd-Frank Act, section 1025(e)(1)(C)

prudential regulator prior to issuance to the institution.

If the Examination Report concerns other types of regulated entities, opportunities for comment by state regulators will depend on whether Bureau is conducting joint or coordinated examinations with the relevant state regulators. The comment process will also be handled by the regional offices.

Board of Directors or Principal(s) Meeting

The purpose of a meeting with a supervised entity's board of directors or principal(s) is to convey the findings of a review directly to those individuals ultimately responsible for the policies and procedures of the institution. Board meetings should be conducted after the closing meeting with management, and should be attended by at least a quorum of directors or by the entity principal(s). The EIC and appropriate Bureau management should attend. The board or principals should be reminded that the Examination Report/Supervisory Letter and rating are confidential and should not be disclosed except as permitted by Bureau regulation.[5]

A board or principal(s) meeting is required when one or more of the following circumstances are present:

- The proposed compliance rating is "3," "4," or "5";
- A supervisory agreement or enforcement action is recommended; or
- The supervised entity's management, board, or principal(s) requests such a meeting.

The meeting should be used to discuss examination findings, supervisory actions, and expected corrective actions; advise the board or principal(s) of the recommended compliance rating; and discuss any recommended enforcement actions.

The timing of a board or principal(s) meeting will depend on the specific situation, and the EIC should work this out with his or her Field Manager, who will ensure the necessary internal coordination. Meetings should be coordinated with prudential and state examiners, and planned for regularly scheduled meetings whenever possible.

Send the Examination Report or Supervisory Letter

The EIC signs the final Examination Report or Supervisory Letter. Regional office administrative staff will handle transmission to the supervised entity.

Upload Final Examination Documents

At the conclusion of the examination, the EIC must finalize the Scope Summary, ensure all workpapers are complete, and be certain that all required documents and information are uploaded or entered into the Supervision and Examination System.

Workpapers

During a review, examiners collect and review information from the supervised entity to reach conclusions about its practices, its compliance management system, and its compliance with Federal consumer financial law. The records documenting the review are called workpapers.

Workpapers should contain sufficient information and supporting documents to explain to a knowledgeable reviewer the basis for the review's conclusions.

Purposes of Workpapers

Examiners develop and maintain workpapers for three principal purposes:

- To provide a record of the work performed during the review that supports findings and conclusions;
- To maintain the evidence necessary to support supervisory agreements or enforcement actions; and
- To facilitate internal quality control reviews.

All information collected and all records created during the review that are used to support findings and conclusions could potentially be included in the workpapers. For example, if an examiner interviews a Real Estate Lending Officer, the write-up of the interview notes becomes a workpaper if the information provided by the lending officer was used to support a particular finding or conclusion. If the examiner also scans pages of the supervised entity's RESPA procedures manual to help illustrate deviations from policy, the scanned pages should be included in the workpapers. Other examples of workpapers include, but are not limited to:

- Scope Summary document
- Completed Bureau Examination Procedures (downloadable templates that allow the examiner to enter narrative findings as they follow the procedures);
- Completed Bureau Checklists;
- Other documents created during the examination to record work, such as spreadsheets or completed job aids;
- Documentation of staff and management interviews;
- Meeting agendas, attendance lists, and notes or minutes;
- Documentation of compliance research performed, including consultations with Bureau stakeholders (e.g., legal opinions, regulation sections reviewed, regulatory alerts); and

- Scanned copies of material obtained from the supervised entity, such as policies, procedures, rate sheets, internal memos and reports, external audit reports, and complaint letters, that are necessary to support a finding or conclusion.

Generally, workpapers should document or support the:

- Proposed scope of the review and any changes to the scope during the course of the review;
- Work performed during the review (what you did);
- Sampling process and methodology used (how you did it);
- Findings and violations noted during the review (what you found);
- Matters Requiring Attention issued;
- Decision to address issues through supervisory or enforcement action;
- Communications with management regarding findings;
- Management's response (oral and written) to findings and violations;
- Commitments made by management regarding corrective action, remediation, and financial relief;
- Changes to the Risk Assessment;
- Consumer Compliance Rating; and
- Changes to the Supervision Plan (where applicable).

The amount of supporting documentation from the entity's records that is necessary to maintain in the workpapers will depend on the particular situation.

Review and Signoff

The EIC is responsible for the adequacy of the workpapers created during the review. Since large team examinations require the EIC to delegate numerous specific areas of review to other examiners, the EIC must track the:

- Workpapers developed;
- Responsible examination team member; and
- EIC's review and approval of the workpapers.

Workpapers that require additional analysis or support should be discussed with and returned to the responsible examiner for further development. The Workpaper Checklist, found in the Supervision and Examination System, must be used to record the EIC's review and sign off on all workpapers developed during the review.

After the EIC reviews and signs off on the workpapers, the Field Manager or Senior Examination Manager assigned to the review should also review and sign off on their adequacy.

Electronic Format and Encryption

All workpapers and related documentation for the review should be maintained in electronic form. If the supervised entity is only able to provide a document in hard copy form, the examiner should scan the document and return the original. Workpapers should be uploaded to the Supervision and Examination System with the completed examination to be preserved as part of the examination record and made available for future reference.

All electronic documents received from the supervised entity should be transmitted and maintained on encrypted media. Examiners should be mindful at all times of the need to protect personally identifiable information (e.g., names, social security numbers, account numbers) and confidential supervisory information. Hard copies should not be left anywhere unattended (even onsite at the entity), should not be removed from the examination site, and if printed while working offsite, should be kept in a locked cabinet when not being used.

Consult Bureau's Privacy and FOIA regulations and guidance for further information.[5]

Quality Control Reviews

Workpapers will also be reviewed through an internal quality control process to ensure they meet the Bureau's standards related to their documentation and proper storage.

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[5] *See* Disclosure of Records and Information, 12 CFR Part 1070 (76 Fed. Reg. 45372 (July 28, 2011)), and any subsequent related guidance that may be issued.

General Principles and Introduction

Exam Date:	[Click&type]
Exam ID No.	[Click&type]
Prepared By:	[Click&type]
Reviewer:	[Click&type]
Supervision ID #:	[Click&type]
Entity Name:	[Click&type]
Event #:	[Click&type]

Institutions within the scope of the CFPB's supervision and enforcement authority include both depository institutions and non-depository consumer financial services companies. These institutions operate in a dynamic environment influenced by challenges to profitability and survival, increased focus on outcomes to consumers, industry consolidation, advancing technology, market globalization, and changes in laws and regulations.

To remain competitive and responsive to consumer needs in such an environment, institutions continuously assess their business strategies and modify product and service offerings and delivery channels. To maintain legal compliance, an institution must develop and maintain a sound compliance management system (CMS) that is integrated into the overall framework for product design, delivery, and administration across their entire product and service lifecycle. Ultimately, compliance should be part of the day-to-day responsibilities of management and the employees of a supervised entity; issues should be self-identified; and corrective action should be initiated by the entity. Institutions are also expected to manage relationships with service providers to ensure that service providers effectively manage compliance with Federal consumer financial laws applicable to the product or service being provided.[1]

A CMS is how an institution:

- Establishes its compliance responsibilities;
- Communicates those responsibilities to employees;
- Ensures that responsibilities for meeting legal requirements and internal policies and procedures are incorporated into business processes;
- Reviews operations to ensure responsibilities are carried out and legal requirements are met; and
- Takes corrective action and updates tools, systems, and materials as necessary.

An effective CMS commonly has two interdependent control components:

- Board and Management Oversight; and
- Compliance Program, which includes:

[1] See CFPB Bulletin 2016-02, Service Providers (October 31, 2016), which describes the CFPB's expectation that supervised banks and nonbanks oversee their business relationships with service providers in a manner that ensures compliance with Federal consumer financial law. Compliance Bulletin and Policy Guidance; 2016-02

- Policies and procedures;
- Training;
- Monitoring and/or audit; and
- Consumer complaint response.

When the two interdependent control components are strong and well-coordinated, an institution should be successful at managing its compliance responsibilities and risks.

Additionally, an institution's compliance expectations extend to service provider relationships into which the institution has entered. There can be certain benefits to institutions engaging in relationships with service providers, including gaining operational efficiencies or an ability to deliver additional products and services, but such arrangements also may expose institutions to risks if not managed properly. 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 Federal consumer financial laws or managing the risks associated with service provider relationships.

Weaknesses in a CMS can result in violations of Federal consumer financial law and associated harm to consumers. Therefore, the CFPB expects every institution under its supervision and enforcement authority to have a CMS adapted to its business strategy and operations. The CFPB understands that compliance will likely be managed differently by large banking organizations with complex compliance profiles and a wide range of consumer financial products and services[2] at one end of the spectrum, than by non-bank entities that may be owned by a single individual and feature a narrow range of financial products and services, at the other end of the spectrum. Compliance may be managed on an enterprise-wide basis, and institutions may engage outside firms to assist with compliance management. However compliance is managed, a provider of consumer financial products or services under CFPB's supervisory purview is expected to comply with Federal consumer financial laws and appropriately address and limit violations of law and associated harms to consumers.

The CFPB also understands that institutions will organize its CMS to include compliance with consumer-related state and Federal laws that are outside the scope of the CFPB's supervision responsibilities, in addition to the matters that are within the CFPB's scope. The CFPB, therefore, expects that CMS will be organized within a firm, legal entity, division, or business unit in the way that is most effective for the institution, and that the manner of organization will vary from institution to institution.

This CMS examination manual is divided into five Modules:

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[2] For example, the Federal Reserve Board of Governors expects large banking organizations with complex compliance profiles to implement firm-wide compliance risk management programs and have a corporate compliance function. SR 08-8 / CA 08-11, October 16, 2008. The CFPB will expect no less.

- Module 1: Board and Management Oversight
- Module 2: Compliance Program
- Module 3: Service Provider Oversight
- Module 4: Violations of Law and Consumer Harm
- Module 5: Examiner Conclusions and Wrap-Up

In general, all CFPB reviews will include Modules 1, 2, 3, and 5. Module 4 will generally be included in targeted reviews of institution product lines, as well as examinations that will result in the institution receiving a consumer compliance rating. The CMS review for target reviews will generally be limited to reviewing aspects of CMS pertaining to the product line under review. To the extent that CMS for a particular product line or a specific institution has been previously reviewed, CFPB examiners may evaluate CMS by reviewing previous conclusions and assessing only the changes to the current CMS program.

Module 1: Board and Management Oversight

In a depository institution, the board of directors is ultimately responsible for developing and administering a CMS that ensures compliance with Federal consumer financial laws and addresses and minimizes associated risks of harm to consumers. In a non-depository consumer financial services company, that ultimate responsibility may rest with a board of directors in the case of a corporation or with a controlling person or some other arrangement. <u>For the balance of this section of the Manual, references to the “board of directors” or “board” generally refer to the board of directors or other individual or group exercising similar oversight functions.</u> In addition, some institutions may be governed by firm-wide standards, policies, and procedures developed by a holding company or other top-tier corporation for adoption, use, and modification, as necessary, by subsidiary entities.

In the absence of a board of directors and board committee structure, the examiner should determine that the person or group exercising similar oversight functions receives relevant information about compliance and consumer protection matters and takes steps to ensure that the key elements, resources, and individuals necessary for a CMS commensurate with the supervised entity’s risk profile are in place and functioning.

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

- 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.

Board and Management Oversight – Examination Objectives

Because the effectiveness of a CMS is grounded in the actions taken by its board and senior management, Examiners should seek to determine whether the board and management meet the following objectives:

Oversight of and Commitment to the Institution's CMS

1. Demonstrate a strong commitment and oversight to the institution's CMS.
2. Provide compliance resources including systems, capital, and human resources commensurate with the institution's size, complexity, and risk profile.
3. Ensure that staff is knowledgeable, empowered and held accountable for compliance with Federal consumer financial laws.
4. Conduct comprehensive and ongoing due diligence and oversight of service providers consistent with the CFPB's expectations to ensure that the institution complies with Federal consumer financial laws.
5. Exercise oversight of service providers' policies, procedures, internal controls, and training to ensure consistent oversight of compliance responsibilities.

Change Management

1. Respond promptly to changes in applicable Federal consumer financial laws, market conditions, and products and services offered by evaluating the change and implementing responses across impacted lines of business.
2. Conduct due diligence in advance of product changes, consider the entire life cycle of a product or service in implementing change, and review the change after implementation to determine that the actions taken achieved the planned results.

Comprehension, Identification and Management of Risk

1. Comprehend and identify compliance risks, including emerging risks, in the institution's products, services, and other activities.
2. Engage themselves in managing identified risks, which include using comprehensive self-assessments and independent audits, as applicable.

3. Address consumer compliance issues and associated risks of harm to consumers throughout product development, marketing, and account administration, and through the entity's handling of consumer complaints and inquiries.

Self-Identification and Corrective Action

1. Proactively identify issues.

2. Promptly respond to CMS deficiencies and any violations of laws or regulations, including remediation.

Board and Management Oversight – Examination Procedures

1. Review board meeting minutes and supporting materials during the period under review for coverage of compliance matters.

2. Determine board committee structures and delegated responsibility for compliance matters, such as to an audit committee or risk committee, and review the meeting minutes and supporting materials of those committees for coverage of compliance matters.

3. Determine any management committees with delegated authority and accountability for compliance matters, and review their composition, functions, authority, and reporting to committees of the board or to the board.

4. Determine management's oversight and review of heightened areas of risk, such as fair lending; sales practices and production incentives (including performance goals); and unfair, deceptive, or abusive practices; commensurate with the institution's size, complexity, and risk profile. Such review should include a review of management oversight, delegations, authorities and input into substantive policies or procedures, audits, and monitoring related to heightened areas of risk.

5. Determine the authority and accountability for compliance matters of regional or business unit governance bodies, and review their composition, functions, and reporting.

6. Review the formal compliance program adopted by the board of directors or an appropriate committee of the board, and determine whether commensurate resource allocation for compliance is part of the entity's budget and planning process.

7. Identify the chief compliance officer and other individuals responsible for compliance.

8. Review the role of the chief compliance officer for authority to lead a compliance program and for independence from business units.

9. Review board and board committee records for evidence of the chief compliance officer's independent access to board members and governance bodies.

10. Review processes for the identification of new regulatory requirements, changes in requirements, and planning for implementation.

11. Review processes for development and implementation of new consumer financial products or services and distribution channels or strategies, to determine degree of compliance function participation, including whether those processes allow for the compliance function to identify potential risks of consumer law violations up front and to put in place appropriate mechanisms for monitoring or mitigating those risks.

12. Review board meeting minutes and supporting materials for coverage of consumer compliance related to sales practices and performance goals, including quotas and incentive structures, both compensation based and non-compensation based. Determine if the board members direct compliance personnel to design and implement CMS elements related to sales practices and performance goals that address both intended and unintended outcomes, and provide adequate resources to do so.

13. Review board or committee consideration of compliance audit matters for coverage of key risks, independence from business functions, and resolution of identified issues.

14. Review reporting for the identification and resolution of issues and the timeliness and completeness of corrective actions.

15. Review policies and procedures for changes management committed to make following monitoring, audit, and examination findings and recommendations.

16. Draw preliminary conclusions as to whether board and senior management oversight is strong, satisfactory, deficient, seriously deficient, or critically deficient.

Module 2: Compliance Program

A sound Compliance Program is essential to the efficient and successful operation of the supervised entity. A Compliance Program includes the following components:

- Policies and procedures;
- Training;
- Monitoring and/or audit; and
- Consumer complaint response.

An institution should establish a formal, written Compliance Program, and that program generally should be administered by a chief compliance officer. In addition to being a planned and organized effort to guide the entity's compliance activities, a written program represents an essential source document that may serve as a training and reference tool for employees. A well planned, implemented, and maintained Compliance Program may prevent or reduce regulatory violations, protect consumers from non-compliance and associated harms, and help align business strategies with outcomes. The examination objectives and procedures for the Compliance Program are divided in this module among the four components.

Policies and Procedures – Examination Objectives

Compliance policies and procedures should document and be sufficiently detailed to implement the board-approved policy documents. Examiners should seek to determine whether compliance policies and procedures:

1. Are designed to effectively manage compliance risk in the products, services and activities of the institution.
2. Are consistent with board-approved compliance policies.
3. Address compliance with applicable Federal consumer financial laws in a manner designed to minimize violations and to detect and minimize associated risks of harm to consumers.
4. Cover the full life-cycle of all products and/or services offered.
5. Are maintained and modified to remain current and complete, and to serve as a reference for employees in their day-to-day activities.

Policies and Procedures – Examination Procedures

1. Request and review policies and procedures related to consumer compliance, including, as applicable, fair lending, sales practices, performance goals, and incentive structures (both compensation and non-compensation based), and other Federal consumer financial laws, and policies and procedures related to offering consumer financial products and services.
2. Review policies and procedures to determine whether and how they address new or amended Federal consumer financial laws implemented since the most recent consumer compliance examination.
3. Request and review policies and procedures to determine whether they cover consumer financial products or services introduced since the most recent consumer compliance examination.
4. Review policies and procedures relating to compliance with specific regulatory requirements (such as fair lending regulations, or the privacy of consumer financial information) and their implementing procedures.
5. Review policies and procedures for outdated content, the names of unaffiliated entities, or other indicators that policies are overly general or not tailored to the needs and actual practices of the institution.
6. Review policies and procedures for products with features that may inhibit consumer understanding or otherwise pose heightened risks of unfair, deceptive, or abusive practices, or fair lending.
7. Review policies and procedures related to an entity's incentive program, including sales quotas, performance goals, and incentive structures, both compensation and non-

compensation based. Determine whether policies and procedures provide fair and independent processes for investigating reported issues of suspected improper behavior related to sales practices and production incentives.

8. Determine whether policies and procedures provide clear guidance for managing the inherent risk of sales practices and production incentives abuse in each state of the product life cycle (as applicable):
   a. Marketing and sales;
   b. Account opening;
   c. Account upgrades or ancillary products;
   d. Account servicing; and
   e. Collections
9. Review policies and procedures for products containing features that may pose heightened risk of unlawful discrimination. Such features may include:
   a. Particular incentives created by employee compensation or performance goal structures, both compensation and non-compensation based;
   b. Discretion over product selection, underwriting, or pricing; or
   c. Distinctions related to geography or prohibited bases (such as age or marital status).
10. Review policies and procedures maintained by different regional, business unit, or legal entities subject to the same corporate or board-level policies for reasonableness. Instances of inconsistency should be justified by business necessity or market condition.
11. Review policies and procedures for record retention and destruction timeframes to ensure compliance with legal requirements.
12. If compliance procedures are embedded in automated tools or business unit procedures, determine whether periodic reviews of these tools and procedures were performed prior to implementation, for compliance with policies and procedures and applicable Federal consumer laws. Also determine whether such tools were approved by the Board or a committee thereof, for the purpose for which they are used.
13. Draw preliminary conclusions as to whether policies and procedures are strong, satisfactory, deficient, seriously deficient, or critically deficient.

Training – Examination Objectives

Education of an entity’s board of directors, management, and staff is essential to maintaining an effective compliance program. Board members should receive sufficient information to enable them to understand the entity’s responsibilities and the commensurate resource requirements.

Management and staff should receive specific, comprehensive training that reinforces and helps implement written policies and procedures. Requirements for compliance with Federal consumer financial laws, including prohibitions against unlawful discrimination and unfair, deceptive, and abusive acts and practices, should be incorporated into training for all relevant officers and employees, including audit personnel. Examiners should seek to determine whether:

1. Compliance training is comprehensive, timely, and specifically tailored to the particular responsibilities of the staff receiving it, including those responsible for product development, marketing and customer service.
2. The compliance training program is updated proactively in advance of the rollout of new or changed products or the effective date of new or changed consumer protection laws and regulations to ensure that all staff is aware of compliance responsibilities.
3. Training is consistent with policies and procedures and designed to reinforce those policies and procedures.
4. Compliance professionals have access to training that is necessary to administer a compliance program that is tailored to the supervised entity's risk profile, business strategy, and operations.

Training – Examination Procedures

1. Request and review the schedule, record of completion, and materials for recent compliance training of board members and senior management.
2. Determine the involvement of compliance officer(s) in selecting, reviewing, or delivering training content.
3. Request and review policies, schedules, and records of completion for compliance-specific training of compliance professionals, managers, and staff, and documents demonstrating that service providers who have consumer contact or compliance responsibilities are appropriately trained.
4. Request and review samples of the content of training materials, including training related to fair lending, new or changed regulatory requirements, new or changed products or channels of distribution, and marketing (including scripts).
5. Request and review training developed as a result of management commitments to address monitoring, audit, or examination findings and recommendations or issues raised in consumer complaints and inquiries.
6. Determine whether the program is designed to provide training about the specific regulatory requirements relevant to the functions of particular positions.
7. Determine if the institution has implemented comprehensive training that addresses expectations for sales practices and production incentives including:

a. Standards of ethical behavior, including procedures for reporting suspected incidents of improper behavior;

b. Common risky behaviors for employees and service providers;

c. Requirements for accurately describing to consumers terms and conditions of products and services; and

d. Regulatory and business requirements for obtaining and maintaining evidence of consumer consent related to product opening and upselling.

8. Review records of follow-up, escalation, and enforcement for units with training completion rates that do not meet the supervised entity's standards or deadlines.

9. Request and review the institution's plans for additions, deletions, or modifications to compliance training over the next 12 months and any plans for changes to the overall training resources and compare actual training activities to prior plans.

10. Draw preliminary conclusions as to whether the training program is strong, satisfactory, deficient, seriously deficient, or critically deficient.

Monitoring and/or Audit – Examination Objectives

Monitoring is a compliance program element that seeks to identify CMS weaknesses in an effort to provide for a high level of compliance by promptly identifying and correcting weaknesses. Monitoring is generally more frequent and less formal than audit, may be carried out by the business unit, and does not require the same level of independence from the business or compliance function that an audit program requires. Conversely, audit is generally less frequent and more formal than monitoring, may be carried out by an institution's internal audit department or outside contracted party, and is generally independent of the business or compliance function that does the monitoring.

The audit function should review an institution's compliance with Federal consumer financial laws and adherence to internal policies and procedures, and should be independent of both the compliance program and business functions that include customer sales or service. A compliance audit program provides the board of directors or its designated committees with a determination of whether policies and procedures adopted by the board to guide risk management are being implemented and followed to provide for the level of compliance and consumer protection established by the board.

Examiners should evaluate monitoring and audit programs to determine whether, considered together, they are commensurate with the institution's size, complexity, and risk profile. In some instances, particularly in institutions that are small, are non-complex in their organizational or operational structure, and that engage in products and services that present low risk of consumer harm, it is possible that the institution's CMS only has one of these functions. In instances where an institution does not have both functions, examiners should evaluate whether coverage is commensurate with the institution's size, complexity, and risk profile.

Examiners' review of compliance monitoring and/or audit should determine whether:

1. Compliance monitoring practices, management information systems, reporting, compliance audit, and internal control systems are comprehensive, timely, and successful at identifying and measuring material compliance risk management throughout a specific product line and/or the institution.
2. Programs are monitored proactively to identify procedural or training weaknesses to mitigate regulatory violations. Program modifications are made timely to minimize compliance risk.
3. The institution is determining that transactions and other consumer contacts are handled according to the entity's policies and procedures.
4. Monitoring considers the results of risk assessments or other guides for prioritizing reviews.
5. Findings as a result of monitoring reviews are escalated to management and to the board of directors, as appropriate.
6. The audit program is sufficiently independent and reports to the board or a committee of the board.
7. The audit program addresses compliance with all applicable Federal consumer financial laws.
8. The schedule and coverage of audit activities is appropriate for the institution's size, complexity, risk profile; consumer financial product offerings; and manner of conducting its consumer financial products business.
9. All appropriate compliance and business unit managers receive copies of audit reports in a timely manner.

Monitoring and/or Audit – Examination Procedures

1. Determine the chief compliance officer's role in the monitoring element of the compliance program.
2. Request and review the monitoring schedule for the review period and the next 12 months, and review the currency of reviews in process against the current schedule.
3. Request and review all applicable risk assessments, including fair lending risk assessments, or other documents that led to the current monitoring plan.
4. Discuss with the compliance officer and/or the monitoring manager the coverage of service providers that have contact with consumers.
5. Determine whether and to what extent monitoring includes calculation tools, the content of consumer disclosures and notices, marketing materials, and scripts or guides for employee contacts with consumers.

6. Request and review all monitoring and corrective action reports completed during a specific period of time. Include reports related to fair lending compliance, such as fair lending "self-tests." Ensure that the entity notifies you of any documents that it claims are withheld on the basis of privilege or "self-tests" so that the applicability of the privilege or regulation can be properly assessed.

7. If the institution has sales quotas and production incentive structures in place, including performance-based sales goals, determine whether and to what extent monitoring of these programs includes (but is not limited to):

    a. Overall product penetration rates by consumer and household;

    b. Specific penetration rates for products and services (such as overdraft, add-on products, and online banking) and penetration rates by consumer segment;

    c. Employee turnover and employee satisfaction or complaint rates;

    d. Spikes and trends in sales (both completed and failed sales) by specific individuals and by units;

    e. Financial incentive payouts;

    f. Fair lending analysis;

    g. Account opening/product enrollment, account upgrades (including ancillary products), and account closure/product cancellation statistics (trends), including by specific individuals and by units, taking into account the terms of the sales practices program;

    h. Consumer complaints about unauthorized account opening/product enrollment, account upgrades (including ancillary products) and/or sales practices.

8. Review reports for indications of weaknesses, repeat violations of law and resulting risks or harm to consumers, or other matters of significant concern such as potential discriminatory effects of policies or procedures or particular business units with continuing or high levels of non-compliance.

9. Review a sample of reports and supporting documents covering potential unfair, deceptive, or discriminatory practices or related matters that pose heightened risks to consumers for thoroughness of review, accuracy of findings, and appropriateness of corrective action.

10. Request the institution's audit plans and schedules for the review period and the next 12 months, and review the currency of audits in process against the current schedule.

11. If audit is performed by a third party, request and review the engagement letters or contracts covering the review period.

12. Determine the basis for the audit plan and schedule and whether reporting is to the board of directors or to an audit committee or other committee of the board.

13. Request and review all audit reports for a specified period of time, including any fair lending audit reports.

14. Determine whether written audit reports identify the scope, sampling techniques, findings/deficiencies, recommendations for corrective action, and management responses with time frames for corrective action.

15. Determine whether audit scopes include previous audit and examination findings, new requirements, new products and channels, and self-identified higher risk areas of the supervised entity's operations.

16. Request and review audit work papers for a sample of audits covering fair lending laws and regulations; potential unfair, deceptive, or abusive practices; or other areas that may pose heightened risks to consumers.

17. Request and review all audit reports related to unauthorized account openings, upgrades, and ancillary products; performance based sales goals and production incentives (both compensation-based and non-compensation based); and sales practices across all product lines.

18. Determine whether the supervised entity's chief compliance officer and appropriate business unit head(s) receive copies of audit reports, so that adjustments can be made to compliance program elements in a timely manner.

19. Review audit function structure and policies and procedures to ensure that the audit function, whether internal or external, is independent of the business line and compliance management function.

20. Draw preliminary conclusions as to whether monitoring and/or audit is strong, satisfactory, deficient, seriously deficient, or critically deficient.

Consumer Complaint Response – Examination Objectives

An effective CMS should ensure that an institution is responsive and responsible in handling consumer complaints and inquiries. Intelligence gathered from consumer contacts should be organized, retained, and used as part of an institution's CMS. The institution should be making a deliberate, good faith effort toward resolution of each consumer complaint.

Examiners will consider consumer complaints to determine the responsiveness and effectiveness of the consumer complaint resolution process. Examiners will assess whether:

1. Processes and procedures for addressing consumer complaints are appropriate.

2. Consumer complaint investigations and responses are reasonable.

3. Consumer complaints and inquiries, regardless of the channel through which they are submitted, are appropriately recorded and categorized.

4. Consumer complaints and inquiries, whether regarding the entity or its service providers, are addressed and resolved promptly.

5. Consumer complaints that raise legal issues involving potential consumer harm from unfair treatment or discrimination, unauthorized product enrollment, account openings or upgrades (including the addition of ancillary products), improper sales practices, imminent foreclosures, or other regulatory compliance issues, are appropriately categorized and escalated.

6. Management monitors consumer complaints to identify risks of potential consumer harm and CMS deficiencies, and takes appropriate prospective and retrospective corrective action.

7. Consumer complaints result in retrospective corrective action to correct the effects of the supervised entity's actions when appropriate.

8. The nature or number of substantive complaints from consumers indicates that potential weaknesses in the CMS exist.

Consumer Complaint Response – Examination Procedures

1. Obtain and review consumer complaints and inquiries received by CFPB about the entity and its service providers.

2. Review industry or other benchmarking complaint data collected by CFPB.

3. To the extent available, obtain and review consumer complaints and any whistleblower complaints against the institution from the prudential regulator, state regulators, state attorneys general offices or licensing and registration agencies, and private or other industry sources.

4. Request and review the institution's policies and procedures for receiving, escalating, and resolving consumer complaints and inquiries.

5. Request and review the record of consumer complaints and inquiries received by the institution related to improper sales practices, unauthorized product enrollment, account openings or upgrades, including the addition of unauthorized ancillary products.

6. Identify complaints, including any whistleblower complaints, that may indicate a risk of consumer financial law violation or management issues related to controls for those risks; for example, those alleging or creating a risk of deception, unfair treatment, unlawful discrimination, or other significant consumer injury. Determine whether the financial institution's responses to complaints and inquiries are prompt and complete, and based on a thorough investigation of the facts.

7. Determine whether corrective action is offered or taken for any complaint resulting in a conclusion of violation of law or regulation.

8. Determine whether complaints involving service providers or other third parties referring business to the institution receive appropriate handling and follow-up by the entity.

9. If an institution maintains multiple consumer complaint response centers or units, determine whether it employs a common set of practices.

10. Determine whether evaluations of consumer complaints, including whistleblower complaints, include comprehensive root cause analysis to assess why a particular law violation or error occurred – for example, whether an information system coding error led to inaccuracies across a portfolio, or whether repeated data entry errors, in the absence of appropriate monitoring, resulted in significant inaccuracies.

11. Determine whether evaluations of consumer complaints and inquiries are shared within the institution and included in compliance reporting to the board and senior management.

12. Determine whether evaluations of root cause analysis are used in corrective action, such as modifying policies, procedures, training, monitoring, and/or other appropriate business adjustments.

13. Draw preliminary conclusions as to whether the supervised entity’s response to consumer issues and concerns is strong, satisfactory, deficient, seriously deficient, or critically deficient.

Module 3: Service Provider Oversight

The CFPB recognizes that the use of service providers is often an appropriate business decision for institutions. Institutions may outsource certain functions to service providers due to resource constraints, use service providers to develop and market additional products or services, or rely on expertise from service providers that would not otherwise be available without significant investment.

However, the mere fact that an institution enters into a business relationship with a service provider does not absolve the institution of responsibility for complying with Federal consumer financial law to avoid consumer harm. A service provider that is unfamiliar with the legal requirements applicable to the products or services being offered, or that does not make efforts to implement those requirements carefully and effectively, or that exhibits weak internal controls, can harm consumers and create potential liabilities for both the service provider and the entity with which it has a business relationship. Depending on the circumstances, legal responsibility may lie with the institution as well as with the supervised service provider.

Service Provider Oversight – Examination Objectives

Examiners should determine whether institutions have met the following expectations regarding service provider oversight:

1. The institution has developed and implemented an appropriate risk management program for service providers based on the size, scope, complexity, importance, and potential for consumer harm of the service(s) being performed.
2. The institution's service provider risk management program includes initial and ongoing due diligence reviews to verify that the service provider understands and is capable of complying with Federal consumer financial law.
3. The institution ensures that the service provider conducts appropriate training and oversight of employees or agents that have consumer contact or compliance responsibilities.
4. The institution has included in its contract with the service provider clear expectations about compliance, as well as appropriate and enforceable consequences for violating any compliance-related responsibilities, including engaging in discrimination and unfair, deceptive, or abusive acts or practices.
5. The institution has established internal controls and ongoing monitoring to determine whether the service provider is complying with Federal consumer financial law.
6. The institution takes prompt action to fully address any problems identified through the monitoring process, including terminating the relationship where appropriate.

Service Provider Oversight – Examination Procedures

1. Determine whether and to what extent the institution uses service providers to carry out functions that have consumer compliance responsibilities.
2. Request and review contracts between the institution and its service providers. Determine whether contracts contain clear expectations about compliance, as well as appropriate and enforceable consequences for violating Federal consumer financial law.
3. Request and review the institution's service provider risk management program.
4. Determine whether the institution's risk management program requires initial and ongoing due diligence reviews on service providers. Evaluate whether these reviews are sufficient to verify that the service provider understands its consumer compliance responsibilities, is capable of complying with Federal consumer financial law, and does not pose unwarranted risks to consumers.
5. Determine whether the risk management program provides for ongoing monitoring reviews sufficient to ensure that service providers are complying with Federal consumer financial laws.
6. Determine whether the institution has policies, procedures, and processes in place to take prompt corrective action to fully address any problems identified through the monitoring process, including termination of the service provider relationship, when appropriate.

7. Draw preliminary conclusions as to whether the institution's service provider oversight is strong, satisfactory, deficient, seriously deficient, or critically deficient. Consider the impact that this conclusion has on conclusions regarding Board and Management Oversight and components contained within the Compliance Program.

Module 4: Violations of Law and Consumer Harm

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 an institution denies the consumer credit or discourages an application in violation of the Equal Credit Opportunity Act.

When violations and consumer harm are identified, it is important for examiners to consider whether or not the institution's CMS identified the violation and implemented appropriate corrective action. Self-identification and correction of violations of law reflect strengths in an institution's CMS. A CMS appropriate for the size, complexity and risk profile of an institution's business often will minimize violations or will facilitate early detection of potential violations. This early detection can limit the size and scope of consumer harm. Moreover, self-identification and corrective action on serious violations represents evidence of an institution's commitment to responsibly address underlying risks. 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.

Violations of Law and Consumer Harm – Examination Objectives

In the event that examiners identify violations of Federal consumer financial law, they should consider the following factors:

1. The root cause of the violation: the degree to which weaknesses in the CMS contributed to the violation(s) of Federal consumer financial law. In many instances, the root cause of a violation may be 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.

2. The severity of consumer harm: the type of harm, if any, that resulted from the violation(s) of Federal consumer financial law. More severe harm results in a higher level of supervisory concern. For example, some violations may cause significant financial harm to a consumer, while other violations may cause negligible harm, based on the specific facts involved.

3. The duration of the violation: the length of time over which the violation(s) of Federal consumer financial law 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.

4. The pervasiveness of the violations: the extent of the violation(s) of Federal consumer financial law 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 is of the highest supervisory concern.

Violations of Law and Consumer Harm – Examination Procedures

The following examination procedures should be conducted in the event that Examiners note violations of Federal consumer financial law:

1. Determine the root cause of the violation(s) by identifying the weaknesses in the institution's CMS that contributed to the noted violations(s). Review preliminary conclusions drawn from Modules 1, 2, and 3 on the component(s) identified as the root cause and revise those conclusions accordingly, keeping in mind that not all violations of law indicate weaknesses in CMS.

2. Determine whether the institution self-identified violation(s) and consumer harm, and assess the effectiveness of any corrective action implemented as a result.

3. Draw a conclusion as to whether the violations are a result of minor weaknesses, modest weaknesses, material weaknesses, serious deficiencies, or critical deficiencies in the CMS.

4. Assess the severity of the consumer harm that resulted from the violations(s) by determining the degree of impact that the violation has on consumers. Consider the degree of financial impact or impact of non-financial harm.

5. Draw a conclusion as to whether the type of harm resulting from the violation(s) would have a minimal, limited, considerable, or serious impact on consumers.

6. Assess the duration of the violation(s) and resulting consumer harm by determining the time period over which the violation occurred. Consider whether management was aware of the violation(s) and whether they took action to resolve the issue or allowed it to continue.

7. Determine the pervasiveness of the violation(s) and consumer harm by considering the number of affected consumers. Consider whether the violation(s) and consumer harm are limited or whether they are widespread or in multiple products or services.

Module 5: Examiner Conclusions and Wrap-Up

To conclude this supervisory activity, examiners must complete all the steps under this section, regardless of the entity's risk profile:

1. Summarize the findings, supervisory concerns and conclusions for each Module completed.

2. Identify action needed to correct weaknesses in the institution's CMS.

3. Discuss findings with the institution’s management and, if necessary, obtain a commitment for corrective action.
4. Record findings according to Bureau policy in the Examination Report/Supervisory Letter.
5. Prepare a memorandum for inclusion in the work papers and CFPB’s official system of record that outlines planning and strategy considerations for the next examination and, if appropriate, interim follow-up.

CFPB

Examination Procedures CMR-IT

Compliance Management Review – Information Technology (CMR-IT)

Exam Date:	[Click&type]
Exam ID No.	[Click&type]
Prepared By:	[Click&type]
Reviewer:	[Click&type]
Supervision ID #:	[Click&type]
Entity Name:	[Click&type]
Event #:	[Click&type]

General Principles and Introduction

Institutions[1] within the scope of the CFPB's supervision and enforcement authority include both depository institutions and non-depository consumer financial services companies. These institutions operate in a dynamic environment influenced by challenges to profitability, increased focus on outcomes to consumers, industry consolidation, advancing technology, market globalization, and changes to laws and regulations.

To remain competitive and responsive to consumer needs in such an environment, institutions continuously assess their business strategies and modify product and service offerings and delivery channels. To maintain legal compliance, an institution should develop and maintain a sound compliance management system (CMS) that is integrated into the overall framework for product design, delivery, and administration across its entire product and service life cycle. Ultimately, compliance should be part of the day-to-day responsibilities of management and the employees of a supervised entity. Issues should be self-identified, and corrective action should be initiated by the entity. Institutions are also expected to manage relationships with service providers to ensure that service providers effectively manage compliance with Federal consumer financial laws applicable to the product or service being provided.[2]

Institutions often use information technology (IT) that could impact compliance with Federal consumer financial laws. As part of its overall CMS assessment, the CFPB may evaluate the technology controls of an institution and its service providers. The CFPB may also evaluate an institution's IT as it relates to compliance with Federal consumer financial laws. The Compliance Management System – Information Technology (CMS-IT) examination procedures set forth below are used by examiners to assess IT and IT controls as part of a CMS review.

A CMS is how an institution:

- Establishes its compliance responsibilities;
- Communicates those responsibilities to employees;
- Ensures that responsibilities for meeting legal requirements and internal policies and procedures are incorporated into business processes;

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[1] The terms "institution" and "entity" are used interchangeably throughout this document.

[2] See CFPB Bulletin 2016-02, Service Providers (October 31, 2016), which describes the CFPB's expectation that supervised banks and nonbanks oversee their business relationships with service providers in a manner that ensures compliance with Federal consumer financial law. [Compliance Bulletin and Policy Guidance; 2016-02]

- Reviews operations to ensure responsibilities are carried out and legal requirements are met; and
- Takes corrective action and updates tools, systems, and materials as necessary.

An effective CMS commonly has two interdependent control components:

- Board and Management Oversight; and
- Compliance Program, which includes:
  - Policies and procedures;
  - Training;
  - Monitoring and/or audit; and
  - Consumer complaint response.

When the two interdependent control components are strong and well-coordinated, an institution typically is successful at managing its compliance responsibilities and risks.

Additionally, the Bureau's supervisory expectations with respect to an institution's compliance program extend to service provider relationships into which the institution has entered. There can be certain benefits to institutions engaging in relationships with service providers, including gaining operational efficiencies or an ability to deliver additional products and services. However, such arrangements may also expose institutions to risks when not managed properly. 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 Federal consumer financial laws or managing the risks associated with service provider relationships.

Weaknesses in a CMS can result in violations of Federal consumer financial law and associated harm to consumers. Therefore, the CFPB expects every institution under its supervision and enforcement authority to have a CMS adapted to its business strategy and operations. The CFPB understands that compliance will likely be managed differently by large banking organizations with complex compliance profiles and a wide range of consumer financial products and services[3] at one end of the spectrum, than by non-bank entities that may be owned by a single individual and feature a narrow range of financial products and services, at the other end of the spectrum. Compliance may be managed on an enterprise-wide basis, and institutions may engage outside firms to assist with compliance management. However compliance is managed, a provider of consumer financial products or services under CFPB's supervisory purview is expected to comply with Federal consumer financial laws and appropriately address and limit violations of law and associated harms to consumers.

[3] For example, the Federal Reserve Board of Governors expects large banking organizations with complex compliance profiles to implement firm-wide compliance risk management programs and have a corporate compliance function. SR 08-8 / CA 08-11, October 16, 2008. The CFPB will expect no less.

The CFPB also understands that institutions will organize their CMS to include compliance with consumer-related state and Federal laws that are outside the scope of the CFPB's supervision responsibilities, in addition to the matters that are within the CFPB's scope. The CFPB, therefore, expects that CMS be organized within a firm, legal entity, division, or business unit in the way that is most effective to the institution, and that the manner of organization will vary from institution to institution.

This CMS examination manual is divided into five Modules:

- Module 1: Board and Management Oversight
- Module 2: Compliance Program
- Module 3: Service Provider Oversight
- Module 4: Violations of Law and Consumer Harm
- Module 5: Examiner Conclusions and Wrap-Up

Module 1: Board and Management Oversight

In a depository institution, the board of directors is ultimately responsible for developing and administering a CMS that ensures compliance with Federal consumer financial laws and addresses and minimizes associated risks of harm to consumers. In a non-depository consumer financial services company, that ultimate responsibility may rest with a board of directors in the case of a corporation or with a controlling person or some other arrangement. For the balance of this section of the Manual, references to the "board of directors" or "board" generally refer to the board of directors or other individual or group exercising similar oversight functions. In addition, some institutions may be governed by firm-wide standards, policies, and procedures developed by a holding company or other top-tier corporation for adoption, use, and modification, as necessary, by subsidiary entities.

In the absence of a board of directors and board committee structure, the examiner should determine that the person or group exercising similar oversight functions receives relevant information about compliance and consumer protection matters and takes steps to ensure that the key elements, resources, and individuals necessary for a CMS commensurate with the supervised entity's risk profile are in place and functioning.

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

- Oversight of and commitment to the institution's CMS;
- Effectiveness of the institution's change management processes, including responding in a timely manner 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.

Board and Management Oversight – Examination Objectives

Since the effectiveness of a CMS is grounded in the actions taken by its board and senior management, examiners should seek to determine whether the board and management meet the following objectives:

Oversight of and Commitment to the Institution's CMS

1. Demonstrate a strong commitment and oversight to the institution's CMS.
2. Provide compliance resources including systems, capital, and human resources commensurate with the institution's size, complexity, and risk profile.
3. Ensure that staff is knowledgeable, empowered and held accountable for compliance with Federal consumer financial laws.
4. Conduct comprehensive and ongoing due diligence and oversight of service providers consistent with the CFPB's expectations to ensure that the institution complies with Federal consumer financial laws.
5. Exercise oversight of service providers' policies, procedures, internal controls, and training to ensure consistent oversight of compliance responsibilities.

Change Management

1. Respond promptly to changes in applicable Federal consumer financial laws, market conditions, and products and services offered by evaluating the change and implementing responses across impacted lines of business.
2. Conduct due diligence in advance of product changes, consider the entire life cycle of a product or service in implementing change and review the change after implementation to determine whether the actions taken achieved the planned results.

Comprehension, Identification and Management of Risk

1. Comprehend and identify compliance risks, including emerging risks, in the institution's products, services, and other activities.
2. Engage themselves in managing identified risks, which include using comprehensive self-assessments and independent audits, as applicable.
3. Address consumer compliance issues and associated risks of harm to consumers throughout product development, marketing, and account administration, and through the entity's handling of consumer complaints and inquiries.

Self-Identification and Corrective Action

1. Proactively identify issues.
2. Promptly respond to CMS deficiencies and any violations of laws or regulations, including remediation.

Board and Management Oversight – IT Examination Procedures

1. Review board meeting minutes and supporting materials during the period under review for coverage of IT and IT controls that may impact compliance with Federal consumer financial law.

[Click&type]

2. Determine board and management's oversight and review of the IT function (e.g., board meeting minutes, strategic plan, significant initiatives or changes).

[Click&type]

3. Assess the compliance and IT organizational structures, including:
    a. Direct reporting line from IT management to senior level management;
    b. Appropriate separation of duties between business functions and IT functions;
    c. Appropriate separation of duties within the IT function;
    d. Coordination and reporting line between IT management and compliance management; and
    e. Board and management committee structures (responsibility and authority).

[Click&type]

4. Determine the existence of a board approved, comprehensive information security program.

[Click&type]

5. Determine whether the board or a sub-committee of the board reviews the IT risk management process, including risk identification, risk assessment, and risk mitigation. Further, determine whether management has developed adequate policies, standards, and procedures to manage technology risk and whether they are current, documented, and appropriately communicated. Determine whether compliance with Federal consumer financial laws is incorporated into the risk process and associated documentation.

[Click&type]

6. Determine whether the board and management oversee changes or anticipated changes in technology enterprise-wide (e.g., service provider relationships, software applications, and/or service offerings).

[Click&type]

7. Determine if management has identified all information assets and systems, including cloud-based and virtualized systems as well as critical service providers that are related to consumer financial services and/or products.

[Click&type]

8. Determine whether the board and management evaluate whether written policies, control procedures, and standards are thorough, properly reflect the complexity of the IT environment, and incorporate compliance with Federal consumer financial laws. Also, evaluate whether these policies, control procedures, and standards have been formally adopted, communicated, and enforced.

[Click&type]

9. Determine if the board and management consider whether inherent risks related to IT have been evaluated, including impact to consumers; controls have been clearly identified; and residual risks are at acceptable levels.

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10. Determine whether the entity's risk assessment program, including IT-related risk, has been formally approved by the board of directors.

[Click&type]

11. Determine whether a report of risk assessment findings, including IT-related risk, has been presented to the board of directors for review.

[Click&type]

12. Determine whether board and management evaluate the adequacy of short- and long-term IT strategic planning and resource allocation.

[Click&type]

13. Determine whether board and management oversee the controls around the system development life cycle (SDLC), including the integration of compliance with Federal consumer financial laws into the SDLC process, and whether that is appropriate for the size and complexity of the entity.

[Click&type]

14. Determine whether senior management oversees the IT change management process that aligns with the entity's IT risk appetite. Further, determine whether management has developed adequate policies, standards, and procedures to address change management for applications or systems used to support compliance with Federal consumer financial laws.

[Click&type]

15. Determine whether the board has established an ongoing, process-oriented approach to business continuity planning that is appropriate for the size and complexity of the entity.

[Click&type]

16. Determine whether management implements and uses IT system reporting and whether it produces accurate and useful reports. Determine the effectiveness of the reports used by senior management or relevant management committees to supervise and monitor the IT functions.

[Click&type]

17. Draw preliminary conclusions as to whether board and senior management oversight related to IT is strong, satisfactory, deficient, seriously deficient, or critically deficient. Further, include how IT oversight impacts compliance with Federal consumer financial laws.

[Click&type]

Module 2: Compliance Program

A sound Compliance Program is essential to the efficient and successful operation of the supervised entity. A Compliance Program includes the following components:

- Policies and procedures;
- Training;
- Monitoring and/or audit; and
- Consumer complaint response.

An institution should establish a formal, written Compliance Program, and that program generally should be administered by a chief compliance officer. In addition to being a planned and organized effort to guide the entity's compliance activities, a written program represents an essential source document that may serve as a training and reference tool for employees. A well-planned, implemented, and maintained Compliance Program may prevent or reduce regulatory violations, protect consumers from non-compliance and associated harms, and help align business strategies with outcomes. The examination objectives and procedures for the Compliance Program are divided in this module among the four components.

Policies and Procedures – Examination Objectives

Compliance policies and procedures should document and be sufficiently detailed to implement the board-approved policy documents. Examiners should seek to determine whether compliance policies and procedures:

1. Are designed to effectively manage IT controls and compliance risk in the products, services and activities of the institution.
2. Are consistent with board-approved compliance policies.
3. Address compliance with applicable Federal consumer financial laws in a manner designed to minimize violations and to detect and minimize associated risks of harm to consumers.
4. Cover the full life cycle of all IT products (e.g., software programs, systems, and components) and/or services offered.
5. Are maintained and modified to remain current and complete, and to serve as a reference for employees in their day-to-day activities.

Policies and Procedures – IT Examination Procedures

1. Review and understand how the consumer compliance program is structured and how it interacts with IT functions and controls to ensure compliance with Federal consumer financial laws.

[Click&type]

2. Review policies and procedures pertaining to the creation and maintenance of IT policies and procedures.

[Click&type]

3. Request and review IT policies and procedures that may impact compliance with Federal consumer financial laws.

[Click&type]

4. Review IT policies and procedures to determine whether and how they address new or amended Federal consumer financial laws.

[Click&type]

5. Determine whether the entity follows IT policies and procedures, including a system development life cycle (SDLC) which integrates compliance with Federal consumer financial laws where applicable, when developing systems to support new products or services.

[Click&type]

6. Determine if IT policies and procedures maintained by different regional, business unit, or legal entities are consistent with applicable corporate or board-level policies. If any inconsistencies are noted, determine if they are justified by business necessity or market condition.

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7. Review IT procedures related to record retention and destruction timeframes for compliance with related internal policies and legal requirements.

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8. Draw preliminary conclusions as to whether IT policies and procedures are strong, satisfactory, deficient, seriously deficient, or critically deficient. Further, include how IT policies and procedures may impact compliance with Federal consumer financial laws.

[Click&type]

Training – Examination Objectives

Education of an entity's board of directors, management, and staff is essential to maintaining an effective compliance program. Board members should receive sufficient information to enable them to understand the entity's responsibilities and the commensurate resource requirements. Management and staff should receive specific, comprehensive training that reinforces and helps support written policies and procedures. Requirements for compliance with Federal consumer financial laws, including prohibitions against unlawful discrimination and unfair, deceptive, and abusive acts and practices, should be incorporated into training for all relevant officers and employees, including audit and applicable IT personnel. Examiners should seek to determine whether:

1. Training is comprehensive, timely, and specifically tailored to the particular responsibilities of the staff receiving it.

2. The training program is updated proactively in advance of the rollout of new or changed products or the effective date of new or changed consumer protection laws and regulations to ensure that all staff is aware of compliance responsibilities.

3. Training is consistent with policies and procedures and designed to reinforce those policies and procedures.

4. Compliance and IT professionals have access to training that is necessary to administer programs that are tailored to the supervised entity's risk profile, business strategy, and operations.

Training – IT Examination Procedures

1. Request and review the schedule, record of completion, and materials for recent security awareness training of all employees, including executive officers, contractors, and board members.

[Click&type]

2. Request and review policies, schedules, training content, and records of completion for IT role-based training of IT staff. In addition, request and review documents demonstrating that service providers with IT responsibilities are appropriately trained.

[Click&type]

3. Determine the involvement of management in selecting, reviewing, or delivering IT training content. Review IT training developed as a result of management commitments to address monitoring, audit, or examination findings and recommendations or issues raised in consumer complaints and inquires.

[Click&type]

4. Review records of follow-up, escalation, and enforcement for IT staff training completion rates that do not meet the supervised entity's standards or deadlines.

[Click&type]

5. Request and review the entity's plans for additions, deletions, or modifications to IT training over the next 12 months and compare actual training activities to prior plans.

[Click&type]

6. Draw preliminary conclusions as to whether the IT training program is strong, satisfactory, deficient, seriously deficient, or critically deficient.

[Click&type]

Monitoring and/or Audit – Examination Objectives

Monitoring is a compliance program element that seeks to identify CMS weaknesses by promptly identifying and correcting weaknesses. Monitoring is generally more frequent and less formal than audit, may be carried out by the business unit, and does not require the same level of independence from the business or compliance function that an audit program requires.

Conversely, audit is generally less frequent and more formal than monitoring, may be carried out by an institution's internal audit department or outside contracted party, and is generally independent of the business or compliance function that does the monitoring.

The audit function should review an institution's compliance with Federal consumer financial laws and adherence to internal policies and procedures, and it should be independent of both the compliance program and business functions. IT and compliance audit programs provide the board of directors, or its designated committees, with a determination of whether policies and procedures adopted by the board to guide risk management are being implemented and followed to provide for the level of compliance and consumer protection established by the board.

Examiners should evaluate monitoring and audit programs to determine whether they are commensurate with the institution's size, complexity, and risk profile. In some instances, particularly in institutions that are small, are non-complex in their organizational or operational structure, and that engage in products and services that present low risk of consumer harm, it is possible that the institution's CMS only has one of these functions. In instances where an institution does not have both functions, examiners should evaluate whether coverage is commensurate with the institution's size, complexity, and risk profile.

Examiners' review of compliance monitoring and/or audit should determine whether:

1. Compliance monitoring practices, management information systems, reporting, compliance audit, and internal control systems, including IT controls, are comprehensive, timely, and successful at identifying and measuring material compliance risk management throughout a specific product line and/or the institution.

2. Programs are monitored proactively to identify procedural or training weaknesses to mitigate regulatory violations. Program modifications are made timely to minimize compliance risk.

3. The institution is determining that financial services, transactions, and other consumer engagements supported by IT systems are handled according to the entity's policies and procedures.

4. Monitoring considers the results of risk assessments or other guides for prioritizing reviews.

5. Findings resulting from monitoring reviews are escalated to management and to the board of directors, as appropriate.

6. The audit program is sufficiently independent and reports to the board or a committee of the board.

7. The audit program addresses compliance with all applicable Federal consumer financial laws.

8. The schedule and coverage of audit activities is appropriate for the institution's size, complexity, risk profile; consumer financial product offerings; and manner of conducting its consumer financial products business.

9. All appropriate compliance and business unit managers receive copies of audit reports in a timely manner.

Monitoring and/or Audit –IT Examination Procedures

1. Determine whether management has Quality Assurance (QA) and Quality Control (QC) procedures defined for significant IT activities and whether those procedures are performed internally or externally.

[Click&type]

2. Review policies and procedures pertaining to IT audit.

[Click&type]

3. Evaluate the independence of the monitoring and/or audit function and the degree to which it identifies and reports weaknesses and risks to the board of directors or its audit committee. Determine whether auditor expertise and training is sufficient for the complexity of the IT function in relation to the technology and overall risk at the entity.

[Click&type]

4. If IT monitoring and/or audit is performed by a third party, request and review the applicable policy, engagement letters, and contracts covering the review period.

[Click&type]

5. Evaluate the quality of IT audit oversight and support provided by the board of directors and management. Include an evaluation of the board and management's approved risk assessment process to ensure IT audit plans address all significant IT functions.

[Click&type]

6. Determine whether monitoring and/or audit coverage includes assessment of IT system capabilities and compliance with Federal consumer financial laws and regulations, including information security controls related to consumer compliance.

[Click&type]

7. Evaluate the entity's audit coverage of user and system access. Ensure the audit covers access restrictions, unauthorized access, the number of employees requiring access, and the different types of access (i.e., logical or physical).

[Click&type]

8. Determine if the entity adjusts risk assessments in response to IT audit and monitoring results.

[Click&type]

9. Evaluate the process for ensuring IT monitoring, audit, and/or related regulatory findings are fully remediated or mitigated.

[Click&type]

10. Draw preliminary conclusions as to whether the IT monitoring and/or audit function is strong, satisfactory, deficient, seriously deficient, or critically deficient. Further, include how the IT monitoring and/or audit function impacts compliance with Federal consumer financial laws.

[Click&type]

Consumer Complaint Response – Examination Objectives

An effective CMS should ensure that an institution is responsive and responsible in handling consumer complaints and inquiries. Intelligence gathered from consumer contacts should be organized, retained, and used as part of an institution's CMS. The institution should be making a deliberate, good faith effort toward resolution of each consumer complaint.

Examiners will consider consumer complaints to determine the responsiveness and effectiveness of the consumer complaint resolution process. Examiners will assess whether:

1. Processes and procedures for addressing consumer complaints are appropriate.
2. Consumer complaint investigations and responses are reasonable.
3. Consumer complaints and inquiries, regardless of the channel through which they are submitted, are appropriately recorded and categorized.
4. Consumer complaints and inquiries, whether regarding the entity or its service providers, are addressed and resolved promptly.
5. Consumer complaints that raise legal issues involving potential consumer harm from unfair treatment or discrimination, unauthorized product enrollment, account openings or upgrades (including the addition of ancillary products), improper sales practices, imminent foreclosures, or other regulatory compliance issues, are appropriately categorized and escalated.
6. Management monitors consumer complaints to identify risks of potential consumer harm and CMS deficiencies, including risks to consumers for which IT issues may be the root cause, and takes appropriate prospective and retrospective corrective action.

7. Consumer complaints result in retrospective corrective action to correct the effects of the supervised entity's actions when appropriate.

8. The nature or number of substantive complaints from consumers indicates that potential weaknesses in the CMS exist.

Consumer Complaint Response – IT Examination Procedures

1. Obtain and review IT-related consumer complaints and inquiries about the entity and its service providers.

[Click&type]

2. Determine whether the entity's policies and procedures for receiving, escalating, and resolving IT issues from consumer complaints and inquiries are adequate for the entity's size, complexity, and risk profile.

[Click&type]

3. Evaluate the entity's responses, corrective actions, analysis, and categorization of IT-related consumer complaints and inquiries.

[Click&type]

4. Determine whether corrective action is offered or taken for any IT-related complaint resulting in a conclusion of violation of law or regulation.

[Click&type]

5. Draw preliminary conclusions as to whether the supervised entity's response to IT-related consumer issues and concerns is strong, satisfactory, deficient, seriously deficient, or critically deficient.

[Click&type]

Module 3: Service Provider Oversight

The CFPB recognizes that the use of service providers is often an appropriate business decision for institutions. Institutions may outsource certain functions to service providers due to resource constraints, or expertise constraints.

The fact that an institution enters into a business relationship with a service provider, however, does not negate the institution's responsibility in complying with Federal consumer financial law. A service provider that is unfamiliar with the legal requirements applicable to the products or services being offered, or that does not make efforts to implement those requirements carefully and effectively, or that exhibits weak internal controls, can harm consumers and create potential liabilities for both the service provider and the entity with which it has a business relationship. Depending on the circumstances, legal responsibility may lie with the institution as well as with the supervised service provider.

Service Provider Oversight – Examination Objectives

Examiners should determine whether institutions have met the following expectations regarding service provider oversight:

1. The institution has developed and implemented an appropriate risk management program for service providers based on the size, scope, complexity, importance, and potential for consumer harm.
2. The institution's service provider risk management program includes initial and ongoing due diligence reviews to verify that the service provider understands and is capable of complying with Federal consumer financial law.
3. The institution ensures that the service provider conducts appropriate training and oversight of employees or agents that have consumer contact or compliance responsibilities.
4. The institution has included in its contract with the service provider clear expectations about compliance, as well as appropriate and enforceable consequences for violating any compliance-related responsibilities, including engaging in discrimination and unfair, deceptive, or abusive acts or practices.
5. The institution has established internal controls and ongoing monitoring to determine whether the service provider is complying with Federal consumer financial law.
6. The institution takes prompt action to fully address any problems identified through the monitoring process, including terminating the relationship where appropriate.

Service Provider Oversight –IT Examination Procedures

1. Determine whether and to what extent the entity uses service providers to support IT functions that could have implications for compliance with Federal consumer financial laws.

[Click&type]

2. Request and review the entity's risk management program for service providers that support IT functions that could have consumer compliance implications.

[Click&type]

3. For critical service providers with access to sensitive customer information, evaluate the entity's assessment of these service providers' written information security programs.

[Click&type]

4. Determine whether the entity maintains policies and procedures related to application or system acquisition activities where the application or system is used to support compliance with Federal consumer financial laws. This includes the project management standards, methodologies, and practices for application development.

[Click&type]

5. Determine whether the entity has policies, procedures, and processes in place to take prompt corrective action to fully address changes or conversions to service provider information systems, as well as any problems identified through the monitoring process, including termination, when appropriate.

[Click&type]

6. Where indicated by the risk assessment, determine whether management reviews IT audit summaries, test results, and other equivalent evaluations of their service providers to confirm that they are fulfilling contractual obligations.

[Click&type]

7. Determine if the entity has formal service level agreements with all of its third-party providers and if the agreements include assurance of continued service.

[Click&type]

8. Draw preliminary conclusions as to whether the institution's service provider oversight is strong, satisfactory, deficient, seriously deficient, or critically deficient. Consider the impact that this conclusion has on conclusions regarding Board and Management Oversight and components contained within the Compliance Program.

[Click&type]

Module 4: Violations of Law and Consumer Harm

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 an institution denies the consumer credit or discourages an application in violation of the Equal Credit Opportunity Act.

When violations and consumer harm are identified, it is important for examiners to consider whether the institution's CMS identified the violation and implemented appropriate corrective action. Self-identification and correction of violations of law reflect strengths in an institution's CMS. A CMS appropriate for the size, complexity and risk profile of an institution's business often will minimize violations or will facilitate early detection of potential violations. This early detection can limit the size and scope of consumer harm. Moreover, self-identification and corrective action on serious violations represents evidence of an institution's commitment to responsibly address underlying risks. 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.

Violations of Law and Consumer Harm – Examination Objectives

In the event that examiners identify violations of Federal consumer financial law, they should consider the following factors:

1. The root cause of the violation: the degree to which weaknesses in the CMS contributed to the violation(s) of Federal consumer financial law. In many instances, the root cause of a violation may be 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.

2. The severity of consumer harm: the type of harm, if any, that resulted from the violation(s) of Federal consumer financial law. More severe harm results in a higher level of supervisory concern. For example, some violations may cause significant financial harm to a consumer, while other violations may cause negligible harm, based on the specific facts involved.

3. The duration of the violation: the length of time over which the violation(s) of Federal consumer financial law 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.

4. The pervasiveness of the violations: the extent of the violation(s) of Federal consumer financial law 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 is of the highest supervisory concern.

Violations of Law and Consumer Harm – Examination Procedures

The following examination procedures should be conducted in the event that Examiners note violations of Federal consumer financial law:

1. Determine the root cause of the violation(s) by identifying the weaknesses in the institution's CMS that contributed to the noted violations(s). Review preliminary conclusions drawn from Modules 1, 2, and 3 on the component(s) identified as the root cause and revise those conclusions accordingly, keeping in mind that not all violations of law indicate weaknesses in CMS.

[Click&type]

2. Determine whether the institution self-identified violation(s) and consumer harm and assess the effectiveness of any corrective action implemented as a result.

[Click&type]

3. Draw a conclusion as to whether the violations are a result of minor weaknesses, modest weaknesses, material weaknesses, serious deficiencies, or critical deficiencies in the CMS.

[Click&type]

4. Assess the severity of the consumer harm that resulted from the violations(s) by determining the degree of impact that the violation has on consumers. Consider the degree of financial impact or impact of non-financial harm.

[Click&type]

5. Draw a conclusion as to whether the type of harm resulting from the violation(s) would have a minimal, limited, considerable, or serious impact on consumers.

[Click&type]

6. Assess the duration of the violation(s) and resulting consumer harm by determining the time period over which the violation occurred. Consider whether management was aware of the violation(s) and whether they took action to resolve the issue or allowed it to continue.

[Click&type]

7. Determine the pervasiveness of the violation(s) and consumer harm by considering the number of affected consumers. Consider whether the violation(s) and consumer harm are limited or whether they are widespread or in multiple products or services.

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Module 5: Examiner Conclusions and Wrap-Up

To conclude this supervisory activity, examiners must complete all the steps under this section, regardless of the entity's risk profile:

1. Summarize the findings, supervisory concerns and conclusions for each Module completed.

[Click&type]

2. Identify action needed to correct weaknesses in the institution's CMS.

[Click&type]

3. Discuss findings with the institution's management and, if necessary, obtain a commitment for corrective action.

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4. Record findings according to Bureau policy in the Examination Report/Supervisory Letter.

[Click&type]

5. Prepare a memorandum for inclusion in the work papers and CFPB's official system of record that outlines planning and strategy considerations for the next examination and, if appropriate, interim follow-up.

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Automobile Finance Examination Procedures

Exam Date:	**[Click&type]**
Prepared By:	**[Click&type]**
Reviewer:	**[Click&type]**
Docket #:	**[Click&type]**
Entity Name:	**[Click&type]**
Event No.:	**[Click&type]**

After completing the examination risk assessment and scoping, examiners should use these procedures to conduct an automobile finance examination. Because the Consumer Financial Protection Bureau (CFPB or Bureau) expects regulated entities under its supervision and enforcement authority to have an effective compliance management system adapted to its business strategy and operations, examiners should also use the Compliance Management Review (CMR) procedures to review and test components of the supervised entity's compliance management system.[1]

These procedures are organized into seven modules, which include guidance for examining all aspects of auto finance. As determined by the examination scope, and in conjunction with the CMR procedures, each examination will include parts of one or more of the following modules. Module 7 – Examiner Conclusions and Wrap-up is a required module and must be completed for all examinations.

Module 1 Company Business Model

Module 2 Advertising and Marketing

Module 3 Application and Origination

Module 4 Payment Processing and Account Maintenance

Module 5 Collections, Debt Restructuring, Repossession, and Accounts in Bankruptcy

Module 6 Credit Reporting, Information Sharing, and Privacy

Module 7 Examiner Conclusions and Wrap-up

[1] A supervised entity must develop and maintain an effective compliance management system that is integrated into the overall framework for product design, delivery, and administration of the entire product and service lifecycle. Ultimately, compliance should be part of the day-to-day responsibilities of management and the employees of a supervised entity; issues should be self-identified; and corrective actions should be initiated by the entity. Supervised entities are also expected to manage relationships with service providers to ensure that these providers effectively manage compliance with Federal consumer financial laws applicable to the product or service being provided. *See CFPB Supervision and Examination Manual,*https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/; *see also CFPB Compliance Bulletin and Policy Guidance*; 2016-02, Service Providers, https://www.consumerfinance.gov/policy-compliance/guidance/supervisory-guidance/compliance-bulletin-and-policy-guidance-2016-02-service-providers/.

Examination Objectives

1. To assess the supervised entity's compliance management system, including internal controls, policies, and procedures for preventing violations of Federal consumer financial law.
2. To identify acts or practices that materially increase the risk of violations of Federal consumer financial law.
3. To gather facts that help determine whether a supervised entity engages in acts or practices that are likely to violate Federal consumer financial law.
4. To determine, in consultation with headquarters, whether a violation of a Federal consumer financial law has occurred, and whether further supervisory or enforcement action is appropriate.

Background

Section 1024 of the Dodd-Frank Act (12 U.S.C. 5514(a)(1)(B)) gave the CFPB supervisory authority over "larger participants" of certain markets for consumer financial products or services, as the CFPB defines by rule.[2] Under this authority, the Bureau issued its final rule defining larger participants of the automobile financing market, 12 CFR 1090.108, on June 30, 2015.[3] The rule became effective on August 31, 2015.[4]

Per the rule, a nonbank covered person that engages in automobile financing is generally a larger participant if such person has at least 10,000 aggregate annual originations,[5] which the Bureau defined to include the following transactions:

- Credit granted for the purpose of purchasing an automobile;
- Automobile leases;

[2] Pub. L. No. 111-203 (2010).

[3] Defining Larger Participants of the Automobile Financing Market and Defining Certain Automobile Leasing Activity as a Financial Product or Service, 80 Fed. Reg. 37495 (June 30, 2015).

[4] *Id*.

[5] 12 CFR 1090.108(b).

- Refinancings of credit granted for the purpose of purchasing an automobile (and any subsequent refinancings thereof) that are secured by an automobile; and
- Purchases or acquisitions of any of the foregoing obligations.[6]

The rule also clarified that auto dealers, including Buy-Here, Pay-Here (BHPH) dealers, are not larger participants under the rule.[7]

Sources of Auto Financing

Consumers often purchase or obtain a vehicle by acquiring credit or entering into a lease arrangement. When acquiring credit, consumers can go through an indirect or a direct channel.

Indirect Lending Channel

With indirect lending, or dealer arranged financing, the dealer, rather than the consumer, typically selects the lender that will provide financing. Upon completion of the vehicle selection process, the dealer collects the consumer's credit application information and forwards that information to one or more lenders using a standardized platform, such as DealerTrack, RouteOne, or Credit Union Direct Lending (CUDL).

When selecting a lender to approve the loan, the dealer may have incentives to select a particular lender over another. For example, a franchised dealer, a dealer that sells vehicles for certain auto manufacturers, may have incentives, such as promotional discounts or limited-time financing offers, to use the manufacturer's subsidiary finance company – typically called a captive finance company – over another lender. Regardless of which lender the dealer selects, the underwriting and approval process is typically the same. That is, after evaluating the applicant, the lender will provide the dealer with its credit decision, including purchase eligibility criteria and other stipulations, such as a risk-based "buy rate."[8]

After receiving a credit decision, the dealer will then finalize a retail installment sales contract with the consumer and subsequently sell that contract to the lender that provided the dealer with

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[6] 12 CFR § 1090.108(a)(i)(A).

[7] *Id*. § 1090.108(c); Section 1029 of the Dodd-Frank Act, 12 USC 5519, limits the Bureau's authority over auto dealers. The final larger participant rule references this exclusion. *See* 12 CFR 1090.108(c)(1). The larger participant rule also excludes motor vehicle dealers that are predominantly engaged in the sale (and/or leasing) and servicing of motor vehicles and operate a line of business that involves the extension of retail credit or retail leases directly to consumers without routinely assigning them to unaffiliated third party finance or leasing sources. *See* 12 CFR 1090.108(c)(2) (citing 12 USC 5519(b)(2) and (f)(2)); *see also* 80 Fed. Reg. at 37515-16 (explaining the exclusion for BHPH dealers in paragraph (c)(2)).

[8] The "buy rate" establishes the minimum interest rate at which the finance company is willing to purchase the retail installment sales contract executed between the consumer and the dealer for the purchase of the vehicle.

an approved credit decision. The lender will then own and service the loan, or transfer those rights and responsibilities to another company.

Direct Lending Channel

In the direct lending context, consumers directly apply for financing with a finance company, bank, or credit union of their choosing. After receiving an approval, the consumer will use the loan proceeds to directly purchase a vehicle from a seller.

Leasing

A lease agreement, between a lessor and lessee, sets forth terms that allow the lessee to use the vehicle for a set number of months, typically 12 to 48 months, while making a payment to the lessor each month. Leasing a vehicle is similar to obtaining credit in that both require an application, decision, and ongoing contractual obligation. For example, like a consumer seeking credit to purchase a vehicle, a consumer seeking to lease a vehicle must provide basic financial information such as income and credit history. Moreover, by signing the lease agreement, the consumer undertakes a major financial obligation in the form of a commitment to make a stream of payments over a specified period. The consumer can typically purchase the vehicle at the end of the lease term for a pre-determined amount, which is generally based on the residual value of the vehicle.[9]

Buy-Here, Pay-Here

While most Buy-Here, Pay-Here (BHPH) dealers are independently owned entities that serve as the primary lender and servicer, some larger BHPH dealers sell or assign their contracts to an affiliated BHPH finance company once the contract has been consummated with the consumer.

Ancillary Products and Services

In addition to the actual vehicle, auto dealers and finance companies sometimes offer ancillary, or add-on, products and services at the time of vehicle purchase. For example:

- Guaranteed Auto Protection or Guaranteed Asset Protection (GAP) is a product designed to cover the difference, or "gap," between the amount owed by the consumer on the auto loan and the amount received from the auto insurer in the event the vehicle is stolen, damaged, or totaled.

  Generally, there are two types of GAP products in the market. A "GAP waiver" is a contractual agreement between the consumer and the finance company to cancel the debt in the event the vehicle is stolen, damaged, or totaled. The agreement typically appears in the

[9] The residual value is the projected market value of the vehicle at the end of the lease, which is used in calculating the amount the consumer would have to pay to purchase the vehicle at the end of the lease term.

retail installment sales contract or as an addendum to the sales contract. Most lease contracts offered by a captive finance company will typically include a GAP waiver.

A "GAP waiver insurance" is an agreement between a consumer and an insurer. With this product, the consumer agrees to pay the insurer premiums for coverage and in return, the insurer agrees to pay the consumer the "gap" amount in the event of a total loss. Upon receiving this payout, the consumer will typically use it to pay off the remaining balance on the auto loan.

- An Extended Warranty is a product that covers the cost of some repairs either in addition to or after the manufacturer's warranty ends. These products typically exclude routine maintenance, such as oil changes and tire replacements.
- Credit insurance is a product in which the provider agrees to make the consumer's auto payments upon the occurrence of certain situations, such as death or disability. There are four main types of credit insurance:
  - Credit life insurance – pays off all or some of the outstanding balance on the loan in the event the consumer dies;
  - Credit disability insurance – makes payments on the loan if the consumer becomes ill or injured and, as a result, cannot work;
  - Involuntary unemployment insurance – makes payments on the loan if the consumer becomes unemployed; and
  - Credit property insurance – protects the car secured by the loan from events such as theft, accident, or natural disasters. This differs from property insurance.

Applicable Laws/Regulations

Entities offering auto finance products or services must comply with Federal consumer financial laws to the extent that the law applies to the particular entity and its activities:

- The Truth in Lending Act (TILA) and its implementing regulation, Regulation Z, require creditors to disclose information relating to the cost of loans, comply with advertising requirements, and process credit balances.
- The Consumer Leasing Act (CLA) and its implementing regulation, Regulation M, require lessors to provide specific disclosures prior to consummation of a consumer lease and include certain disclosures in advertisements that contain specified triggering terms.
- The Electronic Fund Transfer Act (EFTA) and its implementing regulation, Regulation E, protect consumers engaging in electronic fund transfers. Among other things, Regulation E prohibits persons from requiring, as a condition of loan approval, a customer's authorization for loan repayment through a recurring electronic funds transfer (EFT) except in limited circumstances.

- The Fair Debt Collection Practices Act (FDCPA) governs collection activities conducted by third party collection agencies, as well as servicer collection activities if the servicer acquired the loan when it was already in default.
- The Fair Credit Reporting Act (FCRA) and its implementing regulation, Regulation V, require that furnishers of information to consumer reporting agencies ensure the accuracy of data they place in the consumer reporting system. Additionally, the FCRA prohibits the use of consumer reports for impermissible purposes, and it requires users of consumer reports to provide certain disclosures to consumers. The FCRA also limits certain information sharing between affiliated companies. Examiners should note that the FCRA's implementing regulations may differ for depository and non-depository institutions.
- The Gramm-Leach-Bliley Act (GLBA) and its implementing regulation, Regulation P, require entities to provide privacy notices and limit information sharing in particular ways.
- The Equal Credit Opportunity Act (ECOA) and its implementing regulation, Regulation B, set forth requirements for accepting applications and providing notice of any adverse action, and prohibit discrimination against any borrower with respect to any aspect of a credit transaction:
  - On the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to 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.[10]

  If examiners identify concerns related to ECOA or Regulation B, they should consult with the Fair Lending team in the Office of Supervision Policy, as those issues are beyond the scope of these procedures. An examination of whether an entity's auto finance activities involve discrimination or other practices in violation of the ECOA will rely on procedures outlined in the CFPB's ECOA Examination Procedures.

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[10] The Consumer Credit Protection Act, 15 USC 1601 *et seq*., is the collection of federal statutes that protects consumers when applying for or receiving credit. The Act includes statutes that have dispute rights for consumers, such as the Fair Credit Reporting Act. The ECOA prohibits discriminating against an applicant who has exercised a dispute right pursuant to one of the statutes outlined in the Act.

To carry out the **Examination Objectives**, the examination process may also include assessing other risks to consumers. Collecting information about risks to consumers, whether or not there are specific legal guidelines addressing such risks, can help inform the CFPB's policymaking. Moreover, these risks may include potentially unfair, deceptive, or abusive acts or practices (UDAAPs) with respect to the entity's interactions with consumers.[11] The CFPB uses the following standards when assessing UDAAPs:

- A representation, omission, act, or practice is deceptive when:
  - The representation, omission, act, or practice misleads or is likely to mislead the consumer;
  - The consumer's interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and
  - The misleading representation, omission, act, or practice is material.
- An act or practice is unfair when:
  - It causes or is likely to cause substantial injury to consumers;
  - The injury is not reasonably avoidable by consumers; and
  - The injury is not outweighed by countervailing benefits to consumers or to competition.
- An abusive act or practice:
  - Materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or
  - Takes unreasonable advantage of –
    - A lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;
    - The inability of the consumer to protect the consumer's interests in selecting or using a consumer financial product or service; or
    - The reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

[11] Section 1036 of the Dodd-Frank Act, 12 USC 5536.

Refer to the examination procedures regarding UDAAPs for more information about the legal standards and the CFPB's approach to examining for UDAAPs.

The particular facts in a case are crucial to a determination of UDAAPs. As set forth in the **Examination Objectives** section, examiners should follow the CFPB internal consultation requirements to determine whether the applicable legal standards have been met before a violation of any Federal consumer financial law is cited, including a UDAAP violation.

General Considerations

Completing the examination modules, as applicable, will allow examiners to develop a thorough understanding of a regulated entity's practices and operations. To complete the modules, examiners should obtain and review, as applicable, each entity's:

- Organizational charts and process flowcharts;
- Board minutes, annual reports, or the equivalent, to the extent available;
- Relevant management reporting;
- Policies and procedures;
- Compensation and employee incentive structures and policies;
- Rate sheets;
- Fee sheets;
- Loan/lease applications;
- Loan/lease underwriting guidelines;
- Loan/lease account documentation, notes, disclosures, and all other contents of underwriting and closing files;
- Operating checklists, worksheets, and review documents;
- Relevant computer program and system details;
- Dealer agreements, due diligence and monitoring procedures, and origination (lending or leasing) procedures;
- Servicing related policies and procedures, such as those related to payment posting and payment allocation, and repossessions;
- Service provider due diligence and monitoring procedures, and service provider contracts;
- Compliance monitoring and/or audit reports;

- Management's responses to compliance monitoring and/or audit findings;
- Debt collection practices;
- Repossession reports;
- Training programs and materials;
- Advertisements; and
- Complaints.

Examiners should request that the entity provide a "walkthrough" of its origination and servicing processes using one or two specific consumer accounts as an example. Examiners should obtain access to, or a walkthrough of, the entity's online services such as its origination interface and online applications, and servicing interface and online payments.

Depending on the scope of the examination, examiners should perform transaction testing using approved sampling procedures, which may require use of a judgmental or statistical sample. Examiners should also conduct interviews with management and staff to determine whether they understand and consistently follow the policies, procedures, and regulatory requirements applicable to automobile financing; manage change appropriately; and implement effective controls. Examiners should also consider observing live or recorded customer interactions if consumer complaints or transaction testing indicate potential concerns.

Module 1 – Company Business Model

Examiners should review the entity's portfolio and interview management to understand its business model.

1. Determine the type of products and services the entity offers and its strategy.

[Click&type]

2. Determine the product volume, mix, trends, and concentrations.

[Click&type]

3. Review the organizational chart and reporting structure to determine the responsibilities of key managers.

[Click&type]

4. Determine whether the compliance and underwriting functions operate independently of the production function (sales unit).

[Click&type]

5. Assess the overall effectiveness of the entity's compliance management system (CMS). An effective CMS commonly has two interdependent control components: board and management oversight and compliance program, which includes policies and procedures, training, monitoring and/or audit, and consumer complaint response. Additionally, an institution's compliance expectations extend to service provider relationships into which the institution has entered. **Please refer to the Compliance Management Review (CMR) examination procedures for more information**.

[Click&type]

Module 2 – Advertising and Marketing

Examiners should develop a detailed understanding of the entity's marketing program to determine whether its marketing policies, procedures, and practices are consistent with the requirements of applicable Federal consumer financial laws.

1. Determine the relationships that the entity has with affiliated or other third parties to advertise, offer, sell, or provide loans, leases, or other products and services.

[Click&type]

2. Assess how the entity reaches its potential customers through its statements, advertising, or other marketing representations. Examiners should review:

   a. Marketing and advertising materials, including signs or other displays and prescreened solicitations; and

   b. The criteria used to determine the potential recipients of the particular solicitations.

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Truth in Lending Act/Regulation Z

1. Review advertising policies and procedures used by the entity to ensure that there are adequate controls and procedures in place to ensure compliance.

[Click&type]

2. Review a sample of the entity's advertisements, including any electronic advertising, and verify that any specific credit terms advertised actually are or will be arranged or offered by the creditor. Also verify that required disclosures are made clearly and conspicuously. (12 CFR 1026.24(a) and (b))

[Click&type]

3. If the advertisement states a rate of finance charge:

   a. Determine whether the rate is stated as an "annual percentage rate," using that term or the abbreviation "APR";

   b. Determine whether the APR may increase after consummation. If so, verify that fact is stated;

   c. Determine whether the advertisement states any other rate; and

d. If the advertisement discloses the simple annual rate or periodic rate that is applied to an unpaid balance, determine whether it is disclosed more conspicuously than the annual percentage rate. (12 CFR 1026.24(c))

[Click&type]

4. When triggering terms are used, determine whether the advertisements contain the additional required terms in a clear and conspicuous manner. (12 CFR 1026.24(b) and (d))

[Click&type]

5. If an advertisement appearing in a catalog, electronically, or other multiple-page advertisement uses a table or schedule to comply with the requirements in 12 CFR 1026.24(d)(2), determine whether the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered. (12 CFR 1026.24(e)(2))

[Click&type]

6. If television or radio advertisements use triggering terms, determine whether the advertisement provides the additional terms either by:

   a. Clearly and conspicuously stating each of the additional required terms; or

   b. Clearly and conspicuously stating the "annual percentage rate" and, if the rate may increase after consummation, that fact, and a toll-free number, or any telephone number that allows a consumer to reverse the phone charges when calling, along with a reference that such number may be used to obtain additional information. (12 CFR 1026.24(g))

[Click&type]

Consumer Leasing Act/Regulation M

1. Review advertising policies and procedures used by the entity to ensure that there are adequate controls and procedures in place to ensure compliance.

[Click&type]

2. Review a sample of the entity's advertisements, including any electronic advertisements, and verify that the advertised terms are usually and customarily available, or that the lessor will lease the property at those terms. Also verify that required disclosures are made clearly and conspicuously. (12 CFR 1013.7(a) and (b))

[Click&type]

3. When triggering terms are used, determine whether the advertisements contain the additional required terms. (12 CFR 1013.7(d))

[Click&type]

4. If television or radio advertisements use triggering terms, determine whether the advertisement states the items listed in 12 CFR 1013.7(d)(2) or provides the alternative disclosures in 12 CFR 1013.7(f). (12 CFR 1013.7(d)(2) and (f))

[Click&type]

Fair Credit Reporting Act/Regulation V

Affiliate Marketing Opt Out – Section 624; 15 U.S.C. 1681s-3; 12 CFR 1022 Subpart C

1. Determine whether the entity receives consumer eligibility information from an affiliate. If not, Subpart C of 12 CFR 1022 does not apply.

[Click&type]

2. Determine whether the entity 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 not, Subpart C of 12 CFR 1022 does not apply.

[Click&type]

3. Determine that, where applicable, the consumer is provided with an appropriate notice and a reasonable opportunity and method to opt out of the entity's use of eligibility information to make solicitations for marketing purposes to the consumer, and that the entity is honoring the consumer's opt-outs.

[Click&type]

4. If compliance risk management weaknesses or other risks requiring further investigation are noted, obtain and review a sample of notices to ensure compliance and a sample of opt-out requests from consumers to determine if the entity 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 .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, an entity provides a consumer a renewal notice prior to making solicitations based on eligibility information received.

[Click&type]

Prescreened Consumer Reports and Opt-Out Notice – Sections 604(c) and 615(d); 15 U.S.C. 1681b(c) and 15 U.S.C. 1681m(d) 12 CFR 1022.54

1. Determine whether the entity obtained and used prescreened consumer reports in connection with offers of credit and/or insurance.

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2. Evaluate the entity's policies and procedures to determine if a list of the criteria used for prescreened offers, including all post-application criteria, is maintained in the entity's files and the criteria are applied consistently when consumers respond to the offers.

[Click&type]

3. Determine if written solicitations contain the required disclosures of the consumers' right to opt out of prescreened solicitations and if the solicitations comply with all requirements applicable at the time of the offer.

[Click&type]

4. If procedural weaknesses 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.

[Click&type]

Other Risks to Consumers

1. Assess whether the entity clearly and prominently discloses the material terms and conditions of the auto loan, lease, or other products and services.

[Click&type]

2. Determine whether the entity engages in any deceptive acts or practices when marketing its products.

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3. Determine whether the promotional materials clearly and prominently disclose any material limitations, conditions, or restrictions on the offer. This is of particular importance when the entity uses terms such as “rewards,” “discounts,” or “free.”

[Click&type]

4. Determine whether the entity clearly and prominently discloses the optional nature of any optional products and whether the decision to purchase an optional product is considered in decisions to grant financing.

[Click&type]

5. Determine whether the entity reviews or monitors recorded telephone calls, transcripts of online communications, and websites to ensure that advertising and solicitations comply with applicable Federal consumer financial laws.

[Click&type]

Module 3 – Application and Origination

When entities take applications, evaluate applicants, and originate auto loans or leases, they are subject to the legal requirements discussed below. Examiners should determine whether the entity's application and origination practices are consistent with these legal requirements.

Truth in Lending Act/Regulation Z

Disclosure Forms

1. Determine if the entity has changed any TILA disclosure forms or if there are forms that have not previously been reviewed for accuracy. If so, verify the accuracy of each disclosure by reviewing the following:

   a. Note and/or contract forms (including those furnished to dealers); and

   b. Standard closed-end credit disclosures. (12 CFR 1026.17(a) and 1026.18)

[Click&type]

Closed-End Credit Transactional Testing Procedures

1. Determine that the disclosures are clear, conspicuous, grouped together or segregated as required, and provided in writing in a form the consumer may keep. For disclosures provided electronically (other than for advertising requirements), determine whether those disclosures were provided in compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act). (12 CFR 1026.17(a)(1))

[Click&type]

2. Determine whether the terms "Finance Charge" and "Annual Percentage Rate" and corresponding rates or amounts are disclosed more conspicuously than other terms, except for the creditor's identity. (12 CFR 1026.17(a)(2))

[Click&type]

3. Determine whether the required disclosures were given to the consumer in writing, in a form that the consumer may keep, before consummation of the transaction. (12 CFR 1026.17(a)(1) and (b))

[Click&type]

4. Determine whether the information required by 12 CFR 1026.18(a) through (p) and (r) is disclosed, as applicable. (12 CFR 1026.18)

[Click&type]

5. Determine whether the entity retained evidence of compliance with the requirements of 12 CFR Part 1026, other than the advertising requirements, for two years after the date the disclosures were required to be made or an action was required to be taken. (12 CFR 1026.25(a))

[Click&type]

Consumer Leasing Act/Regulation M

Disclosure Forms

1. Determine if the entity has changed any CLA 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:

   a. Note and/or contract forms (including those furnished to dealers); and

   b. Standard leasing disclosures. (12 CFR 1013.3 and 4)

[Click&type]

Transactional Testing Procedures

1. Determine that the disclosures are clear, conspicuous, and provided in writing in a form the consumer may keep. For disclosures provided electronically (other than disclosures in advertisements), determine whether those disclosures were provided in compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act). (12 CFR 1013.3(a))

[Click&type]

2. Determine whether the disclosures are provided in a dated statement and in the prescribed format. (12 CFR 1013.3(a)(1))

[Click&type]

3. Determine whether the information required by 12 CFR 1013.4(b) through (f), (g)(2), (h)(3), (i)(1), (j), and (m)(1) is segregated and in a form substantially similar to the model in Appendix A. (12 CFR 1013.3(a)(2))

[Click&type]

4. Determine whether the required disclosures were made before consummation of the lease. (12 CFR 1013.3(a)(3))

[Click&type]

5. Determine whether the disclosures are accurate and include the information required by 12 CFR 1013.4(a) through (s), as applicable. (12 CFR 1013.4)

[Click&type]

6. Determine whether disclosures are given to lessees when they "renegotiate" or "extend" their leases, except as provided in 12 CFR 1013.5(d). (12 CFR 1013.5)

[Click&type]

7. Determine whether the entity retained evidence of compliance with the requirements of 12 CFR Part 1013, other than the advertising requirements, for a period of not less than two years after the date the disclosures were required to be made or an action was required to be taken. (12 CFR 1013.8)

[Click&type]

Electronic Fund Transfer Act/Regulation E

1. If the entity initiates preauthorized electronic fund transfers (EFTs), assess the entity's compliance with the applicable requirements relating to preauthorized EFTs.
   a. Determine whether the entity obtains proper written authorization for preauthorized EFTs from a consumer's account and provides a copy of the authorization to the consumer. (12 CFR 1005.10(b))
   b. Determine whether the entity conditions an extension of credit to a consumer on the consumer's repayment by preauthorized EFTs. (12 CFR 1005.10(e)(1))

[Click&type]

Fair Credit Reporting Act/Regulation V

Entities that obtain information from a consumer reporting agency to determine a consumer's creditworthiness must comply with the requirements of FCRA. When an entity denies applications for products like loans, or provides such products on materially less favorable terms to a consumer (e.g., charging a higher interest rate) because of the consumer report information it obtains, the entity must provide appropriate adverse action notice or risk-based pricing notices to the consumer. **Please refer to the FCRA examination procedures, Adverse Action Disclosures and Risk-Based Pricing Notice, for more information.**

Adverse Action Disclosures – Sections 615(a) and (b); 15 U.S.C. 1681m(a) and (b)

1. Determine whether the policies and procedures adequately ensure that the entity or other person provides the appropriate disclosures, including the consumer's credit score as appropriate, when it takes an adverse action against consumers based in whole or in part on

information contained in a consumer report or specified information received from third parties, including affiliates.

[Click&type]

2. Review the policies and procedures of the entity or other person for responding to requests for information in response to these adverse action notices.

[Click&type]

3. If procedural weaknesses or other risks requiring further investigation are noted, review a sample of adverse action notices to determine if they are accurate and in compliance.

[Click&type]

Risk-Based Pricing Notice – Section 615(h); 15 U.S.C. 1681m(h); 12 CFR 1022, Subpart H

1. Determine whether the entity uses consumer report information in consumer credit decisions. If yes, determine whether the entity 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 entity is subject to the risk-based pricing regulations.

[Click&type]

2. Determine the method the entity 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)).

[Click&type]

3. For entities that use the direct comparison method (12 CFR 1022.72(b)), determine whether the entity directly compares the material terms offered to each consumer and the material terms offered to other consumers for a specific type of credit product.

[Click&type]

4. For entities that use the credit score proxy method (12 CFR 1022.72(b)(1)):

   a. Determine whether the entity 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;

   b. Determine whether the entity recalculates the cutoff score no less than every two years;

c. For new entrants into the credit business, for new products subject to risk-based pricing, or for acquired credit portfolios, determine whether the entity recalculates the cutoff scores within time periods specified in the regulation;

d. For entities using more than one credit score to set material terms, determine whether the entity establishes a cutoff score according to the methods specified in the regulation; and

e. If no credit score is available for a consumer, determine whether the entity provides the consumer a risk-based pricing notice.

[Click&type]

5. For entities that use the tiered pricing method (12 CFR 1022.72(b)(2)):

a. When four or fewer pricing tiers are used, determine if the entity sends risk-based pricing notices to consumers who do not qualify for the top, best-priced tier; or

b. When five or more pricing tiers are used, determine if the entity 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.

[Click&type]

6. Determine whether the entity provides a risk-based pricing notice to a consumer (12 CFR 1022.72(a)). For entities that provide the notice, proceed to #7, below. If the entity does not provide a risk-based pricing notice, proceed to #8, below, to determine whether an exception applies (12 CFR 1022.74).

[Click&type]

7. 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;

h. A statement directing consumers to the website of the CFPB to obtain more information about consumer reports; and

i. If a credit score of the consumer to whom a person grants, extends, or otherwise provides credit is used in setting the material terms of credit:

   i. A statement that a credit score is a number that takes into account information in a consumer report, that the consumer's credit score was used to set the terms of credit offered, and that a credit score can change over time to reflect changes in the consumer's credit history;

   ii. The credit score used by the person in making the credit decision;

   iii. The range of possible credit scores under the model used to generate the credit score;

   iv. All of the key factors that adversely affected the credit score, which shall not exceed four key factors, except that if one of the key factors is the number of inquiries made with respect to the consumer report, the number of key factors shall not exceed five;

   v. The date on which the credit score was created; and

   vi. The name of the consumer reporting agency or other person that provided the credit score.

[Click&type]

8. If the entity 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. A consumer applies for specific terms of credit and receives them, unless those terms were specified by the entity using a consumer report after the consumer applied for the credit and after the entity obtained the consumer report;

   b. An entity provides a notice of adverse action;

   c. An entity makes a firm offer of credit in a prescreened solicitation (even if the person makes other firm offers of credit to other consumers on more favorable material terms);

d. An entity 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; or

e. An entity that otherwise provides credit score disclosures to consumers that request loans provides a disclosure for when no credit score is available.

[Click&type]

9. For entities 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 12 CFR 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 website of CFPB 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:

      i. Use the same scale as that of the credit score provided to the consumer; and

ii. Be presented:

A. 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;

B. By other clear and readily understandable graphical means; or

C. 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.

[Click&type]

10. For entities that otherwise provide credit score disclosures to consumers that request loans, determine whether the 12 CFR 1022.74(f) notice is provided to the applicable consumers in situations where no credit score is available for the consumer, as required by 12 CFR 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 website of the CFPB to obtain more information about consumer reports.

[Click&type]

11. For entities 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 entity 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 12 CFR 1022.74(d); or

    b. If an entity 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 12 CFR 1022.74(d).

[Click&type]

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)).

[Click&type]

13. For all notices, determine whether the notices are provided within the required time frames (12 CFR 1022.73(c), .74(d)(3), .74(e)(3), and .74(f)(4)), as set out as follows:

    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.

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.

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 entity has requested the credit score, but in any event, not later than consummation of a transaction in the case of closed-end credit.

Application to certain automobile lending transactions

- For automobile lending transactions made through an auto dealer that is unaffiliated with the entity, the entity may provide a notice in the time periods described above. Alternatively, the entity 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 entity arranges to have the auto dealer provide a credit score disclosure for loans not secured by residential real property, the entity complies if the consumer receives a notice containing a credit score obtained by the auto dealer within these time periods, even if a different credit score is obtained and used by the entity.
- For all notices, determine whether the entity 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, an entity must provide a risk-based notice to each consumer. If the consumers have the same address and the notice does not include a credit score(s), an entity may satisfy the requirements by providing a single notice addressed to both consumers. However, if a notice includes a credit score(s), the entity must provide a separate notice to each consumer whether the consumers have the same address or not. Each separate notice that includes a credit score(s) 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. Similarly, for credit score disclosure exception notices, whether the consumers have the same address or not, the entity must provide a separate notice to each consumer and each separate notice that includes a credit score(s) must contain only the credit score(s) of the consumer to whom the notices is provided.
- For all notices, determine whether the entity 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 in Appendix H.

[Click&type]

Optional Products

1. Determine whether the entity offers or finances optional products or services and, if so, which products or services the entity offers or finances.

[Click&type]

2. Determine how the entity tracks the sale or financing of optional products or services.

[Click&type]

3. Determine whether the entity uses a service provider in connection with the sale of any optional products or services. If so, how does the entity ensure that these providers effectively manage compliance with Federal consumer financial laws applicable to the product or service being provided?

[Click&type]

4. Determine whether the entity added optional products or services on the loan or lease without the consumer's explicit authorization.

[Click&type]

Other Risks to Consumers

1. Evaluate the underwriting practices of the entity, including the average loan to value ratios, lengths of terms, and whether the entity originates loans or leases with a high risk of default (e.g., determine if there is evidence of false or undocumented income).

[Click&type]

2. Evaluate the entity's early payment default rate.

[Click&type]

3. Evaluate the loan agreement and identify potential risks of consumer harm.

[Click&type]

4. Evaluate communications related to vehicle financing and the financing of optional products or services, including any scripts.

[Click&type]

5. Obtain records of and evaluate the communications between the entity and the dealers regarding sales incentives and production goals.

[Click&type]

Module 4 – Payment Processing and Account Maintenance

Servicers collect and process auto loan or lease payments from borrowers. Payment processing includes collecting payments such as regular payments or prepayments, posting a payment to a borrower's account, assessing fees such as late fees or nonsufficient funds charges, or providing account statements to borrowers.

To assess payment posting and fee practices, examiners should review the policies and procedures and a sample of servicing records for both loans and leases, as applicable. Examiners should begin by reviewing a sample of records from the servicer's primary record system. If potential problems are found, examiners should review copies of relevant records outside the primary system, such as copies of consumer payment records and copies of bills from vendors documenting any services related to the consumer's loan or lease account. If consumer complaints or document review indicate potential violations in these areas, examiners also may conduct interviews of consumers from the sample and ask questions relevant to each topic area below.

Payment Processing

Overview of Servicer's Activities

1. Assess the servicer's process for crediting payments to borrower accounts.

[Click&type]

2. Determine whether the servicer timely posts payments and credits the borrower's accounts.

[Click&type]

3. Determine how the servicer responds when a payment, such as a check, EFT, or other payment method from the borrower's deposit account fails, including when and how the servicer notifies the borrower of a failed transfer.

[Click&type]

4. Determine whether the servicer's customer service center has access to current loan or lease information, including whether a payment transfer has failed. Determine what practices are in place to advise the borrower when the borrower has concerns that the payment transfer may not have gone through correctly.

[Click&type]

5. Determine whether the servicer allows the borrower to access payment records, including the amortization of the loan, amount of principal and interest paid to date, and if desired, the pay-off amount. Assess the servicer's procedures for allowing borrowers to access these records.

[Click&type]

6. In assessing risks to consumers associated with payment processing, examiners may find evidence of violations of—or an absence of compliance policies and procedures with respect to—other laws, such as the Servicemembers Civil Relief Act. In these circumstances, examiners should identify such matters for appropriate action, such as, where authorized, possible referral to federal or state regulators. For example, the Servicemembers Civil Relief Act requires a servicer to reduce the interest rate that an active duty servicemember must pay on a pre-service loan (entered into before the borrower entering military service) to no more than six percent upon receiving a written request and a copy of the servicemember's military orders.

[Click&type]

Assessment of Fees

1. Determine whether the servicer informs consumers in a timely manner about fees, penalties, or other charges that have been assessed and the reasons for the assessment.

[Click&type]

2. Determine whether the servicer has assessed a late fee or other delinquency fee, even if the servicer received the full amount due on time.

[Click&type]

3. Assess late fee pyramiding: Determine whether the servicer has assessed or collected any late or delinquency fee on a payment where such fee is only attributable to late or delinquency fees assessed on earlier installments (and the payment is otherwise the amount due for the applicable period and is paid on its due date or within an applicable grace period).

[Click&type]

Application of Payments

1. Determine whether the servicer followed the order of payment application specified in the loan or lease agreements when crediting payments.

[Click&type]

2. If a borrower has multiple loans or leases with the same servicer, determine the policies for payment allocation, such as whether interest rate is considered and whether a borrower can change allocation of his or her monthly payment.

[Click&type]

3. If a borrower has multiple loans or leases with the same servicer, assess how the servicer allocates partial payments and if the servicer provides information to consumers on its default payment allocation methodology.

[Click&type]

4. Assess how the servicer handles partial payments (for example, whether the servicer credits the borrower's account for the amount received or whether the servicer uses a suspense account).

[Click&type]

5. Determine the circumstances under which the servicer sends back payments, including, if applicable, whether the servicer in a timely, clear, and understandable manner explains the reason a payment is sent back and the future payment amount that would be accepted.

   NOTE: After the servicer has provided the customer written notice that the contract has been declared in default and the remaining payments due under the contract have been accelerated, the servicer may not be required to accept payments that are insufficient to pay the full balance due.

[Click&type]

Prepayments

1. Determine whether the servicer restricts or refuses any prepayments including prepayments of future installments or principal payments.

[Click&type]

2. Determine whether the servicer assesses fees for any prepayments.

[Click&type]

3. Determine whether the servicer's process for prepayments creates any undue burden on borrowers' ability to make a prepayment.

[Click&type]

4. Determine whether information or instruction about how the servicer credits prepayments is clearly conveyed to the borrower.

[Click&type]

5. Assess whether the servicer credits prepayments to the borrower's principal balance or to a future installment of the borrower's account without reducing principal.

[Click&type]

6. Assess whether the servicer considers borrower instruction when applying the prepayment to the account and if the borrower may choose between having the additional payments applied to the borrower's principal balance or applied to a future installment without reducing principal. Does the servicer require specific instruction from the borrower, such as a written request to apply to the prepayment to a future installment or to principal?

[Click&type]

Periodic Statements

Determine whether the servicer provides borrowers with periodic statements of the account. If so, examiners should review policies, procedures, and systems to assess the content of statements provided to consumers.

1. Determine whether the statements clearly and conspicuously identify payment requirements, payment allocation, and any charges and fees.

[Click&type]

2. Determine how statements are provided to borrowers.

[Click&type]

3. Determine whether the servicer informs the borrower of any interest rate changes, and when and how this information is provided.

[Click&type]

4. Determine whether the servicer has a process to verify that interest rate and payment changes to borrower's accounts based on a change to a variable interest rate are accurate.

[Click&type]

Electronic Fund Transfer Act/Regulation E

If the servicer is within the scope of coverage and obtains electronic payments from borrowers, assess compliance with EFTA's requirements for handling authorizations for electronic payments from consumers.

1. Determine whether the servicer is complying with the appropriate disclosure requirements if the servicer is converting check payments from borrowers to electronic fund transfers (12 CFR 1005.3(b)(2)).

[Click&type]

2. Determine whether the servicer is complying with the appropriate disclosure requirements if the servicer is collecting returned item fees by electronic fund transfer (12 CFR 1005.3(b)(3)).

[Click&type]

3. Determine whether the EFT is a single or a recurring EFT that is a preauthorized electronic transfer. To qualify as a preauthorized electronic fund transfer, the transfer is one that is authorized in advance to recur at substantially regular intervals (12 CFR 1005.3, 1005.2(k)).

[Click&type]

4. If the servicer initiates preauthorized EFTs, assess the servicer's compliance with the applicable advance authorization, disclosures, and other requirements relating to preauthorized electronic fund transfers under the EFTA and Regulation E (12 CFR 1005.10).

   a. Does the servicer obtain proper written authorization for recurring preauthorized electronic fund transfers from a consumer's account and provide a copy of the authorization to the consumer (12 CFR 1005.10(b), 1005.2(k))?

   b. Will the preauthorized transfers vary in amount? If so, does the servicer, prior to each transfer, provide reasonable advance notice to the consumer, in accordance with applicable regulations, of the amount to be transferred and the scheduled date of transfer, or 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 more than an agreed-upon amount (12 CFR 1005.10(d))?

[Click&type]

Account Maintenance

Truth in Lending Act/Regulation Z

Treatment of Credit Balances

1. Assess compliance with Regulation Z, Treatment of Credit Balances. Please refer to the regulation and examination narrative and procedures regarding Regulation Z, 12 CFR 1026.21, for more information.

[Click&type]

Other Risks to Consumers

Servicing Transfers

1. Determine whether the servicer has transferred or acquired loans or leases to/from a different servicing technology platform or to/from another servicer during the period covered by the examination.

[Click&type]

2. Determine whether the servicer provides borrowers with adequate and timely information when it transfers or sells servicing rights to a new servicer.

[Click&type]

3. Determine whether the servicer provides borrowers with adequate and timely information when it receives or purchases servicing rights from another servicer.

[Click&type]

4. Assess whether the servicer provides the borrower with the information necessary for the borrower to continue to make timely payments to the new servicer.

[Click&type]

5. Assess the servicer’s process for forwarding any payments received by borrowers after an account has been transferred to a new servicer.

[Click&type]

6. Assess the servicer’s process and controls to ensure transferred account information is accurate.

[Click&type]

7. Determine whether current automated clearing house (ACH) payment programs transfer to the new servicer and whether borrowers are notified about what impact the servicing transfer has on the existing ACH payment program. For example, determine whether the servicer takes steps to ensure consumers do not inadvertently fail to make a timely payment or make a double payment following transfer.

[Click&type]

8. Determine whether the lender or servicer required the borrower to undergo a period of deferral while the servicing rights were being transferred and whether interest accumulated during that time.

[Click&type]

9. Determine whether information regarding any debt restructures/workouts has been transferred.

[Click&type]

10. Determine whether a servicer who receives servicing transfers complies with the terms of any debt restructure/workout agreements entered into by the borrower and the prior servicer.

[Click&type]

Payoff Statements

1. Assess a servicer's policies and procedures for processing payoff statement requests.

[Click&type]

2. Determine if the servicer provides an accurate statement of the total outstanding balance that would be required to pay the consumer's obligation in full as of a specified date within a reasonable time after receiving a request from the consumer or any person acting on behalf of the consumer.

[Click&type]

Optional Products

1. Determine whether the servicer offers or finances optional products or services (such as biweekly payment plans, payment protection, credit protection, or extended warranties) and, if so, which products and/or services the servicer offers or finances.

[Click&type]

2. Determine whether the servicer offers or finances debt cancellation, debt suspension, or other similar optional products or services and, if so, which products and/or services the servicer offers.

[Click&type]

3. Determine how the servicer monitors optional products attached to loans or leases, including cancelling the products and providing refunds in a timely manner, where applicable.

[Click&type]

4. Determine how refunds of unused optional products or services are processed after the loan is prepaid or the loan is terminated (e.g., after repossession or total loss). Does the servicer's process consider state law requirements for refunds?

[Click&type]

5. Determine whether the servicer uses a service provider in connection with optional products and, if so, how the servicer ensures that these providers effectively manage compliance with Federal consumer financial laws applicable to the product or service being provided.

[Click&type]

6. Review marketing materials, such as telemarketing scripts, direct mail, web-based, or other media, and determine whether each optional product's costs and terms are clearly and prominently disclosed. If consumer complaints or document review indicate potential violations in these areas and the servicer engages in telemarketing, then monitor call center activity and statements of representatives marketing the products. If the servicer engages in web-based marketing, monitor Internet communications related to the marketing.

[Click&type]

7. Determine whether the servicer added optional products or services without obtaining explicit authorization from the consumer. If the servicer obtains written authorization, review records of consumers who received additional products or services to ensure that written authorization has been provided and retained.

[Click&type]

8. For bi-weekly payment plan product solicitations, determine whether the servicer clearly and conspicuously explains the terms and conditions, including, where applicable, whether the servicer will be crediting payments bi-weekly or only monthly.

[Click&type]

Leases

1. Determine whether the servicer informs consumers in a timely manner about fees, penalties, or other charges that have been imposed after the lease has expired and the reasons for the imposition.

[Click&type]

2. In assessing risks to consumers, examiners may find evidence of violations of—or an absence of compliance policies and procedures with respect to—other laws, in which case examiners should identify such matters for appropriate actions, such as, where authorized, possible referral to other regulators. For example, the Servicemembers Civil Relief Act has provisions that allow a servicemember to terminate certain lease agreements if:

   a. The lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service under a call or order specifying a period of not less than

180 days (or who enters military service under a call or order specifying a period of 180 days or less and who, without a break in service, receives orders extending the period of military service to a period of not less than 180 days); or

b. The servicemember, while in military service, executes the lease and thereafter receives military orders either (1) for a permanent change of station from either a location inside the continental United States to one outside the continental United States, or from a location in a state outside the continental United States to any location outside that state, or (2) to deploy with a military unit for a period of not less than 180 days.

[Click&type]

3. Assess policies and procedures for the expiration of lease agreements, including an assessment of turn-in events, and representations made to consumers regarding the condition of the vehicle and mileage.

[Click&type]

Module 5 – Collections, Debt Restructuring, Repossession, and Accounts in Bankruptcy

Examiners should obtain a sample of servicing records for customers in default, including a sufficient number of loans or leases in which the consumer has filed for bankruptcy, to assess collection practices. Examiners should also obtain a sample of servicing records for customers whose vehicles have been repossessed or are in the process of being repossessed. Examiners should obtain collection call records and listen to a sample of collection calls to assess for compliance with Federal consumer financial laws. Examiners should also closely review any collections related complaints to identify potential risks to consumers or violations of Federal consumer financial law.

Collections

Fair Debt Collection Practices Act (FDCPA)

Under the FDCPA, a "debt collector" is generally defined as any person who regularly collects, or attempts to collect, consumer debts due another person or entity or uses some name other than its own when collecting its own consumer debts, with certain exceptions. The definition includes, for example, an entity that regularly collects debts for an unrelated entity.

The debt collector definition has an exception that frequently applies to servicing: an entity is not a debt collector under the FDCPA when it collects debts that were not in default when they were obtained by the servicer.[12] Thus, a servicer that purchases the servicing rights for a portfolio of loans will be a debt collector only for loans that were in "default" at the time of the purchase.[13]

If the entity has acted or is acting as a debt collector under the FDCPA, determine if the entity has:

1. Communicated with the consumer or third parties in any prohibited manner (15 U.S.C. 1692b and c);

[Click&type]

2. Furnished the written validation notice within the required time period and otherwise complied with applicable validation requirements (15 U.S.C. 1692g);

[12] 15 U.S.C. 1692a(6)(F)(iii).

[13] The FDCPA itself does not contain a definition of the term "default." In determining whether a debt is in default, the following factors, among others, are generally considered: the creditor's customary policies and practices; terms of the contract; determinations by the originator, and state law.

[Click&type]

3. Used any harassing, abusive, unfair, or deceptive collection practice prohibited by FDCPA (15 U.S.C. 1692d, 1692e, 1692f, and 1692j);

[Click&type]

4. Collected any amount not expressly authorized by the debt instrument creating the debt or permitted by law (15 U.S.C. 1692f(1));

[Click&type]

5. Applied all payments received as instructed and, where no instruction was given, applied payments only to undisputed debts (15 U.S.C. 1692h);

[Click&type]

6. Filed suit in an authorized forum if the entity sued to collect the debt (15 U.S.C. 1692i).

[Click&type]

Refer to the FDCPA examination procedures for more detailed information.

Servicing Transfers

1. Assess compliance with FDCPA, Right to Validation Notice for Certain Consumers. Please refer to the examination procedures regarding FDCPA, 15 U.S.C. 1692g(a), for more information.

[Click&type]

Other Risks to Consumers

1. Determine when and how a borrower is notified that the account is past due, and when a past due account is sent to collections.

[Click&type]

2. Determine whether the servicer reviews defaulted borrowers for any available debt restructuring/workout options before sending the account to collections.

[Click&type]

3. If the servicer contacts borrowers by telephone, consider the following:

   a. Employees and service providers clearly indicate to consumers that they are calling about the collection of a debt.

b. Employees and service providers do not disclose the existence of a consumer's debt to the public without the consent of the consumer, except as permitted by law.

c. The entity avoids repeated telephone calls to consumers that annoy, abuse, or harass any person at the number called.

[Click&type]

4. Determine whether the servicer's representatives risk making misrepresentations or risk using other deceptive means to collect debts. Determine whether the servicer has appropriate controls to prevent such practices.

[Click&type]

5. Determine whether collections staff transfer borrowers to debt restructure/workouts staff, in accordance with the servicer's policies and procedures, to discuss potential payment alternatives.

[Click&type]

6. For regulated entities using service providers for collection activity, determine whether the servicer has policies and procedures in place to monitor the service provider for compliance with Federal consumer financial laws. **Please refer to the CMR examination procedures for more information on service provider oversight.**

[Click&type]

Collecting Delinquent Accounts through Legal Action

1. Determine whether the servicer has policies and controls in place to ensure the accuracy of information used to collect delinquent accounts through legal action.

[Click&type]

Debt Restructuring/Workouts

1. Determine whether the servicer offers formal or informal debt restructuring/workout options to borrowers in default or at risk of default. Such options may include forbearances, repayment plans, loan modifications, or other repayment options.

   a. Assess the servicer's policies and procedures for workouts, including how the servicer discloses the requirements, terms, and any associated fees or other consequences (e.g., decreased credit score) when providing workout options to borrowers.

   b. Determine how borrowers apply for any available workout options and what the eligibility requirements are for each option.

c. Determine whether and how the servicer communicates with borrowers about possible workout options.

d. Determine how the servicer determines what workout option(s) it will offer to the borrower, if any.

e. Determine whether the servicer offers any available workout options consistently to all borrowers in similar situations.

f. Determine whether the servicer has internal timelines for processing borrower requests for workout options and whether the servicer notifies the borrower of receipt of the application of documents.

g. Determine how promptly workouts go into effect once agreed to by the servicer.

h. Determine if the servicer includes any waiver of legal rights in its workout agreements.

[Click&type]

Repossessions

For the loans or leases in the repossession sample, examiners should focus on whether the consumer is, in fact, in default and whether all amounts due are correct. Examiners should review the amounts recorded in the servicer's system of record and compare them to statements made in communications from the borrower, including consumer complaints. Examiners should review complaints of consumers whose vehicles were repossessed in the prior year or are currently in the process of repossession.

Often, used vehicles sold to subprime borrowers are sold with a Global Positioning System (GPS) enabled Starter Interrupt Device (SID) for payment assurance capabilities. A SID is a payment assurance device that has the ability to interrupt the starter functionality of a vehicle upon which it is installed and prevent the vehicle from starting. A GPS with the SID is installed typically at the point of sale or at the post-repossession reinstatement. Some SIDs also remind consumers when payments are due or past due. Not all GPS devices have SIDs; many are solely used for navigation purposes. Examiners should closely review any repossession related complaints to identify potential risks to consumers or violations of law related to SIDs.

1. Assess the servicer's policies and procedures for repossessions, including how the servicer oversees and communicates with service providers performing repossession services. Please refer to the Bureau's CMR procedures for more information on service provider oversight.

    a. Assess the servicer's policies and procedures for how a repossession order is cancelled after a borrower enters into a modified payment agreement, or makes a sufficient payment to the underlying loan agreement or modified payment agreement.

    b. Assess how servicers assign vehicles to be repossessed to service providers and if the same vehicle may be assigned to more than one service provider.

c. Assess if complaints (oral or written) from borrowers regarding service providers are addressed and resolved promptly. **Please refer to the CMR examination procedures for more information on consumer complaint response.**

d. Assess how servicers cancel repossession orders that previously were communicated to service providers and whether servicers ensure that the service provider acknowledged the cancellation communication.

e. Assess the servicer's policies and procedures for selling repossessed vehicles at auction, including how it chooses facilities and how it applies proceeds to the balance of the loan.

[Click&type]

2. Assess the servicer's policies and procedures for using SIDs or other payment assurance devices, including if the payment assurance device was used in accordance with the disclosure provided regarding the device at origination and how payment assurance devices are removed from vehicles after the loan or lease has been paid off.

[Click&type]

3. Assess the quality of the servicer's data and information to determine if the use of the SID is appropriate.

[Click&type]

4. Assess the quality of the servicer's communications with borrowers with SIDs to determine if the use of the SID is clear.

[Click&type]

5. Determine whether the servicer has repossessed a vehicle owned by a consumer who made payments sufficient to prevent a repossession or is current on the loan or lease. Assess the root cause of any such repossession.

[Click&type]

6. Determine whether the servicer has repossessed a vehicle owned by a consumer complying with the terms of a workout agreement. Assess the root cause of any such repossession.

[Click&type]

7. Determine whether the servicer provides accurate information to the consumer after a repossession about the total amount due, including principal, interest, fees, expenses, or other charges. Include any communications about redemption programs in this review.

[Click&type]

8. In assessing risks to consumers, examiners may find evidence of violations of—or an absence of compliance policies and procedures with respect to—other laws, in which case examiners should identify such matters for appropriate actions, such as, where authorized, possible referral to other regulators. For example, the Servicemembers Civil Relief Act prohibits servicers from repossessing, without a court order, the vehicle of any active duty military consumer who paid a deposit or installment before entering military service. Examiners should determine whether compliance policies and procedures include checking the Department of Defense's Manpower Database prior to completing a repossession and documenting the results.

[Click&type]

9. Determine if the servicer or a service provider detains or refuses to return personal property found in repossessed vehicles until the consumer pays a fee, where the consumer requested return of the property.

[Click&type]

Bankruptcy

1. Determine whether the servicer properly identifies accounts as being in active bankruptcy to ensure that the servicer provides protection from collections to which the borrower is entitled under federal bankruptcy law.

[Click&type]

2. For consumers who have filed for bankruptcy, determine whether the servicer provides accurate information to the debtor about the total amount due, including principal, interest, fees, expenses, or other charges, as of the date the debtor filed for bankruptcy.

[Click&type]

3. For consumers who have filed for Chapter 13 bankruptcy, determine whether the servicer provides notice of any change in the payment amount due, including any change that results from an interest rate, to the debtor, the debtor's counsel, the bankruptcy trustee, and the court, before a payment in the new amount is due.

[Click&type]

4. For consumers who have filed for Chapter 13 bankruptcy, determine whether the servicer provides notice of fees or other amounts charged to the account to the debtor, the debtor's counsel, the bankruptcy trustee, and the court during the pendency of the bankruptcy case.

[Click&type]

5. Determine whether payments received from a bankruptcy trustee are properly applied to the consumer’s account.

[Click&type]

Module 6 – Credit Reporting, Information Sharing, and Privacy

Credit Reporting

Fair Credit Reporting Act/Regulation V

Examiners should obtain a sample of servicing records. For the loans or leases in the sample, compare the information in the servicer's system of record with the information reported to the credit reporting agencies. Examiners should also review consumer complaints or review documents for potential violations of the FCRA and its implementing regulation, Regulation V.

1. Assess compliance with the FCRA Furnisher Requirements. Refer to the FCRA examination procedures, 12 CFR 1022.40-43, for more information.

[Click&type]

2. Assess whether lenders maintain written policies and procedures regarding data accuracy, report information accurately, and have procedures in place to ensure that inquiries and complaints concerning reported data are appropriately resolved in accordance with FCRA requirements.

[Click&type]

Information Sharing

Gramm-Leach-Bliley Act/Regulation P – Privacy Notices

1. Assess compliance with Privacy of Consumer Financial Information Regulations that implement the GLBA. Refer to the GLBA examination procedures, 12 CFR 1016.4 and 1016.5, for more information.

[Click&type]

Fair Credit Reporting Act/Regulation V – Information Sharing with Affiliates

1. Assess compliance with the FCRA Affiliate Marketing Rule. Refer to the FCRA examination procedures, 12 CFR 1022.21, for more information.

[Click&type]

Module 7 – Examiner Conclusions and Wrap-Up

To conclude this supervisory activity, examiners must complete all steps under this section, regardless of the entity's risk profile.

1. Summarize the findings, supervisory concerns, and regulatory violations.

[Click&type]

2. For the violations noted, determine the root cause by identifying weaknesses in internal controls, audit and compliance reviews, training, management oversight, or other factors.

[Click&type]

3. Determine whether the violation(s) are a pattern or practice, or isolated.

[Click&type]

4. Identify any action needed to correct violations and weaknesses in the entity's compliance management system, as appropriate. **Please refer to the CMR examination procedures for more information.**

[Click&type]

5. Discuss findings with the entity's management and, if necessary, obtain a commitment for corrective action.

[Click&type]

6. Record violations according to Bureau policy in the Report of Examination/Supervisory Letter and CFPB's electronic database system to facilitate analysis and reporting.

[Click&type]

7. If the examiner believes enforcement action may be appropriate, contact appropriate agency personnel for guidance.

[Click&type]

8. Prepare a memorandum for inclusion in the work papers and CFPB's official system of record that outlines planning and strategy considerations for the next examination and, if appropriate, interim follow-up.

[Click&type]

Examination Procedures Consumer Reporting Agencies

Exam Date:	[Click&type]
Prepared By:	[Click&type]
Reviewer:	[Click&type]
Docket #:	[Click&type]
Entity Name:	[Click&type]

These examination procedures are intended for use in examining larger participants in the consumer reporting market. The procedures contain a series of modules, grouping similar requirements together. Prior to using these procedures, examiners should complete a risk assessment and scope memorandum. Depending on the scope, and in conjunction with the compliance management system review procedures, each examination will cover one or more of the following modules:

1. Entity Business Model
2. Accuracy of Information and Furnisher Relations
3. Contents of Consumer Reports
4. Permissible Purposes and Other User Issues
5. Consumer File and Score Disclosures
6. Consumer Inquiries, Complaints, and Disputes and the Reinvestigation Process
7. Consumer Alerts and Identity Theft Provisions
8. Prescreening, Employment Reports, and Investigative Consumer Reports
9. Other Products and Services and Risks to Consumers
10. Examination Conclusions and Wrap-Up

Examination Objectives

- To evaluate the quality of the regulated entity's compliance management systems, including its internal controls and policies and procedures, related to its consumer reporting business.
- To identify acts or practices that materially increase the risk of violations of federal consumer financial law in connection with consumer reporting.
- To gather facts that help to determine whether a regulated entity engages in acts or practices that violate the requirements of federal consumer financial law.
- To determine, in accordance with CFPB internal consultation requirements, whether a violation of federal consumer financial law has occurred and whether further supervisory or enforcement actions are appropriate.

Background

A consumer report contains information about a consumer, such as a credit history and other transaction details. Lenders use one type of consumer report—commonly referred to as credit reports—to assess borrower risk when evaluating applications for credit cards, home mortgage loans, automobile loans, and other types of credit. Consumer reports also may be used for a number of other purposes, such as to determine eligibility and pricing for other types of products and services and other relationships. The consumer reporting market affects hundreds of millions of consumers.

The Dodd-Frank Act (12 U.S.C. 5514(a)(1)(B)) gave the Consumer Financial Protection Bureau ("CFPB") supervisory authority over "larger participants" of markets for consumer financial products or services, as the CFPB defines by rule. In July 2012, the CFPB finalized its larger participant regulation in the market of consumer reporting (77 Fed. Reg. 42874). The rule, which appears in 12 CFR Part 1090, and was published in the Federal Register on July 20, 2012, is effective September 30, 2012. It provides that a nonbank covered person that offers or provides consumer reporting is a larger participant of the consumer reporting market if the person's annual receipts resulting from consumer reporting are more than $7 million. (12 CFR 1090.104(b)). Under the regulation, "consumer reporting" includes different types of consumer reporting entities, such as credit bureaus, resellers, specialty consumer reporting agencies, and analyzers of consumer report information and other account information. (12 CFR 1090.104(a)(4); 77 Fed. Reg. at 42875, 42883-85).

These entities perform a variety of functions. For example, credit bureaus collect information, including credit account information, items sent for collection, and public records such as bankruptcies. Resellers purchase consumer information from one or more consumer reporting agencies, typically provide further input to the consumer report (including by merging files from multiple agencies or adding information from other data sources), and then resell the report to lenders and other users. Specialty consumer reporting agencies primarily collect and provide specific types of information that may be used to make eligibility decisions for particular consumer financial products or services, such as payday loans or checking accounts, or for decisions in other areas. Analyzers apply statistical and other methods to consumer report information to facilitate the interpretation of that information and its use in decisions regarding other products and services. For example, they may develop and sell credit scoring services and products.

A key federal consumer financial law relevant specifically to the consumer reporting market is the Fair Credit Reporting Act ("FCRA") (15 U.S.C. 1681 et seq.).[1] The FCRA was enacted in 1971 and significantly amended in 1996, 2003, 2010, and 2018. Together with its implementing regulation, Regulation V,[2] it creates a regulatory framework for the furnishing, use, and disclosure

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[1] For clarity, these procedures refer to the FCRA by listing the section of the Act followed by the relevant section of Title 15 of the U.S. Code (e.g., Section 603; 15 U.S.C. 1681a).

[2] Pursuant to its authority under the Dodd-Frank Act, the CFPB in late 2011 restated the FCRA's implementing rules in Regulation V, 12 CFR Part 1022.

of information in reports associated with credit, insurance, employment, and other decisions made about consumers. In doing so, it imposes a number of obligations on entities that qualify as "consumer reporting agencies." It also imposes obligations on persons who use consumer report information ("users") or furnish information to consumer reporting agencies ("furnishers").

While there is considerable overlap, the definition of "consumer reporting" in the CFPB's larger participant rule does not mirror the FCRA's definitions of "consumer report" or "consumer reporting agency."[3] As a result, an entity that is subject to the larger participant rule may or may not be a "consumer reporting agency" for FCRA purposes. Module 1 includes procedures to determine whether a particular larger participant is a "consumer reporting agency" and meets other FCRA definitions. If a particular larger participant is determined not to be a "consumer reporting agency" in Module 1, examiners should consult with Headquarters on the extent to which the remaining modules apply to the entity being examined (since many presuppose the existence of a consumer reporting agency) and on the extent to which other federal consumer financial laws apply to the entity.

If a larger participant operates as a consumer reporting agency, the FCRA requires it to employ reasonable procedures, in preparing consumer reports, to "assure maximum possible accuracy" of the information concerning the individual about whom the report relates. (Section 607(b); 15 U.S.C. 1681e(b)). A consumer reporting agency may provide only consumer reports in specific circumstances and must adopt reasonable procedures to ensure a consumer report is provided only when the requester has a permissible purpose. (Section 604; 15 U.S.C. 1681b; Section 607(a); 15 U.S.C. 1681e(a)). Consumers have the right to access information in their files at consumer reporting agencies and the right to dispute information and have it corrected if it is found to be inaccurate. (Section 609(a); 15 U.S.C. 1681g(a); Section 611(a)(1); 15 U.S.C. 1681i(a)(1)). The FCRA provides consumers additional protections such as the opportunity to elect not to receive prescreening offers and to request fraud and active duty alerts. (Section 604(e)(5); 15 U.S.C. 1681b(e)(5); Section 605A; 15 U.S.C. 1681c-1).

The FCRA also imposes special obligations on two types of consumer reporting agencies that operate nationwide, known as "nationwide consumer reporting agencies" (Section 603(p); 15 U.S.C. 1681a(p)) and "nationwide specialty consumer reporting agencies" (Section 603(x); 15 U.S.C. 1681a(x)). For example, these nationwide agencies generally must provide consumers a free file disclosure every twelve months upon request. (Section 612(a); 15 U.S.C. 1681j(a)).

In addition to complying with all applicable provisions of the FCRA, larger participants of the consumer reporting market must comply with other applicable federal consumer financial laws. For example, the Gramm-Leach-Bliley Act (GLBA) and its implementing regulation, Regulation P,[4] govern how nonpublic personal information that financial institutions collect about consumers can be shared with nonaffiliated third parties and what financial institutions must tell consumers

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[3] *Compare* 12 CFR 1090.104 *with* FCRA Section 603(d), (f); 15 U.S.C. 1681a(d), (f).

[4] In 2011, the CFPB restated various privacy regulations that had been issued by other federal agencies under the Gramm-Leach-Bliley Act. The resulting Regulation P appears at 12 CFR Part 1016.

about their information-sharing practices. These provisions limit how consumer reporting agencies can disclose to nonaffiliated third parties nonpublic personal information obtained from financial institutions (such as credit header information[5]) if the disclosure is not part of a consumer report. (12 CFR 1016.11; *see generally* 65 Fed. Reg. 33646, 33668 (May 24, 2000)).

To carry out the objectives set forth in the Examination Objectives section, the examination process also will include assessing other risks to consumers. These risks may include potentially unfair, deceptive, or abusive acts or practices (UDAAPs). Please refer to the examination procedures regarding UDAAPs in the CFPB examination manual for information about the legal standards and the CFPB's approach to examining for UDAAPs. The particular facts and circumstances in a case are crucial to the determination of UDAAPs. As set out in the Examination Objectives section, examiners should consult with Headquarters to determine whether the applicable legal standards have been met before a violation of any federal consumer financial law could be cited, including a UDAAP violation.

General Considerations

Completing the following examination modules will allow examiners to develop a thorough understanding of the regulated entity's practices and operations. To complete the modules, examiners should obtain and review the following as applicable:

- Organizational charts and process flowcharts;
- Board minutes, annual reports, or the equivalent to the extent available;
- Relevant management reporting;
- Policies and procedures, including complaint monitoring procedures;
- Applications from prospective furnishers and users;
- Furnisher and user audit results;
- Samples of individual consumer reports, file disclosures, and disputes and responses to them, and other consumer reporting product outputs, notes, and disclosures;
- Telephone recordings;
- Operating and compliance checklists, worksheets, and review documents;
- Relevant computer program and system details;
- Due diligence and monitoring procedures;

[5] "Credit header" information refers to basic information in a credit report that identifies the person who is the subject of the report, such as name, variations of names, current and prior addresses, and phone numbers.

- Compensation policies;
- Historical examination information;
- Audit and compliance reports, and management responses to findings;
- Training programs and materials;
- Third-party contracts, including agreements with furnishers and users; and
- Advertisements, marketing research, and website information.

Depending on the scope of the examination, examiners should perform transaction testing using sampling procedures, which may require use of a judgmental or statistical sample. Examiners also should conduct interviews with management and staff to determine whether they understand and consistently follow the policies, procedures, and regulatory requirements applicable to consumer reporting and implement effective controls.

Examiners should review relevant consumer complaints in scoping and conducting examinations, as appropriate. Examiners also may consider conducting user, furnisher, and/or consumer interviews.

Examination Procedures
Module 1 - Entity Business Model

NATURE OF OPERATIONS FOR FCRA PURPOSES

Assess whether the entity operates as a "consumer reporting agency," a "nationwide consumer reporting agency," a "nationwide specialty consumer reporting agency," and/or a "reseller" for FCRA purposes by making the following determinations:

1. **Consumer Reporting Agency.** Determine in consultation with Headquarters if the entity operates as a "consumer reporting agency." (Section 603(f); 15 U.S.C. 1681a(f)). Definitions of "consumer reporting agency" and "consumer report" (including a list of items that are not "consumer reports") are set forth in the Glossary. If the entity does not operate as a "consumer reporting agency," contact Headquarters for instructions before proceeding with the remaining examination procedures.

[Click&type]

2. **Nationwide Consumer Reporting Agency**. Determine in consultation with Headquarters whether the entity operates as a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis (hereinafter a "nationwide consumer reporting agency") by assessing whether it is a consumer reporting agency that regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer's credit worthiness, credit standing, or credit capacity, each of the following regarding consumers residing nationwide:

   a. Public record information and

   b. Credit account information from persons who furnish that information regularly and in the ordinary course of business. (Section 603(p); 15 U.S.C. 1681a(p)).

[Click&type]

3. **Circumvention or Evasion of Treatment as a Nationwide Consumer Reporting Agency.** If the answer to step 2 above is no, assess whether the entity is circumventing or evading treatment as a nationwide consumer reporting agency by any means, including but not limited to:

   a. Corporate organization, reorganization, structure, or restructuring, including merger, acquisition, dissolution, divestiture, or asset sale of a consumer reporting agency (for example, by (1) restructuring operations so that certain data types are assembled and maintained only by a corporate affiliate or (2) restructuring so that corporate affiliates separately assemble and maintain all information on consumers residing in each state); or

   b. Maintaining or merging public record and credit account information in a manner that is substantially equivalent to that described in steps 2a and 2b above.

   If the entity is circumventing or evading treatment as a nationwide consumer reporting agency, assess whether the entity is in compliance with all obligations imposed upon nationwide consumer reporting agencies in reviewing the remaining modules. (15 U.S.C. 1681x; 12 CFR 1022.140(c)).

[Click&type]

4. **Nationwide Specialty Consumer Reporting Agency.** Determine in consultation with Headquarters whether the entity qualifies as a "nationwide specialty consumer reporting agency" by determining whether it is a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis relating to:
   a. Medical records or payments,
   b. Residential or tenant history,
   c. Check writing history,
   d. Employment history, or
   e. Insurance claims. (Section 603(x); 15 U.S.C. 1681a(x)).

[Click&type]

5. **Reseller**. Determine in consultation with Headquarters whether the entity operates as a "reseller" by determining whether it is a consumer reporting agency that:
   a. Assembles and merges information contained in the database of another consumer reporting agency or multiple consumer reporting agencies concerning any consumer for purposes of furnishing such information to any third party, to the extent of such activities; and
   b. Does not maintain a database of the assembled or merged information from which new consumer reports are produced. (Section 603(u); 15 U.S.C. 1681a(u)).

[Click&type]

AFFILIATES AND OTHER THIRD-PARTY RELATIONSHIPS

6. **Affiliates**.
   a. Ascertain whether the entity is affiliated with any other entities.
   b. If so, determine:
      i. The identities of the affiliates,
      ii. The nature of their business activities, including whether any of the affiliates operate as consumer reporting agencies, and
      iii. The ownership and governance structure of the affiliates.
7. **Service Providers.** Determine whether the entity uses any service providers in conducting its consumer reporting business. If so:

a. Identify who the service providers are, whether they are affiliated with the entity, and what services they perform, and

b. Assess whether the entity:

   i. Requests and reviews the service providers' policies, procedures, internal controls, and training materials to ensure that the service providers conduct appropriate training and oversight of employees or agents that have consumer contact or compliance responsibilities;

   ii. Includes in its contracts with its service providers clear expectations about compliance as well as appropriate and enforceable consequences for violating any compliance-related responsibilities;

   iii. Establishes internal controls and ongoing monitoring to determine whether its service providers are complying with federal consumer financial law; and

   iv. Takes prompt action to address fully any problems identified through the monitoring process, including terminating the relationship where appropriate. *See* CFPB Bulletin 2012-03 (April 13, 2012).

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INTERNAL STRUCTURE, CONTROLS, AND COMPLIANCE MANAGEMENT

8. **Organizational Structure.** Review the organizational chart to determine the reporting structure and the responsibilities of key managers for consumer reporting activities.

[Click&type]

9. **Staff Who Interact With Consumers.** Review the qualifications, experience levels, and training programs that the company requires or uses for staff who interact with consumers.

[Click&type]

10. **Compliance Management Review.** Review the entity's general compliance management system using the compliance management review section of the CFPB examination manual.

[Click&type]

CUSTOMER BASE AND PRODUCTS AND SERVICES OFFERED

11. **Furnishers**. If the entity assembles information about consumers, identify who furnishes the information to the entity (including, for example, by type of business or industry).

[Click&type]

12. **Users**. If the entity provides consumer reports to third parties, identify the third parties that use reports from the entity (including, for example, by type of business or industry).

[Click&type]

13. **Specialization**. Ascertain whether the entity specializes in collecting and reporting particular types of information and, if so, what types.

[Click&type]

14. **Prescreening**. Determine if the entity engages in "prescreening," by furnishing consumer reports (e.g., lists of consumers) in connection with any credit or insurance transactions that are not initiated by the consumers (to solicit the consumers to obtain credit or insurance) and where the consumers have not authorized the entity to provide such reports. (Section 603(*l*); 15 U.S.C. 1681a(*l*); Section 604(c)(1); 15 U.S.C. 1681b(c)(1)). Prescreening is discussed further in Module 8.

[Click&type]

15. **Employment Reports.** Determine if the entity furnishes any reports for employment purposes and, if so, to whom (including, for example, by type of business or industry). (Section 603(h); 15 U.S.C. 1681a(h); Section 604(b); 15 U.S.C. 1681b(b)). Employment reports are discussed further in Module 8.

[Click&type]

16. **Investigative Consumer Reports.** Determine whether the entity provides any "investigative consumer reports." (Section 603(e); 15 U.S.C. 1681a(e)). Investigative consumer reports are defined in the Glossary and discussed in Module 8.

[Click&type]

17. **Credit Scoring and Other Scoring Products.**
    a. Determine whether the entity offers any credit scores to third parties. Refer to the Glossary for the definition of "credit score" for these procedures.
    b. Determine whether the entity offers any other types of scoring products to third parties, such as insurance scores.
    c. If the answer to (a) or (b) above is yes, determine:
        i. What role the entity plays in developing or modifying the scores and scoring products,
        ii. Whether any other parties are involved in developing or modifying the scores and scoring products, and
        iii. To whom the scores and scoring products are offered and provided.

[Click&type]

18. **Other Products or Services.** Ascertain whether the entity offers any types of products or services other than consumer reports and scoring products. If so, review all of these products

and services and to whom they are offered and provided. Other products and services are discussed further in Module 9.

[Click&type]

19. **Relationship of FCRA and Non-FCRA Products and Services.**

    a. Determine if the entity offers some products and services that are subject to the FCRA and other products and services that the entity does not treat as subject to the FCRA.

    b. If so, identify:

        i. All products and services that the entity treats as not subject to the FCRA,

        ii. The information sources and uses for such products, and

        iii. Any policies, practices, and procedures deployed by the entity to differentiate between the products and services that it treats as subject to the FCRA and those that it treats as not subject to the FCRA.

    c. For products that the entity deems not subject to the FCRA, identify the criteria relied on for treating each product as non-FCRA.

    d. Assess in consultation with Headquarters whether there are any products or services offered by the entity that constitute "consumer reports," but that the entity is not treating as subject to the FCRA.

    e. Consult with Headquarters on whether any other federal consumer financial laws should be reviewed with respect to those products and services that are not subject to the FCRA.

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Module 2 - Accuracy of Information and Furnisher Relations

This module discusses the FCRA requirement that consumer reporting agencies employ reasonable procedures in preparing consumer reports to assure maximum possible accuracy of consumer information, as well as other FCRA requirements relating to dealings with furnishers. Additional FCRA requirements related to accuracy are addressed in other modules (such as Module 6, which addresses how disputes must be handled).

1. **Reasonable Procedures to Ensure Maximum Possible Accuracy.** Assess whether the entity follows reasonable procedures, in preparing a consumer report, to assure maximum possible accuracy of information concerning the individual to whom the report relates. (Section 607(b); 15 U.S.C. 1681e(b)). In doing so, consider all relevant factors, including the following:
   a. **Screening of furnishers.** Determine what measures the entity uses to screen furnishers.
   b. **Form and manner in which information is reported.** Assess the steps the entity takes to ensure that information is furnished in a form and manner that minimizes the likelihood that the information may be incorrectly reflected in a consumer report. Consider, for example, whether the entity ensures that reported information:
      i. Includes appropriate identifying information about the consumer to whom it pertains,
      ii. Is furnished in a clearly understandable form and manner, and
      iii. Is furnished with a date specifying the time period to which the information pertains.
   c. **Screening and matching of information from furnishers.**
      i. Review procedures used by the entity to screen information received from furnishers for accuracy, including any audit procedures or other quality control measures. Identify relevant data quality metrics used by the entity. Assess how the entity responds if it receives poor quality data from a particular furnisher.
      ii. Review procedures used by the entity to match data to the appropriate consumer file.
   d. **Measures to prevent duplicative tradelines on reports.** Assess the measures utilized by the entity to ensure that reports do not include duplicative tradelines. Review, for example, what information the entity requires furnishers to provide—such as information to identify the original creditor for debts—before it accepts tradelines.
   e. **Other measures to test accuracy.** Review any other measures utilized by the entity to assess the accuracy of consumer information. Identify the nature of all such measures.

[Click&type]

2. **Notice of Furnisher Responsibilities.** Determine whether the entity provides a notice of furnisher responsibilities under the FCRA to every person who regularly and in the ordinary course of business furnishes consumer information to the entity. (Section 607(d); 15 U.S.C. 1681e(d)). Review the terms of the notice provided to determine whether it is substantially similar to the model notice in Appendix M to Regulation V (12 CFR Part 1022).

[Click&type]

Module 3 - Contents of Consumer Reports

This module addresses the FCRA's requirements governing what consumer reporting agencies must include in or exclude from consumer reports.

1. **Required Information in Consumer Reports.** Determine whether the entity includes the following required information in its consumer reports:

   a. **Bankruptcy information.** If the report identifies information regarding a case under Title 11 of the U.S. Code that involves the consumer:

      i. The chapter of Title 11 invoked (e.g., chapter 7, 11, etc.) if provided by the source of the information and

      ii. The fact that the bankruptcy action has been withdrawn before a final judgment, if the entity has received documentation so certifying. (Section 605(d)(1); 15 U.S.C. 1681c(d)(1)).

   b. **Voluntary closure of account.** The fact that an account was voluntarily closed by the consumer, if the entity includes information related to the account in the report after receiving notification from the furnisher that the account was voluntarily closed. (Section 605(e); 15 U.S.C. 1681c(e)).

   c. **Inquiries as factor.** If the entity provides a consumer report that contains any credit or other risk score or predictor on any consumer and a key factor that adversely affected such score or predictor was the number of inquiries, a clear and conspicuous statement that a key factor that adversely affected such score or predictor was the number of inquiries (unless the entity is a check services company, acting as such, to the extent that it is engaged in issuing authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payments). (Section 605(d)(2); 15 U.S.C. 1681c(d)(2)).

   d. **Existence of a dispute.** The fact that the consumer disputes information, if the entity includes disputed information in the report after receiving notification from a furnisher of the dispute. (Section 605(f); 15 U.S.C. 1681c(f)).

   e. **Overdue child support obligations.** Any information on the failure of the consumer to pay overdue support which:

      i. Is provided

         A. To the consumer reporting agency by a state or local child support enforcement agency; or

         B. To the consumer reporting agency and verified by any local, state, or federal government agency; and

      ii. Predates the report by seven years or less. (Section 622; 15 U.S.C. 1681s-1).

[Click&type]

2. **Prohibited Information in Consumer Reports.** Determine whether the entity provides reports that include any of the following prohibited types of information.

   a. **Previously deleted information.** Determine whether the entity includes in consumer reports or in a consumer's file information that was previously deleted from the consumer's file (unless the information has been reinserted based on a certification from the furnisher that the information is complete and accurate). (Section 611(a)(5)(B)(i), (5)(C); 15 U.S.C. 1681i(a)(5)(B)(i), (5)(C)).

   b. **Obsolete information.** The FCRA prohibits the inclusion of the five types of information listed below in all reports except those reports used in connection with (1) credit transactions or life insurance underwriting that involve or may reasonably be expected to involve at least $150,000 or (2) individual employment decisions where the annual salary equals or may reasonably be expected to equal $75,000 or more. For all reports that do not fall within these two exemptions, determine whether the entity includes any of the following types of prohibited information:

      i. Cases under Title 11 or the Bankruptcy Act, if the date of entry of the order for relief or the date of adjudication is more than 10 years earlier than the date of the report;

      ii. Civil suits, civil judgments, and records of arrest, if:

         A. The governing statute of limitations had expired as of the date of the report and

         B. The date of entry is more than seven years before the date of the report;

      iii. Paid tax liens if the date of payment is more than seven years before the date of the report;

      iv. Accounts placed for collection or charged to profit and loss that are more than seven years old as of the date of the report, provided that:

         A. For delinquent accounts placed for collection, charged to profit and loss, or subjected to any similar action, the seven-year period begins 180 days after the date of delinquency that immediately preceded the collection activity, charge to profit and loss, or similar action, but

         B. Special triggering rules apply for reporting on Federal Family Education Loans, 20 U.S.C. 1080a(f), and

         C. Information regarding the status of Perkins Loans may be reported until the loan is paid in full, 20 U.S.C. 1087cc(c)(3); or

      v. Any other adverse item of information (other than records of convictions of crimes) that is more than seven years old as of the date of the report. (Section 605(a)-(c); 15 U.S.C. 1681c(a)-(c)).

c. **Medical contact information.** Determine whether the entity includes the name, address, and telephone number of any medical information furnisher that has notified the agency of its status, *other than* under the following permitted circumstances:

   i. The name, address, and telephone number are restricted or reported using codes that do not identify, or provide information sufficient to infer, the specific provider or the nature of the services, products, or devices to a person other than the consumer or

   ii. The report is being provided to an insurance company for a purpose relating to engaging in the business of insurance other than property and casualty insurance. (Section 605(a)(6); 15 U.S.C. 1681c(a)(6)).

d. **Veteran's medical debt.** Determine whether the entity (must be a nationwide CRA defined in Section 603(p)) complies with the requirements related to veteran's medical debt.

   i. Determine whether the consumer reporting agency uses the database as a means to identify whether furnished information about consumers is related to a veteran's medical debt. (Section 302(c)(5) of the Economic Growth, Regulatory Relief, and Consumer Protection Act; Pub. L. No. 115-174; 132 Stat. 1296 (2018)).

   ii. Determine whether the entity provides reports that include any of the following prohibited types of information regarding veteran's medical debt:

      A. Any information related to a veteran's medical debt, if the date on which the hospital care, medical services, or extended care services was rendered relating to the debt precedes the consumer report by less than 1 year if the consumer reporting agency has actual knowledge that the information is related to a veteran's medical debt and the consumer reporting agency is in compliance with its obligation under section 302(c)(5) of the Economic Growth, Regulatory Relief, and Consumer Protection Act. (Section 605(a)(7); 15 U.S.C. 1681c(a)(7)).

      B. Any information related to a fully paid or settled veteran's medical debt that had been characterized as delinquent, charged off, or in collection if the consumer reporting agency has actual knowledge that the information is related to a veteran's medical debt and the consumer reporting agency is in compliance with its obligation under section 302(c)(5) of the Economic Growth, Regulatory Relief, and Consumer Protection Act. (Section 605(a)(8); 15 U.S.C. 1681c(a)(8)).

e. **Other prohibited medical information.** Determine whether the entity provides consumer reports that contain any medical information about a consumer for employment purposes or in connection with a credit or insurance transaction, other than under any one of the following permitted circumstances:

   i. The information consists of medical contact information treated in the manner specified in 2c above;

ii. If furnished in connection with an insurance transaction, the consumer affirmatively consented to the furnishing of the report;

iii. If furnished for employment purposes or in connection with a credit transaction:

A. The information is relevant to process or effect the employment or credit transaction and

B. The consumer provided specific written consent for the furnishing of the report that describes in clear and conspicuous language the use for which the information will be furnished; or

iv. The information pertains solely to transactions, accounts, or balances relating to debts arising from the receipt of medical services, products, or devises, where such information, other than account status or amounts, is restricted or reported using codes that do not identify, or do not provide information sufficient to infer, the specific provider or the nature of such services, products, or devices, as provided in step 2c above. (Section 604(g); 15 U.S.C. 1681b(g)).

f. **Information subject to an identity theft block.** Determine whether the entity provides any consumer reports that include information that must be blocked pursuant to an identity theft block, as explained in steps 15-21 of Module 7. (Section 605B; 15 U.S.C. 1681c-2).

g. **Prohibited information about prescreening inquiries.** Determine whether the entity includes information about "credit or insurance transactions that are not initiated by the consumer" (which are typically related to prescreened offers) in consumer reports. This prohibition does not apply to disclosure to the consumer of such inquiries made no more than one year prior to the consumer's request for a file disclosure. Note that the term "credit or insurance transactions that are not initiated by the consumer" does *not* include the use of a consumer report by a person with which the consumer has an account or insurance policy, for purposes of reviewing the account or insurance policy or collecting the account. (Section 603(m); 15 U.S.C. 1681a(m); Section 604(c)(3); 15 U.S.C. 1681b(c)(3)).

h. **Prohibited disclosure of the fact that government has sought or obtained information for counterterrorism purposes.**

i. Determine whether the entity has disclosed, in a consumer report or in any other manner, any information indicating that the FBI has sought or obtained a consumer report or information identifying the consumer's financial institutions. If so, determine whether prior to making the disclosure, the agency received a certification from an appropriate FBI official that disclosure may:

A. Threaten national security;

B. Interfere with a criminal, counterterrorism, or counterintelligence investigation;

C. Interfere with diplomatic relations; or

D. Endanger the life or physical safety of any person. (Section 626(d); 15 U.S.C. 1681u(d)).

ii. Determine whether the entity discloses, in a consumer report or in any other manner, any information indicating that a government agency that conducts investigations, intelligence or counterintelligence activities, or analysis related to international terrorism has sought or obtained access to a consumer report or other information in the consumer's file. If so, determine whether prior to making the disclosure, the agency received a certification from an appropriate agency official that disclosure may:

A. Threaten national security;

B. Interfere with a criminal, counterterrorism, or counterintelligence investigation;

C. Interfere with diplomatic relations; or

D. Endanger the life or physical safety of any person. (Section 627(c); 15 U.S.C. 1681v(c)).

i. **Adverse information from previously prepared investigative reports.** If the entity prepares investigative consumer reports, determine whether any of its consumer reports include any adverse information from a previously-generated investigative consumer report (other than information that is a matter of public record). If so, determine whether:

A. Such adverse information was verified in the process of preparing the subsequent consumer report or

B. The adverse information was received within the three-month period preceding the date the subsequent report was furnished. (Section 614; 15 U.S.C. 1681*l*).

[Click&type]

3. **Procedures Regarding Contents of Consumer Reports.** Determine whether the entity maintains adequate procedures to meet the FCRA requirements regarding information that must be contained in or excluded from consumer reports (described in steps 1 and 2 above). Consider in particular the following:

a. Whether the entity has reasonable procedures in place to ensure that required information about bankruptcies, voluntary closures of accounts, and inquiries as factors is included and that disputed information is marked as such, as described in step 1 above;

b. Whether the entity uses reasonable procedures to ensure that information described in step 2b above is excluded from consumer reports once it is too old to be disclosed; and

c. Whether the entity has reasonable procedures in place to protect medical contact information, as described in step 2c above. (Section 607(a); 15 U.S.C. 1681e(a)).

(Procedures to prevent the reappearance of deleted information are addressed in step 15 of Module 6. Procedures related to identity theft and prescreening inquiries are discussed in step 1 of Module 7 and step 11 of Module 8, respectively.)

[Click&type]

Module 4 - Permissible Purposes and Other User Issues

This module discusses various requirements that the FCRA imposes on consumer reporting agencies in their dealings with users of consumer reports. One such requirement is the obligation to ensure that anyone to whom it furnishes a consumer report has a permissible purpose (as detailed below) to obtain a report.

Examiners should note that reports made to governmental agencies that contain only identifying information (i.e., name, address, former addresses, places of employment, or former places of employment) are not subject to the permissible purpose requirement described below. (Section 608; 15 U.S.C. 1681f). The FCRA also requires certain disclosures, on proper certification, to the FBI for counterintelligence purposes and to other governmental agencies for counterterrorism purposes. (Section 626; 15 U.S.C. 1681u; Section 627; 15 U.S.C. 1681v).

1. **Verification of Identity and Uses of Prospective Users.** Determine whether the entity makes a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing a consumer report to the user. (Section 607(a); 15 U.S.C. 1681e(a)). Determine the steps the entity takes to verify the uses certified by prospective users (such as onsite visits to the users' places of business, checking the users' references, confirmation of applicants' business identity, examining applications and supporting documentation supplied by applicants, or other methods, to detect suspect representations, discrepancies, illogical information, suspicious patterns, factual anomalies, and other indicia of unreliability).

[Click&type]

2. **Certification of Purposes.** Determine whether the entity's procedures require prospective users of consumer reports to:

   a. Identify themselves,

   b. Certify the purposes for which the information is sought, and

   c. Certify that the information will be used for no other purpose. (Section 607(a); 15 U.S.C. 1681e(a)).

[Click&type]

3. **Reasonable Procedures Regarding Permissible Purposes.** Determine whether the entity maintains reasonable procedures to ensure that, aside from the provision of consumer reports to government agencies in appropriate circumstances, consumer reports are furnished only in the following permissible circumstances:

   a. In response to a court order or federal grand jury subpoena.

   b. In accordance with the written instructions of the consumer.

c. To a person that the entity has reason to believe intends to use the report as information for any of the following reasons:

   i. In connection with a credit transaction involving the consumer on whom information is to be furnished and that involves (a) extending credit to the consumer, (b) reviewing an account of the consumer, or (c) collecting an account of the consumer;

   ii. For employment purposes;

   iii. In connection with the underwriting of insurance involving the consumer;

   iv. 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 or status;

   v. 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;

   vi. Otherwise has a legitimate business need for the information:

      A. In connection with a business transaction that the consumer initiates or

      B. To review an account to determine whether the consumer continues to meet the terms of the account.

   vii. To executive departments and agencies in connection with the issuance of government-sponsored individually billed travel charge cards.

d. In response to a request by the head of a state or local child support enforcement agency (or authorized appointee) if the person making the request makes various certifications to the consumer reporting agency regarding the need to obtain the report.

e. To an agency administering a state plan under 42 U.S.C. 654 to set an initial or modified child support award.

f. To the Federal Deposit Insurance Corporation or the National Credit Union Administration in connection with its appointment or operation as a conservator, receiver, or liquidating agent for an insured depository institution or insured credit union or its resolution or liquidation of a failed or failing insured depository institution or insured credit union. (Section 604; 15 U.S.C. 1681b; Section 607(a); 15 U.S.C. 1681e(a)).

[Click&type]

4. **Reasonable Grounds for Belief That Information Will Be Misused.** Determine whether the entity has furnished a consumer report to any person even though the entity had reasonable grounds for believing that the consumer report would not be used for one of the permissible purposes listed in step 3 above. (Section 607(a); 15 U.S.C. 1681e(a)).

[Click&type]

5. **Specific Permissible Use Issues for Consumer Reporting Agencies That Furnish Reports for Resale.**

   a. Determine whether the entity provides reports to any person that seeks the report for purposes of reselling the report or any information in the report. (For purposes of this analysis and step 5b below, do not consider any reselling where the end-user is a federal agency or department that obtains the information in order to determine the consumer's eligibility for access to classified information and that certifies that nondisclosure is required for the reasons set forth in Section 607(e)(3) (15 U.S.C. 1681e(e)(3)).)

   b. If the entity does furnish reports that are used for resale, determine whether the entity requires the reseller to disclose to the entity the following information:

      i. The identity of the end-user of the report (or information) and

      ii. Each permissible purpose for which the report is furnished to the end-user of the report (or information). (Section 604; 15 U.S.C. 1681b; Section 607(e); 15 U.S.C. 1681e(e)).

[Click&type]

6. **Specific Permissible Use Issues for Entities that Resell Reports (or Information From Reports) Obtained From Other Consumer Reporting Agencies.**

   a. Determine whether the entity obtains consumer reports from another consumer reporting agency for purposes of reselling the report or any information in the report. (For purposes of this analysis and step 6b below, do not consider any reselling where the end-user is a federal agency or department that obtains the information in order to determine the consumer's eligibility for access to classified information and that certifies that nondisclosure is required for the reasons set forth in Section 607(e)(3) (15 U.S.C. 1681e(e)(3)).)

   b. If so, consider the following with respect to the entity's reselling activities:

      i. Determine whether the entity discloses to the originating consumer reporting agency:

         A. The identity of the end-user of the report or information and

         B. Each permissible purpose for which the report or information is furnished to the end-user. (Section 607(e)(1); 15 U.S.C. 1681e(e)(1)).

      ii. Assess whether the entity has established and complies with reasonable procedures designed to ensure that the report or information is resold only for a permissible purpose identified in step 3 above. Determine, for example, whether the entity requires each person to which the report or information is resold and that resells or provides the report or information to any other person to:

A. Identify each end-user of the resold report or information,

B. Certify each purpose for which the report or information will be used, and

C. Certify that the report or information will be used for no other purpose. (Section 607(e)(2)(A); 15 U.S.C. 1681e(e)(2)(A)).

iii. Assess whether the entity makes reasonable efforts before reselling any report to verify the identifications and certifications referred to in step 6bii above. (Section 607(e)(2)(B); 15 U.S.C. 1681e(e)(2)(B)).

[Click&type]

7. **Improper Limits on User Disclosures to Consumers.** Determine whether the entity prohibits any user of its consumer reports from disclosing the report's contents to the consumer, if adverse action against the consumer has been taken by the user based in whole or in part on the report. (Section 607(c); 15 U.S.C. 1681e(c)).

[Click&type]

8. **Required Notices to Users.** Determine whether the entity provides users with a notice of their responsibilities under the FCRA. (Section 607(d); 15 U.S.C. 1681e(d)). Review the content of the notice provided to determine:

   a. Whether it is substantially similar to the content prescribed in Appendix N to Regulation V (12 CFR Part 1022) and

   b. Whether the information is clearly and prominently displayed.

[Click&type]

9. **Address Discrepancy Notices.** If the entity is a nationwide consumer reporting agency, determine whether it notifies persons who request consumer reports of the existence of an address discrepancy in all instances when:

   a. A request includes an address for the consumer that substantially differs from the addresses in the consumer's file and

   b. The entity provides a consumer report in response to the request. (Section 605(h); 15 U.S.C. 1681c(h)).

[Click&type]

10. **Unauthorized disclosures by officers or employees.** Determine whether the entity has policies and procedures in effect to ensure that officers and employees do not provide information concerning an individual from the agency's files to a person not authorized to receive that information. (Section 620; 15 U.S.C. § 1681r).

[Click&type]

Module 5 - Consumer File and Score Disclosures

This module assesses compliance with the FCRA provisions that require consumer reporting agencies to give consumers access to their files and scores.

1. **Identification Required for Consumer Disclosures.**

   a. Determine whether the entity requires consumers to furnish proper identification in order to obtain disclosure of their files and/or scores. (Section 610(a)(1); 15 U.S.C. 1681h(a)(1)).

   b. Assess whether the entity has developed and implemented reasonable requirements for the types of information consumers need to provide to constitute proof of identity. Evaluate whether the entity:

      i. Ensures that the information is sufficient to enable the entity to match consumers with their files and

      ii. Adjusts the information to be commensurate with an identifiable risk of harm arising from misidentifying the consumer. (For illustrative examples, see 12 CFR 1022.123.)

[Click&type]

2. **Statement of Rights to Be Provided With Disclosures**. Determine whether the entity provides the following with each written file disclosure provided at the consumer's request:

   a. A summary of rights that:

      i. Is substantially similar to the CFPB's model summary in Appendix K to Regulation V (12 CFR Part 1022),

      ii. Has all information clearly and prominently displayed, and

      iii. Includes a description of:

         A. The right of a consumer to obtain a copy of a consumer report under Section 609(a) (15 U.S.C. 1681g(a)) from each consumer reporting agency;

         B. The frequency and circumstances under which a consumer is entitled to receive a free consumer report under Section 612 (15 U.S.C. 1681j);

         C. The right of a consumer to dispute information in the consumer's file under Section 611 (15 U.S.C. 1681i);

         D. The right of a consumer to obtain a credit score from a consumer reporting agency and a description of how to obtain a credit score;

         E. The method by which a consumer can contact, and obtain a free consumer report from, a nationwide consumer reporting agency; and

F. The method by which a consumer can contact, and obtain a consumer report from, a nationwide specialty consumer reporting agency;

b. In the case of a nationwide consumer reporting agency, a toll-free telephone number for the entity at which personnel are accessible to consumers during normal business hours;

c. A list of all federal agencies responsible for enforcing the FCRA (with addresses and phone numbers), in a form that will assist the consumer in selecting the appropriate agency;

d. A statement that the consumer may have additional rights under state law and that the consumer may wish to contact a state or local consumer protection agency or a state attorney general (or the equivalent thereof) to learn of those rights; and

e. A statement that a consumer reporting agency is not required to remove accurate derogatory information from a consumer's file, unless the information is outdated under Section 605 (15 U.S.C. 1681c) or cannot be verified. (Section 609(c)(1)-(2); 15 U.S.C. 1681g(c)(1)-(2); 12 CFR Part 1022, Appendix K).

[Click&type]

3. **Information to Be Provided in Response to File Requests.** Determine whether the entity clearly and accurately discloses the following to consumers upon request:

   a. All information in the consumer's file at the time of the request, except—

      i. The entity must not disclose the first five digits of the consumer's Social Security number (or similar identification number) if the consumer requests (after providing appropriate proof of identity) that they be truncated (as explained in step 1b above); and

      ii. The entity need not disclose any information concerning credit scores or any other risk scores or predictors relating to the consumer (except under the circumstances described in step 4 below).

   b. The sources of the information, except for sources acquired and used solely in preparing an investigative consumer report. (For disclosures required with respect to investigative consumer reports, see step 19 of Module 8.)

   c. The name or trade name written in full (and, if requested by the consumer, the address and telephone number) of each person that procured a consumer report (including all end-users, but not including certain federal government users for purposes related to classified information in national security investigations):

      i. For employment purposes, during the two-year period preceding the date of the request; or

      ii. For any other purpose, during the one-year period preceding the date of the request.

d. The dates, original payees, and amounts of any checks that:

   i. Are included in the file at the time of the disclosure and

   ii. Form the basis for any adverse characterization of the consumer.

e. A record of all inquiries received by the entity during the 1-year period preceding the request that identified the consumer in connection with a credit or insurance transaction that was not initiated by the consumer.

f. If the consumer requests a credit file and not a credit score, a statement that the consumer may request and obtain a credit score. (Section 609(a); 15 U.S.C. 1681g(a)).

[Click&type]

4. **Information to Be Provided in Response to Credit Score Requests.**

a. Determine whether the entity:

   i. Distributes any scores that are used in connection with residential real property loans or

   ii. Develops any scores that assist credit providers in understanding a consumer's general credit behavior and predicting the consumer's future credit behavior. (Section 609(f)(4); 15 U.S.C. 1681g(f)(4)).

   If the answers to (i) and (ii) above are both "no," skip to step 5 below.

b. Assess the entity's handling of consumer requests for credit scores. Refer to the Glossary and step 17 of Module 1 for the definition of "credit score." In evaluating the entity's handling of consumer requests for credit scores, consider:

   i. Whether the entity provides the following information when a consumer requests a credit score:

      A. A statement indicating that the information and credit scoring model may be different than the credit score that may be used by the lender and

      B. A notice that includes:

         (1) The current credit score of the consumer or the most recent credit score of the consumer that was previously calculated by the entity for a purpose related to the extension of credit;

         (2) The range of possible credit scores under the model used;

         (3) All of the key factors (as defined in the Glossary) that adversely affected the credit score of the consumer in the model used (not to exceed four factors,

except that if the number of inquiries is a key factor it must be included without regard to the numerical limit);

(4) The date on which the credit score was created; and

(5) The name of the source that provided the credit score or credit file upon which the credit score was created. (Section 609(f)(1), (f)(2)(B), (f)(7), (f)(9); 15 U.S.C. 1681g(f)(1), (f)(2)(B), (f)(7), (f)(9)).

ii. Whether the entity provides a credit score that:

A. Is derived from a credit scoring model that the entity distributes widely to users in connection with residential real property loans or

B. Should assist the consumer in understanding the credit scoring assessment of the consumer's credit behavior and predictions about the consumer's future credit behavior. (Section 609(f)(7); 15 U.S.C. 1681g(f)(7)).

[Click&type]

5. **Explaining File and Score Disclosures.** Evaluate whether the entity provides trained personnel to explain information in the disclosures to consumers described above. (Section 610(c); 15 U.S.C. 1681h(c)).

[Click&type]

6. **Contact Information for Developer of Score or Methodology.** When a consumer requests a credit score that the entity distributes but did not develop or modify, assess whether the entity provides the consumer with the name, address, and website for contacting the person or entity that developed the score or developed the methodology for the score. (Section 609(f)(5); 15 U.S.C. 1681g(f)(5)).

[Click&type]

7. **Form of Disclosures.** Determine whether the entity:

   a. Makes the disclosures described in steps 2, 3, 4, and 6 above in writing, unless the consumer authorizes another form (Section 610(a)(2), (b); 15 U.S.C. 1681h(a)(2), (b)) and

   b. Allows a consumer obtaining a disclosure described above to be accompanied by one other person of his or her choosing who furnishes reasonable identification (Section 610(d); 15 U.S.C. 1681h(d)).

[Click&type]

8. **Free Annual Reports.** The FCRA requires nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies to provide free annual reports if they have been in continuous operation for at least a year. Nationwide consumer reporting agencies

must jointly operate a "centralized source" that consumers can use to obtain their free reports. Each nationwide specialty consumer reporting agency must make free reports available through a "streamlined process."

a. **Who must provide free annual reports.** Determine if the entity has an obligation to provide free annual reports in response to consumer requests by assessing whether:

   i. It has been furnishing consumer reports to third parties on a continuing basis with respect to consumers residing nationwide for the last 12 months and

   ii. It is a nationwide consumer reporting agency or a nationwide specialty consumer reporting agency (as determined in steps 2 and 4 of Module 1).

   If the answer to (i) or (ii) above is no, skip to step 9 below regarding free disclosures after adverse actions. (Section 612(a)(1)(A), (a)(4); 15 U.S.C. 1681j(a)(1)(A), (a)(4)).

b. **Basic compliance.** Determine whether the entity provides all of the disclosures described in steps 2 and 3 above without charge to the consumer upon a consumer's request once during any 12-month period. For nationwide consumer reporting agencies, this obligation applies only to requests made through the centralized source. (Section 612(a)(1)(A)-(B); 15 U.S.C. 1681j(a)(1)(A)-(B)).

c. **Timeliness.** Assess whether the entity provides free annual reports within the statutory timeframe, which is within 15 days after the date the request is received. (Section 612(a)(2); 15 U.S.C. 1681j(a)(2)).

d. **Special requirements for nationwide consumer reporting agencies.** If the entity is a nationwide consumer reporting agency, assess whether it meets the following requirements in addition to those described in (b) and (c) above:

   i. **Ease of access.** Determine whether the entity through the centralized source does the following when consumers seek information regarding their files with the entity:

      A. Makes available a standardized form for consumers to use when requesting an annual file disclosure request by mail or through the website;

      B. Provides information through the centralized source website and telephone number regarding how to make a request through the website, by a toll-free telephone number, and by a single mail address;

      C. Provides clear and easily understandable information and instructions, including:

         (1) Providing information on the progress of the consumer's request;

         (2) Providing access on the website to a "help" or "frequently asked questions" screen, which includes specific information that consumers might reasonably need to request file disclosures, answers to questions that consumers might

reasonably ask, and instructions on how to file a complaint with the centralized source and the CFPB;

(3) If a consumer cannot be properly identified, notifying the consumer and providing directions on how to complete the request, including what additional information or documentation will be required to complete the request, and how to submit such information; and

(4) A statement indicating that the consumer has reached the website or telephone number for ordering free annual credit reports as required by federal law. (12 CFR 1022.136(a)-(b)).

ii. **Collection of personally identifiable information.** Determine whether the entity collects only as much personally identifiable information through the centralized source as is reasonably necessary to properly identify the consumer and to process the transaction(s) requested by the consumer. (12 CFR 1022.136(b)(2)(ii)).

iii. **Procedures to anticipate and respond to volume of consumers who request consumer reports from the centralized source.** Determine whether the entity, in conjunction with the other nationwide consumer reporting agencies, has implemented reasonable procedures to anticipate, and respond to, the volume of consumers who use the centralized source to meet the requirements of 12 CFR 1022.136(b)(2)(i), (c), & (e).

iv. **Reports owned by an associated consumer reporting agency.** Determine whether, in response to a consumer's request (accompanied by proper identification) through the centralized source, the entity provides a file disclosure of every consumer report that the entity has the ability to provide to a third party relating to that consumer, regardless of whether the consumer report is owned by the entity or by an associated consumer reporting agency. (12 CFR 1022.136(d)).

v. **Advertising, marketing, or establishment of accounts.** If any advertising or marketing for products or services or requests to establish accounts are done through the centralized source, determine whether:

A. They are delayed until after the consumer has obtained his or her annual file disclosure and

B. Any communications, instructions, or permitted advertising or marketing do not interfere with, detract from, contradict, or otherwise undermine the purpose of the centralized source. (12 CFR 1022.136(g)).

vi. **Conditions.** Determine whether the centralized source requires consumers to set up an account or asks or requires consumers to agree to terms or conditions in connection with obtaining an annual file disclosure from the entity. (12 CFR 1022.136(h)).

e. **Special requirements for nationwide specialty consumer reporting agencies.** If the entity is a nationwide specialty consumer reporting agency, assess whether it meets the following requirements in addition to those described in 8b and 8c above:

i. **Streamlined process.** Determine whether the entity has established a streamlined process for accepting and processing consumer requests for free annual disclosures that:

A. Includes a toll-free telephone number that:

(1) Allows consumers to request their disclosures;

(2) Provides clear and prominent instructions for requesting disclosures by any additional available request methods that do not interfere with, detract from, contradict, or otherwise undermine the ability of consumers to obtain annual file disclosures through the streamlined process;

(3) Is published in conjunction with other published numbers for the entity; and

(4) Is clearly and prominently posted on any website related to consumer reporting that the entity owns or maintains, along with instructions for requesting disclosures by any additional available request methods; and

B. Provides clear and easily understandable information and instructions to consumers, including:

(1) Providing information on the status of the consumer's request;

(2) For a website request method, providing access to a "help" or "frequently asked questions" screen, which includes more specific information on how to order file disclosures, answers to questions that consumers might reasonably ask, and instructions on how to file a complaint with the entity and the CFPB; and

(3) If a consumer cannot be properly identified, providing notice of that fact and directions on how to complete the request, including what additional information or documentation is required and how to submit it. (12 CFR 1022.137(a)).

ii. **Collection of personal information.** Determine whether the entity collects only as much personal information as is reasonably necessary to properly identify the consumer. (12 CFR 1022.137(a)(2)(ii)).

iii. **Anticipating and responding to volume of consumers.** Determine whether the entity has implemented reasonable procedures to anticipate, and respond to, the volume of consumers who will use the streamlined process to meet the requirements of 12 CFR 1022.137(a)(2)(i), (b), & (c).

iv. **Requests received through other methods.** Determine whether the entity accepts consumer requests for annual file disclosures from consumers who use methods other than the streamlined process or instructs such consumers on how to use the streamlined process. (12 CFR 1022.137(e)).

f. **Handling of personally identifiable information.** Determine whether the entity (or the centralized source) uses or discloses any personally identifiable information collected from a consumer because of the consumer's request for an annual or other disclosure required by the FCRA from the entity that the consumer made through the centralized source or the streamlined process, for any reason other than the following:

i. To provide the FCRA disclosure requested by the consumer;

ii. To process a transaction requested by the consumer at the same time as the disclosure request;

iii. To comply with applicable legal requirements; or

iv. To update personally identifiable information already maintained by the entity for the purpose of providing consumer reports, provided that the entity uses and discloses the updated personally identifiable information subject to the same legal restrictions that would apply to the information that is updated or replaced. (12 CFR 1022.136(f), 1022.137(d)).

[Click&type]

9. **Free Disclosures After Adverse Action**. Determine whether the entity complies with its obligation to provide a statement of rights and make the file disclosure described in steps 2 and 3 above without charge to any consumer about whom it maintains a file if the consumer makes a request within 60 days after receiving either:

a. An adverse action notice or

b. A notification from a debt collection agency affiliated with the entity stating that the consumer's credit rating may be or has been adversely affected. (Section 612(b); 15 U.S.C. 1681j(b)).

[Click&type]

10. **Free Disclosures in Connection With Fraud Alerts**. If the entity is a nationwide consumer reporting agency and inserts a fraud alert in the consumer's file at the request of the consumer or the consumer's representative, determine whether it:

a. Discloses to the consumer that the consumer may request:

i. A free file disclosure (in the case of an initial fraud alert) or

   ii. Two free file disclosures in the 12-month period beginning on the date of the fraud alert (in the case of an extended fraud alert); and

b. Provides all disclosures described in steps 2 and 3 above without charge within three business days after the consumer requests the disclosure. (Section 605A(a)(2), (b)(2); 15 U.S.C. 1681c-1(a)(2), (b)(2)).

[Click&type]

11. **Other Free Disclosures**. Determine whether the entity makes all disclosures described in steps 2 and 3 above without charge to any consumer upon request once during any 12-month period if the consumer certifies in writing that the consumer:

    a. Is unemployed and intends to apply for employment in the 60-day period beginning on the date of the certification,

    b. Is a recipient of public welfare assistance, or

    c. Has reason to believe that the consumer's file at the entity contains inaccurate information due to fraud. (Section 612(c); 15 U.S.C. 1681j(c)).

[Click&type]

12. **Charges for Other File Disclosures.** Determine whether any charges imposed by the entity for file disclosures not covered in steps 8 to 11 above are:

    a. Reasonable,

    b. Not in excess of the annually adjusted maximum amount ($11.50 as of January 2012), and

    c. Indicated to the consumer before the disclosure is made. (Section 612(f); 15 U.S.C. 1681j(f)).

[Click&type]

13. **Charges for Credit Score Disclosures**. Determine in consultation with Headquarters whether the fees charged by the entity for credit score disclosures are reasonable and fair. (Section 609(f)(8); 15 U.S.C. 1681g(f)(8)).

[Click&type]

14. **"Free" Disclosures in Exchange for Other Purchases**.

    a. Determine whether the entity offers any file disclosures prepared by or obtained from, directly or indirectly, a nationwide consumer reporting agency that are represented, either expressly or by implication, to be available to the consumer at no cost if the consumer purchases a product or service or agrees to purchase a product or service subject to cancellation.

b. If so, determine in consultation with Headquarters whether all such offers prominently include the disclosures required by 12 CFR 1022.138(b), as applicable, and comply with the general requirements of 12 CFR 1022.138(a)(3)(i)-(vi). Advertising issues are also addressed in Module 9.

[Click&type]

Module 6 - Consumer Inquiries, Complaints, and Disputes and the Reinvestigation Process

This module addresses consumer inquiries, complaints, and disputes, as well as the investigation procedures the FCRA requires a consumer reporting agency to follow if a consumer disputes the completeness or accuracy of any item of information contained in his or her file. Compliance management is addressed in Module 1 and in the compliance management review section of the examination manual, and consumer file disclosure requests are discussed in detail in Module 5.

GENERAL PROCESSES

1. **Channels for Consumers to Contact the Entity**.

   a. Identify all channels the entity makes available for consumers to submit inquiries, complaints, and disputes, including telephone, physical locations, addresses for written submissions, websites, email addresses, and other Internet-based channels.

   b. Assess the effectiveness of each of these channels, including ease of access for consumers, wait times, and company responsiveness. Consider the limits, if any, that each channel places on the amount or type of information or documentation that consumers can submit in support of their dispute.

[Click&type]

2. **Toll-Free Number for Nationwide Consumer Reporting Agencies**. If the entity is a nationwide consumer reporting agency, determine whether it has established a toll-free telephone number at which personnel are accessible to consumers during normal business hours. Assess the ease of accessing a live person, including hold times and call abandonment rates. (Section 609(c)(2)(B); 15 U.S.C. 1681g(c)(2)(B)).

[Click&type]

3. **Responsiveness and Training of Personnel**. Assess the responsiveness and training of company personnel who handle consumer inquiries, complaints, and disputes. In doing so:

   a. Determine if staffing levels are sufficient for the volume of inquiries, complaints, and disputes. Assess whether assumptions used for staffing determinations are supported by analysis. (For procedures related to staffing levels for the centralized source and streamlined processes, see also steps 8d and 8e of Module 5).

   b. Consider response times and other performance metrics used by the entity.

   c. Assess the level of training provided or required for all staff that handle consumer inquiries, complaints, and disputes. (For procedures related to training of personnel who explain file disclosures, see step 5 of Module 5.)

4. **Systems and Procedures Review**.

   a. Evaluate the systems, procedures, and policies used by the entity for capturing, logging, categorizing, tracking, handling, investigating, and resolving consumer inquiries, disputes, and complaints. Assess whether these systems and procedures are adequate to ensure compliance with the requirements identified in steps 5-25 below. Include in this review any systems and procedures used to communicate information to and from furnishers, users, and other consumer reporting agencies.

   b. Assess how the systems and procedures identify and handle:

      i. Patterns of complaints or disputes that suggest systematic problems and

      ii. Repeated complaints or disputes by the same consumer.

[Click&type]

5. **Handling of CFPB Complaints.** If the entity is a nationwide consumer reporting agency, assess the following with respect to complaints it receives from the CFPB:

   a. Whether the entity reviews each such complaint to determine whether its legal obligations under the FCRA have been met (including any obligation imposed by an applicable court or administrative order);

   b. Whether it provides reports to the CFPB regarding the determinations of and actions taken in connection with its review of such complaints; and

   c. Whether it maintains, for a reasonable time period, records regarding the disposition of each such complaint. (Section 611(e)(3); 15 U.S.C. 1681i(e)(3)).

[Click&type]

DISPUTES AND THE REINVESTIGATION PROCESS

Steps 6 to 21 below apply to consumer reporting agencies except those that operate only as resellers (as defined in the Glossary and step 5 of Module 1). If the entity operates only as a reseller, skip to steps 22 to 25 below.

6. **Reasonable Reinvestigation.** Determine whether the entity conducts a reasonable reinvestigation, free of charge, when a consumer notifies the entity (directly or through a reseller) that the consumer disputes the completeness or accuracy of any item of information contained in the consumer's file at the entity. (Section 611(a)(1); 15 U.S.C. 1681i(a)(1)).

[Click&type]

7. **Termination of Frivolous or Irrelevant Reinvestigations.** Assess the circumstances under which the entity declines to investigate a dispute on the grounds that it is frivolous or irrelevant. Determine:

   a. Whether the entity reasonably determines before terminating such a reinvestigation that the dispute by the consumer is frivolous or irrelevant (such as if a consumer fails to provide sufficient information to investigate the disputed information) and

   b. Whether the entity provides notice to the consumer within five business days after determining that a dispute is frivolous or irrelevant, by mail or other means authorized by the consumer, that:

      i. Includes the reasons for the determination and

      ii. Identifies any information required to investigate the disputed information (the entity may identify this information by using a standardized form describing the general nature of such information). (Section 611(a)(3); 15 U.S.C. 1681i(a)(3)).

[Click&type]

8. **Review of All Relevant Information.** Determine whether in conducting its reinvestigations the entity reviews and considers all relevant information submitted by the consumer within 30 days after receiving the dispute from the consumer or reseller. (Section 611(a)(1)(A), (a)(4); 15 U.S.C. 1681i(a)(1)(A), (a)(4)). Review how the entity handles and uses attachments and other supplementary materials and text provided by the consumer in disputes submitted by mail, Internet, telephone, or other means.

[Click&type]

9. **Timely and Complete Notification to Furnisher.**

   a. Determine whether within five business days after receiving notice of a dispute, the entity provides notification to the furnisher (other than in cases of "expedited dispute resolutions" described in step 19 below).

   b. Assess whether this notification includes all relevant information regarding the dispute that the entity has received from the consumer or reseller. (Section 611(a)(2)(A); 15 U.S.C. 1681i(a)(2)(A)). In making this assessment:

      i. Consider disputes that come in through all of the different channels that consumers can use to lodge disputes.

      ii. Assess how information from attachments submitted by consumers is handled.

[Click&type]

10. **Update to Furnisher if Additional Information Received.** If the entity receives additional information from the consumer or reseller after it provides the initial notification to the furnisher, but within thirty days after receiving the dispute, determine whether the entity provides such information to the furnisher (other than in cases of "expedited dispute resolutions" described in step 19 below). (Section 611(a)(2)(B); 15 U.S.C. 1681i(a)(2)(B)).

[Click&type]

11. **Time Limits for Completing Reinvestigation.** For disputes that are not terminated as frivolous or irrelevant (see step 7 above), determine whether the entity completes the reinvestigation and records the current status or deletes the information before the applicable statutory deadline. The deadline is 30 days after the entity receives the notice from the consumer or reseller, except under the following two circumstances:

    a. The time can be extended up to 15 additional days if:

        i. The entity receives information from the consumer during the initial 30-day period that is relevant to the reinvestigation and

        ii. The disputed information is not found to be inaccurate or incomplete or unverifiable in the initial 30-day period (Section 611(a)(1); 15 U.S.C. 1681i(a)(1)); or

    b. The deadline is 45 days after receipt of the notice from the consumer or reseller if the dispute was sent after the consumer received an annual free report (Section 612(a)(3); 15 U.S.C. 1681j(a)(3)).

[Click&type]

12. **Inaccurate, Incomplete, or Unverifiable Information**. If information disputed by a consumer is found to be inaccurate, incomplete, or cannot be verified, determine if the entity:

    a. Promptly deletes the information from the consumer's file, or modifies it as appropriate;

    b. Promptly notifies the furnisher that the information has been modified or deleted from the consumer's file; and

    c. Ensures that the information is not reinserted into the consumer's file unless the furnisher certifies that the information is complete and accurate. (Section 611(a)(5)(A), (a)(5)(B)(i); 15 U.S.C. 1681i(a)(5)(A), (a)(5)(B)(i)).

[Click&type]

13. **Handling of Disputes Related to Credit Scores Developed by Others.** If the entity declines to process disputes relating to credit scores that were developed by another person or entity, confirm:

    a. That the entity did not itself develop or modify the scores and

b. That the entity provides the consumer with the name and address and website for contacting the person or entity who developed the score or developed the methodology of the score. (Section 609(f)(5); 15 U.S.C. 1681g(f)(5)).

[Click&type]

14. **Reinsertion of Deleted Information.** If information deleted from a consumer's file through a reinvestigation is later reinserted in the file, determine whether the entity provides the consumer the following in writing within five business days of the reinsertion:

   a. A statement that the disputed information has been reinserted;

   b. The business name and address (and telephone number, if reasonably available) of any furnisher contacted by the entity or that contacted the entity in connection with the reinsertion of such information; and

   c. A notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the disputed information. (Section 611(a)(5)(B); 15 U.S.C. 1681i(a)(5)(B)).

[Click&type]

15. **Procedures to Prevent Reappearance of Deleted Information.** Assess whether the entity maintains reasonable procedures designed to prevent the reappearance in a consumer's file, and in consumer reports, of information that is deleted based on a reinvestigation (other than information that is reinserted after the furnisher certifies that it is complete and accurate). (Section 611(a)(5)(C); 15 U.S.C. 1681i(a)(5)(C)). See also step 2a of Module 3, which addresses whether the entity actually has included previously deleted information in consumer reports.

[Click&type]

16. **Automated System for Furnishers to Report Reinvestigation Results.** If the entity is a nationwide consumer reporting agency, determine if it provides furnishers access to an automated system that allows them to report the results of a reinvestigation that finds incomplete or inaccurate information to other nationwide consumer reporting agencies. (Section 611(a)(5)(D); 15 U.S.C. 1681i(a)(5)(D)).

[Click&type]

17. **Notice to Consumer of Results of Reinvestigation.** Determine if the entity provides written notice to a consumer (or the reseller, if the dispute was provided through a reseller) of the results of a reinvestigation, by mail or by any other means authorized by the consumer, within five business days after the completion of the reinvestigation (except in the case of "expedited resolutions" described in step 19 below). Determine whether, as part of this notice or in addition to this notice, the entity provides the following to the consumer in writing within the five-day period:

a. A statement that the reinvestigation is completed;

b. A consumer report based upon the consumer's file as revised;

c. A notice that, if requested by the consumer, a description of the procedure used to determine the information's accuracy and completeness will be provided by the entity, including the business name and address of any furnisher contacted in connection with such information (with telephone number, if reasonably available);

d. A notice that the consumer has the right to add a statement to the consumer's file disputing the information's accuracy or completeness; and

e. A notice that the consumer has the right to request that the entity furnish notifications regarding deletions or statements of dispute to certain users who have received reports containing the information. (Section 611(a)(6); 15 U.S.C. 1681i(a)(6)).

[Click&type]

18. **Description of Procedures Used.** If a consumer requests a description of the procedures used, determine whether the entity provides such a description within 15 days after receiving the request (except in cases of "expedited dispute resolutions" described in step 19 below). (Section 611(a)(7); 15 U.S.C. 1681i(a)(7)).

[Click&type]

19. **Expedited Dispute Resolutions.**

a. Determine whether the entity engages in any "expedited dispute resolutions" in which it does not provide timely and complete notification or updates to the furnisher, does not provide written notice to the consumer of the results of the reinvestigation, and/or does not make available a description of the procedures used upon consumer request (per steps 9, 10, 17, and 18 above).

b. If so, determine whether for each of these "expedited dispute resolutions," the entity:

i. Deletes the disputed information within three business days after the date on which the entity receives notice of the dispute from the consumer,

ii. Provides prompt notice of the deletion to the consumer (or to the reseller, if the complaint came through a reseller) by telephone,

iii. Provides written confirmation of the deletion and a revised consumer report, within five business days after making the deletion, and

iv. Includes in the telephone notice described in 19bii above or in a written notice accompanying the confirmation and copy of the report described in 19biii above a statement of the consumer's right to request that the entity notify certain prior users under Section 611(d) (15 U.S.C. 1681i(d)). (Section 611(a)(8); 15 U.S.C. 1681i(a)(8)).

[Click&type]

20. **Statements of Dispute.**

    a. If the reinvestigation does not resolve the dispute, determine whether the entity allows the consumer to file a brief statement setting forth the nature of the dispute. (Section 611(b); 15 U.S.C. 1681i(b)).

    b. If the entity limits the length of such statements of dispute, determine whether:

        i. The entity allows the consumer up to at least 100 words and

        ii. The entity provides the consumer with assistance in writing a clear summary of the dispute. (Section 611(b); 15 U.S.C. 1681i(b)).

    c. In instances where consumers file statements of dispute:

        i. Determine whether the entity:

            A. Clearly notes in any subsequent reports containing the information in question that it is disputed by the consumer and

            B. Provides either the consumer's statement or a codification or summary thereof that is clear and accurate.

        ii. If not, assess whether there are reasonable grounds for the entity to believe that the dispute is frivolous or irrelevant. (Section 611(c); 15 U.S.C. 1681i(c)).

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21. **Notification to Users of Deletions or Disputes.** Review whether the entity notifies users upon consumer request of (1) any deletion of information which is found to be inaccurate or whose accuracy can no longer be verified or (2) any notation as to disputed information. Such notification must be provided to any person specifically designated by the consumer who has received a consumer report containing the deleted or disputed information:

    a. For employment purposes within the previous two years or

    b. For any other purpose within the previous six months. (Section 611(d); 15 U.S.C. 1681i(d)).

RESELLER RESPONSIBILITIES REGARDING DISPUTES

The following procedures should be used to review a reseller's conduct when the reseller receives consumer disputes concerning the completeness or accuracy of information contained in a consumer report produced by the reseller.

[Click&type]

22. **Assessment by Reseller.** Determine whether the reseller determines whether the item of information is incomplete or inaccurate as a result of an act or omission of the reseller within five business days of receiving notice of a dispute from a consumer and without charge to the consumer. (Section 611(f)(2)(A); 15 U.S.C. 1681i(f)(2)(A)).

[Click&type]

23. **Timely Correction of Reseller Errors.** When the reseller determines that disputed information is incomplete or inaccurate as a result of its own act or omission, determine whether the reseller corrects the information in the consumer report or deletes it within 20 days after receiving the notice without charge to the consumer. (Section 611(f)(2)(B)(i); 15 U.S.C. 1681i(f)(2)(B)(i)).

[Click&type]

24. **Notice to Consumer Reporting Agency That Produced Report.**

    a. For instances where the reseller determines that the item of information is not incomplete or inaccurate as a result of its own acts or omissions, determine whether the reseller conveys notice of the dispute to each consumer reporting agency that provided the reseller with the information at issue without charge to the consumer.

    b. If so, determine:

        i. Whether the reseller includes with the notice all relevant information provided by the consumer and

        ii. Whether the reseller uses an address or a notification mechanism specified by the consumer reporting agency for such notices. (Section 611(f)(2)(B); 15 U.S.C. 1681i(f)(2)(B)).

[Click&type]

25. **Conveyance of Reinvestigation Notices to Consumers.** Determine whether the reseller immediately reconveys reinvestigation notices that it receives from the consumer reporting agency to the consumer, including any notice of a deletion by telephone. (Section 611(f)(3); 15 U.S.C. 1681i(f)(3)).

DISPUTE PROCESS FOR VETERAN'S MEDICAL DEBT

The following procedures should be used to review the entity's conduct when the entity receives a veteran's medical debt dispute.

26. **Notice Submitted by Veteran.** Determine whether the consumer submitted a valid veteran's medical debt dispute to the consumer reporting agency or reseller. The veteran may submit the following documentation:

a. A notice from the Department of Veteran Affairs stating the Department has assumed liability for part, or all, of a veteran's medical debt; or

b. Proof of liability of the Department of Veterans Affairs for payment of the debt; or

c. Documentation that the Department of Veterans Affairs is in the process of making payments for authorized hospital care, medical services, or extended care services rendered. (Section 611(g); 15 U.S.C. 1681i(g)).

[Click&type]

27. **Deletion of Information from File.** Determine whether the entity, after receiving any of the documentation listed in step 26, deleted all information relating to the veteran's medical debt from the file and notified the furnisher and veteran of the deletion. (Section 611(g)(3); 15 U.S.C. 1681i(g)(3)).

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Module 7 - Consumer Alerts and Identity Theft Provisions

This Module addresses a number of requirements that the FCRA imposes on consumer reporting agencies to address identity theft and to protect active duty military consumers, including security freezes, fraud and active duty alerts and blocking of reporting of information that stems from identity theft. In addition to the procedures set out below, other modules also touch on identity protection issues – including, for example, the requirement that consumer reporting agencies notify parties requesting reports regarding address discrepancies (discussed in step 9 of Module 4).

POLICIES AND PROCEDURES

1. Review and assess the entity's general policies and procedures governing how the entity responds when consumers assert that they are or have been a victim of fraud or identity theft. For policies and procedures specifically related to alerts, see step 5 below.

[Click&type]

FRAUD AND ACTIVE DUTY ALERTS

2. **Duty to Provide Contact Information.** If the entity is not a nationwide consumer reporting agency, determine whether it explains to consumers who suspect they have been or are about to be a victim of fraud or a related crime (including identity theft) how to contact the CFPB and the nationwide consumer reporting agencies to obtain more detailed information and request alerts. (Section 605A(g); 15 U.S.C. 1681c-1(g)).

[Click&type]

3. **Reseller Responsibility to Reconvey Alerts.** If the entity acts as a reseller (see step 5 of Module 1), determine whether it complies with its statutory obligation to include in its reports any fraud alert or active duty alert placed in the file of a consumer by another consumer reporting agency. (Section 605A(f); 15 U.S.C. 1681c-1(f)).

[Click&type]

4. **Applicability of Requirement to Include Alerts.** The procedures in steps 5 to 26 below apply only to nationwide consumer reporting agencies. If the entity is not a nationwide consumer reporting agency, skip to step 27 below.

[Click&type]

5. **Specific Policies and Procedures Regarding Alerts.** Determine whether the nationwide consumer reporting agency has established policies and procedures relating to fraud alerts and active duty alerts, including:

   a. Procedures that inform consumers of the availability of such alerts and

b. Procedures that allow consumers to request initial, extended, or active duty alerts in a simple and easy manner, including by telephone. (Section 605A(d); 15 U.S.C. 1681c-1(d)).

[Click&type]

6. **Requirements for Alerts.** Determine whether the nationwide consumer reporting agency includes an initial fraud alert, extended fraud alert, or active duty alert in a consumer's file when the entity:

   a. Maintains a file on the consumer,

   b. Has received appropriate proof of the requester's identity (see step 1b of Module 5), and

   c. Receives from the consumer (or an individual acting on behalf of or as a personal representative of a consumer):

      i. *In the case of an initial fraud alert*, a direct request that asserts in good faith a suspicion that the consumer has been or is about to become a victim of fraud or related crime, including identity theft;

      ii. *In the case of an extended fraud alert*, a direct request and an identity theft report (as defined in the Glossary); or

      iii. *In the case of an active duty alert*, a direct request from an active duty military consumer (or an individual acting on behalf of or as a personal representative of an active duty military consumer). (Section 605A(a)(1), (b)(1), (c); 15 U.S.C. 1681c-1(a)(1), (b)(1), (c)). An active duty military consumer means a consumer in military service who:

         A. Is on active duty[6] or is a reservist performing duty under a call or order to active duty under a provision of law referred to in 10 U.S.C. 101(a)(13), and

         B. Is assigned to service away from the usual duty station of the consumer. (Section 603(q)(1); 15 U.S.C. 1681(q)(1)).

[Click&type]

7. **Duration of Alerts.** Determine whether the nationwide consumer reporting agency includes any fraud or active duty alert in the consumer's file and provides the alert along with any credit score generated in using that file for:

   a. Not less than 1 year from the request date for initial fraud alerts,

   b. 7 years from the request date for extended fraud alerts, and

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[6] The term "active duty" here means full-time duty in the active military service of the United States. This 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. (10 U.S.C. 101(d)(1)).

c. 12 months from the request date for active duty alerts,

unless the consumer or his or her representative requests that the alert be removed earlier and provides appropriate proof of the requester's identity (see step 1b of Module 5). (Section 605A(a)(1)(A), (b)(1)(A), (c)(1); 15 U.S.C. 1681c-1(a)(1)(A), (b)(1)(A), (c)(1); 12 CFR 1022.121).

[Click&type]

8. **Referrals to and From Other Nationwide Consumer Reporting Agencies of Alerts.**

   a. Determine whether the nationwide consumer reporting agency refers information regarding fraud alerts, extended fraud alerts, and active duty alerts to each of the other nationwide consumer reporting agencies and has appropriate referral procedures in place. (Section 605A(a)(1)(B), (b)(1)(C), (c)(3); 15 U.S.C. 1681c-1(a)(1)(B), (b)(1)(C), (c)(3); Section 621(f); 15 U.S.C. 1681s(f)).

   b. When the nationwide consumer reporting agency receives referrals of fraud alerts and active duty alerts from other nationwide consumer reporting agencies, determine whether it responds in the same way that it would if it received the request directly from the consumer. (Section 605A(e); 15 U.S.C. 1681c-1(e)).

[Click&type]

9. **Free Disclosures in Connection with Fraud Alerts.** See step 10 of Module 5 for procedures regarding nationwide consumer reporting agencies' obligation to provide upon request a free file disclosure in connection with an initial fraud alert or two free file disclosures in connection with an extended fraud alert and to disclose the consumer's right to such disclosures. (Section 605A(a)(2), (b)(2); 15 U.S.C. 1681c-1(a)(2), (b)(2)).

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10. **Exclusion From Prescreening During Extended Fraud Alerts and Active Duty Alerts.** See steps 9 and 10 of Module 8 for procedures relating to the requirement that nationwide consumer reporting agencies exclude consumers with extended fraud alerts and active duty alerts from prescreening lists for five or two years respectively, unless the consumer asks to be included. (Section 605A(b)(1)(B), (c)-(d); 15 U.S.C. 1681c-1(b)(1)(B), (c)-(d)).

[Click&type]

11. **Contents of Alerts.** Determine whether the entity's fraud alerts and active duty alerts:

    a. Notify all prospective consumer report users that the consumer may be the victim of fraud, including identity theft, or is an active duty military consumer, as applicable, and

    b. Are presented in a manner that facilitates clear and conspicuous view of such notification by any person requesting a consumer report about the consumer. (Section 603(q)(2); 15 U.S.C. 1681a(q)(2)).

[Click&type]

12. **Notification in Alerts Regarding Credit Extensions.**

    a. Determine whether each initial fraud alert, extended fraud alert, and active duty alert included in a file by the entity notifies prospective users that the consumer does not authorize establishment of any new credit plan or extension of credit in the consumer's name (other than under an open-end credit plan), or issuance of an additional card on an existing credit account requested by the consumer, or any increase in credit limit on an existing credit account requested by the consumer, except under specific circumstances permitted by Section 605A(h); 15 U.S.C. 1681c-1(h).

    b. In the case of extended fraud alerts, determine whether each alert included by the entity also provides a telephone number or other reasonable contact method designated by the consumer. (Section 605A(h); 15 U.S.C. 1681c-1(h)).

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SECURITY FREEZES

13. **Security Freeze.** Verify that the consumer reporting agency (a nationwide CRA defined in Section 603(p)) accepts security freeze requests through alternate channel(s), in addition to its webpage. (Section 605A(i)(6)(A)(vi); 15 U.S.C. 1681c-1(i)(6)(A)(vi)).

[Click&type]

14. **Placement of a Security Freeze.** For consumers who request a security freeze, determine whether the nationwide consumer reporting agency:

    a. Placed the freeze free of charge.

    b. Placed the freeze only upon receipt of proper identification.

    c. Placed the freeze timely. For toll-free telephone or electronic requests, the consumer reporting agency must place the freeze no later than 1 business day after receiving the request. For requests by mail, the consumer reporting agency must place the freeze no later than 3 business days after receiving the request. (Section 605A(i)(2)(A); 15 U.S.C. 1681c-1(i)(2)(A)).

    d. Sent confirmation of the freeze to the consumer, no later than 5 business days after placing the freeze. The confirmation must inform the consumer of:

        i. The process to remove the freeze, including a mechanism to authenticate the consumers; and

        ii. The consumer's rights described in Section 615(d)(1)(D). (Section 605A(i)(2)(B); 15 U.S.C. 1681c-1(i)(2)(B)).

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15. **Removal of a Security Freeze.** A nationwide consumer reporting agency may only remove a security freeze upon the direct request of the consumer or upon the determination the freeze was placed due to a material misrepresentation of fact by the consumer. (Section 605A(i)(3); 15 U.S.C. 1681c-1(i)(3)).

    a. For removals due to material misrepresentations, determine:

        i. How the consumer reporting agency concluded that the consumer made a material misrepresentation.

        ii. Whether the consumer reporting agency notified the consumer in writing prior to removing the security freeze.

    b. For removals upon request of the consumer, determine whether the consumer reporting agency:

        i. Removed the freeze free of charge.

        ii. Removed the freeze timely. For toll-free telephone or electronic requests, the consumer reporting agency must remove the freeze no later than 1 hour after receiving the request. For requests by mail, the consumer reporting agency must remove the freeze no later than 3 business days after receiving the request.

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16. **Temporary Security Freeze Removal.** For a temporary removal of a security freeze requested by a consumer, determine whether the nationwide consumer reporting agency:

    a. Removed the freeze for the period of time specified by the consumer.

    b. Removed the freeze timely. For toll-free telephone or electronic requests, the consumer reporting agency must remove the freeze no later than 1 hour after receiving the request. For requests by mail, the consumer reporting agency must remove the freeze no later than 3 business days after receiving the request. (Section 605A(i)(3)(E); 15 U.S.C. 1681c-1(i)(3)(E)).

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17. **Exceptions.** A security freeze will not apply to a consumer reporting agency that provides a consumer report for any of the instances listed in Section 605A(i)(4). Determine whether the consumer reporting agency:

    a. Provided a consumer report for any of the allowable exceptions;

    b. Failed to provide a consumer report due to a security freeze despite a valid exception; or

c. Provided a consumer report for a consumer with a valid security freeze in place and an exception did not apply.

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18. **Notice of Rights.** Whenever a consumer is required to receive notice of rights under Section 609, verify that the notice contains the language listed in Section 605A(i)(5).

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19. **Webpage.** Determine whether the nationwide consumer reporting agency established a website that:

    a. Allows a consumer to request a security freeze;

    b. Allows a consumer to request an initial fraud alert;

    c. Allows a consumer to request an extended fraud alert;

    d. Allows a consumer to request an active duty fraud alert; and

    e. Allows a consumer to opt-out of the use of information in a credit report to send the consumer a solicitation of credit or insurance, in accordance with Section 615(d).

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SECURITY FREEZES FOR PROTECTED CONSUMERS

The FCRA defines "protected consumer" as an individual who is under the age of 16 at the time a freeze request is made, or an incapacitated person or a protected person for whom a guardian or conservator has been appointed. The term "protected consumer's representative" means a person who provides to the consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer, listed in Section 605A(j)(1)(F).

20. **Placement of Security Freeze for a Protected Consumer.** When a protected consumer's representative directly requests a security freeze for a protected consumer, determine whether the nationwide consumer reporting agency, as defined in Section 603(p):

    a. Received sufficient proof of identification, as defined under Section 605A(j)(1)(G).

    b. Received sufficient proof of authority, as defined under Section 605A(j)(1)(F).

    c. Placed the freeze free of charge.

    d. Placed the freeze timely. For toll-free telephone or electronic requests, the consumer reporting agency must place the freeze no later than 1 business day after receiving the request. For requests by mail, the consumer reporting agency must place the freeze no later than 3 business days after receiving the request. (Section 605A(j)(2)(A); 15 U.S.C. 1681c-1(j)(2)(A)).

e. Sent confirmation of the freeze to the protected consumer's representative, no later than 5 business days after placing the freeze, informing the representative of the process to remove the freeze, including a mechanism to authenticate the protected consumer's representative.

f. Created a file record for the protected consumer if one did not exist.

[Click&type]

21. **Prohibition on Release of Record or File of Protected Consumer.** Determine whether the consumer reporting agency provided the protected consumer's report, any information derived from the protected consumer's report, or any record created for the protected consumer, after a security freeze was placed. (Section 605A(j)(3); 15 U.S.C. 1681c-1(j)(3)).

[Click&type]

22. **Removal of a Protected Consumer Security Freeze.** A consumer reporting agency may only remove a protected consumer's security freeze in cases listed in Section 605A(j)(4)(A).

    a. For removals made upon the request of the protected consumer's representative, determine whether the consumer reporting agency:

        i. Removed the freeze free of charge.

        ii. Removed the freeze timely. For toll-free telephone or electronic requests, the consumer reporting agency must remove the freeze no later than 1 hour after receiving the request. For requests by mail, the consumer reporting agency must remove the freeze no later than 3 business days after receiving the request.

    b. For removals made upon the request of the protected consumer, if the consumer is not under 16 years old at the time of the request, determine whether the consumer reporting agency:

        i. Removed the freeze free of charge.

        ii. Removed the freeze timely. For toll-free telephone or electronic requests, the consumer reporting agency must remove the freeze no later than 1 hour after receiving the request. For requests by mail, the consumer reporting agency must remove the freeze no later than 3 business days after receiving the request.

    c. For removals where the security freeze was placed due to a material misrepresentation of fact by the protected consumer's representative, determine:

        i. How the consumer reporting agency concluded that the protected consumer's representative made a material misrepresentation.

        ii. Whether the consumer reporting agency notified the protected consumer's representative in writing prior to removing the security freeze.

[Click&type]

23. **Protected Consumer Temporary Security Freeze Removal.** For temporary removal of a protected consumer's security freeze, the request must be made by either the protected consumer or the protected consumer's representative, provided the protected consumer is not under 16 years old at the time of the request. Determine whether the consumer reporting agency:

    a. Removed the freeze for the period of time specified by the consumer.

    b. Removed the freeze timely. For toll-free telephone or electronic requests, the consumer reporting agency must remove the freeze no later than 1 hour after receiving the request. For requests by mail, the consumer reporting agency must remove the freeze no later than 3 business days after receiving the request

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ACTIVE DUTY CREDIT MONITORING

The following procedures should be used to review an entity's (a nationwide CRA defined in Section 603(p)) conduct to provide free electronic credit monitoring for consumers that inform the entity of their active duty military status.[7] (Section 605A(k); 15 U.S.C. 1681c-1(k)).

24. **Credit Monitoring.** For a consumer who informs the entity of their active duty status, determine whether the consumer reporting agency:

    a. Requested and received appropriate proof of identity, proof of the consumer's active duty status,[8] and the consumer's contact information.

    b. Provided a free electronic monitoring service for two years after the entity verifies the consumer's active duty status, that at a minimum, notifies a consumer of material additions or modifications to the file within 48 hours of the changes.[9]

        i. The notification may be by mobile application, email, or text message. If the notification does not inform the consumer of the specific change, the notice must link to a website that provides that information.

        ii. The notice, or the first page of the electronic credit monitoring service website, shall include a hyperlink to a summary of the consumer's rights under the FCRA. Each file

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[7] The term "active duty military consumer" is defined in 15 U.S.C. 1681a(q)(1). The term also includes a member of the National Guard, as defined in 10 U.S.C. 101(c).

[8] A consumer's active duty status can be verified through: a method or service approved by the Department of Defense, or a certification of active duty status approved by the NCRA.

[9] Material additions or modifications are defined in 16 CFR Part 609.2(l).

disclosure from the entity must also include a summary of the consumer's rights under the FCRA.

[Click&type]

25. **Information use and disclosure.** Determine whether the entity collected information from consumers, as a result of a request to obtain the service, and if so, used or disclosed that information for the following permitted purposes only (16 CFR 609.3(d)):

    a. To provide the free electronic credit monitoring service requested by the consumer;

    b. To process a transaction requested by the consumer at the same time as the request for the free electronic credit monitoring service;

    c. To comply with applicable legal requirements; or

    d. To update information already maintained by the entity for the purpose of providing consumer reports.

[Click&type]

26. **Prohibited practices.** Determine whether the entity engaged in any of the following prohibited practices (16 CFR 609.3(e) and (f)):

    a. Advertised or marketed products or services to the consumer during the enrollment process. This includes any communications or instructions that advertise or market any products and services.

    b. Provided communications, instructions, or advertising or marketing that interfered with, detracted from, contradicted, or undermined the purpose of providing the free electronic credit monitoring service. Examples include:

        i. Materials that represent, expressly or implication, that an active duty consumer must purchase a paid product or service in order to receive the free electronic credit monitoring; or

        ii. Materials that falsely represent, expressly or implication, that a product or service offered additionally to the free electronic credit monitoring service, such as identify theft insurance, is also free, or fail to clearly and prominently disclose that consumers must cancel a service within the initial free period to avoid being charged.

    c. Required an active duty military consumer to agree to terms or conditions in connection with obtaining the free electronic credit monitoring service, other than those terms or conditions required to comply with applicable legal requirements.

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IDENTITY THEFT STATEMENT OF RIGHTS

The FCRA requires consumer reporting agencies under certain circumstances to provide a summary of rights of identity theft victims that contains all of the information required by the CFPB.

27. **Who Receives a Statement of Rights.** Determine if the entity provides a statement of rights to any consumer who expresses a belief to the entity that the consumer is a victim of fraud or identity theft involving credit, an electronic fund transfer, or an account or transaction at or with a financial institution or other creditor. (Section 609(d)(2); 15 U.S.C. 1681g(d)(2)).

[Click&type]

28. **Content and Format of Statement of Rights.** Confirm that:

    a. The disclosures provided are substantially similar to the CFPB's model summary in Appendix I to Regulation V, 12 CFR Part 1022, and

    b. All required information is clearly and prominently displayed. (Section 609(d); 15 U.S.C. 1681g(d); 12 CFR Part 1022, Appendix I).

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IDENTITY THEFT BLOCKING REQUIREMENT

Consumer reporting agencies must "block" the reporting of certain information resulting from an alleged identity theft. Special rules apply to two different types of consumer reporting agencies.

29. **Entities Subject to Different Blocking Requirements.** Check services companies and resellers have different obligations than other consumer reporting agencies when consumers request an identity theft block. Determine if the entity is:

    a. A reseller (as determined in step 5 of Module 1) or

    b. A check services company acting as such that issues authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment.

    If so, skip to step 19 (for resellers) or 20 (for check services companies) below. (Section 605B(d)-(e); 15 U.S.C. 1681c-2(d)-(e)).

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30. **Blocking Requirement.** Absent the circumstances described in step 17 below, determine whether the entity blocks the reporting of consumer file information that the consumer identifies as resulting from an alleged identity theft (other than in reports provided to a federal, state, or local law enforcement agency) within four business days after the entity receives:

a. Appropriate proof of the identity of the consumer (see step 1b of Module 5),

b. A copy of an identity theft report,

c. The identification of such information by the consumer, and

d. A statement by the consumer that the information is not information relating to any transaction by the consumer. (Section 605B(a), (f); 15 U.S.C. 1681c-2(a), (f)).

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31. **Requirements If Declining to Block Information.** The FCRA allows consumer reporting agencies to decline a block request or rescind a block under limited circumstances. If the entity declines to implement an identity theft block, or rescinds any identity theft block, assess whether it:

a. Notifies the consumer promptly, in the same manner as consumers are notified of the reinsertion of previously-deleted information and

b. Reasonably determines that:

   i. The information was blocked in error or a block was requested by the consumer in error;

   ii. The information was blocked, or a block was requested by the consumer, on the basis of a material misrepresentation of fact by the consumer relevant to the request to block; or

   iii. The consumer obtained possession of goods, services, or money as a result of the blocked transaction or transactions. (Section 605B(c); 15 U.S.C. 1681c-2(c)).

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32. **Notification to Furnishers of Identity Theft Block.** Determine whether the entity promptly notifies the furnisher of information subject to an identity theft block request:

a. That the information may be a result of identity theft,

b. That an identity theft report has been filed,

c. That a block has been requested, and

d. Of the block's effective dates. (Section 605B(b); 15 U.S.C. 1681c-2(b)).

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33. **Reseller Obligations.** If the entity is a reseller, review how it responds when consumers request an identity theft block to determine if the reseller does the following:

a. In instances where the reseller is not otherwise furnishing or reselling a consumer report concerning the information identified by the consumer at the time of the block request, determine if the reseller informs the consumer that the consumer may report the identity theft to the CFPB to obtain consumer information regarding identity theft.

b. In instances where the consumer identifies to the entity information in the consumer's file that resulted from identity theft and where the entity is a reseller of the identified information, determine if the reseller:

i. Blocks any consumer report it maintains from subsequent use and

ii. Provides notice to the consumer of the file block, including the name, address, and telephone number of the consumer reporting agency from which the information was obtained. (Section 605B(d); 15 U.S.C. 1681c-2(d)).

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34. **Obligations of Check Services Company.** If the entity is a check services company, determine whether it refrains from reporting to a nationwide consumer reporting agency any information that an identity theft report identifies as resulting from identity theft beginning four business days after the entity receives:

a. Appropriate proof of the identity of the consumer (as explained in step 1b in Module 5),

b. A copy of an identity theft report, and

c. The consumer's identification of such information. (Section 605B(e); 15 U.S.C. 1681c-2(e)).

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35. **Acceptance of Identity Theft Reports.** If the entity asks for additional information or documentation before accepting an identity theft report in connection with a request for an extended fraud alert or for identity theft blocking, determine whether:

a. The entity's request is reasonable and made for the purpose of determining the validity of the alleged identity theft,

b. The entity makes its request within 15 days after the later of the date it receives the copy of the report form or the request by the consumer for the extended fraud alert or for identity theft blocking, and

c. The entity makes any supplemental requests for information or documentation and its final determination on the acceptance of the identity theft report by the statutory deadline, which is:

i. 15 days after its initial request for information or documentation or

ii. If the entity receives any additional information or documentation on the eleventh day or later within the 15-day period, within five days after the date of receipt. (12 CFR 1022.3(i)).

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Module 8 - Prescreening, Employment Reports, and Investigative Consumer Reports

This module addresses the requirements that the FCRA imposes on consumer reporting agencies that engage in prescreening or furnish employment reports or investigative consumer reports.

PRESCREENING

The FCRA includes detailed requirements that must be followed when consumer reporting agencies provide consumer reports not authorized by the consumer that are used to solicit consumers to obtain credit or insurance, a process known as "prescreening." In prescreening, a consumer reporting agency typically either edits a list of consumers developed by the requesting creditor or insurer (or its agents) or independently creates a list of consumers according to the requesting entity's specifications.

In addition to the examination procedures listed below, step 2f of Module 3 and step 3e of Module 5 address the FCRA's requirements that consumer reporting agencies include prescreening inquiries from the preceding year in consumer file disclosures, but not list prescreening inquiries in consumer reports issued to third parties. (Section 604(c)(3); 15 U.S.C. 1681b(c)(3); Section 609(a)(5); 15 U.S.C. 1681g(a)(5)).

1. **Whether Entity Engages in Prescreening.** Determine if the entity engages in "prescreening," by furnishing consumer reports in connection with any credit or insurance transactions that are not initiated by the consumers (to solicit the consumers to obtain credit or insurance) and where the consumers have not authorized the entity to provide such reports (as determined in step 14 of Module 1). (Section 603(l); 15 U.S.C. 1681a(l); Section 604(c)(1); 15 U.S.C. 1681b(c)(1)). If not, skip to step 12 below.

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2. **Consumer Information Released in Prescreening.** Determine whether the entity provides any information about the consumer other than the following in connection with prescreening:

   a. The name and address of a consumer,

   b. An identifier that is not unique to the consumer and that is used solely for the purpose of verifying the consumer's identity, and

   c. Other information pertaining to the consumer that does not identify the relationship or experience of the consumer with respect to a particular creditor or other entity. (Section 604(c)(2); 15 U.S.C. 1681b(c)(2)).

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3. **Notification System for Opt-Outs.** Determine whether the entity maintains a notification system, including a toll-free telephone number, which permits any consumer whose consumer report is maintained by the entity to notify the entity, with appropriate identification, of the consumer's election to be excluded ("opt out") from any list of names and addresses provided by the entity for prescreening. (Section 604(e)(5); 15 U.S.C. 1681b(e)(5)).

    a. **Affiliates.** If the entity has affiliates that engage in prescreening, determine whether they are part of the notification system and whether opt-outs are honored by all of the affiliated entities. (Section 604(e)(4)(D), (e)(5); 15 U.S.C. 1681b(e)(4)(D), (e)(5)).

    b. **Joint notification system for nationwide consumer reporting agencies.** If the entity is a nationwide consumer reporting agency, determine whether it maintains a joint notification system with other nationwide consumer reporting agencies to accomplish the purposes described in step 3 above. (Section 604(e)(6); 15 U.S.C. 1681b(e)(6)).

    c. **Publicity**. Assess how information about the notification system is disseminated to consumers, including whether the entity annually publishes in a publication of general circulation in the area served by the entity:

        i. A notification that information in consumer files maintained by the entity may be used in connection with prescreening and

        ii. The address and toll-free telephone number to use to opt out. (Section 604(e)(5); 15 U.S.C. 1681b(e)(5)).

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4. **Entity Response After System Notification.** When the entity's notification system provides notification of a consumer's election, determine whether the entity:

    a. Informs the consumer that the election is effective only for five years unless the consumer submits to the entity a signed notice of election form issued by the entity and

    b. Provides a notice of election form if requested by the consumer (which must be provided within five business days after receipt of the election notification, if the request is made with the system notification). (Section 604(e)(3); 15 U.S.C. 1681b(e)(3)).

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5. **Tracking Opt-Outs.** Assess the systems and procedures that the entity uses for tracking which consumers have opted out and the effective period for each such opt-out, which must:

    a. Begin no more than five business days after the date of notification and

    b. Continue until:

i. The consumer notifies the entity through its notification system that the election is no longer effective or

ii. If the consumer did not provide a signed notice of election form issued by the entity, five years and five business days after the notification. (Section 604(e)(4); 15 U.S.C. 1681b(e)(4)).

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6. **Honoring Opt-Outs.** Assess whether the entity has systems and processes in place to ensure that consumers who have opted out are not included in prescreening lists. Determine whether the entity provides any consumer reports for prescreening about consumers who have opted out (either through the notification system or by submitting a signed notice of election form issued by the entity) during the effective period of the opt-outs. (Section 604(c)(1); 15 U.S.C. 1681b(c)(1)).

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7. **Firm Offer of Credit.** Determine whether the entity has adequate procedures in place to determine whether the persons to whom it provides prescreened consumer reports are extending firm offers of credit or insurance (as defined in the Glossary) to each identified consumer. (Section 603(*l*); 15 U.S.C. 1681a(*l*); Section 604(c)(1); 15 U.S.C. 1681b(c)(1)).

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8. **Consumers Under 21.** Determine whether the entity provides consumer reports for prescreening that contain dates of birth that show that the consumers are not yet 21, without first obtaining the consumers' consent. (Section 604(c)(1)(B)(iv); 15 U.S.C. 1681b(c)(1)(B)(iv)).

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9. **Extended Fraud Alerts.** Determine whether the entity excludes any consumer whose file includes an extended fraud alert from any list of consumers it prepares and provides to any third party for prescreening, unless:

   a. The consumer or the consumer's representative requests that such exclusion be rescinded or

   b. More than five years have elapsed since the consumer requested the extended fraud alert. (Section 605A(b)(1)(B); 15 U.S.C. 1681c-1(b)(1)(B)).

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10. **Active Duty Alerts.** Determine whether the entity excludes any consumer whose file includes an active duty alert from any list of consumers that it prepares and provides to any third party for prescreening, unless:

a. The consumer or the consumer's representative requests that such exclusion be rescinded or

b. More than two years have elapsed since the consumer requested the active duty alert. (Section 605A(c)(2); 15 U.S.C. 1681c-1(c)(2)).

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11. **Tracking Inquiries.** Assess the systems and procedures that the entity uses to track prescreening inquiries. Evaluate whether these systems and procedures are adequate to meet the entity's obligations to provide to the consumer a list of all prescreening inquiries over the last year with any consumer file disclosure, but not to disclose information about such inquiries in consumer reports furnished to others (see steps 2f in Module 3 and step 3e in Module 5). (Section 604(c)(3); 15 U.S.C. 1681b(c)(3); Section 609(a)(5); 15 U.S.C. 1681g(a)(5)).

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EMPLOYMENT REPORTS

The FCRA imposes additional requirements on consumer reporting agencies when they prepare and furnish reports for employment purposes.

12. **Whether Entity Provides Employment Reports.** Determine if the entity furnishes any reports for employment purposes (as determined in step 15 of Module 1). If not, skip to step 18 below.

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13. **Certification Regarding Employment Laws.** Determine if prior to furnishing consumer reports for employment purposes, the entity obtains a certification from the person requesting the report that information from the consumer report will not be used in violation of any applicable federal or state equal employment opportunity law or regulation. (Section 604(b)(1)(A)(ii); 15 U.S.C. 1681b(b)(1)(A)(ii)).

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14. **Other Certifications.** Determine if prior to furnishing consumer reports for employment purposes (other than in connection with an application for employment in a position regulated by the Secretary of Transportation under 49 U.S.C. 31502 or subject to safety regulation by a state transportation agency, when the application was made solely by mail, telephone, computer, or other similar means), the entity obtains a certification from the person requesting the report that:

    a. A separate, clear, and conspicuous written disclosure has been provided to the consumer before the report is procured or caused to be procured indicating that a consumer report may be obtained for employment purposes;

b. The consumer has authorized in writing (on the disclosure described in (a) above or on another document) the procurement of the report by that person; and

c. Before taking any adverse action based in whole or in part on the report the requester will provide the following to the consumer to whom the report relates (unless the user is a federal agency or department and appropriate certifications relating to a national security investigation are made under Section 604(b)(4)(A) (15 U.S.C. 1681b(b)(4)(A))):

   i. A copy of the report and

   ii. A written description of the consumer's FCRA rights, as prescribed by the CFPB. (Section 604(b); 15 U.S.C. 1681b(b)).

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15. **Summary of Rights.** Determine if the entity provides a summary of the consumer's FCRA rights, as prescribed by the CFPB, either before furnishing the report or with the report. (Section 604(b)(1)(B); 15 U.S.C. 1681b(b)(1)(B); Section 609(c); 15 U.S.C. 1681g(c)).

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16. **Certain Transportation-Related Reports.** When consumer reports are issued for use in decisions regarding employment in positions regulated by the Secretary of Transportation under 49 U.S.C. 31502 or subject to safety regulation by a state transportation agency, in connection with applications made solely by mail, telephone, computer, or other similar means, determine if prior to furnishing such reports, the entity obtains a certification from the person requesting the report that:

a. The requester has provided to the consumer, by oral, written, or electronic means, notice that a consumer report may be obtained for employment purposes and a summary of the consumer's rights under Section 615(a)(3); 15 U.S.C. 1681m(a)(3);

b. The consumer has consented, orally, in writing, or electronically, to the procurement of the report by the requester;

c. If the requester takes adverse action on the employment application based in whole or in part on the report, the requester will provide to the consumer to whom the report relates within three business days of taking such action, an oral, written, or electronic notification:

   i. That adverse action has been taken based in whole or in part on a consumer report received from a consumer reporting agency;

   ii. Of the name, address, and telephone number of the consumer reporting agency that furnished the consumer report (including a toll-free telephone number established by the entity if the entity is a nationwide consumer reporting agency);

iii. That the consumer reporting agency did not make the decision to take the adverse action and is unable to provide to the consumer the specific reasons why the adverse action was taken; and

iv. That the consumer may, upon providing proper identification, request a free copy of a report and may dispute with the consumer reporting agency the accuracy or completeness of any information in the report; and

d. If the consumer requests a copy of the consumer report from the person after receiving the disclosure identified above, the person will send or provide to the consumer a copy of the report and a written description of the consumer's FCRA rights, as prescribed by the CFPB, within three business days of receiving the consumer's request, together with proper identification. (Section 604(b)(2)-(3); 15 U.S.C. 1681b(b)(2)-(3)).

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17. **Public Record Information for Employment Purposes.**

a. Determine whether the entity in preparing consumer reports for employment purposes compiles and reports items of information on consumers that are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment (excluding any situations where the user is a federal agency or department and appropriate certifications relating to a national security investigation are made under Section 604(b)(4)(A) (15 U.S.C. 1681b(b)(4)(A))).

b. If the answer is yes, determine whether the entity:

i. Notifies the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported, at the time that the public record information is reported to the user of the consumer report; or

ii. Maintains strict procedures designed to ensure that whenever public record information that is likely to have an adverse effect on a consumer's ability to obtain employment is reported, it is complete and up-to-date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments are considered up-to-date if the current public record status of the item at the time of the report is reported. (Section 613; 15 U.S.C. 1681k).

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INVESTIGATIVE CONSUMER REPORTS

The FCRA imposes additional requirements on consumer reporting agencies when they prepare and furnish "investigative consumer reports." The term "investigative consumer report" is defined in the Glossary and is a type of consumer report that includes information obtained through personal interviews with the consumer's neighbors, friends, associates, or others.

In addition to the procedures listed below, step 2h in Module 3 addresses when adverse information from investigative consumer reports can be included in subsequent consumer reports under Section 614 (15 U.S.C. 1681*l*), and step 3b in Module 5 relates to information sources for investigative consumer reports under Section 609 (15 U.S.C. 1681g).

18. **Whether the Entity Furnishes Investigative Reports.** Determine if the entity furnishes any investigative reports (as determined in step 16 of Module 1). If not, skip steps 19-20 below.

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19. **Certification From Person Requesting Report.** Determine whether prior to preparing or furnishing investigative consumer reports, the entity obtains from the person requesting the report a certification that:

    a. Within three days after first requesting the report, the requester mailed or otherwise delivered a written disclosure to the consumer that

        i. Clearly and accurately discloses that an investigative consumer report including information as to his character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and

        ii. Includes a statement informing the consumer of his or her right to request the additional disclosures described below and a written summary of rights under Section 609(c) (15 U.S.C. 1681g); and

    b. Upon written request made by the consumer within a reasonable period of time after the receipt of the disclosure mentioned above, the requester will make a complete and accurate disclosure of the nature and scope of the investigation requested, in writing mailed, or otherwise delivered, to the consumer within five days after the date the disclosure request was received or the date the report was first requested, whichever is later. (Section 606(a)(1)-(2); 15 U.S.C. 1681d(a)(1)-(2); Section 606(d)(1); 15 U.S.C. 1681d(d)(1)).

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20. **Prohibited Activities.** Determine whether the entity engages in any of the following prohibited activities:

    a. **Inquiries that would violate employment law if made by an employer.** Making an inquiry for the purpose of preparing an investigative consumer report for employment purposes if the making of the inquiry by an employer or prospective employer of the consumer would violate any applicable federal or state equal employment opportunity law or regulation. (Section 606(d)(2); 15 U.S.C. 1681d(d)(2)).

    b. **Certain public record information.** Furnishing an investigative consumer report that includes public record information relating to an arrest, indictment, conviction, civil judicial action, tax lien, or outstanding judgment, unless:

i. The entity has verified the information's accuracy during the 30-day period ending on the date the report is furnished or

ii. The report is for employment purposes and complies with all of the requirements described in step 17 above. (Section 606(d)(3); 15 U.S.C. 1681d(d)(3)).

c. **Certain adverse information from personal interviews.** Preparing or furnishing an investigative consumer report on a consumer that contains information that is adverse to the consumer's interest and that is obtained through a personal interview with a neighbor, friend, or associate of the consumer or with another person with whom the consumer is acquainted or who has knowledge of such item of information, unless:

i. The entity has followed reasonable procedures to obtain confirmation of the information from an additional source that has independent and direct knowledge of the information or

ii. The person interviewed is the best possible source of the information. (Section 606(d)(4); 15 U.S.C. 1681d(d)(4)).

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Module 9 - Other Products and Services and Risks to Consumers

Larger participants of the consumer reporting market may provide consumer financial products or services that are not covered in the preceding modules. Examiners should consider whether any of the entity's consumer financial products or services creates other risks to consumers. In addition, products and services that are covered in Modules 2 to 8 may be subject to federal consumer financial laws that are not specifically addressed in those modules, including the prohibition on engaging in any unfair, deceptive, or abusive acts or practices. The advertising and Gramm-Leach-Bliley privacy procedures below provide examples of the types of conduct to identify. Please refer also to the UDAAP examination procedures in doing this review. Examiners should consult with Headquarters to determine whether the applicable legal standards have been met before citing any violation.

ADVERTISING ISSUES

1. Review any advertising and promotional materials prepared by or on behalf of the entity to market the entity's products or services to consumers in any media or channel. Determine whether they contain any material misrepresentations, expressly or by implication, including of the following:

   a. The existence, nature, or amount of fees or other costs,

   b. The nature and benefits of the product or service advertised,

   c. The means by which to close or cancel an account, or

   d. Account terms.

   In doing this review, consider how the entity's representations compare to its actual practices, including, for example, how companies close or cancel accounts based on consumer requests, especially for accounts that were part of a free trial or that involve automatic billing or renewal.

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2. Determine whether advertisements and promotional materials directed to consumers in any media or channel clearly disclose all material limitations or conditions on the terms or availability of products or services marketed to consumers, such as:

   a. The expiration date for terms that apply only during an introductory period or

   b. Material prerequisites for obtaining particular products, services, or benefits (e.g., discounts, refunds, or rebates).

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3. Determine whether advertisements and promotional materials directed to consumers in any media or channel avoid using fine print, separate statements, or inconspicuous disclosures to correct potentially misleading headlines.

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4. If additional products or services are sold or offered in connection with products or services sold to consumers, determine if the entity ensures that:

    a. Marketing materials, including direct mail promotions, telemarketing scripts, internet and print ads, radio recordings, and television commercials, reflect the actual terms and conditions of the product and are not deceptive or misleading to consumers;

    b. Employee incentive or compensation programs tied to the sale and marketing of add-on products require adherence to company-specific program guidelines and do not create incentives for employees to provide inaccurate information about the products;

    c. Scripts and manuals used by the entity's telemarketing and customer service centers:

        i. Direct the telemarketers and customer service representatives to accurately state the terms and conditions of the various products, including material limitations on eligibility for benefits;

        ii. Prohibit enrolling consumers in programs without clear affirmative consent to purchase the add-on product, obtained after the consumer has been informed of the terms and conditions;

        iii. Provide clear guidance as to the wording and appropriate use of rebuttal language and any limits on the number of times that the telemarketer or customer service representative may attempt to rebut the consumer's request for additional information or to decline the product; and

        iv. Where applicable, make clear to consumers that the purchase of add-on products is not required as a condition of obtaining the requested product or service, unless there is such a requirement;

    d. To the maximum extent practicable, telemarketers and customer service representatives do not deviate from approved scripts; and

    e. Cancellation requests are handled in a manner that is consistent with the product's actual terms and conditions and that does not mislead the consumer.

    See generally CFPB Bulletin 2012-06 (July 18, 2012). (For "free" file disclosures that require purchase of additional products or services, see also step 14 in Module 5).

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5. For each product or service that the entity markets to consumers, assess whether the entity designs advertisements, promotional materials, disclosures, and scripts used in any media or channel to be comprehensible by the target audience.

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GRAMM-LEACH-BLILEY ACT/REGULATION P

6. For information that is not in or from a consumer report subject to the FCRA:

   a. Identify the types of consumer information that the entity shares with third parties (other than consumer reports subject to the FCRA) and any policies and procedures that the entity has in place governing such information sharing.

   b. Determine whether the entity discloses to nonaffiliated third parties nonpublic personal information that it receives from financial institutions (other than in the form of a consumer report subject to the FCRA). This could occur, for example, if a consumer reporting agency discloses credit header information obtained from a financial institution to nonaffiliated direct marketers or others that do not have a permissible purpose to obtain that information as part of a consumer report. If not, skip to step 7 below.

   c. If the answer to step 6b is yes, determine:

      i. Whether the originating financial institution provided notice to its customers of the sharing described in step 6b and gave them an opportunity to opt out and

      ii. Whether the redisclosure of the information by the entity under examination described in step 6b was done in a manner that was consistent with the originating financial institution’s privacy policy and any applicable consumer opt-out directions.

   If the answer to step 6ci or 6cii is no, consult with Headquarters regarding Gramm-Leach-Bliley Act/Regulation P limitations on reuse and redisclosure. (12 CFR 1016.11). For background on this topic, see 65 Fed. Reg. 33646, 33668 (May 24, 2000)).

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7. Determine whether the entity’s privacy and information-sharing practices are otherwise consistent with the requirements of Sections 502 to 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802-09) and Regulation P (12 CFR Part 1016), to the extent they apply. Refer to the Privacy of Consumer Financial Information examination procedures for more information.

[Click&type]

Module 10 – Examination Conclusions and Wrap-Up

To conclude this supervisory activity, examiners must complete all steps under this section, regardless of the entity's risk profile.

1. Summarize the findings, supervisory concerns, and regulatory violations.

[Click&type]

2. For the violations noted, determine the root cause by identifying weaknesses in internal controls, audit and compliance reviews, training, management oversight, or other factors. Determine whether the violation(s) are pattern or practice, or isolated.

[Click&type]

3. Identify action needed to correct violations and weaknesses in the institution's compliance management system, as appropriate.

[Click&type]

4. Discuss findings with the institution's management and, if necessary, obtain a commitment for corrective action.

[Click&type]

5. Record violations according to agency policy in the Report of Examination/Supervisory Letter and the CFPB's electronic database system to facilitate analysis and reporting.

[Click&type]

6. Determine if enforcement action is appropriate. If so, contact appropriate agency personnel for guidance.

[Click&type]

7. Prepare a memorandum for inclusion in the workpapers and CFPB's official system of record that outlines planning and strategy considerations for the next examination and, if appropriate, interim follow-up.

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GLOSSARY:

1. "**Consumer reporting agency**" is any person who, 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 who uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports. (Section 603(f); 15 U.S.C. 1681a(f)).

2. "**Consumer report**" is any written, oral, or other communication of any information by a consumer reporting agency that bears on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that 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 any of the following:

   a. Credit or insurance to be used primarily for personal, family, or household purposes.

   b. Employment purposes.

   c. Any other purpose authorized under Section 604 (15 U.S.C. 1681b). (Section 603(d); 15 U.S.C. 1681a(d)).

   BUT the term "**consumer report**" does not include any of the following (except with respect to certain disclosures of medical information, as explained in Section 603(d)(3) (15 U.S.C. 1681a(d)(3)) and Section 604(g)(3) (15 U.S.C. 1681b(g)(3)):

   a. Any report containing information solely about transactions or experiences between the consumer and the institution making the report.

   b. Any communication of that transaction or experience information among entities related by common ownership or affiliated by corporate control (for example, different institutions that are members of the same holding company or subsidiary companies of an insured institution).

   c. Communication of other information among persons related by common ownership or affiliated by corporate control if:

      i. It is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons; and

      ii. 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.

   d. Any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device.

e. 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 a 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 the consumer required under Section 615 (15 U.S.C. 1681m).

f. A communication that meets the requirements of Section 603(o) (15 U.S.C. 1681a(o)) by a person who regularly performs employment procurement services.

g. An employee investigation report of the specific type described in Section 603(y) (15 U.S.C. 1681a(y)). (Section 603(d)(2); 15 U.S.C. 1681a(d)(2)).

3. "**Credit score**":

a. Means 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;

b. But does not include –

i. Any mortgage score or rating of an automated underwriting system that considers one or more factors in addition to credit information, including the loan to value ratio, the amount of down payment, or the financial assets of a consumer; or

ii. Any other elements of the underwriting process or underwriting decision. (Section 609(f)(2)(A)(ii); 15 U.S.C. 1681g(f)(2)(A)(ii)).

4. "**Firm offer of credit or insurance**" means an offer of credit or insurance that will be honored if the consumer is determined, based on information in a consumer report on the consumer, to meet the specific criteria used to select the consumer for the offer. Despite this general definition, the offer may be made conditional on one or more of the following:

a. That the consumer must be found, based on information in the consumer's application, to meet specific criteria bearing on credit worthiness or insurability, as applicable. These specific criteria must be established:

i. Before selection of the consumer for the offer and

ii. For the purpose of determining whether to extend credit or insurance pursuant to the offer.

b. That there must be a verification:

i. That the consumer continues to meet the specific criteria used to select the consumer for the offer, by using information in a consumer report on the consumer, information in the consumer's application for the credit or insurance, or other information bearing on the credit worthiness or insurability of the consumer; or

ii. Of the information in the consumer's application for the credit or insurance, to determine that the consumer meets the specific criteria bearing on credit worthiness or insurability.

c. That the consumer must furnish any collateral that is a requirement for the extension of the credit or insurance. Such a requirement must be established before selection of the consumer for the offer of credit or insurance and must be disclosed to the consumer in the offer of credit or insurance. (Section 603(l); 15 U.S.C. 1681a(l)).

5. "**Identity theft**" means a fraud committed or attempted using the identifying information of another person without authority. (12 CFR 1022.3(h)).

6. "**Identity theft report**" means a report that alleges identity theft with as much specificity as the consumer can provide and that is a copy of an official valid report filed by the consumer with a law enforcement agency, the filing of which subjects the person filing the report to criminal penalties if the information is false, as well as any additional information or documentation that an information furnisher or consumer reporting agency reasonably requests to determine the validity of the alleged identity theft pursuant to the procedures set forth in the FCRA. (12 CFR 1022.3(i)).

7. **"Investigative consumer reports"** means consumer reports or portions 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. This 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. (Section 603(e); 15 U.S.C. 1681a(e)).

8. **"Key factors"** means 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. (Section 609(f)(2)(B); 15 U.S.C. 1681g(f)(2)(B)).

9. "**Nationwide consumer reporting agency**" is a consumer reporting agency that regularly engages in the practice of assembling or evaluating and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer's credit worthiness, credit standing, or credit capacity, each of the following regarding consumers residing nationwide:

a. Public record information and

b. Credit account information from persons who furnish that information regularly and in the ordinary course of business. (Section 603(p); 15 U.S.C. 1681a(p)).

10. "**Nationwide specialty consumer reporting agency**" is a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis relating to:

a. Medical records or payments,

b. Residential or tenant history,

c. Check writing history,

d. Employment history, or

e. Insurance claims. (Section 603(x); 15 U.S.C. 1681a(x)).

11. "**Reseller**" is a consumer reporting agency that:

a. Assembles and merges information contained in the database of another consumer reporting agency or multiple consumer reporting agencies concerning any consumer for purposes of furnishing such information to any third party, to the extent of such activities; and

b. Does not maintain a database of the assembled or merged information from which new consumer reports are produced. (Section 603(u); 15 U.S.C. 1681a(u)).

Credit Card Account Management[1]

Exam Date:	[Click&type]
Exam ID No.:	[Click&type]
Prepared By:	[Click&type]
Reviewer:	[Click&type]
Docket #:	[Click&type]
Entity Name:	[Click&type]

These Credit Card Account Management Examination Procedures (Procedures) consist of modules covering the various elements of credit card account management; each module identifies specific matters for review. Before using the Procedures, examiners should complete a risk assessment and examination scope memorandum in accordance with CFPB supervisory policy.

Notably, it is unlawful for any provider of consumer financial products or services or a service provider to engage in any unfair, deceptive or abusive act or practice (UDAAP) under the Dodd-Frank Act. UDAAPs can cause significant financial injury to consumers, erode consumer confidence, and undermine the financial marketplace. As examiners conduct card origination examinations, they should be alert to the potential for UDAAPs. The "Unfair, Deceptive, or Abusive Acts or Practices" section of the CFPB Supervision and Examination Manual provides additional information about identifying these practices.

Further, the Equal Credit Opportunity Act (ECOA) and its implementing regulation, Regulation B, applies to credit card lenders. Under ECOA, it is unlawful for a creditor to discriminate against any borrower with respect to any aspect of a credit transaction:

- On the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to 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.

While reviewing a lender's credit card lending activities (e.g., account origination activities, account servicing activities, or marketing and sale of add-on products), examiners must be mindful of activities that may indicate discrimination in violation of the ECOA. An examination of whether a lender's credit card lending activities involve discrimination in violation of the ECOA will rely on procedures outlined in the CFPB's ECOA Examination Program Manual, including the ECOA Baseline Review Modules, and the Interagency Fair Lending Examination Procedures.

[1] These reflect FFIEC-approved TILA procedures.

Depending on scope, and in conjunction with the compliance management systems review, each examination will cover one or more of the following modules:

Module 1: Advertising and Marketing

Module 2: Account Origination

Module 3: Account Servicing

Module 4: Payments and Periodic Statements

Module 5: Dispute Resolution

Module 6: Marketing, Sale, and Servicing of Credit Card Add-on Products

Module 1: Advertising and Marketing

General advertising requirements (12 CFR 1026.16(a)-(b), (f))

Regulation Z requires that if a credit card advertisement states specific terms, it must only state those terms that the issuer will offer or arrange. For example, an issuer may not advertise a very low annual percentage rate (APR) that will not, in fact, be available at any time; however, it may advertise terms that will only be offered for a limited period or terms that will become available at a future date. This requirement is not limited only to the disclosures that are required by Regulation Z to be included in the advertisement, but also applies to any specific component of the credit plan.

If any charge imposed as part of the plan is set forth affirmatively or negatively in an advertisement for a credit card, additional disclosures must also be included in the advertisement.[2] If any of these terms that trigger additional disclosures are mentioned in an advertisement (so-called "triggering terms"), the advertisement must also include the following information, in a clear and conspicuous manner:[3]

- 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, and if the plan provides for a variable periodic rate, that fact shall be disclosed; and
- Any membership or participation fee that could be imposed.

This additional information is referred to as "triggering terms."

If an advertisement for credit to finance the purchase of goods or services specified in the advertisement specifies a periodic payment amount, it must also state the total number of payments and the time period to repay the obligation, assuming that the consumer pays only the periodic payment amount advertised. The disclosure of the total of payments and the time period to repay the obligation must be equally prominent to the statement of the periodic payment amount.

An advertisement may not refer to an APR as "fixed," or use a similar term, unless the advertisement 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.

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[2] See Appendix 1 to these procedures or 12 CFR 1026.6(b)(3).

[3] See 12 CFR 1026.16, Supp. I, Comment 1 and 2 regarding the clear and conspicuous standards that apply to advertisements.

Special rules for television, radio, catalogue or multi-page, and electronic advertisement (12 CFR 1026.16(c) and (e))

If an advertisement is made through television or radio and states any of the "triggering terms" as discussed previously, the advertisement may comply with the additional disclosure requirements by stating any APRs applicable to the account (and variable rate disclosures, if applicable), and listing a toll-free telephone number (or a number that allows a consumer to reverse phone charges), along with a reference that such number may be used by consumers to obtain the additional cost information.

If the advertisement containing one or more of the "triggering terms" is a catalogue or other multi-page advertisement, or an electronic advertisement (such as an advertisement appearing on a website), Regulation Z permits issuers to put all of the triggered terms in one place. Issuers may use a table or schedule to include the triggered terms, provided the table or schedule is clearly and conspicuously set forth, and if any "triggering terms" are mentioned elsewhere in the advertisement, it must include a reference to the page or location where the table or schedule begins.

Rules for advertisements for certain promotional/deferred APR and/or fee offers (12 CFR 1026.16(g) and (h))

From time to time, credit card issuers will offer special interest rates or fees in connection with a credit card account. These special rates and fees can take several types of forms:

- *Promotional rate*: Any APR applicable to one or more balances or transactions for a specified period of time that is lower than the APR that will be in effect at the end of that period on such balances or transactions.
- *Introductory rate*: A promotional rate offered in connection with the opening of an account.
- *Promotional fee*: A fee required to be disclosed in the account-opening summary table[4] where the fee is (1) applicable either to the credit plan or to one or more balances or transactions; (2) applicable for a specified period of time; and (3) is lower than the fee that will be in effect at the end of that period for such plan or types of balances or transactions.
- *Introductory fee*: A promotional fee offered in connection with the opening of an account.
- *Promotional period:* The maximum time period for which a promotional rate or promotional fee may be applicable.
- *Deferred interest*: Finance charges accrued on balances or transactions that a consumer is not obligated to pay or that will be waived or refunded to a consumer if those balances or

[4] See 12 CFR 1026.6(b)(1) and (2).

transactions are paid in full by a specified date. "Deferred interest" does not include any finance charges the consumer avoids paying in connection with any recurring grace period.

- *Deferred interest period*: The maximum period from the date the consumer becomes obligated for the balance or transaction until the specified date by which the consumer must pay the balance or transaction in full in order to avoid finance charges, or receive a waiver or refund of finance charges.

Regulation Z contains specific requirements for advertisements that include these types of offers:

- If any APR or fee that may be applied to the account is an introductory rate or introductory fee, the term "introductory" or "intro" must be in immediate proximity to each listing of the introductory rate or introductory fee in a written or electronic advertisement. If these terms are included in the same phrase as the listing, they will be deemed to be in "immediate proximity."
- If any APR or fee that may be applied to the account is a promotional rate or a promotional fee, the following information must also be stated in a clear and conspicuous manner,[5] and for written or electronic advertisements, in a prominent location closely proximate to the first listing of the promotional rate or fee:
  - When the promotional rate will end;
  - The APR that will apply after the end of the promotional period (if the advertisement includes a promotional rate);[6] and
  - The fee that will apply after the end of the promotional period (if the advertisement includes a promotional fee).[7]

If a deferred interest offer is advertised, the following requirements apply:

- The deferred interest period must be stated in a clear and conspicuous manner.
- If the phrase "no interest" or similar term regarding the possible avoidance of interest obligations is stated, the term "if paid in full" must also be stated in a clear and conspicuous manner preceding the disclosure of the deferred interest period.

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[5] For this provision, the term "clear and conspicuous" for purpose of written or electronic advertisements means that the disclosures must be equally prominent to the promotional rate or promotional fee to which they apply. If the disclosures are the same type size as the promotional rate or promotional fee to which they apply, they will be deemed to be equally prominent. See Comment 16(1) and (2) regarding the clear and conspicuous standards that apply to advertisements.

[6] 12 CFR 1026.16(g)(4)(ii) and the Comment 16(g)(1) contain additional detailed explanations of the correct way to disclose the APR that will be in effect at the end of the promotional period if the APR will be a variable rate or is based on the consumer's creditworthiness.

[7] These requirements do not apply to an envelope or other enclosure in which an application or solicitation is mailed, or to a banner advertisement linked to an application or solicitation provided electronically.

- If the deferred interest offer is included in a written or electronic advertisement, the deferred interest period and, if applicable, the term "if paid in full" must also be 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.[8]

- The following additional information must also be included; for written or electronic advertisements, this information must be included in a prominent location closely proximate to the first statement of "no interest" or other similar term referred to in the prior bullet:[9]

    - A statement that interest will be charged from the date the consumer becomes obligated for the balance or transaction subject to the deferred interest offer if the balance or transaction is not paid in full within the deferred interest period; and

    - A statement, if applicable, that interest will be charged from the date the consumer incurs the balance or transaction subject to the deferred interest offer if the account is in default before the end of the deferred interest period.

Comment 16(g)(3) and (4) and 16(h)(4) and (5) identify practices that will and will not be deemed to meet the requirements for "immediate proximity," "prominent location closely proximate to," and "first listing" for written and electronic advertisements:

- A term that is in the same phrase as the statement it clarifies will be deemed to be in "immediate proximity."

- If information appears in the same paragraph as the first listing of a term, it will be deemed to be in a "prominent location closely proximate to" the first statement of the term.

- Information disclosed in a footnote is not considered a "prominent location closely proximate to" the statement.

The "first statement" is the most prominent listing of the statement on the front side of the first page of the principal promotional document. The principal promotional document is the document designed to be seen first by the consumer in a mailing, such as a cover letter or solicitation letter.

[8] For this provision, the term "clear and conspicuous" for purposes of written or electronic advertisements means that the required information must be equally prominent 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. If the information required to be disclosed is the same type size as the statement of "no interest," "no payments," "deferred interest," "same as cash," or similar term regarding interest or payments during the deferred interest period, the disclosure will be deemed to be equally prominent.

[9] These 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.

- If one of the statements does not appear on the front side of the first page of the principal promotional document, then the first listing of one of these statements is the most prominent listing of a statement on the subsequent pages of the principal promotional document.
- If one of the statements is not listed on the principal promotional document or there is no principal promotional document, the first listing of one of these statements is the most prominent listing of the statement on the front side of the first page of each document containing one of these statements.
- If one of the statements does not appear on the front side of the first page of a document, then the first listing of one of these statements is the most prominent listing of a statement on the subsequent pages of the document.
- If the listing of one of these statements with the largest type size on the front side of the first page (or subsequent pages if one of these statements is not listed on the front side of the first page) of the principal promotional document (or each document listing one of these statements if a statement is not listed on the principal promotional document or there is no principal promotional document) is used as the most prominent listing, it will be deemed to be the first listing.

Marketing to college students (12 CFR 1026.57)

Regulation Z establishes several requirements related to the marketing of credit cards to students at an institution of higher education. The regulation limits an issuer's ability to offer a college student any tangible item to induce the student to apply for or participate in a credit card plan offered by the issuer. Specifically, Regulation Z prohibits a card issuer from offering tangible items as 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, Comment 57(c)(3) states that a location that is within 1,000 feet of the border of the campus is considered near the campus.

Any card issuer that was a party to one or more college credit card agreements in effect at any time during a calendar year must submit to the CFPB an annual report regarding those agreements. The term "college credit card agreement" means any business, marketing or promotional agreement between a card issuer and an institution of higher education or an affiliated organization in connection with which college student credit cards are issued to college students currently enrolled at that institution. Except for the initial report, a card issuer must submit 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.

Internet posting of credit card agreements (12 CFR 1026.58)

Each quarter, credit card issuers are required to submit to the CFPB any credit card agreement that the issuer offered as of the last business day of the preceding calendar quarter. The CFPB posts these agreements on the CFPB's public website.[10] If the issuer has previously submitted a particular agreement, it does not need to resubmit it unless it has been amended. The issuer must also notify the CFPB if it no longer offers any credit cards whose agreements have been previously submitted. An issuer will not be required to make a quarterly submission if it does not have any new agreements, amendments, or withdrawals. Regulation Z also contains reporting exceptions, including for issuers who have fewer than 10,000 credit card accounts open as of the last business day of the calendar quarter. With respect to agreements that a card issuer is required to submit to the CFPB, the card issuer generally also must provide these same credit card agreements on its publically available website. The card issuer must update these agreements at least quarterly.

In addition, with respect to any open credit card account (i.e., the cardholder can obtain extensions of credit on the account or there is an outstanding balance on the account that has not been charged off), a card issuer must provide the cardholder with access to his or her specific credit card agreement by either (1) posting and maintaining the cardholder's agreement on the card issuer's website; or (2) providing a copy of the agreement within 30 days of receipt of a consumer's request. If the issuer chooses to make the agreements available upon request, it generally must give consumers the ability to place a request through its website or over the phone.

Unfair, deceptive, or abusive acts or practices (12 USC 5531 and 5536)

Under the Dodd-Frank Act, it is unlawful for any provider of consumer financial products or services or a service provider to engage in any unfair, deceptive or abusive act or practice. As examiners review credit card advertising materials, they should be aware of any advertising practices that present a risk of harm to consumers. See "Unfair, Deceptive, or Abusive Acts or Practices," CFPB Supervision and Examination Manual, for additional information on identifying unfair, deceptive, or abusive acts or practice.

[10] Information about the CFPB's database on credit card agreements is available at http://www.consumerfinance.gov/credit-cards/agreements/.

Examination Procedures

Advertising (12 CFR 1026.16)

1. 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).

   A. 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))

   B. If an 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))

   C. If an 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))

   D. 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))

   E. 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), 1026.60(d)(3), 1026.60(e)(4), or 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, 12 CFR 1026 (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.

F. 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))

G. If any deferred interest offer is advertised for an open-end account not subject to 12 CFR 1026.40, determine that the 12 CFR 1026(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))

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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))

   A. 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))

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))

[Click&type]

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 CFR1026.58(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 CFR1026.58(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))

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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). (112 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.

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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.

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 15 USC 101(c) of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 USC. 7001 et seq.). (12 CFR 1026.58(f))

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Module 2: Account Origination

Rules on issuance of credit cards (12 CFR 1026.12(a))

Issuers are generally required to issue credit cards only upon oral or written request, or as a renewal of, or substitute for, an accepted credit card.

Consumers can apply for credit card accounts through a variety of channels; for example, in response to a prescreened offer, by completing a "take-one" application, submitting an electronic application, or directly calling an issuer. Regulation Z contains several requirements for disclosures that generally must accompany application or solicitation materials. The Fair Credit Reporting Act (FCRA)/Regulation V and the Equal Credit Opportunity Act/Regulation B (Regulation B) also contain several requirements with which credit card issuers must comply when soliciting requests from consumers to open a credit or charge card account.

Prescreened consumer reports and opt-out notices (15 USC 1681b(c) and 1681m(d); 12 CFR 1022.54)

Credit card issuers who use prescreened offers to solicit requests from consumers to open a credit or charge card account must ensure that they do so incompliance with the FCRA, which permits credit card issuers to obtain prescreened consumer reports to make firm offers of credit to consumers, unless the consumer elects to opt out of being included on prescreened lists. The law contains a number of requirements for the content of the prescreened lists, as well as notice and opt-out requirements. These requirements are discussed in detail in the Fair Credit Reporting Act section of the CFPB Examination Manual.[11]

Credit and charge card applications and solicitations (12 CFR 1026.60)

Regulation Z generally requires credit card issuers to provide disclosures on or with credit card applications and solicitations, in order to ensure that consumers are aware of certain costs and fees associated with a particular credit card prior to applying for or requesting the card. Credit card solicitation or application disclosures generally must be made in a tabular format on or with a solicitation or an application that is mailed to consumers or provided to consumers in electronic form. The regulation also contains certain disclosure requirements for telephone applications and solicitations initiated by the card issuer, as well as applications and solicitations made available to the general public (such as catalog, magazine, or other generally available publications) or provided in-person to the consumer. See Appendix 1 to these procedures for detailed information on the required contents of these disclosures.

[11] See "Fair Credit Reporting Act," CFPB Supervision and Examination Manual V.2 (October 2012), at FCRA 23.

Ability to Pay (12 CFR 1026.51)

General Provisions

Credit card issuers are required to consider an applicant's ability to pay the minimum monthly payment on an account prior to opening a credit card account or increasing a credit limit. The regulation states that this determination must be based on consideration of the applicant's income or assets and the applicant's current obligations. A card issuer may consider other factors at its option, such as credit score, provided the additional factors are permissible under Regulation B. The issuer may consider income based on the following information:

- Information provided by the consumer in connection with the account, including information provided by the consumer through the application process;
- Information provided by the applicant in connection with other financial relationships with the issuer or the issuer's affiliates (subject to information sharing rules);
- Information from third parties (subject to information sharing rules); or
- Information obtained through any empirically derived, demonstrably and statistically sound model that reasonably estimates an applicant's income or assets, including any income or assets to which the applicant has a reasonable expectation of access.

A card issuer may consider the consumer's current obligations based on information provided by the consumer or in a consumer report. In evaluating a consumer's current obligations, a card issuer need not assume that credit lines for other obligations are fully utilized.

Card issuers must use a reasonable method for estimating the minimum monthly payment for the purpose of determining the consumer's ability to pay. Regulation Z contains a "safe harbor" provision, which states that a card issuer complies with the requirement that it use a reasonable method for determining the minimum monthly payment if the card issuer does the following:

- 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
- Uses the same minimum monthly payment formula that it uses for the actual product, provided that if the minimum monthly payment calculation includes interest and/or mandatory fees, the issuer includes them in the calculation.

Card issuers are also required to establish and maintain reasonable written policies and procedures to consider the applicant's ability to pay. "Reasonable" policies and procedures include the issuer's policy on consideration of income (whether it will consider income and/or assets (income/assets) to which the consumer has "reasonable expectation of access," or whether it will limit consideration to the consumer's independent income/assets). "Reasonable" policies and procedures also include the consideration of at least one of the following:

- The ratio of debt obligations to income;
- The ratio of debt obligations to assets; or
- Residual income.

Applicants 21 or older

If an applicant is 21 or older, the card issuer is required to determine the applicant's and any co-applicant/cosigner/guarantor's ability to pay based on the applicant/co-applicant/cosigner/guarantor's current or reasonably expected income or assets in order to open a credit card account or increase a credit line. The issuer may also consider any income or assets to which the parties have a "reasonable expectation of access" as part of the applicant(s)'current or reasonably expected income; however, the issuer is not required to do so. Comment 51(a)(1)(i)(4)(ii) provides examples of "current or reasonably expected income," including current or expected salary, wages, bonus pay, tips, and commissions. Other sources of income could include interest or dividends, retirement benefits, public assistance, alimony, child support, or separate maintenance payments. Current or reasonably expected income also includes income that is deposited regularly in an account on which the applicant is an accountholder. The income and/or assets to which an applicant has a "reasonable expectation of access" includes those in which an applicant does not have a current or expected ownership interest but that are available to an applicant through the actions of a non-applicant (for example, the non-applicant regularly pays the expenses of the applicant).

Applicants under the age of 21

If the applicant is under the age of 21, the issuer may not open a credit card account unless the issuer has financial information indicating that the applicant can make the minimum monthly payment based on the applicant's current or reasonably expected income or assets, or the issuer has a signed agreement from a co-applicant/cosigner/guarantor who is 21 or older and has a documented ability to make the minimum monthly payment. It is important to note that if the applicant is under 21, the issuer may not consider income or assets to which the applicant only has a "reasonable expectation of access;" however, it may use that standard to assess the over-21 co-applicant/cosigner/guarantor's ability to pay.

Disclosures required to be provided to the consumer at account opening (12 CFR 1026.5 and 1026 1026.6)

Regulation Z requires that card issuers provide certain disclosures to consumers at account opening. These disclosures generally must be made clearly and conspicuously, in a form that the consumer can keep. In general, this means that the disclosures must be written or in electronic form, unless Regulation Z specifically states otherwise.

These disclosures must generally be provided to the consumer before the first transaction is made under the plan, although Regulation Z contains exceptions for certain charges that are imposed as part of the plan and are not required to be disclosed under 12 CFR 1026.6(b)(2)[12] and instances where the consumer establishes the credit card account over the phone and makes the first transaction at that time.[13]

See Appendix 1 to these procedures for detailed information on the required formatting and contents of these disclosures.

Collection of membership and application fees (12 CFR 1026.5(b)(1)(iv)(A) and 1026.5(b)(1)(v))

In general, the card issuer may not collect any fee before account opening disclosures are provided; however, Regulation Z permits certain membership fees and application fees to be collected before account opening disclosures are provided, as long as specific requirements are met.

An issuer may collect or obtain the consumer's agreement to pay membership fees, including application fees excludable from the finance charge under 12 CFR 1026.4(c)(1), before providing account-opening disclosures. In order to do so, the consumer must be able to reject the plan after receiving the disclosures and have no obligation to pay these fees, or any other fee or charge.[14] If the consumer rejects the plan, the issuer must promptly refund the membership fee or application fee if it has been paid, or take other action necessary to ensure the consumer is not obligated to pay that fee or any other fee or charge.

Limitations on fees during first year after account opening (12 CFR 1026.52(a))

During the first year after the opening of a credit card account, the card issuer may not require the consumer to pay fees in excess of the 25 percent of the credit limit in effect when the account

[12] See 12 CFR 1026.5(b)(1)(ii)

[13] See 12 CFR 1026.5(b)(1)(iii)

[14] A membership fee for purposes of this 12 CFR 1026.5 has the same meaning as a fee for the issuance or availability of credit described in 12 CFR 12 CFR 1026.60(b)(2).

is opened.[15] The 25 percent limit applies to any fees or other charges that the card issuer may or will require the consumer to pay with respect to the account during the first year after account opening, other than charges attributable to periodic interest rates. For example, the following fees would be counted towards the 25 percent limit:

- Fees for the issuance or availability of credit, including any fee based on account activity or inactivity and any fee that a consumer is required to pay in order to receive a particular credit limit;
- Fees for insurance, debt cancellation, or debt suspension coverage written in connection with the credit transaction, if the insurance, debt cancellation, or debt suspension is required by the terms of the account;
- Fees that the consumer is required to pay in order to engage in transactions using the account (such as cash advance fees, balance transfer fees, foreign transaction fees, and fees for using the account for purchases);
- Fees that the consumer is required to pay for violating the terms of the account (except those specifically excluded, as described later);
- Fixed finance charges;
- 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; and
- A security deposit for the account, provided that it is charged to the credit card account.

Certain fees are specifically excluded from this prohibition and do not count towards the 25 percent limitation:

- Late payment fees, over the limit fees, and returned payment fees; and
- Fees that the consumer is not required to pay with respect to the account, such as an expedited payment fee, fees for optional services like travel insurance, fees for reissuing a lost or stolen card, or statement reproduction fees.

A card issuer that charges a fee to a credit card account that exceeds the 25 percent limit will not violate the prohibition if the card issuer waives or removes the fee and any associated interest charges or credits the account for an amount equal to the fee and any associated interest charges within a reasonable amount of time, but no later than the end of the billing cycle following the billing cycle during which the fee was charged.

[15] For the purposes of this requirement, an account is considered “opened” no earlier than the date on which the consumer may use the account to engage in transactions.

Only decreases to the credit limit during the first year after the account is opened affect the amount of fees that the issuer can assess. If a card issuer decreases the credit limit during the first year after the account is opened, the card issuer is required to waive, remove, or credit the consumer's account for fees that exceed 25 percent of the reduced credit limit.

Limitations on penalty fees (12 CFR 1026.52(b))

Regulation Z contains specific requirements for card issuers who assess penalty fees against consumers who violate the terms or other requirements of a credit card account. Penalty fees imposed by card issuers must be reasonable and proportional to the violation of the account terms. Card issuers must reevaluate penalty fees at least annually to ensure that the fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of the consumer's violation.[16] If the issuer determines that the fee must be decreased based on this reevaluation, it must decrease the fee within 45 days after completing the reevaluation. Card issuers may also increase a fee if the reevaluation determined that a higher fee represents a reasonable proportion of the cost, and may begin charging the increased fee once it has provided consumers with the Change-in-Terms Notice required by 12 CFR 1026.9.[17]

As an alternative, Regulation Z contains a "safe harbor" provision, which is that a card issuer's penalty fees will be considered reasonable and proportional (and will not require annual reevaluation) if the dollar amount of the fee does not exceed:

- $27 for the first instance of a violation;
- $38, if the card issuer previously imposed a penalty fee for a violation of the same type that occurred during the same billing cycle or one of the next six billing cycles; or
- If the account is a charge card that requires payment of the full outstanding balance at the end of each billing cycle, three percent of the delinquent balance if the card issuer has not received the required payment for two or more consecutive billing cycles.[18]

Credit card issuers must not 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, an issuer may not charge a $39 late payment fee on the day after a $20 minimum payment is due but is not received. 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 transactions that the card issuer declines to authorize, "inactivity" based on the consumer's failure

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[16] The Official Interpretation to 12 CFR 1026.52(b)(1)(i) discusses the factors that should be included in this annual reevaluation of penalty fees.

[17] See the "Change-in-Terms Notice" section of these examination procedures.

[18] The dollar amounts of the "safe harbor" fees are adjusted annually by the CFPB to reflect changes in the Consumer Price Index. The amounts listed are those in effect beginning January 1, 2014. Through December 31, 2016 card issuers were permitted to impose fees of $26 for the first instance of a violation, and $36 if the card issuer if the card issuer previously imposed a penalty fee for a violation of the same type that occurred during the same billing cycle or one of the next six billing cycles.

to use the account to make new purchases, or the closure or termination of an account. It also prohibits issuers from charging multiple penalty fees based on a single event or transaction.

Examination Procedures

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 to Regulation Z. (12 CFR 1026.60(a)(2)(i))

3. Determine that the table required by 12 CFR 1026.60(a)(2)(i) contains only the information required or permitted by that section of the regulation. 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 12 CFR 1026.60(b)(1),

   B. Introductory rate required to be disclosed pursuant to 12 CFR 1026.60(b)(1)(ii),

   C. Rate that will apply after a premium initial rate expires required to be disclosed under 12 CFR 1026.60(b)(1)(iii), and

   D. Fee or percentage amounts or maximum limits on fee amounts required to be disclosed pursuant to 12 CFR 1026.60 (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 12 CFR 1026.60(b)(2) that is not an annualized amount, and other APRs or fee amounts disclosed in the table. (12 CFR 1026.60(a)(2)(iv))

6. 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 later), 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 (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))

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.* For issuers of credit cards that are not charge cards, determine that the creditor disclosed a reference to the website established by the Consumer Financial Protection Bureau (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))

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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 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).

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Account opening initial disclosures (12 CFR 1026.6)

1. Review financial institution policies, procedures, and systems to determine, either separately or when completing the actual file review, whether the account opening initial disclosures are provided before the first transaction is made under the plan (12 CFR 1026.5(b)(1).
2. 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 to Regulation Z. (12 CFR 1026.6(b)(1))
3. 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 12 CFR 1026.6 (b)(2)(i)(B) or required to be disclosed under 12 CFR 1026.6 (b)(2)(i)(F);
   C. Any rate that will apply after a premium initial rate expires permitted to be disclosed pursuant to 12 CFR 1026.6 (b)(2)(i)(C) or required to be disclosed pursuant to 12 CFR 1026.6 (b)(2)(i)(F); and
   D. Any fee or percentage amounts or maximum limits on fee amounts disclosed pursuant to 12 CFR 1026.6 (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 12 CFR 1026.6(b)(2) 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 12 CFR 1026.6 (b)(2)(i)(D)(2)) and (b)(2)(vii) through (b)(2)(xiv) are provided in the table. Disclosures required by 12 CFR 1026.6 (b)(2)(i)(D)(2), (b)(2)(i)(D)(3), (b)(2)(vi) and (b)(2)(xv) 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 12 CFR 1026.6 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. Determine that the creditor discloses in the appropriate format, as applicable:

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))

i. *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))

ii. *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))

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 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))

iv. *Penalty rates.* Except for introductory rates and employee preferential rates (discussed later), 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))

v. *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))

vi. *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))

vii. *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)):

a. The specific APR applicable to the consumer's account, or

b. 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.

B. Determine that the issuer discloses in the table (12 CFR 1026.6(b)(2)(i)(F)):

c. Any introductory rate, and

d. Any rate that would apply upon expiration of a premium initial rate.

C. *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))

D. *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))

E. 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))

F. *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))

G. *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))

H. *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))

I. *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))

J. *Late payment fee*. Determine that the creditor disclosed any fee imposed for a late payment. (12 CFR 1026.6(b)(2)(viii))

K. *Over-the-limit fee.* Determine that the creditor disclosed any fee imposed for exceeding the credit limit. (12 CFR 1026.6(b)(2)(ix))

L. *Balance transfer fee*. Determine that the creditor disclosed any fee imposed to transfer a balance. (12 CFR 1026.6(b)(2)(x))

M. *Returned payment fee*. Determine that the creditor disclosed any fee imposed for a returned payment. (12 CFR 1026.6(b)(2)(xi))

N. *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))

O. *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))

P. *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))

Q. *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))

R. *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))

S. *Disclosure of rates:* 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.

T. *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 12 CFR 1026.6 (b)(4)(ii)(H), 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.

U. *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.

V. *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))

W. *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))

X. *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))

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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.

   A. Covered fees include fees (Comment 12 CFR 1026.52(a)(2)-1):

      i. For the issuance or availability of credit, including any fees based on account activity or inactivity;

      ii. 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;

      iii. The consumer is required to pay to engage in transactions using the account, such as:

         a. Cash advance fees;

         b. Balance transfer fees;

         c. Foreign transaction fees; and

         d. Fees for using the account for purchases.

   B. Fees the consumer is required to pay for violating the terms of the account, except to the extent they are specifically excluded (see below);

   C. Fixed finance charges; and

   D. 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.

      NOTE: Section 1026.52(a) does not authorize the imposition or payment of fees or charges otherwise prohibited by law. (12 CFR 1026.52(a)(3)

   E. Fees not covered by this limitation include: (12 CFR 1026.52(a)(2)(i)

i. Late payment fees, over-the-limit fees, and returned-payment fees; or

ii. Fees that the consumer is not required to pay with respect to the account, such as:

a. An expedited payment fee;

b. Fees for optional services like travel insurance;

c. Fees for reissuing a lost or stolen card; or

d. Statement reproduction fees.

F. Review penetration rates of various optional services to determine if they are truly optional and therefore not covered by the 25 percent limitation.

G. Ensure 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 unless the dollar amount of the fee is consistent with 12 CFR 1026.52(b)(1) and (b)(2). (12 CFR 1026.52(b))

H. 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))

I. *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)):

i. 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).

ii. 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.

iii. If used by the card issuer when making its determination:

a. 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.

b. 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.

J. 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))

K. *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)):

i. $26.00,

ii. $37.00 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

iii. 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 i and ii 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.

L. 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))

M. 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)):

i. Transactions that the card issuer declines to authorize;

ii. Account inactivity; and

iii. The closure or termination of an account.

N. 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))

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Module 3: Account Servicing

Subsequent disclosure requirements

Change-in-Terms Notice (12 CFR 1026.9(c)(2))

When a significant change in account terms is made, the issuer must provide the consumer with a written notice of the change at least 45 days prior to the effective date of the change. A "significant change in account terms" is defined in Regulation Z as a change to a rate, fee, or other account term required to be disclosed under 12 CFR 1026.6(b)(1), (2), or (4); an increase in the minimum periodic payment; or the acquisition of a security interest.[19] For increases in charges required to be disclosed under 12 CFR 1026.6(b)(3) that do not meet the definition of a "significant change in account terms," the issuer may either provide the Change-in-Terms Notice or provide oral or written notice of the amount of the charge before the consumer agrees to or becomes obligated to pay the charge, at a time and manner that the consumer would be likely to notice the disclosure of the charge.

The 45-day period for notice does not apply if a consumer has agreed to a particular change: in this instance, the Change-in-Terms Notice may be mailed or delivered as late as the effective date of the change. This only applies, however, 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 providing additional security or paying an increased minimum payment amount.[20] Regulation Z also excludes certain account changes from the Change-in-Terms Notice requirements, including changes to the consumer's credit limit, except as otherwise required by 12 CFR 1026.9(c)(2)(vi), changes in the name of the credit card or credit plan, the termination or suspension of credit privileges, and changes arising by operation of law.[21]

In certain instances, the consumer has the right to reject a significant change to an account term.[22] The consumer may do so by notifying the creditor of the rejection before the effective date of the change. Upon such notification, the creditor may not (1) apply the change to the account; or (2) impose a fee or charge or treat the account as in default solely as a result of the rejection. The creditor also may not require repayment of the balance on the account using a

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[19] See 12 CFR 1026.9(c)(2)(ii).

[20] The following are not considered agreements between the consumer and the creditor for purposes of this notice exception: (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. See 12 CFR 1026.9(c)(2)(i)(B).

[21] See 12 CFR 1026.9(c)(2)(v) for additional circumstances under which a creditor is not required to provide notice.

[22] The right to reject does not apply when the change in terms is due to the consumer's failure to make the minimum monthly payment within 60 days after the payment due date. See 12 CFR 1026.9(h)(3).

method that is less beneficial than one of the following: (1) the method of repayment for the account before the change in terms; (2) an amortization period of no less than five years, beginning no earlier than the effective date of the increase; or (3) 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.[23]

If a creditor decreases the credit limit on an account, advance notice of the decrease must be 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. The creditor is required to provide notice in writing or orally at least 45 days prior to imposing the over-the-limit fee or penalty rate and must state that the credit limit on the account has been or will be decreased.

See Appendix 1 to these procedures for detailed information on the required formatting and contents of the Change-in-Terms Notice.

Supplemental credit access devices and additional features (12 CFR 1026.9(b))

Credit card issuers may add additional features to a credit card account, such as adding overdraft checking to an existing account, or adding the ability to secure cash advances on the credit card when the account did not previously offer that feature. Issuers may also offer supplemental credit access devices, such as convenience checks, that give the consumer an alternative method for accessing the line of credit. If the issuer adds the feature or delivers the supplemental credit access device within 30 days after mailing or delivering the account opening disclosures, and the finance charge terms are the same as those previously disclosed, then Regulation Z does not require the issuer to make any additional disclosures. Except for checks that can be used to access the credit card account (generally referred to as "convenience checks"), if the credit feature that is added or the supplemental credit device has the same finance charge terms as previously disclosed but are issued later than 30 days after account opening disclosures are provided, the card issuer must disclose, before the consumer uses the feature or device for the first time, that it is used for obtaining credit under the terms previously disclosed.

However, except for convenience checks, if 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 applicable finance charge disclosures for the added feature or device must be given before the consumer uses the feature or device for the first time.[24] Additional disclosure requirements apply for convenience checks that 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. See Appendix 1 to these procedures for detailed information on the required formatting and contents of this disclosure.

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[23] See 12 CFR 1026.55(c)(2).

[24] See 12 CFR 1026.6(b)(3)(ii)(A) for the specific finance charge disclosures that are required.

Disclosures required upon renewal of a credit or charge card (12 CFR 1026.9(e))

A card issuer is required to mail or deliver written notice of the renewal to the cardholder if it imposes any annual or other periodic fee to renew a credit or charge card account of the type subject to 1026.60, including any fee based on account activity or inactivity or any card issuer that has changed or amended any term of a consumer's account required to be disclosed in the table on the account opening disclosures[25] that has not previously been disclosed to the consumer. If the card issuer imposes any annual or other periodic fee for renewal, the notice must be provided at least 30 days or one billing cycle, whichever is less, before the mailing or the delivery of the periodic statement on which any renewal fee is initially charged to the account. If the card issuer has changed or amended any of the terms disclosed in the account opening disclosure table and has not previously disclosed the changes to the consumer, it must provide the notice at least 30 days prior to the scheduled renewal date of the consumer's credit or charge card. The notice must contain the following information:

- The disclosures contained in 12 CFR 1026.60(b)(1) through (b)(7) that would apply if the account were renewed; and
- The manner and timing by which the cardholder may terminate credit availability under the account to avoid paying the renewal fee, if applicable.

These disclosures may be made on or with a periodic statement. If any of the disclosures are provided on the back of a periodic statement, the card issuer must include a reference to those disclosures on the front of the statement.

Limitations on increasing APRs, fees, and charges (12 CFR 1026.55)

Unless an exception applies, a card issuer must not increase the following rates, fees, or charges in connection with a credit card account:

- An APR;
- Periodic fees for the issuance or availability of the credit plan (as described in 12 CFR 1026.6(b)(2)(ii));
- A fixed finance charge or minimum interest charge that exceeds $1(as described in 12 CFR 1026. 6(b)(2)(iii)); or
- A charge for required insurance, debt cancellation, or debt suspension (as described in 12 CFR 1026.6(b)(2)(xii)).

[25] See 12 CFR 1026.6(b)(1)-(2)

Regulation Z provides for some general exceptions to this prohibition:

- *Temporary or Promotional APRs, fees, or charges*: A card issuer may increase one of these APRs, fees, or charges upon expiration of a specified period of six months or longer, provided that, prior to the commencement of that period, the card issuer provided a written disclosure that clearly and conspicuously discloses the length of time period that the lower APR, fee, or charge will be in effect, and the APR, fee, or charge that will apply after the expiration of the time period. Once the time period expires, the card issuer may not apply the increased APR, fee, or charge to a transaction that occurred prior to the disclosed time period, and may not apply an APR, fee, or charge to a transaction that occurred during the disclosed time period that is higher that the disclosed increased APR. If the required disclosure of the APR, fee, or charge increase is provided to the consumer through a Change-in-Terms Notice, the card issuer may not apply the increased APR, fee, or charge to transactions that occurred within 14 days after provision of the notice.[26]

- *Variable APRs*: A card issuer may increase an APR when the APR varies according to an index that is not under the card issuer's control and is available to the general public, and the increase in the APR is due to an increase in the index.

- *Advance notification:* A card issuer may increase an APR, fee, or charge described previously in accordance with certain subsequent notification provisions of Regulation Z, provided that it meets certain requirements for each type of notification:

  - *Additional credit feature or supplemental credit devices:* If the card issuer has added a credit feature to the existing account or has provided a supplemental credit device (such as a convenience check) which causes an APR, fee, or charge as described previously to increase, and has provided the consumer with advance notice of the increase in the APR, fee, or charge, the card issuer must not apply the increased APR, fee, or charge to transactions that occurred prior to provision of the notice.[27]

  - *Change-in-Terms Notice:* The card issuer may increase the APR, fees, or charges after complying with the applicable notice requirements in 12 CFR 1026.9(b), (c), or (g), provided that:

    - If the notice is provided pursuant to 12 CFR 1026.9(b), the card issuer must not apply the increased APR, fee, or charge to ta transaction that occurred prior to provision of the notice; and

[26] See 12 CFR 1026.9(c)(2)

[27] See Appendix 1 of these procedures or 12 CFR 1026.9(b) for specific disclosure requirements.

- If the notice is provided pursuant to 12 CFR 1026.9(c) or (g), the card issuer must not apply the increased APR, fee, or charge to transactions that occurred prior to or within 14 days after provision of the notice.[28]

  This advance notice exception does not permit a card issuer to increase an APR, fee or charge during the first year after the account is opened, while the account is closed, or while the card issuer does not permit the consumer to use the account for new transactions. For purposes of this provision, 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.

  When a card issuer increases an APR, fee, or charge pursuant to the advance notification exception, it may not require repayment of a “protected balance” using a method that is less beneficial to the consumer than one of the following methods:

- The method of repayment of the account before the effective date of the increase;
- An amortization period of not less than five years, beginning no earlier than the effective date of the increase; or
- 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.

  A “protected balance” for the purpose of this requirement means the amount owed for a category of transactions to which an increased APR, fee, or charge cannot be applied after the APR, fee, or charge for that category has been increased.[29]

- *Delinquency:* The card issuer may increase an APR, fee, or charge as described previously if the minimum payment has not been received within 60 days after the due date, provided that the card issuer complied with applicable notice requirements.[30] 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, the card issuer must reduce the increased APR, fee, or charge with respect to transactions that occurred prior to or within 14 days of the 12 CFR 1026.9(c) or (g) notice to the rate or amount that applied prior to the increase.[31]

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[28] See Appendix 1 of these procedures or 12 CFR 1026.9(c)(2) for specific disclosure requirements.

[29] See 12 CFR 1026.55(c).

[30] See Appendix 1 of these procedures or 12 CFR 1026.9(g) for specific disclosure requirements.

[31] See also 12 CFR 1026.59 for Regulation Z’s requirements for reevaluation of rate increases.

- *Workout and Temporary Hardship Arrangements:* The card issuer may increase an APR, fee, or charge described previously if 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.
- *Servicemembers' Civil Relief Act (SCRA):* The issuer is permitted to increase the rate, fee, or charge once the SCRA ceases to apply, provided that the card issuer does not apply to any transactions that occurred prior to the decrease an APR, fee, or charge that exceeds the APR, fee, or charge that applied to those transactions prior to the decrease.

These requirements continue to apply to a balance on a credit card account after the account is closed or acquired by another creditor; or the balance is transferred to another credit card account issued by the same creditor, its affiliate, or its subsidiary.[32]

Reevaluation of rate increases (12 CFR 1026.59)

Requirement to reevaluate APR increases

If a card issuer has increased an APR on a credit card account, it is required to review the account no less frequently than once every six months and, if appropriate, based on that review, reduce the APR. The requirement to reevaluate rate increases applies both to increases in APRs based on consumer-specific factors, such as changes in the consumer's creditworthiness, and to increases in APRs imposed based on factors that are not specific to the consumer, such as changes in market conditions or the issuer's cost of funds. 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 APR applicable to similar new credit card accounts.

If the consumer's APR was increased because the consumer failed to make his minimum monthly payment within 60 days after the payment due date, the card issuer is required to automatically reduce the APR back to its prior amount with respect to transactions that occurred prior to or within 14 days after the 12 CFR 1026.9(c) or (g) notice if the consumer makes six consecutive minimum monthly payments on time, beginning with the first payment due date following the effective date of the increase. If, however, the consumer does not do so, the card issuer is required to conduct the review described previously no later than six months after the sixth payment due following the effective date of the rate increase.

Timing requirements for APR reductions

If, based on its review, a card issuer is required to reduce the rate applicable to an account, the issuer must reduce the rate within 45 days after completing the evaluation. The rate reduction is required to apply to any outstanding balances to which the increased rate has been applied, and

[32] See 12 CFR 1026.55(d) and (e)

to any new transactions that occur after the effective date of the rate reduction that would otherwise have been subject to the increased rate. If the issuer does not reduce the rate to an amount equal to or lower than the rate applicable prior to the increase, the issuer will be required to conduct the reevaluation every six months until the rate is reduced to or below that amount.[33]

Exceptions

The requirement to reevaluate rate increases does not apply to increases in an APR that was previously decreased pursuant to the requirements of the Servicemembers' Civil Relief Act. The requirements also do not apply to accounts that a card issuer has charged off in accordance with loan loss provisions.

Requirements for over-the-limit transactions (12 CFR 1026.56)

An "over-the-limit transaction" means any extension of credit by a card issuer to complete a transaction that causes a consumer's credit card account balance to exceed the credit limit. Credit card issuers have the option as to whether to permit over-the-limit transactions. Regulation Z does not require that they permit them, nor does it prohibit them from doing so. However, if a card issuer permits over-the-limit transactions and charges a fee for such transactions, it must provide the consumer notice and reasonable opportunity to affirmatively consent (opt in) to the card issuer's payment of the over-the-limit transaction prior to the assessment of any over-the-limit fee or charge on the consumer's account.

The initial notice must be oral, written, or electronic, and segregated from all other information. It must include the following information:

- The dollar amount of any fees or charges assessed by the card issuer for an over-the-limit transaction;
- Any increased periodic rate (expressed as an APR) that may be imposed on the account as a result of an over-the-limit transaction; and
- An explanation of the consumer's right to affirmatively consent (opt in) to the card issuer's payment of over-the-limit transactions, including the method(s) by which the consumer may consent.[34]

If the consumer affirmatively consents, the issuer is also required to provide written confirmation (or electronic confirmation if the consumer agrees to receive electronic communications) of the

[33] If the rate applicable immediately prior to the increase was a variable rate, the reevaluation will be required unless the rate has been reduced to a variable rate determined by the same formula that was used to calculate the APR applicable immediately prior to the increase.

[34] Safe Harbor: Appendix G to Regulation Z contains a "safe harbor" provision if the issuer uses the model forms in Appendix G to the regulation. The appendix contains two Model Forms for this type of notice, Model Forms G-25(A) and G-25(B). Card issuers who use either of these forms, or substantially similar notices, for the initial notice and opt-in will be deemed to be in compliance with the notice content requirements.

consumer's consent. The issuer must also provide a consumer notice in writing of the right to revoke that consent following the assessment of an over-the-limit fee or charge. This notice of the right to revoke must be provided on the front page of any periodic statement that reflects the imposition of an over-the-limit fee. A consumer's affirmative consent is effective until it is revoked by the consumer, or until the card issuer decides for any reason to cease paying over-the-limit transactions for the consumer. A consumer may affirmatively consent to the issuer's payment of over-the-limit transactions at any time in the manner described by the initial notice. A consumer may affirmatively *revoke consent* at any time in the manner described by the notice of the right to revoke. A card issuer must comply with the consumer's revocation request as soon as reasonably practicable after the card issuer receives it.

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, and only if the credit limit was exceeded during the billing cycle. An issuer cannot impose an over-the-limit fee on the account for the same transaction in more than three billing cycles 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. The prohibition on imposing an over-the-limit fee or charge in more than three billing cycles for the same over-the-limit transaction(s) does not apply if another over-the-limit transaction occurs during either of the last two billing cycles.

Regulation Z also prohibits certain acts or practices in connection with the over-the-limit fees or other penalty charges. Specifically, issuers are prohibited from engaging in three practices:

- Assessing an over-the-limit fee solely because the issuer failed to promptly replenish the consumer's available credit following the crediting of the consumer's payment;
- Conditioning the amount of available credit on the consumer's consent to the payment of over-the-limit transactions if the card issuer assesses a fee or charge for such service (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 certain interest charges or fees on the consumer's account during that billing cycle.

Credit line increases (12 CFR 1026.51)

Credit card issuers may not increase a consumer's credit limit unless they consider the consumer's ability to make the minimum monthly payment on the account with the increased credit limit. The ability to pay requirements for credit line increases are the same as the ability to pay requirements for opening a credit card account.[35]

[35] See Module 2 of these procedures, or 12 CFR 1026.51.

If the consumer is under the age of 21, and the credit card account was opened based on the under-21 applicant's independent ability to pay, the issuer cannot increase the credit limit on the account if the consumer is still under 21 unless the consumer has the independent ability to make the minimum monthly payment on the increased limit, or a co-applicant/cosigner/guarantor agrees in writing to assume liability for the debt. If the consumer is still under 21 and the account had a cosigner/guarantor/joint applicant at account opening, the cosigner/guarantor/joint applicant must agree in writing to assume liability on the increase (unless the cosigner/guarantor/joint applicant requested the credit line increase).

Examination Procedures

Subsequent disclosure requirements (12 CFR 1026.9)

1. 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))

2. 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))

3. *Checks that access a credit card account.* 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 Regulation Z. (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)).

iv. 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)).

B. If no promotional rate applies to the checks, determine that the creditor discloses 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))

C. 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))

4. 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))

5. 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))

6. 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))

7. 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. Section 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 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))

8. The 45-day advance notice requirement applies to changes to the following terms (12 CFR 1026.9(c)(2)(ii)):

   A. APR increase, 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 (such rates may include any discounted initial rate, premium initial rate, or penalty rate that may be applied to the account);

      i. Variable-rate information;

      ii. Discounted or premium initial rates;

      iii. Penalty rates;

   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.

9. 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), 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.

10. 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)

11. 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, 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 USC 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.

12. *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.* (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) 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 12 CFR 1026.9(c)(2)(i) 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.

13. 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 to Regulation Z. 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))

14. 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 Regulation Z. (12 CFR 1026.9(c)(2)(iv)(D)(2))

15. 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 12 CFR 1026.9(c)(2)(iv)(A)(1) 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.

16. 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), and is substantially similar to the format shown in Sample G-20 or G-21 in Appendix G to Regulation Z. (12 CFR 1026.9(c)(2)(iv)(D)(3))

17. 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 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)) 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.

18. 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))

19. 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))

20. 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.

21. Whenever any notice is required to be given pursuant to paragraph 12 CFR 1026.9(g)(1), 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))

22. 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. (Commentary 12 CFR 1026.9(g) - 7)

23. If the rate increase required to be disclosed pursuant to 12 CFR 1026.9(g)(1) 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 12 CFR 1026.9(g)(1) 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))

24. 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 12 CFR 1026.9(c)(2)(iv) if that notice is provided on the same statement. (12 CFR 1026.9(g)(3)(ii)(A))

25. 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). (12 CFR 1026.9(g)(3)(ii)(B))

26. *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.

G. 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))

27. 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,

28. 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))

29. 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))

30. 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))

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Limitations on increasing APRs, 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.

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. app. 527 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.

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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) 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).

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))

   A. Determine that a card issuer that complies with 12 CFR 1026.59 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))

   B. 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)):

      i. 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.

      ii. 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.

      iii. 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 Regulation Z 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).

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Over-the-limit transactions (12 CFR 1026.56)

1. If the credit card issuer charges a fee for over-the-limit transactions, 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))

3. Joint Relationships. Determine that, if two or more consumers are jointly liable on a credit card account, 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))

4. 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.

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Credit line increases (12 CFR 1026.51)

1. Determine that the card issuer does increase the credit limit for a consumer 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. 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))

4. 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.

5. If a credit card account was opened for a consumer under the age of 21 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))

6. 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))

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Module 4: Payments and Periodic Statements

Periodic statements (12 CFR 1026.5(b)(2); 12 CFR 1026.7; 12 CFR 1026.8)

Regulation Z requires credit card issuers to provide a consumer with a periodic statement for each billing cycle at the end of which an account has a debit or credit balance of more than $1 or on which a finance charge has been imposed. The issuer is not required to send a periodic statement for an account if:

- It is deemed to be uncollectible;
- Delinquency proceedings have been instituted;
- The issuer has charged off the account in accordance with loan loss provisions and will not charge any additional fees or interest in the account; or
- Furnishing the statement would violate Federal law.

Credit card issuers must adopt reasonable procedures 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 consumer credit card accounts with grace periods, issuers 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.[36]

See Appendix 1 to these procedures for detailed information on the required formatting and contents of the periodic statement.

Payments (12 CFR 1026.10)

General and specific requirements (12 CFR 1026.10(a) and (b))

A credit card issuer is generally required to credit a payment to the consumer's account as of the date of receipt. The “date of receipt” is the date that the payment instrument or other means of completing payment reaches the issuer. A card issuer does not violate this provision when a delay in crediting does not result in a finance or other charge. Also, issuers may specify reasonable requirements for payments that enable most consumers to make conforming payments. These may include, but are not limited to:

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[36] 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.

- Specifying that payments include the account number or a payment stub;
- Setting reasonable cut-off times for payments to be credited on a particular day; or
- Specifying that only checks or money orders should be sent by mail, and that payment is to be made in U.S. dollars.

If the issuer accepts a payment that does not conform to the requirements specified on or with the periodic statement, the issuer is required to credit the payment within five days of receipt.[37]

Generally, a card issuer may set reasonable cut-off times for payments to be received by mail, by electronic means, by telephone, and in person, provided that such cut-off times shall be no earlier than 5 p.m. on the payment due date at the location specified by the creditor for the receipt of such payments. Special rules apply for payments made in person at a branch or office of a card issuer that is a financial institution.[38] For those payments, any payments received prior to the close of business of that branch or office will be considered received on the date on which the consumer makes the payment. Card issuers may not impose a cut-off time for in-person payments earlier than the close of business for the branch or office. 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.

Limitations on fees related to method of payment (12 CFR 1026.10(e))

An issuer, or any third-party processor that collects, receives, or processes payments on behalf of a creditor, may not impose a separate fee for processing a payment unless the payment method is for an expedited service which involves the assistance of a live customer service representative. An expedited service requires the payment to be credited the same day, or if the payment is received after any cut-off time established by the issuer, the next business day.

Issuer's failure to credit payment (12 CFR 1026.10(c), 1026.10(d), and 1026.10(f))

If an issuer fails to properly credit a payment in time to avoid the imposition of a finance charge or other charges, the issuer is required to adjust the consumer's account so that the charges imposed are credited to the consumer's account during the next billing cycle.

If an issuer does not accept payments by mail on the due date for payments (for example, if the U.S. Postal Service does not deliver mail on that date), the issuer generally must not treat payments received on the next business day as late for any purpose such as increasing the APR as a penalty, reporting the consumer as delinquent to a credit reporting agency, assessing a late

[37] If a creditor promotes a method for making payments, such payments must be considered conforming payments and (if made prior to any reasonably cut-off time specified by the creditor) must be credited 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.

[38] For purposes of this provision, "financial institution" means a bank, savings association, or credit union.

fee or any other fee, initiating collection activities, or terminating benefits (such as rewards on purchases).[39]

If an issuer changes the address for receiving payments, such as a mailing address or the address of a branch where customers can make payments, and the change causes a delay in crediting payment to a customer's account, the issuer cannot charge a late payment fee or finance charge during the 60-day period following the date on which the change took effect. The issuer can also credit an amount equal to the fee or charge if such a fee or charge has been imposed.

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 any remaining portion to the other balances in descending order based on the applicable APR. Regulation Z does not require card issuers to allocate the minimum monthly payment in any particular manner.

However, if any of the balances are subject to a deferred interest program, 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.[40]

For accounts with secured balances, issuers are permitted (but not required) to allocate excess payments to the secured balance if requested by the consumer.

Limitations on the imposition of finance charge related to loss of grace period (12 CFR 1026.54)

Section 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"). 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 based on the portion of the balance that has been repaid (but only if that balance was subject to the grace period).

[39] 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, even if it does not accept mailed payments on the due date.

[40] Balances subject to a temporary or promotional interest rate are not included in this exception, unless the consumer may be obligated to pay interest that accrues during the period if the balance is not paid in full prior to the expiration of the period. See Comment 53(b).

Treatment of credit balances (12 CFR 1026.11(a))

Issuers are required to credit the amount of any credit balance of greater than $1 to a customer's account. Credit balances greater than $1 must be refunded within seven business days of receiving a written request from the consumer. Issuers must also 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 of more than $1 remaining in the account for more than six months.

Examination Procedures

Periodic statement disclosures (12 CFR 1026.7)

1. Review financial institution policies, procedures, and systems to determine, either separately or when completing the actual file review, whether the periodic statement is furnished when required by Regulation Z: 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))

2. 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 12

CFR 1026.6 (b)(2), substantially similar to Sample G–18(A) in Regulation Z. (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).

G. *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))

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. 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))

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(b)(9))

J. *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))

K. *Due date; late payment costs*. With the exception of periodic statements provided solely for charge cards 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)):

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:

a. Charge card accounts that require payment of outstanding balances in full at the end of each billing cycle;

b. 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

c. 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.

L. 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 Regulation Z. 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 Regulation Z, 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 Regulation Z. 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 Regulation Z. 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 Regulation Z. 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 (listed in 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:

a. The minimum payment repayment estimate that is disclosed on the periodic statement pursuant to paragraph 12 CFR 1026.7(b)(12)(i)(B) after rounding is three years or less;

b. The estimated monthly payment for repayment in 36 months, as described in Appendix M1 to Regulation Z, 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

c. 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 to Regulation Z, 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 L 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))

M. 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 12 CFR 1026.7(b)(12) 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.

N. 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 Regulation Z. (12 CFR 1026.7(b)(14))

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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))

[Click&type]

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.

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 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))

[Click&type]

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 discussed 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.

[Click&type]

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))

[Click&type]

Module 5: Dispute Resolution

Billing error resolution (12 CFR 1026.13)

Regulation Z contains an error resolution process that a card issuer must follow in the event of a billing error on or related to the periodic statement. The error resolution process is triggered when the consumer provides the issuer with written notice of a billing error within the 60-day timeframe discussed later. A "billing error" is defined under Regulation Z as any of the following items that are reflected on or, in some cases, with or pertaining to a periodic statement:

- An extension of credit that is not made to the consumer or a person who has authority to use the consumer's credit card account;
- An extension of credit that is not identified in accordance with Regulation Z's requirements for identification of transactions on a periodic statement;
- An extension of credit for property or services that the consumer did not accept, or that were not delivered to the consumer as agreed;
- The issuer's failure to properly credit a payment or other credit issued to the consumer's account;
- A computational or similar accounting error that is made by the issuer;
- An extension of credit for which the consumer requests additional clarification, including documentary evidence; or
- The issuer's failure to mail or deliver a periodic statement to the consumer's last known address, if that address was received by the issuer, in writing, at least 20 days before the end of the billing cycle for which the statement was required.

The error resolution process is triggered if the issuer receives a billing error notice from a consumer within 60 days after the issuer transmitted the first periodic statement that reflects the alleged billing error, or if the issuer failed to provide the periodic statement, 60 days from the time the statement should have been sent. The written notice must contain enough information to enable the issuer to identify the consumer's name and account number and must, to the extent possible, indicate the consumer's belief and the reasons for the belief that a billing error exists, along with the type, date, and amount of the error.

The issuer must mail or deliver to a consumer a written acknowledgment within 30 days of receiving a billing error notice, unless the issuer is able to resolve the issue before the 30 days have passed. The issuer then has two complete billing cycles or 90 days (whichever is shorter) to comply with the resolution procedures discussed later.

Until a billing error is resolved, the consumer is not required to pay (and the issuer is not permitted to attempt to collect) any portion of any required payment that the consumer believes is related to the disputed amount, including related finance and other charges; and the issuer may not accelerate any part of the debt or restrict or close the account solely because the consumer has exercised his right to dispute the charge. The issuer also cannot make or threaten to make an adverse report to any person about the consumer's credit standing, or report that the account is delinquent because the consumer failed to pay the disputed amount or related charges. However, the issuer:

- May take action to collect any undisputed portion of the item or bill;
- May deduct any disputed amount and related finance or other charges from the consumer's credit limit on the account; or
- May reflect a disputed amount and related finance or other charges on a periodic statement, provided that the issuer indicates on or with the periodic statement that payment of any disputed amount and related finance or other charges is not required until the billing error is resolved.

If the issuer determines that a billing error has occurred as asserted, it is required to correct the billing error and credit the consumer's account with any disputed amount and related finance or other charge as applicable, and mail or deliver a written correction notice to the consumer. If the issuer, after conducting a reasonable investigation, determines that a billing error did not occur or that a different billing error occurred from that asserted, the issuer is required to provide the consumer with a written explanation asserting the issuer's belief as to why the alleged billing error does not exist, along with copies of documentary evidence of the consumer's debt (if the consumer has requested it). If the issuer determined that a different billing error occurred than the one originally alleged, the issuer must correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable.[41]

If a card issuer determines that a consumer owes all or part of the disputed amount and related finance or other charges, the issuer must also notify the consumer in writing of the amount owed and the time when payment is due. The issuer must give the consumer the length of any disclosed grace period applicable to the consumer during which the consumer can pay the amount due without incurring additional finance or other charges.

The issuer generally may report an account or amount as delinquent because the amount due remains unpaid after allowing any disclosed grace period as discussed previously or 10 days (whichever is longer) during which the consumer can pay the amount. However, a card issuer may not report an account or amount as delinquent because such amount remains unpaid, if the issuer receives further written notice from the consumer that any portion of the billing error is in dispute, unless the card issuer (a) promptly reports that the amount or account is in dispute; (b) mails or delivers to the consumer (at the same time the report is made) a written notice of the

[41] If the billing error asserted related to unauthorized use (as defined in 12 CFR 1026.12(b)(1)(i)), the issuer may hold the consumer liable for up to $50 of the unauthorized amount. See 12 CFR 1026.12.

name and address of each person to whom the creditor makes a report; and (c) promptly reports any subsequent resolution of the reported delinquency to all persons to whom the creditor has made a report. An issuer that has already fully complied with the resolution procedures is not required to reinvestigate if a consumer reasserts substantially the same billing error.

Liability of cardholder for unauthorized use (12 CFR 1026.12(b))

Regulation Z provides special rules for the unauthorized use of a credit card. The term "unauthorized use" means the use of a credit card by a person, other than the consumer who is authorized on the account, who does not have actual, implied, or apparent authority to use, and from which the consumer receives no benefit. Generally, consumers become aware of unauthorized use of their credit card account by discovering that their card has been lost or stolen, by noticing an unauthorized charge on their billing statement, or through notification from the card issuer. Regulation Z limits the consumer's liability for unauthorized use to the lesser of $50 or the amount of unauthorized charges obtained before the card issuer is notified of the unauthorized use. In order for the card issuer to hold the consumer liable for up to $50 of unauthorized charges, the following must be true:

- The credit card must be an accepted credit card;
- The card issuer must have provided the consumer with adequate notice that the consumer's liability will not exceed $50 (or any lesser amount), that the cardholder may give oral or written notification, and the means by which the consumer can notify the issuer of the unauthorized use (for example, a telephone number, an address, or both); and
- The card issuer has provided a means to identify the cardholder on the account or the authorized user of the card (for example, a signature, photograph, or fingerprint on the card or other biometric means, or electronic or mechanical confirmation).[42]

As discussed previously, Regulation Z limits the consumer's liability for unauthorized use to the lesser of $50 or the amount of unauthorized charges obtained before the card issuer is notified of the unauthorized use. Notice is considered "given" when the steps are taken by the consumer as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information about the loss, theft, or possible unauthorized use of a credit card account,

[42] The cardholder may not be held liable for any amount under 12 CFR 1026.12(b) when the card itself (or some other sufficient means of identification of the cardholder) is not used to conduct the unauthorized transaction. Since the issuer has not provided a means to identify the user under these circumstances, the issuer has not fulfilled one of the conditions for imposing liability. For example, when merchandise is ordered by telephone or the Internet by a person without authority to do so, using a credit card account number by itself or with other information that appears on the card (for example, the card expiration date and a 3- or 4-digit cardholder identification number), no liability may be imposed on the cardholder. See Comment 12(b)(2)(iii).

regardless of whether any particular officer, employee, or agent of the card issuer does, in fact, receive the information.[43]

If a card issuer seeks to impose liability when a claim of unauthorized use is made by a consumer, the card issuer must conduct a reasonable investigation of the claim. In conducting its investigation, the card issuer may reasonably request the consumer's cooperation. The card issuer may not automatically deny a claim based solely on the consumer's failure or refusal to comply with a particular request, including providing an affidavit or filing a police report; however, if the card issuer otherwise has no knowledge of facts confirming the unauthorized use, the lack of information resulting from the consumer's failure or refusal to comply with a particular request may lead the card issuer reasonably to terminate the investigation. The procedures involved in investigating claims may differ, but actions such as the following represent steps that a card issuer may take, as appropriate, in conducting a reasonable investigation of an unauthorized transaction:

- Reviewing the types or amounts of purchases made in relation to the consumer's previous purchasing pattern.
- Reviewing where the purchases were delivered in relation to the consumer's residence or place of business.
- Reviewing where the purchases were made in relation to where the consumer resides or has normally shopped.
- Comparing any signature on credit slips for the purchases to the signature of the consumer or an authorized user in the card issuer's records, including other credit slips.
- Requesting documentation to assist in the verification of the claim.
- Requiring a written, signed statement from the consumer or authorized user. For example, the issuer may include a signature line on a billing rights form that the consumer may send in to provide notice of the claim. However, an issuer may not require the consumer to provide an affidavit or signed statement under penalty of perjury as part of a reasonable investigation.
- Requesting a copy of a police report, if one was filed.
- Requesting information regarding the consumer's knowledge of the person who allegedly used the card or of that person's authority to do so.

[43] A consumer may also initiate the error resolution process under 12 CFR 1026.13, as unauthorized use is a “billing error.” Regardless of whether or not the consumer exercises his rights under 12 CFR 1026.13, the liability limitations for unauthorized use in 12 CFR 1026.12(b) apply.

Annual Statement of Billing Rights (12 CFR 1025.6(b)(5)(iii) and 12 CFR 1026.9(a)(1) and (2))

Prior to the first transaction for a credit card account, card issuers are required to provide to a consumer a statement that outlines the consumer's rights and the creditor's responsibilities regarding billing error resolution and the right of a cardholder to assert claims or defenses against the card issuer (the so-called "billing rights summary"). This statement must be substantially similar to the statement found in Model Form G-3(A) in Appendix G to Regulation Z. A card issuer also must mail or deliver the billing rights summary at least once per calendar year, at intervals of not less than 6 months and not more than 18 months, either to all consumers or to each consumer entitled to a periodic statement in the billing cycle in which the billing rights summary is provided. As an alternative, the creditor may include a statement substantially similar to Model Form G-4(A) in Appendix G to Regulation Z on or with each periodic statement.

Right of a consumer to assert claims or defenses against the card issuer (12 CFR 1026.12(c))

When a person who honors a credit card fails to satisfactorily resolve a dispute as to property or services purchased with the credit card, the consumer may assert against the card issuer all claims (other than tort claims) and defenses arising out of the transaction and relating to the failure to resolve the dispute. The consumer may withhold payment up to the amount of credit outstanding for the property or services that gave rise to the dispute and any finance or other charges imposed on that amount. The card issuer may not report the amount withheld as delinquent until the dispute is settled or judgment is rendered.

These rights only apply if:

- The consumer has made a good faith attempt to resolve the dispute with the person honoring the credit card; and
- The amount of credit extended to obtain the property or services that result in the assertion of the claim or defense by the cardholder exceeds $50, and the disputed transaction occurred in the same state as the cardholder's current designated address or, if not within the same state, within 100 miles from that address; unless the person honoring the credit card:
  - Is the same person as the card issuer;
  - Is controlled by the card issuer directly or indirectly;
  - Is under the direct or indirect control of a third person that also directly or indirectly controls the card issuer;
  - Controls the card issuer directly or indirectly;

- Is a franchised dealer in the card issuer's products or services; or
- Has obtained the order for the disputed transaction through a mail solicitation made or participated in by the card issuer.

Prohibitions on offsets (12 CFR 1026.12(d))

Card issuers are generally prohibited from offsetting a consumer's credit card debt against the consumer's funds held on deposit with the issuer. However, Regulation Z does permit automatic payment plans that allow the card issuer to periodically deduct all or part of the consumer's credit card debt for a deposit account held with the issuer, if authorized in writing by the consumer.[44]

[44] This prohibition does not alter or affect the right of a card issuer acting under state or Federal law to do any of the following with regard to funds of a cardholder held on deposit with the card issuer if the same procedure is constitutionally available to creditors generally: (a) obtain or enforce a consensual security interest in the funds; (b) attach or otherwise levy upon the funds; or (c) obtain or enforce a court order relating to the funds.

Examination Procedures

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. Liability for unauthorized credit card use is limited to $50;

   B. Disputed amounts are not reported delinquent unless remaining unpaid after the dispute has been settled;

   C. Offsetting credit card indebtedness is prohibited; and

   D. Errors are resolved within two complete billing cycles.

Annual billing rights statement (12 CFR 1026.9(a)(1))

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(A) in Appendix G to Regulation Z, as applicable. (12 CFR 1026.9(a)(2))

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Module 6: Marketing, Sale, and Servicing of Credit Card Add-on Products

Credit card issuers market various "add-on" products to card users that are supplementary to the credit provided by the card itself. Consumers may purchase the products when they apply for a new credit card or can add them to an existing credit card account. Card issuers often enroll new account holders in these products through either the credit card application, or at the time the consumer activates the credit card. Existing account holders can typically purchase the product by telephone, mail, or through the credit card issuer's website. In general, consumers are charged a monthly fee for the product, typically either a flat fee or a percentage of the statement balance.

Debt protection and identity theft protection products are two common "add-on" products. Debt protection products typically offer to suspend or cancel all or part of a consumer's obligation to repay an outstanding credit card balance when a qualifying event occurs. "Cancellation" benefits usually promise forgiveness of some or all of a cardholder's debt:-; either cancelling the minimum monthly payment for a certain period of time and reducing the account balance, or forgiving the total credit card balance altogether. "Suspension" benefits typically offer to allow a cardholder to skip the minimum monthly payment without penalty and without accruing interest for a specific period, but do not reduce the cardholder's account balance. Qualifying events may vary across products, but generally include loss of life, disability, involuntary unemployment, and leave of absence from employment. Some products also include certain "life events" such as the birth or adoption of a child, marriage, relocation, divorce, hospitalization, and retirement. Identity theft protection products are promoted as helping protect consumers against identity theft. These products often take the form of credit score monitoring. In order to receive the full benefits of many identity theft protection products, consumers must authorize the product administrator to access the consumer's credit report.

Credit card issuers who offer credit card add-on products should ensure that the products are marketed, sold, and serviced in a manner that is not unfair, deceptive, or abusive to consumers. The CFPB has found that issuers have engaged in deceptive practices, for instance, when they:

- Sell consumers a product despite the consumer providing information that indicated they would be ineligible for the product's primary benefits.
- Lead consumers to believe that they could avoid paying the product fee by paying their balance in full before the monthly payment due date when they would have had to pay it before the end of the billing cycle in order to avoid the fee.
- Inform consumers that the products were a "limited time offer" or that the consumer's account was eligible for a limited time "special offer," when, in fact, almost all consumers were eligible for and were offered products.
- Fail to disclose that the products were optional or representing that the products were an "additional feature" of the account.

- Represent that the products would improve the consumer's credit score.
- Represent that consumers could try the product for "free for 30 days," when in fact consumer was billed beginning at the time of purchase and had to call and cancel within 30 days to obtain a refund.
- Imply that consumer would receive benefits immediately upon reporting a claim when, in fact, consumers were required to submit benefit forms and supporting documentation.[45]

The CFPB has identified unfair billing practices in connection with the offering of some identity theft protection products. As noted previously, for many identity theft products, the consumer cannot receive the full benefits of the product by agreeing verbally. Rather, the consumer must complete and submit a form with additional information, including an authorization for the administrator to access the consumer's credit report. The CFPB has found instances when consumers verbally agreed to enrollment but never returned the authorization form. These consumers were still charged for the product despite not completing the second step, but when they attempted to claim the product's benefits, they were unable to do so.[46]

As examiners review credit card add-on products, they should be aware of these and any additional marketing, sales, or servicing practices that present a risk of harm to consumers. See "Unfair, Deceptive, or Abusive Acts or Practices," CFPB Supervision and Examination Manual, for additional information on identifying unfair, deceptive, or abusive acts or practice.

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[45] See *In the Matter of American Express Centurion Bank*, Administrative Proceeding File No. 2013-CFPB-0011 (December 24, 2013); *In the Matter of American Express, FSB*, Administrative Proceeding File No. 2013-CFPB-0012 (December 24, 2013); *In the Matter of American Express Travel Related Services*, Administrative Proceeding File No. 2013-CFPB-0013 (December 24, 2013); *In the Matter of Bank of America, N.A.; and FIA Card Services, N.A.*, Administrative Proceeding File No. 2014-CFPB-0004 (April 9, 2014); *In the Matter of Synchrony Bank, f/k/a GE Capital Retail Bank*, Administrative Proceeding File No. 2014-CFPB-0007 (June 19, 2014).

[46]See *In the Matter of JPMorgan Chase Bank, N.A. and Chase Bank USA N.A.*, Administrative Proceeding File No. 2013-CFPB-0007 (September 19, 2013); *In the Matter of American Express Centurion Bank*, Administrative Proceeding File No. 2013-CFPB-0011 (December 24, 2013); *In the Matter of American Express, FSB*, Administrative Proceeding File No. 2013-CFPB-0012 (December 24, 2013); *In the Matter of American Express Travel Related Services*, Administrative Proceeding File No. 2013-CFPB-0013 (December 24, 2013); *In the Matter of U.S. Bank, National Association*; Administrative Proceeding File No. 2014-CFPB-0013 (September 25, 2014).

Examination Procedures

General information

1. Briefly describe the types of credit card add-on products offered by the bank during the Review Period, including their key terms, conditions, and features.
2. Name and describe the involvement of any affiliates or service providers in offering the products and whether they are a third party provider or affiliate. Also describe the services provided and how much of the time during the review period services were provided by the third party provider or affiliate. If the services changed over time, note the dates of the changes and describe how the services changed.

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Compliance management, quality control, and training

1. Review copies of any internal audit reports that would have included a review of the products that were offered to consumers during the review period.

   A. Assess whether the audit(s) appear to have been comprehensive, accurate, adequate, and timely. A few examples of factors to consider in reviewing the reports include the following:

      i. Who conducted the audits - Internal auditors or external auditors?

      ii. What time period was covered by the reports? When was the report issued?

      iii. What products were covered by the reports? For example, an internal audit report may document the results of a review of the bank's credit reporting products but not its debt protection products.

      iv. If the review focused upon marketing, what marketing channels were covered by the reports?

      v. Are any activities of service providers or affiliates included in any of the reports?

      vi. Did audit listen to a sample of inbound or outbound calls if the products are marketed or serviced by telephone? Was the size of the sample adequate?

      vii. What other areas, if any, were not covered by the reports? To the extent that areas were not covered, consider whether these are areas that should be included in the scope of the review. To the extent review is required, document the results of the additional review in the space below or refer to the portion of these procedures under which you have documented the results of the additional review.

viii. If no audit reports were issued during the review period, review internal audit's plans for the next two calendar years. Did audit have a reasonable, risk-based basis for not auditing the products during the applicable time period?

a. Were the bank's UDAAP risks considered in the audit plan?

b. If so, was the assessment of the risks reasonable?

c. Was an appropriate audit schedule implemented that considered these risks?

d. Were UDAAP reviews done of other types of products, such as "add on" products relating to other types of loans, such as auto loans?

B. Review any findings noted in the reports and assess the status of any actions taken by the bank in response. Consider whether further review is needed by examiners. To the extent further review is required, document the results of the additional review in the space below or refer to the portion of these procedures under which you have documented the results of the additional review. For example, an internal audit report may contain findings indicating possible inaccuracies in calculating the fees for the product. If so, that finding should be noted below and a determination made about the extent that we need to do further review of fee calculations.

2. Review copies of any compliance risk management reports that would have included a review of the products that were offered to consumers during the review period.

A. Assess the scope of the reports. A few examples of factors to consider in reviewing the scope include the following:

i. What time period was covered by the reports? When were the reports issued?

ii. What products were covered by the reports?

iii. If the reports include data on marketing, what marketing channels were covered by the reports? Do the reports contain data from all marketing channels used by the bank to market the products?

iv. Are any activities of service providers or affiliates included in any of the reports?

v. What other areas (other than specific products and marketing channels) if any, were not covered by the reports?

vi. Is the bank's MIS sufficient to monitor and manage the various debt protection products?

vii. Where there negative trends or information evident in the reports which management failed to note?

B. Document any negative findings noted in the reports and the status of any actions taken by the bank in response.

   i. Assess whether the bank's planned responses were adequate and whether management has determined that any planned corrective action is complete. If management reports that corrective actions are complete, document the basis for management's determination that they are complete and assess whether management has an adequate basis for that determination.

   ii. Determine if examiners needs to conduct a further review of any deficiencies noted in the report or management's determination that corrective actions have been completed. If so, note the need for an additional review in the findings below and document the findings of any additional review by describing the additional review that was performed and the outcome of the review.

3. Assess the manuals and other materials provided regarding any formal or informal training that any individual receives regarding the sale and marketing of the products. Consider the following:

   A. Which employees of the bank, its service providers (if any), and its affiliates (if any) receive training related to UDAAP or the products?

   B. Is the training appropriate for the scope of those employees' responsibilities, such as enrollment, claims processing, cancellation, or refunds?

4. Assess the bank's policies and procedures for conducting Quality Assurance (QA) reviews of telemarketing calls and the QA reports (if any) provided by the bank.

   A. Do the reports appear to have been produced as required by any procedures? For example, were they produced with the frequency provided by the procedures?

   B. Review the findings in the QA reports. Describe any trends in the numbers or types of issues found that are red flags which require further review. To the extent further review is required, document the results of the additional review in the space below or refer to the portion of these procedures under which you have documented the results of the additional review.

   C. Document any findings noted in the reports and the status of any actions taken by the bank in response. Consider whether further review is needed by examiners. To the extent further review is required, document the results of the additional review in the space below or refer to the portion of these procedures under which you have documented the results of the additional review. For example, an internal audit report may contain findings indicating possible inaccuracies in calculating the fees for the product. If so, that finding should be noted below and a determination made about the extent that we need to do further review of fee calculations

5. Review the records regarding any disciplinary actions or other actions taken against any part of the bank, any affiliate, any employee, or any third party concerning the marketing, sales, and/or operation of the products.

   A. Summarize any actions taken.

   B. Document any examiner concerns with the actions taken.

6. Review and summarize consumer complaints received.

   A. Review the complaint data provided. Describe any trends in the numbers and/or types of complaints that are red flags which require further examiner review.

   B. To the extent further review of any trends is required, document the results of the additional review in the space below or refer to the portion of these procedures under which you have documented the results of the additional review.

7. Review the reports used by management to monitor customer complaints related to the marketing, sales, and/or operation of the products during the review period.

   A. Who uses these reports?

   B. Do the reports note any of the same trends in numbers or types of complaints that were noted during the review of the complaints themselves under Procedure 6 above?

   C. If the reports note particular trends or red flags, did management take appropriate action to address them?

8. Review the bank's summary of significant litigation. Describe any trends noted. Document any procedures or additional reviews performed during the examination to address any concerns noted by the examiner.

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Marketing and sales

1. Assess the marketing campaign materials for the products sold during the review period:

   A. Were marketing materials provided for each of the bank's products? If not, discuss with bank. Obtain copies of any missing materials.

   B. Do the terms presented in the marketing materials match the product descriptions given to examiners by the bank? If not, discuss with management to obtain an explanation.

2. Describe the enrollment process for each product.

A. Does the bank enroll customers in the products? Are service providers or Bank affiliates involved with the enrollment of any products? Which ones?

B. When customers indicate that they want to purchase one of these products, are they required to complete additional steps to activate and/or receive the full benefits of the products? For example, are customers required to provide written consents to allow the service provider or others to obtain copies of their credit reports or other records? If additional information or consents are required,

C. What controls are in place to ensure that customers are not billed for the products until the information or consents are provided?

3. Select a sample from the list of consumers who purchased the products during the review period that required consumer to complete more than one step to activate and/or receive the full benefits of the products. In selecting the sample, consider the following:

   A. Generally, each product will require a separate sample, unless the products are subject to the same additional steps.

   B. If the bank used one or more affiliates or service providers in administering its enrollment process, treat the products administered by each service provider as a separate population and select a sample from each population.

   C. When providing the bank with the selected sample, request: (a) account statements which show when customers were billed for the products and how much they were billed and (b) copies of bank records indicating whether the required additional steps were completed, and if it was, the date that the process was completed. If the additional steps involved customers' submitting signed authorizations, request a copy of the signed authorizations also.

4. Review the scripts for the products sold during the review period. Were scripts provided for each of the bank's products? If not, discuss this with bank. Obtain copies of any missing scripts. Summarize the results below.

5. Select a sample of the inbound telemarketing calls and a sample of the outbound telemarketing calls. If the bank used one or more affiliates or service providers to make inbound or outbound telemarketing calls, treat the calls made by each party as a separate call population and select a sample from each population.

   A. When providing the bank with the selected sample, request (a) copies of any disclosures mailed to customers following the telephone purchase, (b) proof that the disclosures were mailed, and (c) copies of any signed applications or authorizations that were required to be returned by customers.

B. Listen to the **<u>entire conversation</u>** for each of the inbound or outbound calls that are a part of the selected samples. Record observations regarding the sample (including any observations about mailed disclosures). Upon completion of the samples, summarize findings below.

6. Review the description of any customer targeting model or other mechanism or process that the Bank, its components, affiliates, or third parties have used, uses, or have created to target product marketing and sales to **specific** customers or groups of customers.

   A. Summarize any targeting model, mechanism, or process below.

   B. If the bank targets specific types of customers, does the bank tailor advertisements, promotional materials, disclosures, and scripts to take into account the level of sophistication and experience of the target audience?

7. Assess any incentives or incentive programs connected to the sales and marketing of any product offered to customers during the review period. Consider whether the incentive programs may have negatively or positively influenced the likelihood that customers received accurate information about the products and customers understood what they were being offered.

[Click&type]

Customer cancellations and benefit claims requests

1. Select a sample of the calls containing customer cancellation requests.

   A. If the bank used one or more affiliates or service providers to handle these calls, treat the calls handled by each party as a separate call population and select a sample from each population.

   B. Review the information supplied by the bank about each product type. Listen to the **<u>entire conversation</u>** for each of the tapes from the sample containing customer cancellation requests. Record observations regarding the calls. Upon completion of the sample, summarize findings below.

2. Select a sample of the calls containing customer claims for benefits.

   A. If the bank used one or more affiliates or service providers to handle these calls, treat the calls handled by each party as a separate call population.

   B. Review the information about each product type. Listen to the **<u>entire conversation</u>** for each of the tapes from the sample containing customer benefit claims. Record observations regarding the calls. Upon completion of the sample, summarize findings below.

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Appendix 1: Disclosure Requirements

This Appendix contains content and format requirements for the various disclosures required under Regulation Z. It should be used in conjunction with the Credit Card Account Management Examination Procedures in order to gain an understanding of the specific requirements for each type of disclosure.

Module 2: Application and solicitation disclosures (12 CFR 1026.60)

The following information is required to be disclosed on or with a direct mail or electronic credit card application or solicitation. Certain information, as designated later, must be included in a table with headings, content, and format substantially similar to the applicable tables found in G-10 in Appendix G to Regulation Z. If the amount of any fee required to be disclosed 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.

- *APR:* The disclosure must include the APR for purchases, cash advances, and balance transfers. If more than one rate applies for a category of transactions, the disclosure must contain the range of balances to which each rate applies. The APR for purchases must be in 16-point type,[47] and all APRs must be in bold type. The APRs must be included in the table. (12 CFR 1026.60(b)(1)) (Charge cards are not subject to this requirement.)
  - *Variable rates:* If any of the APRs are variable, the disclosure must state that the rate may vary and how the rate is determined, along with the type of index or formula used in setting the rate. This information must be included in the table. Information on the value of the index and the amount of the margin that are used to calculate the variable rate, and any applicable limitations on rate increases may not be included in the table. (12 CFR 1026.60(b)(1)(i))
  - *Discounted initial rate:* If the initial APR is an introductory rate (as defined in 12 CFR 1026.16(g)(2)(ii)), the disclosure must include in the table:
    - The introductory rate in bold type,
    - The time period during which it will remain in effect,
    - The term “introductory” or “intro” in immediate proximity to the rate.
    - The rate that will apply after the introductory rate expires. If this rate is variable, the rate must be based on the applicable index or formula in accordance with the

[47] The 16-point font requirement does not apply to oral disclosures of the APR for purchases or to a penalty rate that may apply upon the occurrence of one or more specific events.

accuracy requirements in 12 CFR 1026.60(c)(2), (d)(3), or (e)(4), as applicable (12 CFR 1026.60(b)(1)(ii)).

- *Premium Rates:* If the initial APR is temporary and is higher than the rate that will apply after the temporary rate expires, the disclosure must include in the table the premium initial rate and the time period during which the premium initial rate will remain in effect. The premium initial rate for purchases must be in at least 16-point type, and the table must include the rate that will apply after the premium initial rate expires, in at least 16-point bold type. (12 CFR 1026.60(b)(1)(iii))

- *Penalty rates:* Except for introductory rates or employee preferential rates (discussed later), 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, the card issuer must disclose 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)) If a penalty rate depends, at least in part, on a later determination of the consumer's creditworthiness, the disclosure may state the highest rate that could apply, instead of the specific rate or the range of rates that could apply. (12 CFR 1026.60(b)(1)(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 for direct mail applications or applications made available to the general public, the disclosure must include, 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))

    - *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, the circumstances under which such preferential rate may be revoked and the rate that will apply after such preferential rate is revoked must be disclosed directly beneath the table. (12 CFR 1026.60(b)(1)(iv)(C))

- *Rates that depend on consumer's creditworthiness:* If the APR cannot be determined at the time disclosures are given because it depends, at least in part, on a later determination of the consumer's creditworthiness, the disclosure must include 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))

- *APRs that vary by state:* If the APR varies by state, the disclosure may include in the table either the specific APR that would apply to the consumer's account or the range of the APRs, if the disclosure includes a statement that the APR varies by state and refers the consumer to a disclosure provided with the table where the APR applicable to the consumer's account is disclosed. The card issuer may not list APRs for multiple states in the table. (12 CFR 1026.60(b)(1)(vi))

- *Fees for issuance or availability.* The disclosure must include in the table, in bold type, any annual or other periodic 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; how frequently it will be imposed; and any annualized amount of the fee. (The bold text must not be used for the amount of any periodic fee described previously that is not an annualized amount.) The card issuer must include in the table, in bold type, any non-periodic fee that relates to opening an account and disclose that the fee is a one-time fee. (12 CFR 1026.60(b)(2))[48]
- *Fixed finance charge; minimum interest charge*. The disclosure must include in the table any fixed finance charge, as well as a brief description of that charge. The card issuer must disclose any minimum interest charge if it exceeds $1.00[49] that could be imposed during a billing cycle, and a brief description of the charge. The issuer has the option of disclosing in the table any minimum interest charge below $1.00. (12 CFR 1026.60(b)(3)) (Charge cards are not subject to this requirement.)
- *Transaction charge:* The disclosure must include in the table, in bold type, any transaction charge imposed for the use of the card for purchases. (12 CFR 1026.60(b)(4))
- *Grace Period*: The disclosure must include in the table 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. (Charge cards are not subject to this requirement.)
  - If no grace period is provided, that fact must be disclosed.
  - If the length of the grace period varies, the disclosure may include 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.
  - In disclosing in the tabular format a grace period that applies to all types of purchases, the phrase "How to Avoid Paying Interest on Purchases" is required to be used 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, the phrase "Paying

[48] For examples of these types of fees, see Comment 60(b)(2).

[49] The $1.00 threshold amount shall be adjusted periodically by the CFPB to reflect changes in the Consumer Price Index. The CFPB shall calculate each year a price level adjusted minimum interest charge using the Consumer Price Index in effect on June 1 of that year. When the cumulative change in the adjusted minimum value derived from applying the annual Consumer Price level to the current minimum interest charge threshold has risen by a whole dollar, the minimum interest charge will be increased by $1.00.

Interest" must be used as the heading for the row describing this fact. (12 CFR 1026.60(b)(5))

- *Balance Computation Method:* The name of the balance computation method (listed in 12 CFR 1026.60(g)) used to determine the balance for purchases on which the finance charge is computed must be disclosed directly beneath the table. (12 CFR 1026.60(b)(6)) (Charge cards are not subject to this requirement.)

- *Statement on Charge Card Payments:* If the card is a charge card, a statement that charges incurred are due when the periodic statement is received must be included in the table. (12 CFR 1026.60(b)(7))

- The following fees must be disclosed in the table, in bold type. If these fees vary by state (with the exception of the fees listed in 1026.60(b)(13)), the issuer may, at its option, disclose in the table, either the specific fee that would apply to the consumer's account or the range of the fees, if the disclosure includes a statement that the fee varies by state and refers the consumer to a disclosure provided with the table where the fee applicable to the consumer's account is disclosed. The card issuer may not list fees for multiple states in the table.

  - Cash advance fee (12 CFR 1026.60(b)(8))
  - Late payment fee (12 CFR 1026.60(b)(9))
  - Over-the-limit fee (12 CFR 1026.60(b)(10))
  - Balance transfer fee (12 CFR 1026.60(b)(11))
  - Returned payment fee (12 CFR 1026.60(b)(12))
  - Fees for any required insurance, debt cancellation, or debt suspension coverage, along with a cross-reference to any additional information provided about the insurance or coverage accompanying the application or solicitation. (12 CFR 1026.60(b)(13)) (Charge cards are not subject to this requirement.)

- *Available Credit*: If the card issuer requires fees for the issuance or availability of credit or a security deposit, and the total amount of those required fees and/or security deposit that will be imposed and charged to the account when the account is opened is 15 percent or more of the minimum credit limit for the card, a card issuer must disclose in the table the available credit remaining after these fees or security deposit are debited to the account, assuming that the consumer receives the minimum credit limit. (Charge cards are not subject to this requirement.)

  - If fees for issuance or availability are optional, these fees should not be considered in determining whether the disclosure must be given.

  - o If the 15 percent threshold test is met, the issuer must disclose the amount of available credit calculated by excluding those optional fees, and the available credit including those optional fees. (12 CFR 1026.60(b)(14))

- *CFPB Website Reference:* A reference to the website established by the Bureau and a statement that consumers may obtain on the website information about shopping for and using credit cards must be included in the table. (12 CFR 1026.60(b)(15))

If the application or solicitation is initiated by the card issuer by telephone, the issuer is required to orally disclose the information in 12 CFR 1026.60(b)(1)-(7) and (b)(14), to the extent applicable. These oral disclosures must be accurate as of the time they are given. In the alternative, the card issuer does not need to give the oral disclosures if it does not impose fees for issuance or availability, as described in 12 CFR 1026.60(b)(2), or if it imposes such a fee, the card issuer provides the consumer with a right to reject the plan. To use this alternative, the card issuer must disclose in writing within 30 days after the consumer requests the card (but not later than the delivery of the card) the applicable information in 12 CFR 1026.60(b) and, as applicable, the fact that the consumer has the right to reject the plan and not be obligated to pay fees described in 12 CFR 1026.60(b)(2) or any other fees or charges until the consumer has used the account or made a payment on the account after receiving a billing statement. The alternative disclosures generally must be accurate as of the time they are mailed or delivered.[50] (12 CFR 1026.60(d))

If the application or solicitation is made available to the general public, such as through a catalog, magazine, or other generally available publication, the card issuer may disclose in a prominent location on the application or solicitation the following information:

- The applicable information from 12 CFR 1026.60(b);
- The date the required information was printed, including a statement that the required information was accurate as of that date and is subject to change after that date; and
- A statement that the consumer should contact the card issuer for any change in the required information since it was printed, and a toll-free number or mailing address for that purpose.

In the alternative, if none of the items in 12 CFR 1026.60(b) are provided on or with the application or solicitation, the card issuer may state in a prominent location on the application or solicitation that there are costs associated with the use of the card, and that the consumer may

[50] A variable annual percentage rate is one that is accurate if it was: (A) in effect at the time the disclosures are mailed or delivered; or (B) in effect as of a specified date (and the rate is then updated from time to time, but no less frequently than each calendar month).

contact the card issuer to request specific information about the costs, along with a toll-free number and mailing address for that purpose. The card issuer must promptly respond to any requests. (12 CFR 1026.60(e))

Applications and solicitations initiated by the card issuer and given to the consumer in person must include the information required by 12 CFR 1026.60(b), to the extent applicable. A card issuer complies with this requirement if the issuer provides disclosures in accordance with 12 CFR 1026.60(c)(1) or (e)(1).

Module 2: Account opening disclosures (12 CFR 1026.6)

The following are required to be disclosed in the account-opening table:

- *APR:* The disclosure must include the APR for purchases, cash advances, and balance transfers. If more than one rate applies for a category of transactions, the disclosure must contain the range of balances to which each rate applies. The APR for purchases must be in 16-point type,[51] and all APRs must be in bold type. (12 CFR 1026.6(b)(2)(i))
    - *Variable Rates:* If any of the APRs are variable, the disclosure must state that the rate may vary and how the rate is determined, along with the type of index or formula used in setting the rate. Information on the value of the index and the amount of the margin that are used to calculate the variable rate, and any applicable limitations on rate increases or decreases may not be included in the table. (12 CFR 1026.6(b)(2)(A))
    - *Discounted Initial Rates:* If the initial APR is an introductory rate (as defined in 12 CFR 1026.16(g)(2)(ii)), the disclosure must include the rate that would otherwise apply to the account (if the issuer was not offering the introductory rate). If the rate is not tied to an index or formula, the disclosure must include the rate that will apply after the introductory rate expires. In a variable-rate account, the disclosure must include a rate based on the applicable index or formula (in accordance with the accuracy requirements of 12 CFR 1026.6(b)(4)(ii)(G)). The issuer also is required to disclose in the table the introductory rate, and the time period during which the introductory rate will remain in effect. The card issuer must disclose the introductory rate using the term “introductory” or “intro” in immediate proximity to the introductory rate. (12 CFR 1026.6(b)(2)(i)(B) and (F))
    - *Premium Rates:* If the initial APR is temporary and is higher than the rate that will apply after the temporary rate expires, the disclosure must include the premium initial rate in the table. The premium initial rate for purchases must be in at least 16-point type. (12 CFR 1026.6(b)(2)(i)(C)) The issuer also is required to disclose in the table the time period during which the premium initial rate will remain in effect and the

[51] The 16-point font requirement does not apply to a penalty rate that may apply upon the occurrence of one or more specific events.

rate that will apply after the premium initial rate expires. The rate that will apply after the premium initial rate for purchases expires must be in at least 16-point type. (12 CFR 1026.6(b)(2)(i)(C) and (F))

- *Penalty rates:* Except for introductory rates or employee preferential rates (discussed later), 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, the disclosure must include 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))
  - *Introductory rate:* If the issuer discloses an introductory rate in the table, the disclosure must include, directly beneath the table, the circumstances, if any, 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))
  - *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, the circumstances under which such preferential rate may be revoked and the rate that will apply after such preferential rate is revoked must be disclosed directly beneath the table. (12 CFR 1026.6(b)(2)(i)(D)(3))
- *Point of Sale where APR varies by state or based on creditworthiness:* If the APR varies by state or depends on the consumer's creditworthiness, and the account opening disclosure is provided in person at the time the plan is established in connection with financing the purchase of goods or services, the issuer may, at its option, disclose either the specific APR that would apply to the consumer's account or 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 table where the APR applicable to the consumer's account is disclosed. The card issuer may not list APRs for multiple states in the table. (12 CFR 1026.6(b)(2)(i)(E))

- *Fees for issuance or availability:* The disclosure must include**,** in bold type**,** any annual or other periodic 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; how frequently it will be imposed; and the annualized amount of the fee. (The bold text must not be used for the amount of any periodic fee described previously that is not an annualized amount.) The disclosure must also include any non-periodic fee that related to opening the plan, and state that the fee is a one-time fee. (12 CFR 1026.6(b)(2)(ii))

- *Fixed finance charge; minimum interest charge*: The disclosure must include any fixed finance charge, as well as a brief description of that charge. The card issuer must disclose any minimum interest charge if it exceeds $1.00 that could be imposed during a billing cycle, and a brief description of the charge. The issuer has the option of disclosing in the table any minimum interest charge below $1.00. (12 CFR 1026.6(b)(2)(iii))
- *Transaction charge:* The disclosure must include**,** in bold type**,** any transaction charge imposed for the use of the card for purchases. (12 CFR 1026.6(b)(2)(iv))
- *Grace Period*: The disclosure must include 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 disclosure may include 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.
    - In disclosing in the tabular format a grace period that applies to all features on the account, the phrase "How to Avoid Paying Interest" must 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" must be used as the heading for the row describing this fact. (12 CFR 1026.6(b)(2)(v))
- *Balance Computation Method:* The name of the balance computation method 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 one of the methods listed in 12 CFR 1026.60(g)), along with a statement that an explanation of the method is provided with the account opening disclosure. In determining which balance computation method to disclose, the issuer is required to assume that the credit extended will not be repaid within any grace period, if one is offered. (12 CFR 1026.6(b)(2)(vi))
- The following fees must be disclosed in bold type. If the fee varies by state (with the exception of the fees described in 12 CFR 1026.6(b)(2)(xii)) and the account opening disclosure is provided in person at the time the plan is established in connection with financing the purchase of goods or services, the card issuer may, at its option, disclose either the specific fee that would apply to the consumer's account or the range of the fees, if the disclosure includes a statement that the fee varies by state, and refers the consumer to the account agreement or other disclosure provided with the table where the fee applicable to the consumer's account is disclosed. The card issuer may not list fees for multiple states in the table. (12 CFR 1026.6(b)(1)(iii))
    - Cash advance fee (12 CFR 1026.6(b)(2)(vii))

- Late payment fee (12 CFR 1026.6(b)(2)(viii))
- Over-the-limit fee (12 CFR 1026.6(b)(2)(ix))
- Balance transfer fee (12 CFR 1026.6(b)(2)(x))
- Returned payment fee (12 CFR 1026.6(b)(2)(xi))
- Fees for any required insurance, debt cancellation, or debt suspension coverage, along with a cross-reference to any additional information provided about the insurance or coverage. (12 CFR 1026.6(b)(2)(xii))

- *Available Credit*: If the card issuer requires fees for the issuance or availability of credit or a security deposit, and the total amount of those required fees and/or security deposit that will be imposed and charged to the account when the account is opened is 15 percent or more of the minimum credit limit for the card, a card issuer must disclose the available credit remaining after these fees or security deposit are debited to the account. The determination whether the 15 percent threshold is met must be based on the minimum credit limit for the plan. However, if the 15 percent threshold is met, the disclosure provided must be based on the actual initial credit limit provided on the account. The card issuer must also disclose that the consumer has the right to reject the plan and would not be obligated to pay those fees or any other fee or charges until the consumer has used the account or made a payment on the account after receiving a periodic statement.
  - If fees for issuance or availability are optional, these fees should not be considered in determining whether the disclosure must be given.
  - If the 15 percent threshold test is met, the issuer must disclose the amount of available credit calculated by excluding those optional fees, and the available credit including those optional fees. (12 CFR 1026.6(b)(2)(xiii))
- *Website Reference:* For credit cards that are not charge cards, a reference to the website established by the CFPB and a statement that consumer may obtain on the website information about shopping for and using credit cards. (12 CFR 1026.6(b)(2)(xiv))
- *Billing Error Rights Reference:* A statement that information about the consumer's right to dispute transactions is included in the account opening disclosures. (12 CFR 1026.6(b)(2)(xv))

The following information is required to be disclosed outside of the table:[52]

- *Charges imposed as part of the plan*: For charges imposed as part of the plan, the circumstances under which the charge may be imposed, including the amount of the charge or an explanation of how the charge is determined. For finance charges, include a statement of when the charge begins to accrue and an explanation of whether or not the account includes a grace period.[53] (12 CFR 1026.6(b)(3))
  - Charges imposed as part of the plan are:
    - Finance charges identified under 12 CFR 1026.4(a) and 12 CFR 1026.4(b). (12 CFR 1026.6(b)(3)(ii)(A))
    - Charges resulting from the consumer’s failure to use the plan as agreed, except amounts payable for collection activity after default, attorney’s fees whether or not automatically imposed, and post-judgment interest rates permitted by law. (12 CFR 1026.6(b)(3)(ii)(B))
    - Taxes imposed on the credit transaction by a state or other governmental body, such as documentary stamp taxes on cash advances. (12 CFR 1026.6(b)(3)(ii)(C))
    - Charges for which the payment, or nonpayment, affect the consumer’s access to the plan, the duration of the plan, the amount of credit extended, the period for which credit is extended, or the timing or method of billing or payment. (12 CFR 1026.6(b)(3)(ii)(D))
    - Charges imposed for terminating a plan. (12 CFR 1026.6(b)(3)(ii)(E))
    - Charges for voluntary credit insurance, debt cancellation or debt suspension. (12 CFR 1026.6(b)(3)(ii)(F))
  - Charges that are not imposed as part of the plan include (12 CFR 1026.6(b)(3)(iii)):
    - Charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system. (12 CFR 1026.6(b)(3)(iii)(A))
    - A charge for a package of services that includes an open-end credit feature, if the fee is required whether or not the open-end credit feature is included and the non-

[52] Charges imposed as part of the plan that are not required to be disclosed in the account-opening table may be disclosed along with the account-opening table (outside of the table) prior to the first transaction, or may be disclosed after account opening but before the consumer agrees to pay or becomes obligated to pay for the charge, provided they are disclosed at a time and in a manner that a consumer would be likely to notice them. (12 CFR 1026.5(b)(1)(ii))

[53] If a grace period is provided, an issuer may, at its option and without disclosure, elect not to impose a finance charge when payment is received after the time period expires.

credit services are not merely incidental to the credit feature. (12 CFR 1026.6(b)(3)(iii)(B))

- Charges under 12 CFR 1026.4(e) (Certain security interest charges) disclosed as specified. (12 CFR 1026.6(b)(3)(iii)(C))

- *Rates* (12 CFR 1026.6(b)(4))
  - For each periodic rate that may be used to calculate interest (12 CFR 1026.6(b)(4)(i)):
    - *Rates:* The rate, expressed as a periodic rate and a corresponding APR. (12 CFR 1026.6(b)(4)(i)(A))
    - *Range of balances:* The range of balances to which the rate is applicable; however, an issuer is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies. (12 CFR 1026.6(b)(4)(i)(B))
    - *Type of transaction:* The type of transaction to which the rate applies, if different rates apply to different types of transactions. (12 CFR 1026.6(b)(4)(i)(C))
    - *Balance computation method:* An explanation of the method used to determine the balance to which the rate is applied. (12 CFR 1026.6(b)(4)(i)(D))
  - *Variable-rate accounts:* For interest rate changes that are tied to increases in an index or formula specifically set forth in the account agreement (12 CFR 1026.6(b)(4)(ii)):
    - The fact that the APR may increase. (12 CFR 1026.6(b)(4)(ii)(A))
    - How the rate is determined, including the margin. (12 CFR 1026.6(b)(4)(ii)(B))
    - The circumstances under which the rate may increase. (12 CFR 1026.6(b)(4)(ii)(C))
    - The frequency with which the rate may increase. (12 CFR 1026.6(b)(4)(ii)(D))
    - Any limitation on the amount the rate may change. (12 CFR 1026.6(b)(4)(ii)(E))
    - The effect(s) of an increase. (12 CFR 1026.6(b)(4)(ii)(F))
    - Except as specified in 12 CFR 1026.6(b)(4)(ii)(H), 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. (12 CFR 1026.6(b)(4)(ii)(G))
    - Issuers imposing APRs that vary according to an index that is not under the issuer's control that provide the disclosures required 12 CFR 1026.6(b) in person at the time the open-end plan is established in connection with financing the

purchase of goods or services may disclose in the table a rate, or range of rates to the extent permitted by 12 CFR 1026.6(b)(2)(i)(E), that was in effect within the last 90 days before the disclosures are provided, along with a reference directing the consumer to the account agreement or other disclosure provided with the account-opening table where an APR applicable to the consumer's account in effect within the last 30 days before the disclosures are provided is disclosed. (12 CFR 1026.6(b)(4)(ii)(H))

- *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 (12 CFR 1026.6(b)(4)(iii)):
    - The initial rate (expressed as a periodic rate and a corresponding APR) required under 12 CFR 1026.6(b)(4)(i)(A). (12 CFR 1026.6(b)(4)(iii)(A))
    - How long the initial rate will remain in effect and the specific events that cause the initial rate to change. (12 CFR 1026.6(b)(4)(iii)(B))
    - 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. (12 CFR 1026.6(b)(4)(iii)(C))
    - The balances to which the new rate will apply. (12 CFR 1026.6(b)(4)(iii)(D))
    - The balances to which the current rate at the time of the change will apply. (12 CFR 1026.6(b)(4)(iii)(E))
- *Voluntary credit insurance, debt cancellation or debt suspension:* The disclosures in 12 CFR 1026.4(d)(1)(i) and (d)(1)(ii) and (d)(3)(i) through (d)(3)(iii) if the issuer offers optional credit insurance or debt cancellation or debt suspension coverage that is identified in 12 CFR 1026.4(b)(7) or (b)(10). (12 CFR 1026.6(b)(5)(i))
- *Security interests:* The fact that the issuer 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))
- A statement that outlines the consumer’s rights and the issuer’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(A) in appendix G to 12 CFR 12 CFR 1026. (12 CFR 1026.6(b)(5)(iii))

Module 3: Change-in-Terms Notice (12 CFR 1026.9(c)(2)(iv))

If a creditor makes a significant change in account terms that requires a 45-day advance notice, the notice must contain the following information:

- A summary of the changes made to terms required to be disclosed 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 periodic payment, and a description of any security interest being acquired by the creditor (12 CFR 1026.9(c)(2)(iv)(A)(1)).
    - If the change is to a term required to be disclosed by 12 CFR 1026.6(b)(1) or (2), this change must be in tabular format, with headings and format substantially similar to any of the account-opening tables found in G-17 in Appendix G to 12 CFR 1026. The table must disclose 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). The new terms shall be 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)).
- A statement that changes are being made to the account (12 CFR 1026.9(c)(2)(iv)(A)(2));
- The date the changes will become effective (12 CFR 1026.9(c)(2)(iv)(A)(4));
- If applicable, a statement that the consumer may find additional information about the summarized changes, and other changes to the account, in the notice (12 CFR 1026.9(c)(2)(iv)(A)(5));
- If the creditor is changing a rate on the account, 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 (12 CFR 1026.9(c)(2)(iv)(A)(6));
- If the change in terms being disclosed is an increase in an APR, the balances to which the increased rate will be applied. If applicable, a statement identifying the balances to which the current rate will continue to apply as of the effective date of the change in terms (12 CFR 1026.9(c)(2)(iv)(A)(7)); and
- If the change in terms being disclosed is an increase in an APR, a statement of no more than four principal reasons for the rate increase, listed in their order of importance (12 CFR 1026.9(c)(2)(iv)(A)(8)).
- If the change in terms is an increase in an APR or 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 of the payment due date:

- The reason for the increase if there 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) (12 CFR 1026.9(c)(2)(iii)(C)(2)); and
- A statement 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(c)(2)(iii)(C)(1)).

* Information concerning the consumer’s right to reject the change in terms:[54]
  - 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 (12 CFR 1026.9(c)(2)(iv)(B)(1));
  - 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 (12 CFR 1026.9(c)(2)(iv)(B)(2)); and
  - 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 (12 CFR 1026.9(c)(2)(iv)(B)(3)).
* If the notice is included on or with a periodic statement, the summary of changes (pursuant to 12 CFR 1026.9(c)(2)(iv)(A)(1)) must be disclosed on the front of any page of the statement. The summary of changes must immediately follow the information described in 12 CFR 1026.9(c)(2)(iv)(A)(2) through (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), and be substantially similar to the format shown in Sample G-20 or G-21 in Appendix G to 12 CFR 12 CFR 1026.
* If a notice required by 12 CFR 1026.9(c)(2)(i) is not included on or with a periodic statement,
  - The summary of changes (pursuant to 12 CFR 1026.9(c)(2)(iv)(A)(1)) must, at the creditor’s option, be disclosed on the front of the first page of the notice or segregated on a separate page from other information given with the notice. The summary of

[54] 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 APR applicable to a consumer's account, an increase in a fee previously reduced consistent with 50 U.S.C.USC app. 527 or a 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 (1026.9(c)(2)(iv)(B))

changes required to be in a table pursuant to 12 CFR 1026.9(c)(2)(iv)(A)(1) 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. The summary of changes described in 12 CFR 1026.9(c)(2)(iv)(A)(1) must immediately follow the information described in 12 CFR 1026.9(c)(2)(iv)(A)(2) through (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), substantially similar to the format shown in Sample G-20 or G-21 in Appendix G to 12 CFR 12 CFR 1026. (12 CFR 1026.9(c)(2)(iv)(D))

Module 3: Checks that access a credit card account (12 CFR 1026.9(b)(3))

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, the following information must be disclosed on the front of the page containing the checks in the form of a table with the headings, content, and form substantially similar to Sample G-19 in Appendix G to 12 CFR 12 CFR 1026 (12 CFR 1026.9(b)(3)(i)):

- If a promotional rate applies to the checks (12 CFR 1026.9(b)(3)(i)(A)):
  - 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));
  - The type of rate that will apply (such as whether the purchase or cash advance rate applies) after the promotional rate expires, and the APR that will apply after the promotional rate expires (12 CFR 1026.9(b)(3)(i)(A)(2)); and
  - 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 APR other than the promotional rate, the creditor must disclose this fact and the type of APR that will apply if the consumer uses the checks after such date (12 CFR 1026.9(b)(3)(i)(A)(3)).
- If no promotional rate applies to the checks, the type of rate that will apply to the checks and the applicable APR (12 CFR 1026.9(b)(3)(i)(B)(1)).
- Any transaction fees applicable to the checks disclosed under 12 CFR 1026.6(b)(2)(iv) (12 CFR 1026.9(b)(3)(i)(C)); and
- 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" must 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)).

- *Accuracy:*
  - The disclosures 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)).
  - If any APR required to be disclosed is a variable rate, the card issuer must also disclose the fact that the rate may vary and how the rate is determined. In describing how the applicable rate will be determined, the card issuer must identify the type of index or formula that is used in setting the rate. The value of the index and the amount of the margin that are used to calculate the variable rate, and any applicable limitations on rate increases may not be disclosed in the table (12 CFR 1026.9(b)(3)(iii)).

Module 3: Notice of increase in rates due to delinquency, default, or as a penalty (12 CFR 1026.9(g)

Creditors must provide notice of an increase in rates due to delinquency, default, or as a penalty at least 45 days prior to the effective date of the rate increase. If this notice is provided on or with a periodic statement, it must be in the form of a table and provided on the front of any page of the periodic statement, above any notice of changes in account terms under 12 CFR 1026.9(c)(2)(iv). If the notice is not included on or with the periodic statement, the required information must be disclosed on the front of the first page of the notice. The only other information that may be included along with this notice is a notification of a change in significant account terms (pursuant to 12 CFR 1026.9(c)(2)(iv)) or notification of an increase of rate for obtaining an extension of credit that exceeds the credit limit (pursuant to 12 CFR 1026.9(g)(4)).

- The notice must include the following information:
  - A statement that the delinquency or default rate or penalty rate, as applicable, has been triggered (12 CFR 1026.9(g)(3)(i)(A)(1));
  - The date on which the delinquency or default rate or penalty rate will apply (12 CFR 1026.9(g)(3)(i)(A)(2));
  - 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 (12 CFR 1026.9(g)(3)(i)(A)(3));

- A statement indicating to which balances the delinquency or default rate or penalty rate will be applied (12 CFR 1026.9(g)(3)(i)(A)(4));
- 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 (12 CFR 1026.9(g)(3)(i)(A)(5)); and
- A statement of no more than four principal reasons for the rate increase, listed in their order of importance (12 CFR 1026.9(g)(3)(i)(A)(6)).

- If the rate increase is based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment, the notice must also state 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)).
- If a creditor has decreased a consumer’s credit limit and will apply a penalty rate if the consumer exceeds the reduced credit limit, notice is not required prior to increasing the rate for obtaining an extension of credit that exceeds the credit limit, provided that (12 CFR 1026.9(g)(4)):
  - The creditor provides at least 45 days in advance of imposing the penalty rate a notice, in writing, that includes the following information (12 CFR 1026.9(g)(4)(i)):
    - A statement that the credit limit on the account has been or will be decreased (12 CFR 1026.9(g)(4)(i)(A));
    - A statement indicating the date on which the penalty rate will apply, if the outstanding balance exceeds the credit limit as of that date (12 CFR 1026.9(g)(4)(i)(B));
    - A statement that the penalty rate will not be imposed on the date specified in 12 CFR 1026.9(g)(4)(i)(B), if the outstanding balance does not exceed the credit limit as of that date (12 CFR 1026.9(g)(4)(i)(C));
    - 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 time period (12 CFR 1026.9(g)(4)(i)(D));
    - A statement indicating to which balances the penalty rate may be applied (12 CFR 1026.9(g)(4)(i)(E)); and
    - 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; (12 CFR 1026.9(g)(4)(i)(F));

- The creditor does not increase the rate applicable to the consumer's account to the penalty rate if the outstanding balance does not exceed the credit limit on the date set forth in the notice and described in 12 CFR 1026.9(g)(4)(i)(B). (12 CFR 1026.9(g)(4)(ii))

Module 4: Periodic statements (12 CFR 1026.7(b); 12 CFR 1026.8)

The following information is required to be disclosed on the periodic statement, as applicable:

- *Previous balance.* The account balance outstanding at the beginning of the billing cycle. (12 CFR 1026.7(b)(1))
- *Identification of transactions:* An identification of each credit transaction in accordance with 12 CFR 1026.8. (12 CFR 1026.7(b)(2)) The issuer shall identify credit transactions on or with the first periodic statement that reflects the transaction by furnishing the following information, as applicable (12 CFR 1026.8):
  - *Sale credit:* (12 CFR 1026.8(a))
    - For each credit transaction involving the sale of property or services, the issuer must disclose the amount and date of the transaction, and either (12 CFR 1026.8(a)(1)):
      - A brief identification of the property or services purchased, for issuers and sellers that are the same or related (12 CFR 1026.8(a)(1)(i)); or
      - The seller's name; and the city and state or foreign country where the transaction took place. The issuer may omit the address or provide any suitable designation that helps the consumer to identify the transaction when the transaction took place at a location that is not fixed; took place in the consumer's home; or was a mail, Internet, or telephone order. (12 CFR 1026.8(a)(1)(ii))
    - Issuers are not required to include this information if an actual copy of the receipt or other credit document is provided with the first periodic statement reflecting the transaction, and the amount of the transaction and either the date of the transaction to the consumer's account or the date of debiting the transaction are disclosed on the copy or on the periodic statement. (12 CFR 1026.8(a)(2))
  - *Nonsale credit:* For each credit transaction not involving the sale of property or services, the issuer must disclose a brief identification of the transaction; the amount of the transaction; and at least one of the following dates:

      - the date of the transaction,
      - the date the transaction was debited to the consumer's account, or,
      - if the consumer signed the credit document, the date appearing on the document.

    If an actual copy of the receipt or other credit document is provided and that copy shows the amount and at least one of the specified dates, the brief identification may be omitted. (12 CFR 1026.8(b))

  - *Alternative issuer procedures; consumer inquiries for clarification or documentation:* The following procedures apply to issuers that treat an inquiry for clarification or documentation as a notice of a billing error, including correcting the account in accordance with 12 CFR 1026.13(e) (12 CFR 1026.8(c)):
      - Failure to disclose the information required by 12 CFR 1026.8(a) and (b) is not a failure to comply with the regulation, provided that the issuer also maintains procedures reasonably designed to obtain and provide the information. This applies to transactions that take place outside a state, as defined in 12 CFR 1026.2(a)(26), whether or not the issuer maintains procedures reasonably adapted to obtain the required information. (12 CFR 1026.8(c)((1))
      - As an alternative to the brief identification for sale or nonsale credit, the issuer may disclose a number or symbol that also appears on the receipt or other credit document given to the consumer, if the number or symbol reasonably identifies that transaction with that issuer. (12 CFR 1026.8(c)(2))

- *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))
- *Periodic rates:* (12 CFR 10267(b)(4))
  - Each periodic rate that may be used to compute the interest charge expressed as an APR and using the term "Annual Percentage Rate," along with the range of balances to which it is applicable.
      - A promotional rate is only required to be disclosed in periods in which the offered rate is actually applied. (12 CFR 1026.7(b)(4)(ii))
      - For variable-rate plans, the statement must include the fact that the APR may vary.
  - The types of transactions to which the periodic rates apply.

- If no interest charge is imposed when the outstanding balance is less than a certain amount, the issuer is not required to disclose that fact, or the balance below which no interest charge will be imposed.

- *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))
  - 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.
  - As an alternative to providing an explanation of how the balance was determined, an issuer that uses a balance computation method identified in 12 CFR 1026.60(g) may, at the issuer's option, identify the name of the balance computation method and provide a toll-free telephone number where consumers may obtain from the issuer more information about the balance computation method and how resulting interest charges were determined. If the method used is not identified in 12 CFR 1026.60(g), the issuer shall provide a brief explanation of the method used. [55]

- *Charges imposed.* The following information must be disclosed in a format substantially similar to Sample G-18(A) in Appendix G to 12 CFR 12 CFR 1026. (12 CFR 1026.7(b)(6))
  - The amount of any charges imposed as part of a plan, grouped together, in proximity to the identified credit transactions.
  - 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. 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.
  - 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. A total of charges, using the term “Fees,” must be disclosed for the statement period and calendar year to date.

- *Certain Changes in Terms:* If a change-in-terms notice required by 12 CFR 1026.9(c)(2) is provided on or with the periodic statement, a tabular summary of key changes must appear on the front of the statement. Similarly, if a notice of a rate increase due to

[55] These balance computation methods include Average Daily Balance (including new purchases); Average Daily Balance (excluding new purchases); Adjusted Balance; Previous Balance; and Daily Balance. See 12 CFR 1026.60(g) for the definitions of each method.

delinquency or default or as a penalty required by 12 CFR 1026.9(g)(1) is provided on or with the periodic statement, information required to be provided about the increase must be presented in a table on the front of the statement. See Forms G-18(F) and G-18(G) in Appendix G to 12 CFR 12 CFR 1026. (12 CFR 1026.7(b)(7))

- *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, an issuer 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))
- *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))
- *Closing Date of Billing Cycle:* The closing date of the billing cycle. (12 CFR 1026.7(b)(10))
- *New Balance, Due Date, Late Payment Costs, and Repayment Disclosures*: The following items must be included on the periodic statement, in the specific format described. Regulation Z requires that these items be grouped together on the periodic statement (see Sample G-18D in Appendix G to 12 CFR 12 CFR 1026 for an example of how these terms may be grouped).
    - *Ending Balance:* The account balance outstanding on the closing date of the billing cycle. The ending balance must be disclosed in close proximity to the minimum payment due (12 CFR 1026.7(b)(10) and (13)).
    - *Due date; late payment costs*: The due date and late payment cost must be disclosed as described below (12 CFR 1026.7(b)(11)):
        - The payment due date must be disclosed on the front of the first page of the statement. The due date disclosed must be the same day of the month for each billing cycle. (12 CFR 1026.7(b)(11)(i)(A); 12 CFR 1026.7(b)(13))
        - The amount of any late payment fee and any increased APR that may be imposed on the account as a result of a late payment must be included in the periodic statement, in close proximity to the due date. If a range of late payment fees may be assessed, the card issuer may state the range of fees, or the highest fee and an indication that the fee imposed could be lower. 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. (12 CFR 1026.7(b)(11)(i)(B) and 1026.7(b)(13))[56]

- *Repayment disclosures* (12 CFR 1026.7(b)(12))

  - Unless negative or no amortization occurs when calculating the minimum payment repayment estimate, the following disclosures must be included on each periodic statement, closely proximate to the minimum payment due. See Appendix M1 to 12 CFR 12 CFR 1026 for the specific language and formatting that must be used for repayment disclosures.[57]

    - 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));

    - The minimum payment repayment estimate as described in Appendix M1 to 12 CFR 12 CFR 1026. If the minimum payment repayment estimate is less than 2 years, the card issuer must disclose 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));

    - The minimum payment total cost estimate as described in Appendix M1 to 12 CFR 12 CFR 1026, rounded either to the nearest whole dollar or to the nearest cent, at the card issuer's option (12 CFR 1026.7(b)(12)(i)(C));

    - 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));

    - 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)(i)(E); and

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[56] These disclosure requirements do not apply to the following: periodic statements provided solely for charge card accounts (12 CFR 1026.7(b)(11)(ii)(A)); and periodic statements provided for a charged-off account where payment of the entire account balance is due immediately (12 CFR 1026.7(b)(11)(ii)(B)).

[57] Repayment disclosures under 12 CFR 1026.7(b)(12) are not required in the following instances: charge card accounts that require payment of outstanding balances in full at the end of each billing cycle; 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 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. See 12 CFR 1026.7(b)(12)(v).

- The following disclosures (12 CFR 1026.7(b)(12)(i)(F)(1)):

  - The estimated monthly payment for repayment in 36 months as described in Appendix M1 to 12 CFR 1026, rounded either 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));
  - A statement that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years (12 CFR 1026.7(b)(12)(i)(F)(1)(ii));
  - The total cost estimate for repayment in 36 months as described in Appendix M1 to 12 CFR 1026, rounded either 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
  - The savings estimate for repayment in 36 months as described in Appendix M1 to 12 CFR 1026, rounded either 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)).[58]

    - *Negative or no amortization.* If negative or no amortization occurs when calculating the minimum payment repayment estimate, the following disclosure must appear on the periodic statement instead of the Repayment Disclosures described in 12 CFR 1026.7(b)(12)(i):

      - The following statement: "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));
      - The following statement: "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));
      - The estimated monthly payment for repayment in 36 months, as described in Appendix M1 to 12 CFR 1026. The estimated monthly payment for

[58] The requirements of 12 CFR 1026.7(b)(12)(i)(F)(1) do not apply to a periodic statement in any of the following circumstances: The minimum payment repayment estimate that is disclosed on the periodic statement after rounding is three years or less; the estimated monthly payment for repayment in 36 months that is calculated for a particular billing cycle is less than the minimum payment required for the plan for that billing cycle; and 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. See 12 CFR 1026.7(b)(12)(i)(F)(2).

repayment in 36 months must be rounded either to the nearest whole dollar or to the nearest cent, at the issuer's option (12 CFR 1026.7(b)(12)(ii)(C));

- A statement that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years (12 CFR 1026.7(b)(12)(ii)(D)); and

- 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))

▪ Provision of information about credit counseling services. (12 CFR 1026.7(b)(12)(iv))

- *Required information:* To the extent available from the United States Trustee or a bankruptcy administrator, a card issuer must provide through the toll-free telephone number, disclosed pursuant to 12 CFR 1026.7(b)(12)(i) or (b)(12)(ii), 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 pursuant to 11 USC 111(a)(1) to provide credit counseling services in, at the card issuer's option, 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)).

- *Updating required information:* At least annually, a card issuer must update the information provided pursuant to 2 CFR 1026.7(b)(12)(iv)(A) for consistency with the information available from the United States Trustee or a bankruptcy administrator (12 CFR 1026.7(b)(12)(iv)(B)).

- *Deferred interest or similar transactions:* For accounts with an outstanding balance subject to a deferred interest or similar program, 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 must be disclosed 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 12 CFR 1026. (12 CFR 1026.7(b)(14))

Appendix 2: Calculating Finance Charge and APR

Finance charge (12 CFR 1026.6(b)(3) and 12 CFR 1026.7(b)(5) and (b)(6)(ii))

On periodic statements, 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. 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) in Appendix G to 12 CFR 1026. In addition, the periodic statement must disclose the amount of the balance to which a periodic rate was applied, using the term *Balance Subject to Interest Rate.* The examiner must know how to compute the balance to which the periodic rate is applied. Common methods used are the previous balance method, the daily balance method, and the average daily balance method, which are described as follows:

- *Previous balance method*: The balance on which the periodic finance charge is computed is based on the balance outstanding at the start of the billing cycle. The periodic rate is multiplied by this balance to compute the finance charge.
- *Daily balance method*: A daily periodic rate is applied to either the balance on each day in the cycle or the sum of the balances on each of the days in the cycle. If a daily periodic rate is multiplied by the balance on each day in the billing cycle, the finance charge is the sum of the products. If the daily periodic rate is multiplied by the sum of all the daily balances, the result is the finance charge.
- *Average daily balance method*: The average daily balance is the sum of the daily balances (either including or excluding current transactions) divided by the number of days in the billing cycle. A periodic rate is then multiplied by the average daily balance to determine the finance charge. If the periodic rate is a daily one, the product of the rate multiplied by the average balance is multiplied by the number of days in the cycle.

In addition to these 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 can 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. Examiners must discuss any inability to understand the disclosed explanation with management and examiners must emphasize to management 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 on the periodic statement.

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, each applicable to the daily periodic rates imposed for the time that those were in effect, provided that the creditor explains that interest is or may be determined by:
  - multiplying each of the average daily balances by the number of days in the billing cycle (or if the daily rate varied during the cycle, by multiplying by the number of days the applicable rate was in effect),
  - by multiplying each of the results by the applicable daily periodic rate, and
  - 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: Section 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.

Annual percentage rate (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 advertising; and
- The APR in oral disclosures.

The corresponding APR is prospective and it does not involve any particular finance charge or periodic balance.

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.

Examination Procedures Debt Collection

Exam Date:	[Click&type]
Exam ID No.	[Click&type]
Prepared By:	[Click&type]
Reviewer:	[Click&type]
Docket #:	[Click&type]
Entity Name:	[Click&type]
Event #:	[Click&type]

These examination procedures apply to larger participants in the consumer debt collection market defined by 12 CFR 1090.105 and other entities within the supervisory authority of the Consumer Financial Protection Bureau (CFPB) to the extent that they seek to collect debt from consumers. The procedures contain a series of modules, grouping similar requirements together. Prior to using these procedures, however, examiners should complete a risk assessment and scope memorandum. Depending on the scope, and in conjunction with the compliance management system review procedures, each examination will cover one or more of the following modules:

1. Entity Business Model
2. Communications in Connection with Debt Collection
3. Information Sharing, Privacy, and Interactions with Consumer Reporting Agencies
4. Validation Notice, Consumer FDCPA Disputes and Complaints, and Ceasing Communication
5. Payment Processing and Account Maintenance
6. Equal Credit Opportunity Act
7. Litigation Practices, Administrative Wage Garnishment and Repossession, and Time-Barred Debt

Examination Objectives

1. To assess the quality of the regulated entity's compliance management systems, including its internal controls and policies and procedures, for its debt collection business.
2. To identify acts or practices that materially increase the risk of violations of Federal consumer financial laws in connection with debt collection.
3. To gather facts that help to determine whether a regulated entity engages in acts or practices that violate the requirements of Federal consumer financial laws.
4. To determine, in accordance with CFPB internal consultation requirements, whether a violation of a Federal consumer financial law has occurred and whether further supervisory or enforcement actions are appropriate.

Background

A variety of entities, including originating creditors, third-party collectors, debt buyers, and collection attorneys, engage in debt collection. Originating creditors may attempt to obtain payment from the consumer, typically by sending letters, placing telephone calls, or other attempts to contact the consumer to convince the consumer to pay. Originating creditors also may hire debt collectors to assist with their in-house collection activity or outsource the collection of debt to third-party collection agencies or attorneys, or sell the debt to debt buyers after an account has been delinquent for a period of time. Third-party collection agencies collect debt on behalf of originating creditors or other debt owners, often on a contingency fee basis. Debt buyers purchase debt, either from the originating creditor or from another debt buyer, usually for a fraction of the balance owed. Debt buyers sometimes use third-party collection agencies or collection attorneys to collect their debt, but many also undertake their own collection efforts. Debt buyers also may decide to sell purchased debt to another debt buyer.

The Dodd-Frank Act gave the CFPB supervisory authority over a variety of institutions that may engage in debt collection, including certain depository institutions and their affiliates, nonbank entities in the residential mortgage, payday lending, and private education lending markets, and larger participants in other markets as defined by a rule of the Bureau such as in the student loan servicing and automobile financing markets, as well as their service providers. The Act also gave the CFPB supervisory authority over "larger participants" of markets for consumer debt collection, as the CFPB defines by rule, and their service providers. (12 USC 5514(a)(1)(B)). On October 24, 2012, the CFPB issued a larger participant regulation in the market of consumer debt collection. The consumer debt collection larger participant rule, which appears in 12 CFR Part 1090, was effective January 2, 2013. It provides that a nonbank covered person is a larger participant of the consumer debt collection market if the person's annual receipts resulting from consumer debt collection – as defined in the rule – are more than $10 million.

As they seek to collect debt from consumers, the entities that the CFPB supervises must comply with various laws to the extent applicable, including:

- The Fair Debt Collection Practices Act (FDCPA) and its implementing regulation, Regulation F, governs collection activities including prohibiting deceptive, unfair, and abusive collection practices. The FDCPA applies to entities that are "debt collectors" under the Act (see Step 1 of Module 1 for details).

- The Fair Credit Reporting Act (FCRA) and its implementing regulation, Regulation V, require that furnishers of information to consumer reporting agencies follow reasonable policies and procedures regarding the accuracy and integrity of data they place in the consumer reporting system. The FCRA and Regulation V require furnishers and consumer reporting agencies to handle disputes and impose other obligations on furnishers, consumer reporting agencies, and users of consumer reports.

- The Gramm-Leach-Bliley Act (GLBA) and its implementing regulation, Regulation P, impose limitations on when financial institutions can share nonpublic personal information with third parties. They also require under certain circumstances that financial institutions disclose their privacy policies and permit customers to opt out of certain sharing practices with unaffiliated entities.

- The Electronic Fund Transfer Act (EFTA) and its implementing regulation, Regulation E, impose requirements if an entity within the statute's scope of coverage obtains electronic payments from a consumer.
- The Equal Credit Opportunity Act (ECOA) and its implementing regulation, Regulation B, apply to all creditors and prohibit discrimination in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity discrimination), marital status, age (provided the applicant has the capacity to contract), receipt of public assistance income, or exercise in good faith of any right under the Consumer Credit Protection Act. (12 CFR 1002.2(z), 1002.4(a)). Credit transactions encompass "every aspect of an applicant's dealings with a creditor regarding an application for credit or an existing extension of credit," and include "revocation, alteration, or termination of credit" and "collection procedures." (12 CFR 1002.2(m)).

To carry out the objectives set forth in the Examination Objectives section, the examination process also will include assessing other risks to consumers. These risks may include potentially unfair, deceptive, or abusive acts or practices (UDAAPs). Please refer to the examination procedures regarding UDAAPs for information about the legal standards and the CFPB's approach to examining for UDAAPs. The particular facts and circumstances in a case are crucial to the determination of UDAAPs. As set out in the Examination Objectives section, examiners should consult with Headquarters to determine whether the applicable legal standards have been met before a UDAAP violation is cited.

General Considerations

Completing the following examination modules will allow examiners to develop a thorough understanding of the regulated entities' practices and operations. To complete the modules, examiners should obtain and review the following as applicable:

- Organizational charts and process flowcharts;
- Board minutes, annual reports, or the equivalent to the extent available;
- Relevant management reporting;
- Policies and procedures;
- Notes and disclosures;
- Telephone recordings;
- Operating checklists, worksheets, and review documents;

- Monitoring procedures;
- Compensation policies;
- Relevant computer program and system details;
- Consumer files, including original loan documents, and payment records systems;
- Historical examination information;
- Audit and compliance reports, and management responses to findings;
- Training programs and materials;
- Scripts for employee use;
- Third-party contracts and oversight materials, including monitoring reports and findings;
- Written correspondence with consumers;
- Court documents; and
- Consumer complaints and disputes, including those submitted to CFPB Consumer Response Center, Consumer Sentinel, the Better Business Bureau, or other sources as appropriate.

Depending on the scope of the examination, examiners should perform transaction testing using sampling procedures, which may require use of a judgmental or statistical sample. Examiners should also conduct interviews with management and staff to determine whether they understand and consistently follow the policies, procedures, and regulatory requirements applicable to debt collection, and implement effective controls.

Examiners should review relevant consumer complaints in scoping and conducting examinations, as appropriate. If consumers may possess information needed to resolve potential violations or risks of violations of law, examiners should consult with regional management and Headquarters to determine whether to interview these consumers.

Module 1: Entity Business Model

This module assesses whether the entity is a "debt collector" under the FDCPA and therefore subject to that Act.[1] In addition, this module addresses other aspects of the entity's business model, including affiliate and vendor relationships, internal controls, and related account management issues.

Nature of Operations for FDCPA Purposes

1. Assess whether the entity is a "debt collector" for purposes of the FDCPA. In doing so:

   a. Determine whether the entity falls within the general definition of "debt collector" (15 USC 1692a(6)) [12 CFR 1006.2(i)] by determining whether it:

      i. Regularly collects, or attempts to collect, consumer debts for another person or institution;

      ii. Uses interstate commerce or the mail in a business the principal purpose of which is consumer debt collection; or

      iii. Uses a name other than its own when collecting its own consumer debts.

   b. If the entity falls within the general definition per step 1a above, determine whether the entity nevertheless falls into an exception from the definition of "debt collector" to the extent that it is:

      i. Collecting the following types of debts if they are owed to another:

         A. Debts it originated (15 USC 1692a(6)(F)(ii)); [12 CFR 1006.2(i)(2)(vi)(B)]

         B. Debts that were not in default when they were obtained (15 USC 1692a(6)(F)(iii)); [12 CFR 1006.2(i)(2)(vi)(C)]

         C. Debts that were obtained as security for a commercial credit transaction (15 USC 1692a(6)(F)(iv)); [12 CFR 1006.2(i)(2)(vi)(D)]

         D. Debts if the activity is incidental to a bona fide fiduciary relationship or escrow arrangement (for example, a debt held in the entity's trust department or mortgage loan escrow for taxes and insurance) (15 USC 1692a(6)(F)(i)); [12 CFR 1006.2(i)(2)(vi)(A)]

      ii. Using an officer or employee of the creditor to collect debts owed to the creditor in the creditor's own name (15 USC 1692a(6)(A)); [12 CFR 1006.2(i)(2)(i)]

[1] The FDCPA applies only to the collection of obligations or alleged obligations of consumers to pay money arising out of transactions in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes. 15 USC 1692a(3), (5). [12 CFR § 1006.2(e), (h)] The FDCPA does not apply to the collection of corporate debt or to debt owed for business or agricultural purposes. These examination procedures should not be used if the debt at issue is corporate debt or debt owed for business or agricultural purposes.

iii. Collecting debts regularly for other institutions to which it is related by common ownership or corporate control if the entity only does so for persons to whom it is so related or affiliated and the entity's principal business is not the collection of debts (15 USC 1692a(6)(B)); [12 CFR 1006.2(i)(2)(ii)]

iv. An officer or employee of the United States or any State, collecting or attempting to collect debt in the performance of his or her official duties (15 USC 1692a(6)(C)); [12 CFR 1006.2(i)(2)(iii)]

v. Serving legal process or attempting to serve legal process in connection with the judicial enforcement of any debt (15 USC 1692a(6)(D)) [12 CFR 1006.2(i)(2)(iv)]; or

vi. A nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors (15 USC 1692a(6)(E)). [12 CFR 1006.2(i)(2)(v)]

Affiliates and Third-party Relationships

2. Ascertain whether the entity is affiliated with any other entities. If so, determine the identities of the affiliates and the nature of their business activities, including whether any of the affiliates engage in debt collection.

3. Determine whether the entity uses any service providers in conducting its debt collection activities. If so:

   a. Identify who the service providers are, whether they are affiliated with the entity, and what services they perform, and

   b. Assess whether the entity:

      i. Requests and reviews the service providers' policies, procedures, internal controls, and training materials to ensure that the service providers conduct appropriate training and oversight of employees or agents that have consumer contact or compliance responsibilities;

      ii. Includes in its contracts with its service providers clear expectations about compliance with Federal consumer financial laws as well as appropriate and enforceable consequences for violating any compliance-related responsibilities;

      iii. Establishes internal controls and ongoing monitoring to determine whether its service providers are complying with Federal consumer financial law; and

      iv. Takes prompt action to address fully any problems identified through the monitoring process, including terminating the relationship where appropriate. *See* CFPB Bulletin 2016-02 (October 31, 2016).

[Click&type]

Internal Structure, Controls, and Compliance Management

4. Review the organizational chart to determine the reporting structure and the responsibilities of key managers for debt collection activities.

[Click&type]

5. Review the qualifications, experience levels, and training programs that the company requires or uses for staff who interact with consumers.

[Click&type]

6. Evaluate compensation practices and programs.

   a. Evaluate the quality and impact of controls on the compensation program.

   b. To the extent that the entity's compensation program creates incentives for behaviors or practices that result in heightened risk to consumers, determine whether the policy also includes disciplinary procedures such as reductions in compensation or termination if an employee is found to engage in such risky behaviors or practices.

[Click&type]

7. Review the entity's general compliance management system using the compliance management review section of the *CFPB Supervision and Examination Manual*.

[Click&type]

8. Review the entity's policies and procedures for monitoring both incoming and outgoing communications, attempts to communicate, and other outgoing messages.

[Click&type]

9. Review the entity's policies and procedures for gathering and maintaining underlying information regarding the underlying debt(s).

[Click&type]

10. Determine whether the entity retains records that are evidence of compliance or noncompliance with the FDCPA and Regulation F until at least three years after the last collection activity on a debt. (12 CFR 1006.100(a)).

    a. For example, the entity should retain all telephone logs and copies of documents provided to consumers. (Comment 100(a)-1).

b. There is no requirement to create additional records for the sole purpose of evidencing compliance. (Comment 100(a)-2).

c. Determine whether the entity retains any recordings of telephone calls in connection with the collection of a debt for three years after the date of the call. (12 CFR 1006.100(b)).

[Click&type]

Debt Ownership or Account Transfer

Debt Purchases

11. Determine whether the entity collects on any debt it purchased from another party. If so:

    a. Review the account information that the entity received regarding the debt when it purchased the debt. Consider in particular whether the entity received information sufficient to make required disclosures and to determine the consumer's identity, the amount due, whether all amounts due were permitted by contract or applicable law, and the original creditor.

    b. Review sale contracts, considering in particular the following items:

        i. Provisions that describe the nature of the account-level information that is provided by the seller;

        ii. Any representations or disclaimers made relating to the accuracy of the account-level information that is provided by the seller; and

        iii. Whether the entity can request additional account-level information upon request, including how long the additional account-level information will be available and how much it will cost.

    c. Determine whether the entity has reason to doubt the accuracy of the account-level information it received from the seller (for example, if there were patterns of disputes, unusual gaps of information, or known problems with account maintenance).

    d. Determine whether the information received is sufficient to substantiate representations made to consumers regarding the debt and the consumer's liability for the debt.

[Click&type]

Debt sales

12. Determine whether the entity sells any debt to any debt buyers. If so:

    a. Review the information that the entity provides regarding the debt to the debt buyers. Consider in particular whether the entity provides information sufficient to determine the consumer's identity, the amount due, whether all amounts due were permitted by contract or applicable law, and the original creditor.

b. Review sale contracts, in particular:

   i. Provisions that describe the nature of the account-level information provided to the debt buyer;

   ii. Any representations or disclaimers made relating to the accuracy of the account-level information provided to the debt buyer; and

   iii. Whether the entity agreed to provide additional account-level information upon the buyer's request, including how long the additional account-level information will be available and how much it will cost.

c. If the entity sells any debt that has been disputed by the consumer, determine:

   i. Whether the entity attempts to verify the debt prior to selling it, and

   ii. Whether the entity provides information about the dispute to the debt buyer.

d. Determine whether the entity had reason to doubt the accuracy of the account-level information it provided to the buyer (for example, if there were patterns of disputes, unusual gaps of information, or known problems with account maintenance).

e. Determine whether the debt collector entity sells debt that it knows or should know has been paid or settled or discharged in bankruptcy. If it does, determine if the entity qualifies for an exception to the prohibition on doing so. (12 CFR 1006.30(b)).

f. If Module 3 is not scoped into the exam, consider scoping in the following: Determine whether the entity complies with restrictions in FCRA concerning the sale, transfer, or placement for collection debts with a report of identity theft. (15 USC 1681m(f)).

[Click&type]

Account Transfers

13. Determine what information the entity provides when it transfers consumer accounts to any third parties (including, for example, the original creditor or a service provider) for collection activity or receives any accounts from third parties for collection activity.

[Click&type]

14. Determine whether the debt collector entity places for collection debt that it knows or should know has been paid or settled or discharged in bankruptcy. If it does, determine if the entity qualifies for an exception to the prohibition on doing so. (12 CFR 1006.30(b)).

[Click&type]

Module 2: Communications in Connection with Debt Collection

This module addresses FDCPA and UDAAP issues that may arise when entities communicate or attempt to communicate with consumers or third parties as part of their debt collection activities. As noted, the FDCPA (and its implementing Regulation F) only applies if the entity is a "debt collector" under the FDCPA, while the prohibition on unfair, deceptive, or abusive acts and practices applies to all supervised entities.

In assessing an entity's communications, examiners should consider documents and recordings, including hard copies or electronic copies of letters, voice recordings of telephone communications, and notes made during or after telephone calls or personal visits. Examiners should review a sample of records and listen to a sample of collection calls.

FDCPA

"Communicate" or "communication" under the FDCPA and Regulation F means the conveying of information regarding a debt directly or indirectly to any person through any medium (15 USC 1692a(2)). [12 CFR 1006.2(d)] If an attempt to contact, a message to, or a discussion with a consumer or third party does not convey information regarding a debt, it is not a communication under the FDCPA or the Rule.

Even if they are not communications, such actions may be "attempts to communicate" for the purposes of the FDCPA and Regulation F. An "attempt to communicate" is any act to initiate a communication or other contact about a debt with any person through any medium, including by soliciting a response from such person (12 CFR 1006.2(b)).

A "limited-content message" is not a communication for the purposes of the FDCPA and Regulation F; however, it is an attempt to communicate. See 12 CFR 1006.2(j) for more information on what is required for a voicemail message to be a limited-content message.

If the entity is a "debt collector" (per step 1 of Module 1), follow steps 1 to 18 below; otherwise skip to step 19.

Disclosing the Debt Collector's Identity and the Purpose/Nature of the Communication

1. Determine whether the debt collector places telephone calls without meaningful disclosure of its identity (except for calls placed for the sole purpose of acquiring location information). (15 USC 1692d(6)). [12 CFR 1006.14(g)]

    a. A debt collector does not violate meaningful disclosure requirements by leaving a limited-content message. Comment 2(j)-3.

[Click&type]

2. Determine whether the debt collector communicates or attempts to communicate with consumers using emails and text messages, and if so:

[Click&type]

3. Determine whether the debt collector communicates or attempts to communicate through a social media platform and if so, whether the communication or attempt to communicate is viewable by the general public or the person's social media contacts. (12 CFR 1006.22(f)(4)).

[Click&type]

4. Determine whether the debt collector discloses in its first written communication with the consumer that it is attempting to collect a debt and that any information obtained will be used for that purpose. If the initial communication is oral, determine whether the debt collector also discloses the same information again in the initial written communication with the consumer. (15 USC 1692e(11)). [12 CFR 1006.18(e)(1)]

[Click&type]

5. Determine whether the debt collector discloses in each subsequent communication that the communication is from a debt collector. (15 USC 1692e(11)) [12 CFR 1006.18(e)(2)]. A limited-content message under 12 CFR 1006.2(j) is not a communication; as such, a debt collector who leaves only a limited-content message need not make the disclosures required by 12 CFR 1006.18(e)(1) and (2).

[Click&type]

6. Determine whether the debt collector misrepresents its identity or authorization by:

   a. Using any business, company, or organization name other than the true name of the debt collector's business, company, or organization (15 USC 1692e(14)) [12 CFR 1006.18(c)(4)]. A debt collector may use a shortened version of its name in a limited-content message so as not to disclose a name that indicates the collector is in the business of debt collection;

   b. Misrepresenting that it is vouched for, bonded by, or affiliated with the United States or any State, including by using any badge, uniform, or facsimile thereof (15 USC 1692e(1)) [12 CFR 1006.18(b)(1)(i)];

   c. Falsely representing or implying that an individual debt collector is an attorney or that any communication is from an attorney (15 USC 1692e(3)) [12 CFR 1006.18(b)(1)(iii)];

   d. Falsely representing or implying that it operates or is employed by a consumer reporting agency (15 USC 1692e(16)) [12 CFR 1006.18(b)(1)(ii)];

e. Using or distributing any written communication or attempt to communicate that creates a false impression as to its source, authorization, or approval, or that simulates or is falsely represented to be a government document (15 USC 1692e(9)) [12 CFR 1006.18(c)(3)];

f. Using any forms that falsely imply that someone other than the creditor is participating in the collection activities. If so, determine the source of the forms. (15 USC 1692j) [12 CFR 1006.30(e)]; or

g. Using any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer. (12 CFR 1006.18(d)).

    i. See Comment 18(d)-1 for more information on this provision's applicability to social media communications.

[Click&type]

7. Determine whether the debt collector makes any false representations regarding the nature of the communications or attempts to communicate, for example by:

    a. Falsely representing or implying that documents are legal process (15 USC 1692e(13)) [12 CFR 1006.18(b)(1)(vii)]; or

    b. Falsely representing that documents are not legal process forms, or that documents do not require action by the consumer (15 USC 1692e(15)) [12 CFR 1006.18(b)(1)(viii)].

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8. Determine whether the debt collector sends postcards to communicate or attempt to communicate with the consumer regarding a debt. (15 USC 1692f(7)) [12 CFR 1006.22(f)(1)].

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9. Determine whether the debt collector leaves messages on consumers' electronic call recording devices (i.e., voicemail or answering machines) and if so, whether the content of the message meets the requirements of a "limited-content message" as described in Regulation F (12 CFR 1006.2(j)). A voicemail that is not a limited-content message must comply with the restrictions on disclosures to third parties which are outlined in the "Special Limits on Communications with Third Parties section" of these procedures.

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10. Determine whether the debt collector refrains from using any language or symbols on envelopes, other than its address and its business name, when communicating or attempting to communicate with consumers by mail or telegram. If it uses its business name on envelopes, determine whether the name indicates that it is in the debt collection business. (15 USC 1692f(8)) [12 CFR 1006.22(f)(2)].

11. Determine whether the debt collector causes any person to incur charges for communications or attempts to communicate by concealing the true purpose of the communications or attempts to communicate (e.g., by making collect calls or sending telegrams). (15 USC 1692f(5)) [12 CFR 1006.22(d)].

Time and Place of Communications; Attempts to Communicate

12. Determine whether the debt collector communicates with the consumer without obtaining prior consent directly from the consumer or the express permission of a court of competent jurisdiction in any of the following situations. (15 USC 1692c) [12 CFR 1006.6(b)(4)]. For purposes of steps 13 and 14, "consumer" is defined to include the borrower's spouse, parent (if the borrower is a minor), guardian, executor, successor in interest, or administrator. (15 USC 1692c(d)) [12 CFR 1006.6(a)].

    a. Determine whether the debt collector communicates or attempts to communicate with any consumer at an unusual time or place or at a time or place that the debt collector knows or should know is inconvenient. A debt collector knows or should know that a time or place is inconvenient for a consumer if the consumer uses the word "inconvenient" or if the facts and circumstances indicate that a time or place is inconvenient for the consumer even if the consumer does not specifically state to the debt collector that a time or place is "inconvenient" (Comment 6(b)(1)-1). Absent information to the contrary, debt collectors are to assume that calls between 9:00 p.m. and 8:00 a.m. in the consumer's local time are inconvenient. (15 USC 1692c(a)(1)) [12 CFR 1006.6(b)(1)(i)].

    b. Determine whether the debt collector communicates with any consumer at work if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving communications of that nature. (15 USC 1692c(a)(3)) [12 CFR 1006.6(b)(3)].

    c. Determine whether the debt collector has engaged in any communications with any consumer after learning that the consumer was represented by an attorney with respect to the debt. If so, determine whether the contact was permissible because:

        i. The debt collector did not know the attorney's name and address and could not readily ascertain that information;

        ii. The attorney had failed to respond within a reasonable period of time to a communication from the debt collector [12 CFR 1006.6(b)(2)(i)]; or

        iii. The attorney had consented to the debt collector's direct communication with the consumer. (15 USC 1692c(a)(2)) [12 CFR 1006.6(b)(2)(ii)].

[Click&type]

Harassing, Oppressive, or Abusive Conduct

13. Determine whether the debt collector engages in any conduct the natural consequence of which is to harass, oppress, or abuse any person. (15 USC 1692d) [12 CFR 1006.14(a)]. This provision applies to any communication medium (*e.g.*, in person interactions, telephone calls, audio recordings, paper documents, mail, email, text messages, social media, or other electronic media and applies based on the cumulative effect of the debt collector's conduct. Prohibited conduct includes, but is not limited to:

    a. Using or threatening to use violence to physically harm a person or his or her reputation or property (15 USC 1692d(1)) [12 CFR 1006.14(c)];

    b. Using obscene or profane language or other language the natural consequence of which is to abuse the hearer or reader (15 USC 1692d(2)) [12 CFR 1006.14(d)];

    c. Publishing a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of Section 603(f) or 604(a)(3) of the FCRA (15 USC 1681a(f) or 1681b(a)(3)) (15 USC 1692d(3)) [12 CFR 1006.14(e)];

    d. Advertising a debt for sale to coerce payment (15 USC 1692d(4)) [12 CFR 1006.14(f)]; or

    e. Communicating with a person in any other harassing, oppressive, or abusive manner not identified above, including through text messages or emails. Examiners should consult with Headquarters to assess whether a particular communication or group of communications are harassing, oppressive, or abusive.

[Click&type]

False, Deceptive, or Misleading Communications

14. Determine whether the debt collector uses any false, deceptive, or misleading representations in connection with the collection of any debt. (15 USC 1692e) [12 CFR 1006.18(a)]. This would include, but is not limited to:

    a. Misrepresenting the character, amount, or legal status of the debt (15 USC 1692e(2)(A)) [12 CFR 1006.18(b)(2)(i)];

    b. Falsely representing or implying that nonpayment will result in the arrest of any person or the seizure, garnishment, attachment or sale of any person's property or wages, unless such action is lawful and the debt collector or creditor intends to take such action (15 USC 1692e(4)) [12 CFR 1006.18(b)(3)];

    c. Threatening to take any action that cannot legally be taken or that is not intended to be taken [12 CFR 1006.18(c)(1)]. Examples include:

i. Bringing or threatening to bring a legal action against a consumer to collect a time-barred debt (i.e., a debt for which the applicable statute of limitations has expired) [12 CFR 1006.26(b)].

ii. Threatening to make third-party disclosures about the existence of a debt as prohibited by 15 USC 1692c(b) [12 CFR 1006.6(d)(1)]; or

iii. Threatening to furnish information to a consumer reporting agency that the debt collector does not actually intend to furnish (15 USC 1692e(5));

d. Falsely representing or implying that the sale, referral, or transfer of any interest in the debt will cause the consumer either to lose any claim or defense to payment or become subject to any practice prohibited by the FDCPA or 12 CFR Part 1006 (15 USC 1692e(6)) [12 CFR 1006.18(b)(1)(v)];

e. Falsely representing or implying that the consumer has committed a crime or other conduct to disgrace the consumer (15 USC 1692e(7)) [12 CFR 1006.18(b)(1)(iv)];

f. Threatening to communicate or communicating to any person credit information which is known or which should be known to be false, including not communicating disputed debts as such (15 USC 1692e(8)) [12 CFR 1006.18(c)(2)];

g. Falsely representing or implying that accounts have been turned over to innocent purchasers for value (15 USC 1692e(12)) [12 CFR 1006.18(b)(1)(vi)]; or

h. Using any other false representation or deceptive means to collect or attempt to collect any debt or obtain information concerning a consumer (15 USC 1692e(10)) [12 CFR 1006.18(d)].

[Click&type]

Telephone Call Frequency Limitation

15. Determine whether the debt collector causes a person's telephone to ring or engages any person in telephone conversations repeatedly or continuously with intent to annoy, abuse, or harass (15 USC 1692d(5)) [12 CFR 1006.14(b)(1)]. Compliance with this provision is presumed, unless either of the following occurs:

a. The debt collector places telephone calls to a person in connection with the collection of a particular debt more than seven times within a seven-day period, subject to certain exceptions in Section 1006.14(b)(3) (12 CFR 1006.14(b)(2)(ii)(A)).

b. The debt collector places a telephone call within seven days after engaging in a telephone conversation with the person about the particular debt, subject to certain exceptions in Section 1006.14(b)(3) (12 CFR 1006.14(b)(2)(ii)(B)).

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Special Limits on Communications with Third Parties

The FDCPA limits debt collectors' communications with "third parties," which for purposes of these procedures means anyone other than: the consumer, the consumer's attorney, a consumer reporting agency (if otherwise permitted by law), the creditor, the creditor's attorney, or the debt collector's attorney (15 USC 1692c(b)) [12 CFR 1006.6(d)(1)]. For purposes of this section on Special Limits on Communications with Third Parties, the term "consumer" includes the consumer's spouse, consumer's parent (if the consumer is a minor), consumer's guardian, the executor or administrator of the consumer's estate, if the consumer is deceased, or a confirmed successor in interest, as defined in Regulation X, 12 CFR 1024.31, or Regulation Z, 12 CFR 1026.2(a)(27)(ii) [15 USC 1692c(d), 12 CFR 1006.6(a)].

16. Assess whether the debt collector has adequate policies and procedures to avoid disclosure of the existence of a debt to third parties, for example, how does the debt collector identify itself or leave messages with third parties?

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17. Determine whether the debt collector communicates with any third parties to obtain location information, which is defined as the consumer's home address and telephone number or place of employment [12 CFR 1006.10(a)]. If so:

    a. Determine whether the debt collector refrains from making statements that:

        i. Reveal the debt collection company's name, unless specifically asked (15 USC 1692b(1)) [12 CFR 1006.10(b)(1)], or

        ii. Indicate that the consumer owes a debt (15. USC 1692b(2)) [12 CFR 1006.10(b)(2)].

    b. Determine whether the debt collector communicates with any third parties more than once. 12 CFR 1006.10(c). If so, determine whether the communication is permissible because:

        i. The third party specifically requested additional communication; or

        ii. The debt collector reasonably believes that the information from the first communication was wrong or incomplete and that the third party has since received better location information. (15 USC 1692b(3)).

    c. Determine whether the debt collector knows the consumer is represented by an attorney and has knowledge of, or can readily ascertain, such attorney's name and address. If so, determine whether the debt collector communicates only with the attorney, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector. (15 USC 1692b(6)) [12 CFR 1006.10(b)(5)].

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18. Determine if the debt collector communicates with any third party in connection with the collection of any debt for reasons not related to obtaining location information. If so, determine whether the contact is permissible because:

    a. The debt collector:

        i. Received prior consent directly from the consumer [12 CFR 1006.6(d)(2)(ii)]; or

        ii. Received express permission from a court of competent jurisdiction (15 USC 1692c(b)) [12 CFR 1006.6(d)(2)(iii)]; or

        iii. As reasonably necessary to effectuate a postjudgment judicial remedy. (12 CFR 1006.6(d)(2)(iv)).

    b. Additionally, a debt collector may send an email to an email address if, among other things, the immediately prior debt collector used the email address to communicate with the consumer about the debt. Comment 6(d)(4)(iii)-1.

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19. Debt collectors generally may not communicate with a consumer using an email address that the debt collector knows is provided by the consumer's employer, unless the debt collector received the consumer's direct prior consent and the consumer has not withdrawn that consent, or the consumer used the email address to contact the debt collector and has not since opted out of communications to that email address (or the debt collector obtained the email address from a prior debt collector who satisfied one of those conditions) (12 CFR 1006.22(f)(3)).

[Click&type]

Other Risks to Consumers

20. Determine whether the entity makes calls to consumers' mobile phones, sends emails or text messages to consumers, or uses any other newer technology in contacting consumers. If so:

    a. Review the circumstances of such contacts including (to the extent applicable) how the entity identifies itself in making these contacts (e.g., information provided via caller identification or its email address).

[Click&type]

21. Determine whether the entity makes representations to consumers regarding the effect of debt payments on consumer credit reports and scores, and if so, whether these representations are deceptive under the FDCPA or deceptive under the Dodd-Frank Act's prohibition on deceptive acts and practices. *See* Bulletin 2013-08 (July 10, 2013).

[Click&type]

22. Using the UDAAP examination procedures, consider whether any of the entity's debt collection communications constitute unfair, deceptive, or abusive acts or practices, or a risk of such a violation. Conduct that is prohibited under the FDCPA (or that would be, if done by a "debt collector") may, depending on the facts and circumstances, also raise UDAAP concerns. Examiners should consult with Headquarters to determine whether the applicable legal standards have been met before a UDAAP violation is cited.

[Click&type]

23. Determine whether the entity sues or threatens to sue on time-barred debt. (12 CFR 1006.26(b)). Threats to sue on time-barred debt also may be analyzed under Module 7.

[Click&type]

Module 3: Information Sharing, Privacy, and Interactions with Consumer Reporting Agencies

This module addresses specific requirements related to information sharing, privacy, and interactions with consumer reporting agencies under the GLBA and Regulation P; the FCRA and Regulation V; and the FDCPA and Regulation F.

GLBA and Regulation P

Under the GLBA, many entities that collect debts including debt collection agencies are "financial institutions." Certain obligations are triggered at the start of a "customer relationship." Originating creditors can establish a customer relationship at the time they make a loan.[2] A debt buyer can establish a "customer relationship" with a debtor when the debt buyer locates the individual and tries to obtain payments on the debt.[3]

1. Determine whether the entity under examination originated the debt, has purchased the debt, or is collecting on behalf of another party that owns the debt.

[Click&type]

2. For debt that the entity under examination originated or has purchased and on which the entity is trying to obtain payments, use the Privacy of Consumer Financial Information examination procedures to assess compliance with the applicable requirements of Sections 502 to 509 of the GLBA (15 USC 6802-09) and Regulation P (12 CFR Part 1016).

[Click&type]

3. For debt that the collector does not own but collects or attempts to collect on behalf of another party, use the Privacy of Consumer Financial Information examination procedures to assess compliance with the "reuse and redisclosure" limitations. (12 CFR 1016.11).

[Click&type]

FCRA and Regulation V / FDCPA and Regulation F

Users of Consumer Reports

4. Determine if the entity obtains consumer reports from any consumer reporting agency. If so, use the FCRA examination procedures to assess its compliance with the requirements on users of consumer reports, including whether:

[2] *See* 12 CFR 1016.3(j)(2)(i)(B), 1016.3(j)(3)(i)(B).

[3] *See* 12 CFR 1016.3(j)(3)(i)(J). An entity also can establish a "customer relationship" by acquiring ownership of the servicing rights for the loan. *See* 12 CFR 1016.3(j)(2)(i)(C), 1016.3(j)(3)(i)(L).

a. It trains its employees regarding use of consumer reports;

b. It has a permissible purpose for all reports obtained and does not use the reports for any impermissible purpose (15 USC 1681b(f));

c. It complies with duties of users regarding address discrepancies (15 USC 1681c(h); 12 CFR 1022.82); and

d. If the entity is a creditor, it provides notice to consumers when furnishing negative information about the consumer to a credit reporting agency. 15 USC 1681s–2(a)(7).

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Furnishing Information about Consumers

The FCRA imposes obligations on entities that provide information to consumer reporting agencies (this activity is called "furnishing"). If the entity is furnishing, examiners should obtain a sample of items furnished to consumer reporting agencies, a sample of notices of disputes received from consumer reporting agencies and consumers, and the corresponding loan or collection files. In doing this review, examiners should become familiar with the entity's process relating to furnishing information, including the manner in which it furnishes information (e.g., through an electronic system or otherwise), the frequency of the furnishing, and how consumer disputes are communicated to consumer reporting agencies.

Regulation F prohibits "passive collections", that is, the regulation requires debt collectors to complete a specified action or actions to notify consumers about a debt before furnishing information regarding the debt to a consumer reporting agency. [12 CFR 1006.30(a)(1)]. Other FDCPA provisions which apply to furnishers who are debt collectors are addressed in Module 2 and should be considered for coverage in this module if Module 2 is not scoped into the exam. Examiners should refer to step 15 of Module 2 if the entity is a "debt collector" for FDCPA purposes and furnishes credit information it knows or should know is false, including if it furnishes information about disputed debts without identifying them as such (15 USC 1692e(8)) [12 CFR 1006.18(c)(2)].

Regulation V Requirements for Furnishers

5. Determine if the entity is a "furnisher" for purposes of the Furnisher Rule (12 CFR 1022.40-1022.43) because it furnishes information relating to consumers to one or more consumer reporting agencies for inclusion in a consumer report. Note that an entity is not a furnisher when it:

    a. Provides information to a consumer reporting agency solely to obtain a consumer report in accordance with sections 604(a) and (f) of the FCRA (i.e., uses the consumer report only for the purpose for which the consumer report is authorized to be provided);

    b. Is acting as a "consumer reporting agency" as defined in section 603(f) of the FCRA;

    c. Is a consumer to whom the furnished information pertains; or

d. 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. (12 CFR 1022.41(c)).

If the entity is not a furnisher, skip to step 13 below.

[Click&type]

6. Assess compliance with Regulation V's requirements relating to accuracy and integrity by determining:

    a. Whether the furnisher has established and implemented reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a consumer reporting agency;

    b. Whether these policies and procedures are appropriate to the nature, size, complexity, and scope of each furnisher's activities;

    c. Whether the furnisher considered the guidelines in Appendix E of Regulation V in developing its policies and procedures, and incorporated those guidelines that are appropriate; and

    d. Whether the furnisher reviews its policies and procedures on accuracy and integrity periodically and updates them as necessary to ensure their continued effectiveness. (12 CFR 1022.42).

[Click&type]

7. Assess the furnisher's handling of Regulation V "direct disputes" from consumers, which are disputes 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. (12 CFR 1022.41, 1022.43). In doing so, consider the following:

    a. Determine whether the entity has policies and procedures for properly identifying a direct dispute as such. (12 CFR 1022.41, 1022.43).

    b. Determine whether the furnisher conducts reasonable investigations of direct disputes from consumers where required, including a review of all relevant information provided by the consumer. (12 CFR 1022.43(a)-(b), (e)(1), (2)).

    c. Determine whether the furnisher completes the investigation and reports the results to the consumer within the required time frame (12 CFR 1022.43(e)(3)).

d. Determine whether the furnisher notifies and provides corrected information to the consumer reporting agencies when the results of its investigation finds that inaccurate information was furnished to the consumer reporting agencies (12 CFR 1022.43(e)(4)).

e. If the furnisher declines to investigate a direct dispute on the ground that it is frivolous or irrelevant, determine whether the furnisher:

i. Has reasonably determined that the dispute is frivolous or irrelevant. A dispute qualifies as "frivolous or irrelevant" if:

A. The consumer did not provide sufficient information to investigate the disputed information;

B. 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 already has complied with the statutory or regulatory requirements (provided, however, that a direct dispute would not be "substantially the same" as the one previously submitted if the dispute includes new information required by Regulation V to be provided to the furnisher, but that had not previously been provided to the furnisher); or

C. The furnisher is not required to investigate the direct dispute because one or more of the exceptions listed in 12 CFR 1022.43(b) is applicable (12 CFR 1022.43(f)(1)).

ii. Notifies the consumer within five business days after finding the dispute frivolous or irrelevant (12 CFR 1022.43(f)(2)); and

iii. 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)).

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8. Determine if the furnisher has provided an address in a consumer report relating to the consumer or otherwise clearly and conspicuously specified an address for submitting direct disputes in writing or electronically (if the consumer has agreed to the electronic delivery of information from the furnisher).

a. If so, determine whether it accepts and investigates all direct disputes submitted to the specified address(es). (12 CFR 1022.43(c)).

b. If not, determine whether it accepts and investigates all direct disputes submitted to any of its business addresses. (12 CFR 1022.43(c)).

[Click&type]

Disputes Received from Consumer Reporting Agencies

9. Determine whether the furnisher complies with its obligation to do the following when it is notified by a consumer reporting agency that a consumer has disputed the accuracy or completeness of information that it previously has furnished:

   a. Conduct an investigation with respect to the disputed information (15 USC 1681s-2(b)(1)(A));

   b. Review all relevant information provided by the consumer reporting agency (15 USC 1681s-2(b)(1)(B));

   c. Report the results of the investigation to the consumer reporting agency (15 USC 1681s-2(b)(1)(C));

   d. Report the results of the investigation to all other nationwide consumer reporting agencies to which the information was furnished if the investigation finds that the furnished information was inaccurate or incomplete (15 USC 1681s-2(b)(1)(D));

   e. Modify, delete, or permanently block the furnishing of information that is found to be inaccurate or incomplete or could not be verified (15 USC 1681s-2(b)); and

   f. Complete the required investigations, reviews, and reports within applicable time limits (15 USC 1681s-2(b)(2)).

[Click&type]

Other Furnisher Issues

10. For furnishers who are FDCPA debt collectors, determine whether the furnisher engages in "passive collections" by furnishing information about a debt to a consumer reporting agency before the collector:

    a. Speaks to the consumer about the debt in person or by telephone; or

    b. Sends a letter or electronic message to the consumer about the debt and waits a reasonable period of time to receive a notice of undeliverability. (12 CFR 1006.30(a)).

    This prohibition does not apply to a debt collector's furnishing of information to a nationwide specialty consumer reporting agency that compiles information on a consumer's check-writing history.

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11. Assess the furnisher's compliance with the other requirements that the FCRA imposes on furnishers using the FCRA examination procedures. Consider in particular whether the entity:

    a. Does not furnish information relating to a consumer to a consumer reporting agency it knows or has reasonable cause to believe is inaccurate (15 USC 1681s-2(a)(1)(A)), which may also violate the FDCPA (15 USC 1692e(8)) [12 CFR 1006.18(c)(2)];

    b. Does not furnish information to a consumer reporting agency after receiving notice from the consumer (at the address specified for such notices) that the information was inaccurate when the information is, in fact, inaccurate (15 USC 1681s-2(a)(1)(B));

    c. If it regularly and in the ordinary course of business furnishes information and has furnished information that it determines is not accurate or complete,

        i. Promptly notifies the consumer reporting agency and provides corrections; and

        ii. Thereafter does not send the consumer reporting agency any of the information that remains incomplete or inaccurate. (15 USC 1681s-2(a)(2));

    d. Within 90 days of furnishing information about a delinquent account that is being placed for collection, charged-off, or subjected to any similar action,

        i. Notifies the consumer reporting agency of the month and year of commencement of a delinquency that immediately preceded the action; and

        ii. Thereafter does not furnish a different month and year of commencement of the delinquency unless it identifies an error that requires correction (15 USC 1681s-2(a)(5));

    e. Furnishes a notice to a consumer reporting agency of a dispute in situations where:

        i. A consumer has disputed the completeness or accuracy of any information the entity furnished; and

        ii. The entity continues furnishing the information to a consumer reporting agency. (15 USC 1681s-2(a)(3)).

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12. Determine whether the furnisher has adequate procedures in place to keep track of information that it has determined to be incomplete or inaccurate or that it has been unable to verify in response to a dispute and to prevent re-furnishing of such information as long as it remains incomplete, inaccurate, or unverifiable, consistent with the requirements of 15 USC 1681s-2(a)(2) and 15 USC 1681s-2(b).

[Click&type]

Identity Theft Issues Including Prevention of Re-Pollution of Consumer Reports

13. If the entity is a furnisher:

    a. Determine whether it has reasonable procedures in place to ensure that items of information blocked because of an alleged identity theft are not re-furnished to a consumer reporting agency after the entity is notified of a block by a consumer reporting agency (15 USC 1681s-2(a)(6)(A));

    b. Review a sample of notices from a consumer reporting agency of allegedly fraudulent information due to identity theft furnished by the entity, to determine whether the entity does not re-furnish the item to a consumer reporting agency (15 USC 1681s-2(a)(6)(A)); and

    c. Assess whether the furnisher improperly furnishes to any consumer reporting agency any information alleged to result from identity theft after the consumer provides an identity theft report to the entity at the address specified by the entity, unless the furnisher subsequently knows or is informed by the consumer that the information is correct (15 USC 1681s-2(a)(6)(B)).

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14. Determine whether the entity sells, transfers for consideration, or places for collection a debt after being notified by a consumer reporting agency that the debt resulted from identity theft. (15 USC 1681m(f)).

[Click&type]

15. If the entity is a "debt collector" (per step 1 of Module 1), determine if it acts on behalf of one or more third parties that are creditors or other users of a consumer report. If so:

    a. Determine whether the debt collector has policies and procedures in place to use if it is notified that any information relating to the debt it is attempting to collect may be fraudulent or may be the result of identity theft. Consider specifically whether it:

        i. Notifies the third party for whom it is collecting that the information may be fraudulent or the result of identity theft; and

        ii. Upon request, provides the consumer to whom the debt purportedly relates 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 applicable provisions of law.

    b. If procedural weaknesses 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 determine if all of the appropriate information was provided to the consumer. (15 USC 1681m(g)).

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Information Sharing Among Affiliates

16. If the entity shares information with affiliates, use the FCRA examination procedures for affiliate marketing, to assess compliance with the FCRA affiliate marketing rule (12 CFR 1022.20-1022.27).

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Module 4: Validation Notice, Consumer FDCPA Disputes and Complaints, and Ceasing Communication

This module addresses consumer inquiries, complaints, and FDCPA disputes, as well as the debt verification obligations imposed by the FDCPA (where applicable). This review assesses (1) whether complaints are resolved adequately and in a timely manner, (2) whether they reflect any potential violations of Federal consumer financial law, and (3) whether the entity has a process in place to analyze and address any underlying sources or systemic reasons for any law violations revealed by the complaints.

Examiners should review reports to management and the board of directors (or principals), consumer complaint log(s), performance metrics, and exception/trend reports and should listen to live calls and taped calls.

FDCPA

General Disclosure Delivery Requirements

Throughout this module, determine whether the entity is in compliance with the requirements of the FDCPA and Regulation F for the delivery of disclosures provided to consumers.

1. With certain exceptions noted below, whenever the FDCPA or Regulation F requires a debt collector to provide a disclosure and the disclosure is provided in writing or electronically, the debt collector must provide the disclosure in a manner that is reasonably expected to provide actual notice and in a form that the consumer may keep and access later. 12 CFR 1006.42(a)(1).
    a. These requirements generally do not apply to:
        i. The notice of a reasonable and simple method to opt out. [12 CFR 1006.42(a)(2)]
        ii. The disclosure in the initial communication with a consumer that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose. [12 CFR 1006.42(a)(2)]
        iii. The disclosure in a subsequent communication that the communication is from a debt collector. [12 CFR 1006.42(a)(2)]
    b. However, these requirements do apply if the disclosures listed in step 1(a) are included in a written or electronic validation notice, or in the response to a FDCPA dispute or request for original-creditor information. [12 CFR 1006.42(a)(2)]
    c. Generally, a debt collector satisfies these requirements if the debt collector mails a printed copy of a disclosure to the consumer's last known address. However, mailing a printed copy to the last known address does not satisfy the requirement if the debt collector, at the time of mailing, knows or should know that the consumer does not

currently reside at, or receive mail at, that location. Comment 1006.42(a)(1)-3. Additionally, a debt collector who sends a required disclosure in writing or electronically and who receives a notice that the disclosure was not delivered has not sent the disclosure in a manner that is reasonably expected to provide actual notice. Comment 1006.42(a)(1)-2.

[Click&type]

2. A debt collector must make the disclosures required by 12 CFR 1006.18(e)(1) and (2) in the same language or languages that the debt collector used for the rest of the communication in which the disclosure is included. Any translation of the disclosures must be complete and accurate. 12 CFR 1006.18(e)(4).

[Click&type]

Validation Information

If the entity is a "debt collector" (per step 1 of Module 1), follow steps 3 to 16 below; otherwise skip to step 17 below. Any entity that qualifies as a "debt collector" under the FDCPA must provide consumers with certain basic information about each debt it attempts to collect. If a debt collector also furnishes information about the debt, examiners should check to ensure the debt collector is in compliance with obligations under Regulation F related to "passive collections" (see Module 3). These obligations are covered under Module 3 but may be scoped into an exam under this module if Module 3 is not scoped into the exam.

3. Determine whether the debt collector correctly uses the model validation notice. Regulation F includes a model validation notice as Model Form B-1 (located in Appendix B to Regulation F). If a debt collector correctly uses the model validation notice, a version of the model validation notice that adds or omits certain optional content, a version that includes certain content on a separate page, or a version that is otherwise substantially similar to the model validation notice, the debt collector receives a safe harbor for the validation information requirements in Section 1006.34(c) and for the clear and conspicuous requirement in Section 1006.34(d)(1). (12 CFR 1006.34(d)(2)(i)-(iii) & (3)). Determine whether, if the model validation notice is not used, the debt collector correctly provides the required information to the consumer.

[Click&type]

4. Determine whether the debt collector provides the following "validation information" to the consumer, either in the initial communication or within five days of the initial communication. For certain residential mortgage debt, pursuant to a special rule, a debt collector may omit certain validation information from the validation notice. (12 CFR 1006.34(c)(5)). The debt collector is not required to provide the validation information if the consumer pays the debt within five days of the initial communication. (12 CFR 1006.34(a)).

a. The debt collector communication disclosure required by 12 CFR 1006.34(c)(1).

b. The information about the debt required by 12 CFR 1006.34(c)(2).

c. The information about consumer protections required by 12 CFR 1006.34(c)(3).

d. The consumer-response information required by 12 CFR 1006.34(c)(4).

[Click&type]

5. Determine whether the validation information, whether provided orally or in a validation notice, is "clear and conspicuous" as defined by 12 CFR 1006.34(b)(1). (12 CFR 1006.34(d)(1)).

[Click&type]

6. If the debt collector delivers a validation notice electronically, determine whether it correctly uses certain formatting options, such as a hyperlink to the debt collector's website. (12 CFR 1006.34(d)(4)).

[Click&type]

7. Use step 1 of Module 4 to determine if the validation notice was sent in the manner required by 12 CFR 1006.42. (12 CFR 1006.34(a)(1)(i)).

[Click&type]

8. Determine whether the debt collector sends validation notices completely and accurately translated into languages other than English.

   a. The debt collector may send a validation notice translated into any language if certain requirements are met. (12 CFR 1006.34(e)(1)).

   b. The debt collector may offer to provide a copy of the validation notice in Spanish using the optional disclosures described in 12 CFR 1006.34(d)(3)(vi). If the debt collector provides these optional disclosures and the consumer requests a Spanish-language validation notice, the debt collector must provide a validation notice completely and accurately translated into Spanish. (12 CFR 1006.34(e)(2)).

[Click&type]

9. Determine whether during the validation period defined in Section 1006.34(b)(5), the debt collector's communications and/or collection activities overshadow or are inconsistent with the disclosure of the consumer's rights to dispute the debt or to request the name and address of the original creditor. (15 USC 1692g(b)) [12 CFR 1006.38(b)(1)]. This could occur, for example, if a debt collector threatens dire consequences for the consumer if the consumer

fails to make an immediate payment or if a debt collector demands immediate payment without noting that the consumer has 30 days to dispute the debt.

[Click&type]

10. Determine whether the consumer invokes his or her verification rights by notifying the debt collector in writing during the validation period that the consumer disputes the debt or any portion thereof or by requesting the name and address of the original creditor. If so, determine whether the debt collector:

    a. Ceases collection of the debt (or any disputed portion), until the debt collector mails the consumer a copy of verification of the debt, a copy of the judgment, or the name and address of the original creditor in writing or electronically in the manner required by 12 CFR 1006.42. (15 USC 1692g(b)) [12 CFR 1006.38(c)]; or

    b. In the case of a FDCPA dispute that the debt collector reasonably determines is a duplicative dispute, either responds as required for a non-duplicative dispute or notifies the consumer in writing or electronically in the manner required by 12 CFR 1006.42(a)(1) that the dispute is duplicative, provides a brief statement of the reasons for this determination, and refers the consumer to the debt collector's response to the earlier dispute. (12 CFR 1006.38(d)(2)(ii)).

[Click&type]

Ceasing Communications

11. Determine whether a consumer notified the debt collector in writing that he or she refuses to pay a debt or wishes for the debt collector to cease further communications. 12 CFR 1006.6(c)(1). Written electronic communications fulfill the "in writing" requirement of this rule. Comments 1006.6(c)(1)-1 and -2. If such a request was made in writing:

    a. Determine whether the debt collector continued to communicate with the consumer, the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator with respect to the debt.

    b. If the debt collector continued to communicate with the consumer per step 11(a) above, determine whether the communications are permissible because they are limited to:

        i. Advising the consumer that further collection efforts are being terminated (15 USC 1692c(c)(1)) [12 CFR 1006.6(c)(2)(i)];

        ii. Notifying the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor (15 USC 1692c(c)(2)) [12 CFR 1006.6(c)(2)(ii)]; or

iii. Where applicable, notifying the consumer that the debt collector or creditor intends to invoke a specified remedy (15 USC 1692c(c)(3)) [12 CFR 1006.6(c)(2)(iii)].

[Click&type]

12. If a consumer opts out of communications through the opt-out option required for electronic communications by 12 CFR 1006.6(e), assess whether the debt collector honors the consumer's opt-out request as required by 12 CFR 1006.14(h).

[Click&type]

13. Assess whether the debt collector honors consumers' requests not to communicate in a specific medium as required by 12 CFR 1006.14(h). This request may be made separate from an opt out request described in step 12 above and need not be in writing.

[Click&type]

FDCPA Disputes

14. Assess the debt collector's policies and procedures for handling consumer FDCPA disputes and the steps the debt collector takes upon learning that a consumer disputes the debt.

[Click&type]

15. Evaluate whether the debt collector communicates or threatens to communicate false credit information or information which should be known to be false, including not communicating disputed debts as such. (15 USC 1692e(8)) [12 CFR 1006.18(c)(2)].

[Click&type]

16. Evaluate the debt collector's policies and procedures concerning accounts where consumers assert that the underlying debt is the result of identity theft or other fraudulent activity.

[Click&type]

Other Risks to Consumers

17. Evaluate the comprehensiveness of systems, procedures, and/or flowcharts for capturing, logging, tracking, handling, and reporting disputes and/or complaints and their resolutions.

[Click&type]

18. Identify all channels and physical locations the entity provides for receipt of customer disputes, complaints, and inquiries.

[Click&type]

19. Assess the effectiveness of any telephone line available for inquiries or complaints, including (a) whether it is toll-free, (b) the ease of accessing a live person, (c) the hold times, and (d) the call abandonment rates. Assess the quality and training of call center personnel.

[Click&type]

20. Assess the effectiveness of other means available for disputes, inquiries, or complaints, including written submissions and any online portal.

[Click&type]

21. Evaluate the entity's processes and promptness in responding to consumer disputes and complaints.

[Click&type]

22. Determine whether consumer complaints are captured, correctly categorized, and are handled appropriately.

[Click&type]

23. Determine if staffing levels are sufficient for volume of complaints and whether assumptions used for staffing determinations are validated or supported by analysis.

[Click&type]

24. Determine whether the entity has a process for analyzing complaints to identify patterns of debt collection practices that violate the law or pose risks to consumers. For example, such analysis might indicate violations by a particular employee or service provider or data integrity problems associated with a particular set of accounts or portfolio. Determine what steps, if any, are taken if patterns are discovered.

[Click&type]

Module 5: Payment Processing and Account Maintenance

This module addresses how consumers' payments are applied to their accounts and other account maintenance issues, including those associated with electronic fund transfers.

Examiners should review the entity's policies, procedures, and practices regarding fees, other charges, and payment allocation and processing to assess whether they are adequate to ensure compliance with the standards set forth below.

FDCPA

If the entity is a "debt collector" (per step 1 of Module 1), follow steps 1 to 13 below; otherwise skip to step 7 below.

1. Determine whether the debt collector applies all payments received as directed by the consumer and, where no direction is given, applies payments only to undisputed debts. (15 USC 1692h) [12 CFR 1006.30(c)].

[Click&type]

2. Determine whether the debt collector collects or attempts to collect any amount (including interest, late fees, service charges, collection charges, attorney fees, or court costs) not expressly authorized by the agreement creating the debt or permitted by law. (15 USC 1692f(1)) [12 CFR 1006.22(b)].

[Click&type]

3. Determine whether the debt collector overstates the balance of the debt or otherwise collects any amount not expressly authorized by the agreement creating the debt or permitted by law. (15 USC 1692f(1), 1692e(2)(A)). [12 CFR 1006.22(b); 12 CFR 1006.18(b)(2)(i)].

[Click&type]

4. Determine whether the debt collector misrepresents the services it has rendered or the compensation to which it is lawfully entitled. (15 USC 1692e(2)(B)) [12 CFR 1006.18(b)(2)(ii)].

[Click&type]

5. If the debt collector accepts or solicits any postdated payment instruments, assess the following:

   a. If the debt collector accepts a check or other payment instrument that is postdated by more than five days, determine whether the debt collector provides written notice to the consumer of its intention to deposit the check or instrument three to ten business days prior to depositing the check. (15 USC 1692f(2)) [12 CFR 1006.22(c)(1)].

b. Determine whether the debt collector solicits postdated checks or other postdated payment instruments for the purpose of threatening or instituting criminal prosecution. (15 USC 1692f(3)) [12 CFR 1006.22(c)(2)].

c. Determine whether the debt collector deposits or threatens to deposit post-dated checks or other postdated payment instruments prior to the date on the check or instrument. (15 USC 1692f(4)) [12 CFR 1006.22(c)(3)].

[Click&type]

6. Determine whether the debt collector uses any unfair or unconscionable means to collect or attempt to collect any debt not identified above. (15 USC 1692f) [12 CFR 1006.22(a)].

[Click&type]

EFTA/Regulation E

If the entity receives payment through an electronic fund transfer, it may be required to comply with the requirements of the EFTA and Regulation E. If the entity has established electronic fund transfers from the consumer's account, examiners should use the EFTA examination procedures to review the extent to which the entity is complying with the EFTA.

7. Determine if the consumer agreed to initiate or if the entity initiated an electronic fund transfer subject to the EFTA/Regulation E ("EFT"). Consider if the entity is using methods subject to the EFTA or methods that are not subject to the EFTA such as remotely-created checks.

[Click&type]

8. Determine whether the EFT is a single EFT or a preauthorized EFT. To qualify as a preauthorized EFT, the transfer is one that is authorized in advance to recur at substantially regular intervals. (12 CFR 1005.2(k)).

[Click&type]

9. If the entity initiates preauthorized EFTs:

   a. Assess the entity's compliance with the applicable advance authorization, disclosures, and other requirements relating to preauthorized EFTs under the EFTA and Regulation E. (12 CFR 1005.10).

b. Determine whether the entity obtains proper written authorization for preauthorized EFTs from a consumer's account and provides a copy of the authorization to the consumer. (12 CFR 1005.10(b)).

[Click&type]

10. Determine whether the preauthorized EFTs will vary in amount. If so, determine whether the payee or financial institution, prior to each transfer, provides reasonable advance notice to the consumer, when required by applicable regulations, of the amount to be transferred and the scheduled date of transfer. (12 CFR 1005.10(d)).

[Click&type]

11. If the entity initiates single EFTs using information from a check, assess whether the entity obtains authorization from the consumer to initiate the EFT and is complying with appropriate notice requirements. (12 CFR 1005.3(b)(2)(ii)).

[Click&type]

12. If the entity initiates an EFT to collect a fee for the return of an EFT or a check that is unpaid, determine whether the entity is complying with appropriate notice requirements. (12 CFR 1005.3(b)(3)).

[Click&type]

Other Risks to Consumers

13. If the entity initiates single EFTs in circumstances other than those described under items 11 or 12 above, determine whether the entity obtains prior authorization from the consumer.

[Click&type]

14. Assess whether the entity issues refunds of overpayments and returns payments received in error to consumers in a timely and transparent manner.

[Click&type]

15. Using the UDAAP examination procedures including any procedures for any Bureau regulations issued under its UDAAP rulemaking authority, evaluate whether the entity's practices with respect to payment processing, fees and charges, and other accounting issues raise any potential UDAAP concerns. Examiners should consult with Headquarters to determine whether the applicable legal standards have been met before a UDAAP violation is cited.

[Click&type]

Module 6: Equal Credit Opportunity Act

Under the ECOA and its implementing Regulation B, creditors may not discriminate against an applicant in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity discrimination), marital status, age (provided the applicant has the capacity to contract), receipt of public assistance income, or exercise in good faith of any right under the Consumer Credit Protection Act. (12 CFR 1002.2(z), 1002.4(a)). Credit transactions encompass "every aspect of an applicant's dealings with a creditor regarding an application for credit or an existing extension of credit," and include "revocation, alteration, or termination of credit" and "collection procedures." (12 CFR 1002.2(m)).

1. Determine whether the entity is a "creditor" for ECOA purposes, under 15 USC 1691a(e), by determining if the entity is a person who regularly participates in a credit decision, including setting the terms of the credit. A "creditor" includes a creditor's assignee, transferee, or subrogee who so participates. For purposes of 12 CFR 1002.4(a) and (b), a "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. (12 CFR 1002.2(1)).

[Click&type]

2. If the entity is a "creditor" per step 1 above, evaluate whether the entity is complying with the requirements of ECOA and Regulation B, as applicable, using the ECOA examination procedures. In conducting this evaluation, pay particular attention to the following:

    a. The extent of discretion in the entity's collection procedures and practices, and the extent to which the entity controls and monitors the exercise of that discretion;

    b. The extent to which the entity's collection procedures and practices incorporate a prohibited basis under ECOA;

    c. The extent to which the entity's compliance management system addresses ECOA and fair lending risks; and

d. The extent of fair lending training offered to individuals involved in the entity's collection activities.

[Click&type]

The above factors create conditions under which the risk of fair lending violations may be increased. Whether any particular factor constitutes a fair lending violation requires consideration of the particular facts and circumstances at issue.

For more information regarding the scoping of fair lending exams, see CFPB ECOA examination procedures.

Module 7: Litigation Practices, Administrative Wage Garnishment, Repossession, and Time-Barred Debt

This module addresses collection actions in court and potential risks to consumers that may arise in this context. It also addresses repossession and collection of debt that is beyond the applicable statute of limitations for a collection lawsuit.

Litigation Practices

Examiners should first determine whether the entity files legal actions to collect debt or exercises any control over such actions. If so, examiners should review court documents filed by or on behalf of the entity, steps to enforce court judgments such as garnishment of consumer wages and attachment of consumer bank accounts, policies of the debt owner and state or local laws governing these practices, consumer complaints, consumer files, and other relevant materials to ascertain the following:

1. If the entity is a "debt collector" subject to the FDCPA (per step 1 of Module 1), determine whether it brings actions only in forums permitted by the FDCPA by evaluating:
   a. Whether it brings actions to enforce a security interest in real property securing the consumer's obligations only in the judicial district or similar legal entity in which such real property is located [12 CFR 1006.30(d)(1)]; and
   b. Whether it brings all other actions only in the judicial district or similar legal entity in which:
      i. The consumer signed the contract sued upon; or
      ii. The consumer resides at the time the action is commenced. (15 USC 1692i) [12 CFR 1006.30(d)(2)].

[Click&type]

2. If the entity is a "debt collector" subject to the FDCPA (per step 1 of Module 1), determine whether its litigation practices involve:
   a. Unfair or unconscionable means (15 USC 1692f) [12 CFR 1006.22(a)];
   b. False, deceptive, or misleading representations or means (15 USC 1692e) [12 CFR 1006.18(a)]; or
   c. Harassing, oppressive, or abusive conduct in violation of the FDCPA (15 USC 1692d) [12 CFR 1006.14(a)].

[Click&type]

3. Determine whether any of the entity's litigation practices are unfair, abusive, or deceptive. Refer to the examination procedures regarding UDAAPs for more information about the legal standards and the CFPB's approach to examining for UDAAPs. Examiners should consult with Headquarters to determine whether the applicable legal standards have been met before a UDAAP violation is cited.

[Click&type]

Administrative Wage Garnishment and Repossession

4. Determine whether the entity repossesses, disables, or threatens to repossess or disable property through nonjudicial action under any of the following circumstances:

   a. There is no present right to possession of the property claimed as collateral through an enforceable security interest;

   b. There is no present intention to take possession of the property; or

   c. The property is exempt by law from repossession or disablement.

   These determinations should be made, for example, when the entity participates in administrative wage garnishment as a means of collection on federal student loans or in the repossession of automobiles to collect on consumer loans secured by automobiles. If the entity takes such action, consult with Headquarters to determine if the entity is subject to 15 USC 1692f [12 CFR 1006.22] including its subparagraph (6) [(e)] and to assess whether the conduct raises any UDAAP concerns.

[Click&type]

Time-barred Debt

5. Determine whether the entity has policies and procedures related to debt for which the applicable statute of limitations has expired ("time-barred debt"), including how the entity identifies such debt and how it collects on such debt (if at all).

[Click&type]

6. Determine whether the entity sues or threatens to sue on time-barred debt. (12 CFR 1006.26(b)). Threats to sue on time-barred debt also may be analyzed under Module 2.

[Click&type]

7. If the entity demands payment on time-barred debt other than through litigation, determine if this is permitted by State law and determine what representations, if any, the entity makes in its written and oral communications with consumers regarding the time-barred nature of the

debt and its ability to sue on the debt. Communications in connection with time-barred debt also may be analyzed under Module 2.

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Education Loan Examination Procedures

Exam Date:	[Click&type]
Exam ID No.	[Click&type]
Prepared By:	[Click&type]
Reviewer:	[Click&type]
Docket #:	[Click&type]
Entity Name:	[Click&type]
Event #:	[Click&type]

After completing the risk assessment and examination scoping, examiners should use these procedures to conduct an education loan examination.

In addition, the CFPB expects every regulated entity under its supervision and enforcement authority to have an effective compliance management system appropriate for the size and complexity of the entity and adapted to its business strategy and operations. Examiners should also use the compliance management system review procedures to conduct review and testing of components of the supervised entity's compliance management system.[1]

These procedures include guidance for examination of all aspects of private education loans, examination of servicing practices in connection with all types of student loans, and examination of education-related credit. The examination procedures contain a series of modules, grouping similar requirements together. In many cases, the examination scope will focus on either origination or servicing. Depending on the scope, and in conjunction with the compliance management system and consumer complaint response review procedures, each examination will cover parts of one or more of the following modules. Module 7 – Examination Conclusions and Wrap-up is a required module and must be completed. The modules include:

1. Advertising, Marketing, and Lead Generation
2. Customer Application, Qualification, Loan Origination, and Disbursement
3. Student Loan Servicing
4. Borrower Inquiries and Complaints
5. Collections, Accounts in Default, and Credit Reporting
6. Information Sharing and Privacy
7. Examination Conclusion and Wrap-up

[1] A supervised entity must develop and maintain a sound compliance management system that is integrated into the overall framework for product design, delivery, and administration — that is, the entire product and service lifecycle. Ultimately, compliance should be part of the day-to-day responsibilities of management and the employees of a supervised entity; issues should be self-identified; and corrective action should be initiated by the entity. Supervised entities are also expected to manage relationships with service providers to ensure that these providers effectively manage compliance with Federal consumer financial laws applicable to the product or service being provided. *See CFPB Supervision and Examination Manual*, https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/.

Examination Objectives

1. To assess the quality of the regulated entity's compliance risk management systems, including internal controls and policies and procedures, for preventing violations of Federal consumer financial law in its private education lending business or student loan servicing business.

2. To identify acts or practices that materially increase the risk of violations of Federal consumer financial law in connection with private education lending or student loan servicing.

3. To gather facts that help determine whether a regulated entity engages in acts or practices that are likely to violate Federal consumer financial law in connection with private education lending or student loan servicing.

4. To determine, in consultation with headquarters, whether a violation of a Federal consumer financial law has occurred, and whether further supervisory or enforcement actions are appropriate.

Background

Education loans are essential for many students to obtain post-secondary education and are a significant part of the nation's economy. During the last decade, a greater proportion of Americans than ever pursued post-secondary education, and the costs to students have risen steadily. In light of the rising cost of obtaining post-secondary education, American consumers have increasingly turned to education loans to bridge the gap between personal and family resources and the total cost of education.

The Dodd-Frank Wall Street Reform and Consumer Act of 2010 (Dodd-Frank Act) gave the CFPB supervisory authority over a variety of institutions that may engage in private education lending or student loan servicing, including certain depository institutions and their affiliates, and nonbank entities in the private education lending market, as well as their service providers. The Dodd-Frank Act also gave the CFPB supervisory authority over "larger participants" of markets for consumer financial products, as the CFPB defines by rule, and their service providers (12 USC 5514(a)(1)(B)). On December 3, 2013, the CFPB issued a larger participant regulation for the student loan servicing market. The student loan servicing larger participant rule became effective March 1, 2014 and is codified in 12 CFR Section 1090.106. The rule provides that a nonbank covered person is a larger participant of the student loan servicing market if the person's servicing account volume, as defined by the rule, exceeds one million accounts.

Private Education Lending

The CFPB has supervisory authority over entities that originate private education loans. In broad terms, private education loans are consumer loans made directly to students and/or parents to fund undergraduate, graduate, and other forms of postsecondary education.[2] Private education loans are

[2] Under Section 140 of the Truth in Lending Act, 15 U.S.C. § 1650, a private education loan means a loan provided by a private education lender that:

offered by banks, non-profits, nonbanks, credit unions, state-affiliated organizations, and institutions of higher education, including both for-profit schools (also known as proprietary institutions) and non-profit schools. Private education loans are typically used to cover the shortfall between the cost of higher education programs and available financial aid, which can include scholarships, work-study, grants, and loans made by the U.S. Department of Education under the Federal Direct Loan Program (Direct Loans). Private education loans can also be used to finance the cost of attending institutions ineligible to participate in the Federal Direct Loan Program, and they may also be used by borrowers who are ineligible for Direct Loans.

In the past, private lenders were also able to provide borrowers with federally-guaranteed student loans under the Family Federal Education Loan Program (FFELP).[3] Under FFELP, lenders would use private capital to make FFELP loans. FFELP was eliminated under the Health Care and Education Reconciliation Act of 2010.[4] Today, most federal student loans are made directly through the U.S. Department of Education under the Direct Loan program pursuant to Title IV of the Higher Education Act.[5]

Unlike Direct Loans or FFELP loans, private education loans are not subsidized or insured by the federal government. Private education loan borrowers are not eligible for the benefits and protections offered to borrowers with federal student loans under Title IV of the Higher Education Act, including certain Income-Driven Repayment plans, although some private loan programs offer graduated repayment options and private lenders can choose to offer Income-Driven Repayment options. However, like federal education loans, private education loans are generally non-dischargeable in bankruptcy, unless the borrower can show undue hardship by not discharging the loans.

Private education loans are typically made through several different channels, including school referral to a preferred lender or set of lenders; a consumer independently shopping for a private lender; or through the school itself (institutional loans including deferred tuition or billing plans). For non-institutional loans, the school will typically certify enrollment, financial need levels, and academic progress to the lender. The school certification process enables school financial aid offices to gain an overview of student financing needs and propose appropriate mixes of aid sources to the student. School certification also enables lenders to ensure that private loan monies

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- Is not made, insured, or guaranteed under Title IV of the Higher Education Act of 1965;
- Is issued expressly for postsecondary educational expenses to a borrower, regardless of whether the loan is provided through the educational institution that the subject student attends or directly to the borrower from the private educational lender; and
- Does not include an extension of credit under an open end consumer credit plan, a reverse mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling.

[3] *See* Higher Education Act of 1965, Pub. L. No. 89-329, title IV, Sec. 421 (1965).

[4] *See* Health Care and Education Reconciliation Act of 2010, Pub.L. 111-152, title II, Sec. 2201 (2010).

[5] The vast majority of new federal student loans are originated by the Department of Education through the Federal Direct Loan Program. Up until 2018, a small share of new federal student loans was originated directly by higher education institutions through the Federal Perkins Loan Program, which provided low-interest loans to students with financial need. The authority to make new loans under the Perkins program lapsed in 2018, but borrowers must repay existing Perkins loan obligations.

are used to cover the student's cost of attendance.[6] Once a student takes out a private education loan, the money is typically distributed directly to the school which, in some cases, then disburses any overages to the borrower. Private education loans sometimes take non-traditional forms such as temporary credits and income share agreements.

Unlike federal loans, private education loan products are typically underwritten to a credit policy and priced based on risk. Private education lenders typically involve a cosigner because many younger students may not have a robust credit record. The private education loan product often has variable rates, based on LIBOR or Prime plus a margin.[7] The margin is risk-based, usually ranging from less than zero percent to over 13 percent. Private lenders often offer fixed rate loans as well. Like the variable rate loans, the pricing is risk-based.

Education loans are generally longer in duration than other forms of consumer credit, with the exact term varying based on the terms of the loan and the total amount borrowed. The term can be as short as five years and as long as 30 years.

Lenders use different underwriting methods relying on various measures of the borrower's ability to pay when originating private student loans. For loans to full-time undergraduate students, product approval and pricing are predominantly based on the credit of a cosigner. For graduate/professional students, part-time students, and employed students, pricing may be solely based on the student's credit history, if the student applies without a cosigner.

Like federal loans, private education loans have traditionally offered full deferment of payments during school, capitalizing on the accrued interest upon entering repayment. However, some private education loans require some form of in-school payment, from full principal-and-interest payments to interest-only payments to nominal fixed monthly sums (e.g., $25). Increasingly, lenders offer a range of loan products that enable borrowers to choose whether to make in-school payments or defer payments until the end of the post-school grace period. Whether payments are required during the in-school period can affect the loan's interest rate. Borrowers may acquire loans with different repayment terms – for example, they may choose to make interest-only payments on freshman and sophomore year loans, and then switch to deferred loans for subsequent years.

Student Loan Servicing

As a result of the Larger Participant Rule issued on December 3, 2013, the CFPB also has supervisory authority over a number of nonbank student loan servicers. Student loan servicers handle three main types of post-secondary education loans.[8] First, some entities service

[6] Lenders who market loans directly to borrowers often use school verification as an additional underwriting tool.

[7] Developments with the LIBOR will prompt many of these private education loans to transition to a different reference interest rate by June 2023.

[8] There are additional federal programs under Title IV that also authorize student loans. For example, one such program finances loans made directly by certain post-secondary education institutions through their financial aid offices. *See* 20 USC Section 1087aa. Another program offers grants to those who pledge to become teachers. If the recipients do not become teachers, then the disbursed

outstanding loans made under FFELP. These loans are either serviced by the loan holders themselves or serviced pursuant to contracts with the loan holders. Second, the student loan servicing market includes Direct Loans originated by the U.S. Department of Education and some FFELP loans that were purchased by the Department of Education. Direct Loans and government-owned FFELP loans are serviced by entities that contract with the Department of Education pursuant to Title IV of the Higher Education Act of 1965. Third, some entities service private student loans, made without federal involvement. Private student loans are usually serviced either by the originating institutions or by other third-party entities. The same entities awarded servicing contracts for Direct Loans and government-owned FFELP loans may also service legacy Commercial FFELP loans and private student loans.

Servicing, in general, is the day-to-day management of a borrower's loans. Servicers' duties typically include maintaining borrowers' account records, sending periodic statements advising borrowers about amounts due and outstanding balances, receiving payments from borrowers and allocating them among various loans and loan holders, reporting to creditors or investors, providing borrowers with information and facilitating enrollment in a range of benefits and protections (including loan forgiveness programs), and attempting default aversion activities for delinquent borrowers. Servicers receive scheduled periodic payments from borrowers pursuant to the terms of their loans and apply the payments to principal and interest and other fees as may be required pursuant to the terms of the loans or of the contracts governing the servicers' work. Typically, student loan servicing also involves maintaining records of payments and balances and answering borrowers' questions. Servicers also make borrowers aware of alternative payment arrangements such as income-driven payment plans or deferments, and process requests or applications for said payment arrangements. Servicers may provide other services to help prevent default as well.

Student loan servicers also play a role while students are still in school. A borrower may receive multiple disbursements of a loan, or multiple loans, over the course of one or more academic years. Repayment of the loans may be deferred until some future point, such as when the student finishes post-secondary education or separates from school prior to completion of a program of study. A student loan servicer will maintain records of the amount lent to the borrower and of any interest that accrues; the servicer also may send statements of such amounts to the borrower.

Private education lenders and student loan servicers—whether banks or nonbanks—must comply with Federal consumer financial laws to the extent that the law applies to the particular entity and its activities:

- The Truth in Lending Act (TILA) and its implementing regulation, Regulation Z, generally impose requirements on lenders for certain private education loans, including disclosure of terms and interest rates. They also impose requirements on lenders regarding advertising of these terms, crediting of payments, and treatment of credit balances with respect to closed-end consumer credit transactions. In 2009, Regulation Z was amended following the passage of the Higher Education Opportunity Act (HEOA) to add disclosure and timing requirements that

funds are converted from grants to loans. *See* 20 USC Section 1070g-2.

apply specifically to creditors making private education loans as defined by the regulation.[9] TILA, as amended by HEOA, also bans prepayment penalties on private education loans.[10]

- The Electronic Funds Transfer Act (EFTA) and its implementing regulation, Regulation E, impose requirements if the loan servicer of the education loan within the scope of coverage obtains recurring electronic payments from borrowers.

- The Fair Debt Collection Practices Act (FDCPA) governs the activities of debt collectors.

- The Fair Credit Reporting Act (FCRA), and its implementing regulation, Regulation V, require entities that furnish information to consumer reporting agencies to have reasonable written policies and procedures to ensure the accuracy and integrity of information they furnish to consumer reporting agencies. FCRA and Regulation V also require that lenders give risk-based pricing notices when, based on consumer reports, they give borrowers materially less favorable loan terms than a substantial proportion of other consumers to which they lend. FCRA and Regulation V also put restrictions on the use and dissemination of various types of consumer information. In addition, when a consumer reporting agency notifies a furnisher of a consumer dispute, FCRA and Regulation V require the furnisher to reinvestigate the dispute. They also require furnishers to handle disputes submitted directly to the furnisher by consumers about information the lender furnished to the consumer reporting agency. They also place limits on obtaining or using medical information when determining eligibility for a student loan. Additionally, the FCRA provides consumers the right to request that a financial institution remove a reported default on a private education loan if the financial institution offers certain qualifying loan rehabilitation programs and the consumer meets the program requirements.

- The Equal Credit Opportunity Act (ECOA) makes it unlawful to discriminate against any applicant for credit with respect to any aspect of a credit transaction:

  - On the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, marital status, or age (provided the applicant has the capacity to 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.[11]

[9] Notably, the Regulation Z definition of private education loans is narrower that TILA's. *See* 12 CFR § 1026.46 (b)(5). Among other differences, it excludes tuition billing plans and short-term credit offered by the postsecondary institution itself. While these excluded products are not required to comply with the disclosure and timing regime described here, they are private education loans for the purposes of assessing the Bureau's supervisory authority under Dodd-Frank.

[10] 15 USC 1650(e).

[11] The Consumer Credit Protection Act (the Act), 15 USC 1601 *et seq.*, is the collection of federal statutes that protects consumers when applying for or receiving credit. The Act includes statutes that have dispute rights for consumers, such as the Fair Credit Reporting Act (FCRA). The Equal Credit Opportunity Act (ECOA) prohibits discriminating against an applicant who has exercised a dispute right pursuant to one of the statutes outlined in the Act.

Creditors also are prohibited from making any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.

In addition, ECOA and Regulation B require lenders to provide adverse action notices to consumers.

- The Gramm-Leach-Bliley Act (GLBA), through its implementing regulation, Regulation P, requires entities to provide privacy notices and limits information sharing in particular ways.

To carry out the objectives set forth in the **Examination Objectives** section, the examination process also will include assessing other risks to consumers that are not governed by specific statutory or regulatory provisions. These risks may include potentially unfair, deceptive, or abusive acts or practices (UDAAPs) with respect to lenders' or servicers' interactions with consumers.[12] Collecting information about risks to consumers, whether or not there are specific legal guidelines addressing such risks, can help inform the CFPB's policymaking. Generally, the standards the CFPB will use in assessing UDAAPs are:

- A representation, omission, act, or practice is deceptive when:
  1. The representation, omission, act, or practice misleads or is likely to mislead the consumer;
  2. The consumer's interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and
  3. The misleading representation, omission, act, or practice is material.
- An act or practice is unfair when:
  1. It causes or is likely to cause substantial injury to consumers;
  2. The injury is not reasonably avoidable by consumers; and
  3. The injury is not outweighed by countervailing benefits to consumers or to competition.
- An abusive act or practice:
  1. Materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or
  2. Takes unreasonable advantage of –
     - A lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;

[12] Section 1036 of the Dodd-Frank Act, PL 111-203 (July 21, 2010).

- ○ The inability of the consumer to protect its interests in selecting or using a consumer financial product or service; or
- ○ The reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

Refer to the examination procedures regarding UDAAPs for more information about the legal standards and the CFPB's approach to examining for UDAAPs.

The particular facts in a case are crucial to the determination of UDAAPs. As set forth in the **Examination Objectives** section, examiners should consult with Regional management and headquarters to determine whether the applicable legal standards have been met before a violation of any Federal consumer financial law is cited, including a UDAAP violation.

Role of Educational Entities in Higher Education Finance

Many schools offer their students the opportunity to finance their post-secondary educational expenses through various types of internal or co-branded programs and products. These programs may include private student loans, payment plans, temporary credits, income-share agreements, and other agreements.

The CFPB's supervisory authority extends to these school entities and their affiliates when they offer or provide private education loans as defined in Section 140 of the Truth in Lending Act, 15 U.S.C. § 1650. Similarly, the CFPB's supervisory authority extends to some entities that act as third-party service providers to institutions that originate private education loans and are themselves subject to the Bureau's supervisory authority.[13]

General Considerations

Completing the following examination modules, as applicable, will allow examiners to develop a thorough understanding of a regulated entity's practices and operations. To complete the modules, examiners should obtain and review, as applicable, each entity's:

- Organizational charts and process flowcharts;
- Board minutes, annual reports, or the equivalent to the extent available;
- Relevant management reporting;
- Policies and procedures;
- Rate sheets;
- Fee sheets;

[13] 12 USC 5481(26)

- Loan applications, loan account documentation, notes, disclosures, and all other contents of loan underwriting and servicing of account files;
- Underwriting guidelines;
- Loan servicing contracts;
- Loan transfer policies and procedures;
- Payment posting and allocation policies and procedures;
- Policies and procedures relating to alternative repayment plans, including income-based repayment plans, deferment, forbearance, and public service loan forgiveness;
- Operating checklists, worksheets, and review documents;
- Relevant computer program and system details;
- Service provider due diligence and monitoring procedures and service provider contracts;
- Compensation policies;
- Historical examination information;
- Audit and compliance reports;
- Management's responses to findings;
- Training programs and materials;
- Advertisements and co-marketing or co-branding agreements; and
- Complaints.

Finally, examiners should obtain access or a walkthrough of the creditor's online origination interface, the creditor's online applications, a walkthrough of the origination process to test the timeliness and completeness of disclosures, and access to the systems used for the servicing and collection of payments for education loans, including any consumer interfaces.

Depending on the scope of the examination, examiners should perform transaction testing using approved sampling procedures, which may require the use of a judgmental or statistical sample. Examiners also should conduct interviews with management and staff to determine whether they understand and consistently follow the policies, procedures, and regulatory requirements applicable to private education lending; manage change appropriately; and implement effective controls. Examiners also should consider observing customer interactions if consumer complaints or document reviews indicate potential concerns.

Module 1: Advertising, Marketing, and Lead Generation

Examiners analyzing private student loan origination should engage in several steps to assess potential violations of law in connection with the advertising or marketing of private education loans. Examiners should begin the process by understanding how private education loans are developed and marketed to consumers. This can be accomplished through a review of the private education lender's policies, procedures, and internal controls. Examiners should also interview the entity's management to determine the process used to verify that marketing and advertising materials comply with consumer protection laws. Examiners should evaluate representative samples of all marketing and advertising materials, including print, electronic, and other media, such as the Internet, email and text messages, telephone solicitation scripts, agreements and disclosures for the product(s) and service(s). Examiners should also understand the extent of any relationships that the private education lender has with service providers (including brokers, agents, or lead generators) to advertise, offer, or provide loans.

Truth in Lending Act (TILA) and Implementing Regulation Z

Regulation Z imposes general advertising requirements applicable to all closed-end loans. Regulation Z has additional requirements applicable to certain private education lending, including additional disclosure requirements, prohibitions on co-branding an educational institution with the private education lending advertising material, and prohibitions on statements that an educational institution endorses the lender's loans.[14] Additionally, Regulation Z includes model forms that creditors may use which vary depending on the step of the origination process.

1. Assess compliance with the advertising requirements in Regulation Z for closed-end loans. (12 CFR 1026.24)

[Click&type]

2. Determine whether the advertisements for credit are clear and conspicuous and state specific credit terms that actually are, or will be, arranged or offered by the lender. (12 CFR 1026.24(a) and (b))

[Click&type]

3. Determine whether the lender is using "triggering terms," and, if so, that additional requirements are satisfied. (12 CFR 1026.24(d))

[Click&type]

[14] *See* Note 9.

4. In connection with solicitations[15] for private education loans as defined by regulation, assess compliance with private education loan specific disclosure requirements. (12 CFR 1026.47). Disclosures are required on or with the solicitation and must include:

   a. The interest rates (or range of rates) at the time of the solicitation, and a statement, if applicable, that the interest rate will depend on the consumer's creditworthiness; whether the rate is fixed or variable, and certain additional information regarding interest rates than may increase after consummation;

   b. Fees and default or late payment costs;

   c. Repayment terms;

   d. Cost estimates;

   e. Eligibility;

   f. Alternatives to private education loans;

   g. Rights of consumers; and

   h. Self-certification information.

[Click&type]

5. Assess the creditor's advertisements and marketing materials for compliance with the Regulation Z prohibition on co-branding and institutional endorsement requirements for covered private education loans. (12 CFR 1026.48)

[Click&type]

6. Determine whether the creditor has established a preferred lender arrangement with a covered educational institution. For each preferred lender arrangement determine whether the creditor met the requirements of 12 CFR 1026.48(f) to provide the covered educational institution with the information required under 12 CFR 1026.47(a)(1)-(5) for each type of covered private education loan planned to be offered by the preferred lender for students attending the covered educational institution.

[Click&type]

[15] *See* 12 CFR 1026.46(d)(1)(i). For the purposes of the disclosures for private education loans, the term solicitation means an offer of credit that does not require the consumer to complete an application. A *firm offer of credit* as defined in section 603(l) of the Fair Credit Reporting Act (15 USC 1681a(l)) is a solicitation.

Equal Credit Opportunity Act (ECOA) and Implementing Regulation B

1. Assess the private education lender's compliance with ECOA's marketing and advertising requirements, including the prohibition against discrimination or discouragement on a prohibited basis. Examiners should complete the advertising portion of the ECOA chapter of the *CFPB Supervision and Examination Manual*.

[Click&type]

2. Assess the methods used by the private education lender to solicit, market to, or advertise to potential applicants for private education loan products, including but not limited to identifying any scripts. Determine whether there are any differences in the entity's solicitation or marketing efforts by lines of business, channel, loan product, particular educational institution, type of educational institution, or geography.

[Click&type]

3. Assess the factors used by the private education lender to determine which potential applicants receive solicitations for private education loan products, as well as the terms and conditions of those solicitations.

[Click&type]

4. Assess the marketing prospect databases used by the private education lender to determine which potential applicants receive solicitations for private education loan products, including the factors used by the marketing prospect database.

[Click&type]

5. Assess the private education lender's guidelines, policies, procedures, and standards regarding making private education loan product recommendations, referring a loan applicant to a different loan product than first requested (including parent or co-signer loan products), or referring a loan applicant to subsidiaries, affiliates, or different lending channels within the entity.

[Click&type]

Service Provider Business Arrangements (e.g., Agents, Brokers, or Lead Generators)

Private education lenders may have arrangements with service providers to perform advertising and marketing. Examiners should assess whether the private education lender is monitoring its service provider relationships and activities for compliance with consumer regulations. Examiners' review of service provider arrangements should include a review of the private education lender's internal policies, procedures, service provider agreements, compensation programs, and training and promotional materials, including telemarketing scripts.

1. Determine whether the private education lender monitors the training of the service provider employees who market or promote private education loan products to ensure that those employees are trained to comply with applicable law, including to avoid making statements or taking actions that might be unfair, deceptive, or abusive.

[Click&type]

2. Determine whether the private education lender reviews a service provider's primary interface with consumers, such as reviewing recorded telephone calls or transcripts of online communication.

[Click&type]

Other Risks to Consumers

1. Determine whether the private education lender's advertisements make representations about future potential employment or earnings opportunities.

[Click&type]

2. Determine whether the private education lender describes the loans as "government loan programs," "government-supported loans," or otherwise endorsed or sponsored by a federal or state government entity.

[Click&type]

3. Determine whether the private education lender uses terms such as *pre-approved*, *guaranteed*, or *fixed rate* on promotional material, and, if so, whether the lender discloses any limitations, conditions, or restrictions on the offer.

[Click&type]

4. Determine whether the private education lender has established a compensation structure that rewards employees based on the dollar value or number of private education loans originated.

[Click&type]

Module 2: Application, Qualification, Loan Origination and Disbursement

Examiners analyzing private student loan origination should obtain and review a sample of applications (including scripts for telephone applications and screen captures of online applications), policies and procedures, training materials, and audits pertaining to the taking of applications, to ensure that the private education lender has controls to comply with consumer protection regulations. If possible, examiners should observe the interaction between consumers and the private education lender's loan officers. Examiners should also review loan files and conduct loan officer interviews to determine whether the officers understand the policies, procedures, and regulatory requirements applicable to private education lending, and whether the officers are consistently applying applicable policies and procedures. If consumer complaints or document review indicates potential violations in the application, qualification, origination, or disbursement process, examiners may also conduct interviews of consumers and ask questions relevant to each topic below.

Customer Application, Qualification, and Underwriting

TILA and Implementing Regulation Z

In addition to the Regulation Z requirement that private education lenders provide TILA closed-end disclosures prior to loan consummation under 12 CFR 1026.17 and .18, lenders also have three additional disclosure requirements for certain private education loans.[16] Specific disclosures are required for the following stages in the loan origination process: application, approval, and final. Additionally, TILA provides customers with a right of rescission after the consummation of private education loans.

1. Assess the private education lender's compliance with Regulation Z general disclosure requirements for closed-end credit. (12 CFR 1026.18). TILA disclosures must, among other things, be clear and conspicuous and made prior to the consummation of the loan. In addition, certain information must be disclosed, including:

    a. Creditor;

    b. Amount financed;

    c. Finance charge;

    d. Annual Percentage Rate (APR);[17]

[16] *See* Note 9.

[17] NOTE: When verifying Annual percentage rate (APR) accuracies, use the Office of the Comptroller of the Currency's APR calculation model or other calculation tool acceptable to the CFPB.

e. Variable Rate;

f. Payment schedule including amount, timing and number of payments;

g. Total of payments;

h. Demand feature; and

i. Late payment.

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2. Assess the private education lender's compliance with Regulation Z general disclosure requirements for variable rate loans. (12 CFR 1026.18(f))

[Click&type]

3. Assess the private education lender's compliance with Regulation Z private education disclosure requirements, for private education loans as defined under the regulation. (12 CFR 1026.47). Examiners should verify that each disclosure was provided at the appropriate stage of the lending process, and that all information required by the respective disclosure was included. Review the TILA chapter in the *CFPB Supervision and Examination Manual* for a full list of each item required for each of the four private education disclosures.[18]

[Click&type]

4. Application Disclosures – Lenders must provide application disclosures on or with an application for a covered private education loan. If the application is taken over the phone, the creditor may, at its option, provide the application disclosure orally. If the creditor does not provide an oral disclosure, the application disclosure must be provided to the consumer or placed in the mail within three business days[19] unless the lender denies the application or approves the loan and instead provides the approval disclosure within three business days. Content of the application is the same as the solicitation disclosure. (12 CFR 1026.46(d)(1)). *See* Module 1's discussion of Solicitation Disclosures for more information.

[Click&type]

5. Approval Disclosures – Lenders must provide approval disclosures prior to consummation of the covered private education loan, on or with any notice of approval provided to the consumer. (12 CFR 1026.46(d)(2)). If the lender provides an approval notice to the consumer in person, the approval disclosure must be provided concurrently. If notice of approval is communicated over the phone, the private education lender must place the approval disclosure in the mail within three business days. Content of the approval disclosure must include:

[18] Solicitation Disclosures are covered in Module 1.

[19] The lender satisfies this requirement once the disclosure is mailed to the consumer.

a. Interest rate information;

b. Fees and default or late payment costs;

c. Repayment terms;

d. Alternatives to private education loans; and

e. Rights of the consumer.

[Click&type]

6. Final Disclosure – Lenders must provide a final disclosure after the consumer accepts the loan and prior to disbursement (*see* #14, below). Content of the final disclosure must include:

   a. Interest rate information;

   b. Fees and default or late payment costs;

   c. Repayment terms; and

   d. Cancellation right (*see* #14 below).

[Click&type]

7. Assess, as applicable, the private education lender's compliance with the Regulation Z requirement to obtain a signed self-certification form, attesting to the cost of attendance for the period covered by the covered private education loan and amount of financial assistance, other than the private education loan, for that period. (12 CFR 1026.48(e)). The U.S. Department of Education has published a specific form that must be used by the lender.

[Click&type]

8. Determine whether the private education lender has a process to verify the accuracy and completeness of signed self-certification forms or uses other procedures (such as verifying students' financial aid need with the school financial aid office) to determine that covered private education loan amounts do not exceed financial need. (12 CFR 1026.48(e))

[Click&type]

9. Assess the private education lender's compliance with Regulation Z term change and re-disclosure provisions. (12 CFR 1026.48(c)). Examiners should request loan files for covered private education loans where there was a change in terms, specifically the rate or terms of the loan under 12 CFR 1026.48(c)(4)(ii), to verify compliance with these provisions.

[Click&type]

10. Determine whether the private education lender provided a new TILA disclosure if the lender changed the consumer's interest rate, payment, or term to accommodate a specific request from the consumer.

[Click&type]

11. If the private education lender changed loan terms, and the change was not in connection with a specific request from the consumer, assess compliance with the exemptions to the change prohibition not requiring re-disclosure under 12 CFR 1026.48(c)(3).

[Click&type]

12. Determine whether the lender withdrew a previously approved offer, or terms, for a reason other than those permitted under the regulation, or for a reason that was not a direct request from the consumer.

[Click&type]

13. Assess the private education lender's compliance with Regulation Z requirement that the consumer's application and offer must remain open for 30 days. (12 CFR 1026.48(c)(1))

[Click&type]

14. Assess the private education lender's compliance with Regulation Z requirement that consumers be allowed a right to cancel the covered private education loan. (12 CFR 1026.48(d)). Included in the final disclosure, the lender must provide customers with statements that:

    a. The consumer has the right to cancel the loan, without penalty, at any time before 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 state that the consumer may cancel by that date.

    b. The loan proceeds will not be disbursed until the cancellation period expires.

    c. The method or methods by which the consumer may cancel; if the creditor permits cancellation by mail, the statement must specify that the consumer's mailed request will be deemed timely if placed in the mail not later than the cancellation date specified on the disclosure.

[Click&type]

15. Assess compliance with the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 USC 7001 *et seq*.). (The E-Sign Act does not mandate that lenders or consumers use or accept electronic records or signatures. It permits lenders to satisfy any statutory or regulatory disclosure requirements by providing the information electronically after making

certain disclosures, obtaining the consumer's affirmative consent, and obtaining a reasonable demonstration that the consumer can receive and retain disclosures electronically.)

[Click&type]

ECOA and Implementing Regulation B

Eligibility, Underwriting, and Pricing

1. Determine whether the entity utilizes cohort default rates (CDR) or any other educational institution-specific variable (such as graduation rate), in determining borrower eligibility, underwriting and/or pricing of private education loans.

[Click&type]

2. Assess the entity's business justification for utilizing CDR or any educational institution-specific variables and determine whether the entity conducts an analysis to support its business justification.

[Click&type]

3. Determine whether the lender maintains any partnership, referral relationship, or preferred lender agreement with any educational institution regarding the entity's private education lending programs. Assess any financial or compensation arrangements. To the extent the entity distinguishes among or categorizes educational institutions, assess each such category.

[Click&type]

4. Assess the entity's procedures, guidelines, and policies for identifying new educational institutions at which to make its private education loan products available. Assess eligibility standards, the eligibility monitoring process, and procedures for the elimination of ineligible educational institutions.

[Click&type]

5. Assess the entity's underwriting and pricing guidelines, policies, procedures, and standards for each private education loan product offered during the review period. If the underwriting or pricing guidelines, policies, or procedures differ by lines of business, channel, divisions or geography, assess the differences.

[Click&type]

6. Assess any credit scoring systems used in the underwriting and/or pricing processes. If the system is proprietary, assess all variables that in any way influence the score, including the weight of each variable in determining the score, and documentation validating the system.

[Click&type]

7. Determine whether the entity used an automated underwriting system (AUS) in underwriting private education loans and assess how it was used during the review period. Determine all variables that in any way influence the AUS decision or score. For each product, determine the percentage of private education loan applications underwritten with the assistance of each AUS, and the percentage of private education loans underwritten without using any AUS.

[Click&type]

8. Assess differences between rate sheets used for pricing private education loan products by line of business, channel, division, or geographical area, as well as rate sheets that are specific to a particular educational institution or a particular type of educational institution.

[Click&type]

9. Determine whether the underwriting and/or pricing guidelines, policies, procedures, or standards differ in any way based on the applicants' or the co-applicants' race, color, religion, national origin, sex, sexual orientation, gender identity, marital status, age (provided the applicant has the capacity to contract), receipt of income from any public assistance program, or other prohibited basis. Include any consideration of age in the credit process, including but not limited to products with age restrictions or incorporation of age into a model or credit decision.

[Click&type]

10. Assess any underwriting or pricing criteria related to a specific educational institution or type of educational institution.

[Click&type]

11. Assess any differences in underwriting or pricing of products designed for individual institutions or different institution types (for instance, university, college, undergraduate, graduate, two-year, certificate).

[Click&type]

12. Assess the entity's guidelines, policies, procedures, and standards for making overrides or exceptions in the underwriting and/or pricing of a private education loan. Determine if overrides or exceptions are capped at a certain percentage or number. Determine whether exception reporting is conducted and assess the quality of the report and the review process.

[Click&type]

13. Assess the entity's guidelines, policies, procedures, and standards for providing adverse action notices to private education loan applicants. Include the procedures currently followed when the entity takes adverse action on oral or written private education loan applications and requests for preapproval submitted by consumers.

[Click&type]

14. Determine how the entity links variables used in underwriting into adverse action reasons.

[Click&type]

15. Assess the circumstances under which the entity requires an applicant to obtain a guarantor or co-signer for a private education loan.

[Click&type]

16. Determine whether the private education lender refrains from collecting information on the race, color, religion, national origin, or sex of the applicant or any other person in connection with a loan transaction unless it is for purposes of a "self-test."

[Click&type]

Other Risks to Consumers

1. Assess the private education lender's process for approving and communicating approval of private education loans.

[Click&type]

2. Determine whether the private education lender approves loans in a timely manner, allowing borrowers to have full use of a 30-day firm offer period.

[Click&type]

3. Determine whether the private education lender discloses that optional or related products and services that are offered simultaneously with credit—such as insurance, credit protection, and consumer report update services—are not required to obtain credit and are not considered in decisions to grant credit.

[Click&type]

4. Determine the circumstances under which the private education lender requires students to add a co-signer; and, if applicable, the consequences that flow from the addition of a co-signer, including whether the borrower is provided accurate information about such consequences.

[Click&type]

5. Determine whether the lender provides co-signers with information and disclosures of the co-signers' rights and responsibilities associated with signing the private education loan.

[Click&type]

6. Determine whether a loan product is a private education loan as defined by Regulation Z, and, if so, the supervised entity's compliance with TILA's prohibition on the use of prepayment penalties for private education loans. (*See* 15 U.S.C. 1650(e))

[Click&type]

7. Determine whether a supervised entity participates in Federal Student Aid programs and, if so, how the supervised entity communicates with and advises borrowers regarding the availability of Federal Aid.

[Click&type]

Disbursement Processing

Regulation Z

1. Determine whether the private education lender disbursed funds at least three business days after the consumer received the disclosures required by section 1026.47(c) for certain private education loans.[20] (12 CFR 1026.48(d))

[Click&type]

Other Risks to Consumers

1. Assess the private education lender's cancellation policy in the event that a borrower consummates a loan and subsequently has less or no need for the private education loan.

[Click&type]

2. Determine whether the lender is fully disbursing the principal amount of the loan disclosed to the customer, whether in a lump sum or in accordance with the educational institution's disbursement requirements (e.g., half each semester).

[Click&type]

3. Determine whether the lender places limitations on the student's use of private education loan funds (e.g., a lender establishes a requirement that funds borrowed to pay for books or other educational expenses are used solely at a specific retailer).

[Click&type]

4. Determine whether the lender has arrangements that require or pressure students to accept disbursement of education funds to a prepaid card or other required payment device; and, if so, any attendant fees and requirements are fully disclosed to the consumer.

[20] *See* Note 9.

[Click&type]

Module 3: Student Loan Servicing

Student loan servicing portfolios may include: private education loans; legacy loans from the discontinued FFEL program; loans made by colleges and universities, including loans made under the Perkins loan program (institutional loans); and/or Direct Loans.[21] Private education lenders may service their own accounts, or contract with servicers who specialize in managing education loans to service their portfolios. Only servicers under contract with the Department of Education may service Direct Loans, but contractors that service loans for the Department of Education may also service private education loans or FFELP loans from other loan holders. Servicing requirements and borrower protections may differ depending on whether an education loan is a private education, FFELP, or Direct loan; however, servicers generally adopt consistent approaches to common servicing functions across loan types.

Refer to the Department of Education's website for more information on various loan characteristics, repayment plans, benefits, etc., relating to federal loans.

During a student loan servicing examination, examiners should review policies and procedures, including policies and procedures governing the oversight of subcontractors and service providers, as well as samples of servicing files and any relevant portions of IT systems responsible for servicing education loans. Examiners should review loan records on servicers' systems, copies of written communications provided to borrowers, call recordings, websites and online accounts using test logins, and any other relevant documentation. Examiners also should review the servicer's complaint files to identify patterns of issues or significant concerns. Unless otherwise specified, examiners should consider the following as it applies to the servicing of all student loans, including private loans and federal loans (FFELP, Direct Loans, Perkins loans, etc.).

Electronic Fund Transfer Act (EFTA) and Implementing Regulation E

1. Determine whether the servicer obtains appropriate authorization for preauthorized electronic fund transfers (EFTs). *See* 12 CFR 1005.10(b); CFPB Compliance Bulletin 2015-06.

[Click&type]

2. Determine whether the servicer provides a copy of the authorization to the consumer. *See* 12 CFR 1005.10(b); CFPB Compliance Bulletin 2015-06.

[Click&type]

[21] There are additional federal programs under Title IV that also authorize student loans. For example, one such program offers grants to those who pledge to become teachers. If the recipients do not become teachers, then the disbursed funds are converted from grants to loans. *See* 20 USC Section 1070g-2.

3. Determine whether the servicer conditions an extension of credit to a consumer on the consumer's repayment by preauthorized EFTs, whether initially or upon default. *See* 15 U.S.C. § 1693k(1); *cf.* 12 CFR 1005.10(e)(1).

[Click&type]

Truth In Lending Act (TILA) and Implementing Regulation Z

1. Assess compliance with Regulation Z – Treatment of Credit Balances. Refer to the examination procedures regarding Regulation Z, 12 CFR 1026.21, for more information.

[Click&type]

Adverse Action Notices (Fair Credit Reporting Act (FCRA) and Equal Credit Opportunity Act (ECOA))

1. Assess the servicer's compliance with FCRA, 15 USC 1681m, pertaining to notices required when a servicer takes adverse action with respect to any borrower on the basis of information in a consumer report.

[Click&type]

2. Assess the servicer's compliance with Regulation B, 12 CFR 1002.9, pertaining to notices required when a servicer takes adverse action relating to applications for credit, as defined in 12 CFR 1002.2(f) and (j).

[Click&type]

3. Assess compliance with Regulation B, 12 CFR 1002.12(b) pertaining to retaining records of applications for credit.

[Click&type]

Other Risks to Consumers

As stated in the Background section above, the examination process will include assessing other risks to consumers, including potentially unfair, deceptive, or abusive acts or practices (UDAAPs) with respect to servicers' interactions with consumers. Please refer to the examination procedures regarding UDAAPs for information about the legal standards and the CFPB's approach to examining for UDAAPs. The particular facts and circumstances in a case are crucial to the determination of UDAAPs. To the extent the Department of Education's contracts or regulations instruct federal student loan servicers to service federal loans in a given manner, adherence to those instructions may be relevant but not determinative as the Bureau reviews for risks to consumers and the prohibition against UDAAPs.

While not determinative of whether a UDAAP violation occurred at any one servicer, depending on the particular facts and circumstances, the following may potentially assist examiners in evaluating for potential UDAAPs, risks to consumers, or compliance management system concerns, and/or help identify when further follow-up requests may be appropriate. The particular facts and circumstances in a case are crucial to the determination of UDAAPs, and this is not an exhaustive list of the facts and circumstances that might be relevant. As set out in the Examination Objectives section and consistent with the Bureau's supervisory process, examiners should consult with Headquarters to determine whether the applicable legal standards have been met before a UDAAP violation is cited.

Payment Processing

Student loan borrowers often take out more than one loan to cover the total expense of obtaining an education. Servicers typically group those loans into one servicing account, meaning that borrowers get one billing statement and have one online login even though they might have several independent loan obligations. The borrower is billed a regular monthly payment that is the aggregate of the monthly payments owed for each loan. When a borrower pays more (overpayment) or less (underpayment) than that monthly payment, the servicer allocates the payment among the borrower's various loans according to certain default allocation methodologies. Borrowers also have the ability to choose how the servicer allocates a payment among the borrower's loans.

For both federal and private loans, when a borrower makes an overpayment that is high enough to cover the current month's payment, as well as one or more future months' payment, servicers may offer an option to advance the due date, either automatically or upon request by the borrower. For example, a borrower making a February payment that would also cover the March payment may have the next due date advanced to April. However, borrowers have a choice as to whether an overpayment should advance the due date or not.

1. Determine whether payments from borrowers, cosigners, and third parties received by the servicer are accurately credited to the appropriate account as of the date of receipt. If not, determine whether the delayed crediting results in a late fee, additional interest accrual, furnishing of negative credit information, or loss of any borrower or cosigner benefit.

[Click&type]

2. Determine whether and how the servicer allows borrowers, cosigners, or third parties to provide instructions on how to allocate underpayments and overpayments among multiple loans in one account, including whether and in what circumstances the servicer allows borrowers to provide standing instructions.

[Click&type]

3. Assess whether the servicer clearly and prominently discloses the ability to provide instructions on how to allocate underpayments and overpayments among multiple loans in an

account. Such disclosures may be found, for example, on the servicer's website or billing statement.

[Click&type]

4. Assess the ease of using available methods for providing instructions, including over the phone, by mail, online, and through mobile application.

[Click&type]

5. Assess whether the servicer consistently honors payment instructions, and the extent to which the servicer honors borrower, co-signer, or third-party instructions provided after a payment is received.

[Click&type]

6. Assess the servicer's default methodology for allocating overpayments among multiple loans in an account and the resulting borrower consequences. Also, assess the servicer's default methodology for allocating underpayments among multiple loans in an account and the resulting borrower consequences, particularly for loans with late fees and borrowers in late-stage delinquency.

[Click&type]

7. Determine whether the servicer clearly and prominently discloses a basic overview and/or detailed description of the default allocation methodologies for payment allocation, and/or whether the servicer discloses the manner in which the default methodologies will impact the borrower's loan balances, total interest expense, etc. Such disclosures may be found, for example, on the servicer's website or billing statement.

[Click&type]

8. When the servicer advances a due date automatically upon receipt of an overpayment that is high enough to cover the current month's and one or more future months' monthly payments, determine whether the servicer advances the due date when a borrower submits an overpayment. If so, determine whether the servicer allows the borrower to opt out, including whether the borrower may opt out on an ongoing basis. Where the borrower provides instruction regarding whether to advance the due date after an overpayment is received, determine whether the servicer honors the instruction.

[Click&type]

9. Where applicable, determine whether disclosures explaining the ability to opt out of advancing the due date and the consequences of advancing or not advancing the due date are clear and prominent, including with respect to the additional interest that accrues when borrowers do not continue making monthly payments and any potential effect nonpayment may have on

eligibility for benefits and protections to which a borrower may be entitled. Such disclosures may be found, for example, on the servicer's website or billing statement.

[Click&type]

10. Determine whether the servicer treats multiple underpayments within a billing cycle that, when combined, equal the full monthly payment differently from a single payment equal to the monthly payment.

[Click&type]

11. Determine whether, and under what circumstances, the servicer recalculates payments, repayment schedules, or amortization schedules for borrowers' loans, and assess any applicable notices to the borrower.

[Click&type]

Fees

1. Determine whether the servicer charges any fees (e.g., late fees, payment fees, etc.), and, if yes, whether such fees are permissible under the relevant promissory note and consistent with any requirements related to fees established by the holder of the loan.

[Click&type]

2. Determine whether fees or other charges were assessed when the servicer received payments on or before the applicable due date, including during any applicable grace period.

[Click&type]

3. Determine whether the servicer charges late fees on a per-loan basis at a fixed-dollar amount, including a minimum fixed-dollar fee per loan, such that total late fee amounts change depending on how an underpayment is allocated.

[Click&type]

4. Determine whether the servicer charges a borrower or cosigner a late fee more than once with respect to a single late payment (including late fee pyramiding).

[Click&type]

5. Determine whether the servicer charges a borrower or cosigner any fee to modify, defer, forbear, renew, extend, or amend a loan, and review communications and disclosures relating to those fees.

[Click&type]

6. Determine whether and how the servicer charges fees for processing payments, including any fees for a borrower to submit payment by phone or for expedited payment processing, and review communications and disclosures relating to those fees.

[Click&type]

Billing Statements and Payment Histories

1. Determine whether the information provided on billing statements and/or borrowers' online accounts is accurate, clear, and understandable, and whether relevant information borrowers need on a monthly basis to make informed decisions about managing their loan obligations is missing.

[Click&type]

2. Determine whether the billing statement and borrowers' online accounts provide information on individual loan obligations, at the account-level, or using sub-groups of loans.

[Click&type]

3. Determine whether the billing statement and online account include the total accrued interest due on the account and for each loan.

[Click&type]

4. Where the billing statement reflects zero dollars due, determine whether the billing statements and website provide an easily understandable explanation of the meaning and consequences of having loans with due dates that have been advanced beyond the next regular due date, including, for example, the next date upon which payments will come due, why the borrower is billed for zero dollars, and the consequences associated with the decision to accept a payment holiday (e.g., the effect on interest accrual and the borrower's ability to make a qualified payment towards certain federal student loan programs).

[Click&type]

5. Determine whether information on billing statements and the website about alternative, non-standard repayment plans, including Income-Driven Repayment plans if applicable, is accurate and clear.

[Click&type]

6. For borrowers with loans for which late fees are not permitted, determine whether the billing statements or other communications suggest late fees may be charged.

[Click&type]

7. Determine whether, for cosigned loans, cosigners have access to, for example, billing statements, online accounts, payment histories, or other account information related to the loans for which they have cosigned.

[Click&type]

8. Determine whether, upon request, the servicer provides, for example, an amortization schedule, payment history, or other communication documenting historical payments on individual loans.

[Click&type]

9. Determine whether and how the servicer accurately informs consumers about the number of qualifying payments made towards various benefit offerings, including, as applicable, potential Public Service Loan Forgiveness (PSLF) for borrowers who certified public service employment, cosigner release, interest rate reductions, etc.

[Click&type]

10. Determine whether and how a servicer records payments that have met the on-time requirements for borrower benefit programs, including payments that may qualify for PSLF if the borrower later certifies public service employment.

Borrower Communications for Federal Loans

Borrowers of FFELP loans and Direct Loans are entitled to various repayment plans, including Standard Repayment, Graduated Repayment, Extended Repayment, and Income-Driven Repayment plans. The Standard Repayment plan, which is the default choice if a borrower does not opt into a different plan, is a 10-year repayment plan with fixed payments. The Extended Repayment plan consists of fixed or graduated payments that are lower than the standard plan because the repayment term is extended to up to 25 years. Graduated Repayment plans are 10-year plans, with payments starting lower and ending higher.

Income-Driven Repayment plans allow borrowers to tie their payments to a percentage of their discretionary income. There are four Income-Driven Repayment plans: (1) Revised Pay As You Earn (REPAYE); (2) Pay As You Earn (PAYE); (3) Income-Based Repayment (IBR); and (4) Income-Contingent Repayment (ICR). Depending on the type of loans the borrower has, a borrower may be eligible for one repayment plan, but not another. For example, the REPAYE plan is available to all Direct Loan borrowers except borrowers of Parent PLUS Direct Loans, but only available to FFELP loan borrowers if the borrower consolidates the loans into a Direct Loan. PAYE is only available to new borrowers of Direct Loans on or after October 1, 2007, who received a disbursement of a Direct Loan on or after October 1, 2011. IBR is available to all FFELP and Direct Loan borrowers, except for Direct or FFEL Plus Loans made to parents.

Each plan has slightly different terms, including the number of payments necessary before the remainder is forgiven (20 or 25 years) and the payment calculation. Payments under REPAYE and

PAYE are 10 percent of a borrowers' discretionary income (calculated as Adjusted Gross Income minus 150 percent of the applicable Federal Poverty Level). IBR payments are also 10 percent of discretionary income for new borrowers on or after July 1, 2014, but otherwise 15 percent of discretionary income. ICR payments are the lesser of 20 percent of discretionary income (calculated as 100 percent of the applicable Federal Poverty Level), or what a borrower would pay on a repayment plan with a fixed payment over the course of 12 years, adjusted according to income. For any of these plans, borrowers who have no discretionary income would have zero dollar payments.

To apply for an Income-Driven Repayment Plan, borrowers can fill out a form online with the Department of Education, and authorize the servicer to use IRS income data for the calculation. This information is forwarded to the servicer to process. The borrower can also file an application by filling out a manual form and sending it to the servicer along with proof of income. After enrolling, borrowers must recertify their income and family size every 12 months to continue making the lower payments.

Borrowers are also eligible for various deferment and forbearance plans in various scenarios. For example, borrowers may obtain a deferment when a borrower is enrolled in school at least half-time, is unemployed, has an economic hardship, or is on active military duty. Certain administrative, voluntary, and hardship forbearances are also available.

For more information on the different repayment options, refer to the Department of Education's website and the Income-Driven Repayment application form. Servicers are responsible for communicating these repayment options to borrowers, helping borrowers understand the application processes, processing and approving applications, and implementing the repayment options.

Communications about repayment options

1. Assess the policies, procedures, and scripts related to oral and written communications and the training provided to personnel who communicate with borrowers about alternative repayment or forgiveness options, including Income-Driven Repayment plans, loan forgiveness, loan cancellation, discharge options, and defense to repayment.

[Click&type]

2. Assess the servicer's monitoring of personnel who communicate with borrowers about alternative repayment or forgiveness options.

[Click&type]

3. Determine whether the servicer has any incentives or performance goals based on call/task time or resolution goals, and assess whether they impact the service provided by personnel who communicate to borrowers about Income-Driven Repayment plans or forgiveness options.

[Click&type]

4. Determine whether written communications provided to borrowers about repayment options clearly and prominently disclose important information, like the steps to apply and the fact that payments can be as low as zero dollars per month (for Direct and FFELP loans).

[Click&type]

5. Determine whether the servicer encourages federal loan borrowers with long-term financial hardship to sign up for forbearance or deferment instead of an Income-Driven Repayment plan, for example, by mentioning forbearance or deferment before income-driven repayment plans in the servicer's communications with borrowers or by omitting mention of income-driven repayment plans in such communications.

[Click&type]

6. Determine whether the servicer enrolls federal loan borrowers with long-term financial hardship in multiple, consecutive forbearances instead of income-driven repayment plans.

[Click&type]

7. Determine whether the servicer has procedures, and whether the servicer follows its procedures, related to communicating with borrowers about repayment plans, including, for example:

   a. Whether phone representatives assess the borrower's long and short term financial situation and disclose the repayment plan reasonably believed to be the most appropriate for the borrower;

   b. The order in which phone representatives discuss, in various scenarios, income-driven repayment plans versus other options;

   c. Whether phone representatives present the income-driven repayment plan that would give the borrower the lowest monthly payment;

   d. Whether phone representatives disclose important information, like the steps to apply and the fact that payments can be as low as zero dollars per month (for Direct and FFELP loans); and

   e. Whether phone representatives discuss the attributes and potential consequences of the repayment plans, including that certain repayment arrangements may increase costs over the life of the loan or result in tax liabilities.

[Click&type]

8. Determine whether phone representatives' assessments of the temporary or short-term nature of hardship, for borrowers the representatives enroll in voluntary "hardship" forbearance or deferment, match the borrowers' communications with the representatives.

[Click&type]

9. Determine whether phone representatives communicate to borrowers before enrolling in a forbearance or deferment (1) the consequences of forbearance or deferment, including interest capitalization and any impact on co-signer release for private student loans (where applicable), and (2) the benefits and potential consequences of an income-driven repayment plan for federal student loans.

[Click&type]

10. Determine whether phone representatives obtain sufficient income information from borrowers, including any spousal income, and inform borrowers that if they have low or no income, they may be eligible for Income-Driven Repayment plans with payments as low as zero dollars.

[Click&type]

11. For borrowers of FFELP loans applying for the Income Based Repayment (IBR) plan or who inquire about loan forgiveness options, determine whether phone representatives disclose that borrowers may be eligible for other benefits or protections, including REPAYE and PSLF, if they obtain Direct Consolidation loans.

[Click&type]

12. Determine whether and in what circumstances phone representatives tell borrowers that payments are required to enroll in income driven-repayment plans.

[Click&type]

Income-Driven Repayment Plan Applications and Recertification

13. Determine whether, when, and how the servicer informs borrowers that they need to recertify their income and family size to continue making reduced payments under an income-driven repayment plan.

[Click&type]

14. Assess the sufficiency and timeliness of notices informing borrowers of the need to recertify to continue making reduced payments under an income-driven repayment plan.

[Click&type]

15. When recertification notices are sent via email, determine what information the servicer provides in the email and where in the email the information is placed, and whether the message refers borrowers to an online mailbox. Determine whether the servicer tracks whether borrowers open emails or initiated contact with the servicer, and if the servicer initiates additional outreach to non-responders.

[Click&type]

16. Determine whether and how the servicer provides borrowers with timely information on the status of income-driven repayment plan applications (including recertification applications).

[Click&type]

17. Determine whether, when received timely, the servicer processes initial income-driven repayment plan applications in time to prevent adverse consequences (including processing timely applications before periods of repayment begin), and whether the servicer processes timely recertification applications in time to prevent adverse consequences (including capitalization of interest at the end of the 12-month repayment period).

[Click&type]

18. When a borrower submits a recertification application within the deadline set by the Department of Education, but there are delays, determine whether the servicer maintains the old payment amount until the new scheduled monthly payment amount is determined, and assess the servicer's process for ensuring the old payment is maintained.

[Click&type]

19. Determine whether and when the servicer uses non-interest-capitalizing administrative forbearances or interest-capitalizing voluntary forbearances to forbear payments while the servicer processes income-driven repayment plan applications and recertification applications.

[Click&type]

20. Determine how the servicer handles incomplete applications for income-driven repayment plans (including recertification applications), including, for example:

    a. Determine whether the servicer accurately informs borrowers that an application is incomplete and whether this notification is provided within a reasonable period of time.

    b. Determine whether the servicer informs the borrower about the information or documentation the borrower must submit to address the specific application deficiency.

    c. Assess written or oral communications that inform borrowers who submit incomplete applications about how to address application deficiencies in a timely manner.

[Click&type]

21. Determine whether the servicer incorrectly denied applications for income-driven repayment, incorrectly concluded that such applications were incomplete, or incorrectly calculated Income-Driven Repayment plan payment amounts.

[Click&type]

22. Determine whether the servicer follows established procedures for determining which income-driven repayment plan to enroll a borrower in when borrowers check the "choose for me" option on the Income-Driven Repayment plan application.

[Click&type]

23. Determine whether, when, and how the servicer contacts borrowers to inform them that their payments will increase due to a failure to timely recertify.

[Click&type]

Borrower Communications for Private Education Loans

1. If the servicer offers alternative repayment plans or loan modifications for private education loans, determine whether the servicer discloses (e.g., on its website) the repayment plans, key eligibility criteria, qualification processes, terms, and the required documentation and information necessary to be considered for each of the plans.

[Click&type]

2. If the servicer offers alternative repayment plans or loan modifications for private education loans, determine how the servicer decides to whom to offer the plans or loan modifications, and whether there are policies and procedures aimed at ensuring consistency with regard to when plans are offered.

[Click&type]

3. If the servicer is a financial institution, determine whether the servicer offers a private education loan rehabilitation program under FCRA Section 623(a)(1)(E), that includes, without limitation, a requirement of the consumer to make consecutive on-time monthly payments in a number that demonstrates, in the assessment of the financial institution, a renewed ability and willingness to repay the loan.

[Click&type]

4. If the servicer is a financial institution, determine whether the servicer removes reported defaults from consumer reports upon the consumer's completion of such rehabilitation program described in step 3 above and upon the consumer's request to remove the reported default.

[Click&type]

5. Assess the training provided to servicer personnel who handle or communicate with borrowers about alternative repayment plans, forbearance, deferment, or loan modifications.

[Click&type]

6. Assess the servicer's monitoring of personnel who communicate with borrowers about alternative repayment plans, forbearance, deferment, or loan modifications.

[Click&type]

7. Assess how the servicer prioritizes among forbearance, deferment, proprietary alternative repayment plans, and loan modifications in phone discussions and written materials.

[Click&type]

8. Determine whether written or verbal communications about alternative repayment plans, deferment, forbearance, or loan modifications accurately and sufficiently describe the attributes and consequences, including any capitalization of interest.

[Click&type]

Cosigned Private Education Loans

1. Assess communications to borrowers about the availability of cosigner release, the criteria for qualifying for cosigner release, and the process to apply for cosigner release, if applicable.

[Click&type]

2. If certain actions by the borrower can delay or permanently prevent the borrower from obtaining cosigner release (such as obtaining a forbearance), determine whether the servicer discloses this fact before the borrower takes such actions.

[Click&type]

3. If the servicer requires borrowers to make a certain number of consecutive and/or on-time payments to qualify for cosigner release, determine how zero dollar payments during periods when loans are paid ahead impact a borrower's progress towards that requirement and determine whether the servicer informs the borrower of these consequences.

[Click&type]

4. If the servicer requires a written application to apply for cosigner release, and a borrower submits an incomplete written application, determine whether the servicer asks the borrower for supplemental information to complete the application.

[Click&type]

5. Determine whether the servicer accurately applies any criteria for cosigner release appearing in the borrower's loan notes, company's marketing materials, and/or website.

[Click&type]

6. Assess communications to borrowers about denial of cosigner release.

[Click&type]

7. Assess the appeal process, if any, after the denial of a cosigner release application.

[Click&type]

8. Determine whether the servicer retains documents pertinent to a decision to deny a cosigner release application.

[Click&type]

9. Determine whether the servicer deems a borrower to have defaulted on a loan because a cosigner dies or enters bankruptcy, and, if so, assess the circumstances, policies, and procedures, related to that practice.

[Click&type]

Payoff

1. Determine whether and how the servicer discloses methods to obtain a payoff statement and basic information about how to pay off a loan, including how a borrower can pay off an individual loan or loans when the servicer services multiple loans for the borrower.

[Click&type]

2. Determine whether the servicer provides written payoff statements listing payoff amounts for individual loans, including whether these notices are provided in a timely manner in response to borrower requests and whether the servicer honors those payoff statements.

[Click&type]

3. Determine whether the servicer provides timely paid in full notices.

[Click&type]

4. Determine whether the servicer provides a refund or reimbursement of any payoff overpayment in a timely manner.

[Click&type]

5. If a large lump sum payment satisfies much of, but not all of, the remaining balance and the remaining amount exceeds the lender/servicer's tolerance levels, determine whether the servicer attempts to contact the borrower or payer to inform the borrower or payer that he or

she did not pay off the loan, and determine whether the borrower continues to receive billing notices.

[Click&type]

Transfer of Servicing

Examiners should engage in several steps to assess potential violations of Federal consumer financial protection law in connection with servicing and loan ownership transfers. First, examiners should review policies and procedures and obtain a sample of servicing records, for loans transferred within the review period. Examiners also may need to review copies of the electronic and paper documents transferred from the prior servicer. Additionally, examiners should review relevant records such as copies of monthly statements, and other letters or communications sent to consumers. Examiners should look at servicing transfers when the servicer is the transferor (sender), when the servicer is the transferee (recipient), and when the servicer is transferring accounts internally (e.g., a transfer between two of the servicer's systems).[22]

When the servicer is a transferor

1. Determine whether the servicer has a mechanism for accurately capturing and conveying information on a borrower's payment plan, benefits, terms, conditions, payment instructions, disputes or complaints from the consumer, and/or payment history for loans being transferred to another servicer.

[Click&type]

2. Determine whether progress towards loan forgiveness options available to borrowers with Federal loans (e.g., at the end of Income-Driven Repayment and PSLF), or progress toward other benefits that require consecutive payments like co-signer release for borrowers with applicable private loans, is accurately captured and conveyed to the new servicer.

[Click&type]

3. Determine whether the servicer maintains documents and data on each account in a manner that facilitates compiling such documents and data into a servicing file for purposes of transferring the account.

[Click&type]

4. Determine whether and how the servicer transfers borrower accounts that involve a pending application for deferment, forbearance, alternative repayment plans, or benefits.

[22] Examiners should be aware that student loan servicing transfers may occur for a number of reasons, including the sale of a loan, the reassignment of servicing rights by the loan holder, or action by a borrower that automatically triggers the transfer of servicing (e.g., the completion of an Employer Certification Form (ECF) indicating interest in the Public Service Loan Forgiveness program).

[Click&type]

5. Determine whether the servicer sends notices to borrowers informing them of an impending transfer and whether notices informing borrowers of an impending transfer sufficiently and timely inform borrowers of key information, including the date of transfer and contact information.

[Click&type]

6. Assess the servicer's process for forwarding any payments received from borrowers after an account has been transferred to a new loan servicer, including the timeliness of such forwards.

[Click&type]

When the servicer is a transferee

7. Determine whether the servicer conducts due diligence to ensure that it has accurate and complete information on a borrower's payment plan, benefits, terms, conditions, payment instructions, and payment history for loans received from another servicer, which may entail reviewing the servicer's pre-onboarding testing protocols, contract provisions ensuring the transfer of data or documentation, quality control efforts, and organization and labeling of information.

[Click&type]

8. Determine whether borrowers were financially impacted by the servicing transfer, including whether the borrower was charged late fees or if the servicer furnished negative credit information because of the transfer and whether additional interest accrued or interest capitalized as a result of a mandatory forbearance or deferment used to facilitate the transfer.

[Click&type]

9. Determine whether the servicer has a process for monitoring and verifying the accuracy and completeness of data or documentation received from a transferor servicer, and whether the servicer has processes to address any related issues.

[Click&type]

10. Determine whether the servicer has a process for monitoring and verifying the receipt of payments prior to, during and following transfer, including payments submitted to the transferor servicer following transfer, and whether the servicer has a process to address any related issues.

[Click&type]

11. Determine whether the servicer has a process for monitoring and verifying changes in monthly payment amount following any redisclosure or reamortization resulting from transfer, whether

servicer provides notice to the borrower of anticipated changes in monthly payment amount, and whether the servicer has a process to address any related issues.

[Click&type]

12. Determine whether the servicer has a specific policy or procedure for handling the transfer of borrower accounts that involve a pending application for deferment, forbearance, alternative repayment plans, or benefits, including whether the servicer flags those accounts, ensures that it retains all documentation relating to the pending application, and processes those applications in a timely manner.

[Click&type]

13. Determine whether and when the servicer sends notices to borrowers informing them of an impending transfer, and whether notices informing borrowers of an impending transfer clearly disclosed material information, including the date of transfer and contact information.

[Click&type]

14. Determine whether and in what circumstances the servicer ceased providing benefits or other offerings provided to the borrower by the prior servicer.

[Click&type]

15. Determine whether recurring payments transfer to the servicer, and whether borrowers are notified about what impact the loan servicing transfer has on the existing recurring payment program with sufficient time to complete any necessary action requested by the servicer in order to prevent a missed payment.

[Click&type]

Internal Transfers

16. Determine whether the servicer has a mechanism for accurately capturing, conveying, and maintaining information on a borrower's payment plan, benefits, terms, conditions, and full payment history for loans being transferred to another loan owner when the servicer does not change.

[Click&type]

17. Determine whether the servicer has a process for monitoring and verifying the accuracy and completeness of information that is transferred automatically or manually from one loan owner to another, or one servicing system to another, and whether the servicer has processes to address any related issues.

[Click&type]

In-School Deferment and Repayment Status Processing

1. For borrowers entering repayment status, assess the timeliness and adequacy of the initial communications from the servicer to the borrower, and determine whether the servicer provides the borrower with an overview of all available repayment options.

[Click&type]

2. Determine how the servicer makes decisions on whether a borrower's account should be placed in an in-school status, a grace period, deferment, or repayment, and whether the servicer has a process for reversing adverse consequences (including late fees and interest capitalization and adverse credit reporting) when that process results in errors.

[Click&type]

3. Determine whether borrowers can access loan information online or on written account statements before their loans enter repayment, and determine the sufficiency and accuracy of those statements.

[Click&type]

4. Determine how the servicer accounts for medical leave and other absences from school in its decisions regarding when a borrower should enter repayment status.

[Click&type]

Borrower Benefits

Some private and federal student loans offer various borrower benefits, such as rate reduction for Automated Clearing House (ACH) payments or timely payments, graduation "bonus," payment deferment for borrowers serving on active duty, or other rewards to encourage the borrower to either take out the loan initially or to ensure payments are made in a timely manner once the loan is in repayment. On many occasions, these benefits may be offered to a borrower years before repayment is required. Examiners should verify that loan servicers are aware of what benefits were offered to borrowers and ensure that those benefits are provided to borrowers who meet the necessary qualifications.

1. Determine whether the servicer has retained appropriate documentation of all benefits offered to borrowers, including whether this documentation is recorded at the loan level.

[Click&type]

2. Determine whether the servicer has sufficient systems capabilities and controls to ensure that earned benefits are honored, including whether the servicer has sufficient policies and procedures in place to keep track of borrower progress towards receiving benefits.

[Click&type]

3. Assess the extent to which servicer communications, including communications on the servicer's website, written communications, or oral communications, inform borrowers of the benefits available to them, the criteria for earning those benefits, and the process for obtaining those benefits.

[Click&type]

4. Determine whether the servicer clearly discloses why benefits are denied, the conditions and requirements that were not met, and whether and how the borrower can regain benefit.

[Click&type]

5. Determine whether the servicer has procedures, and whether the servicer follows its procedures, for circumstances where a servicer is informed that a borrower attended a school for which the Department of Education has made a finding supporting a potential discharge (e.g., a defense to repayment (DTR) claim or a closed school discharge), including whether phone representatives assess the borrower's current circumstances and disclose the discharge option reasonably believed to be the most appropriate to the borrower.

[Click&type]

6. Determine whether the servicer has procedures, and whether the servicer follows its procedures, for circumstances where a servicer is informed of a borrower's disability, including whether phone representatives assess the borrower's current circumstances and disclose the availability of any discharge or modification option reasonably believed to be the most appropriate to the borrower (e.g., the Total and Permanent Disability Discharge (TPD) program for federal loans).

[Click&type]

7. Determine whether the servicer has procedures, and whether the servicer follows its procedures, for circumstances where the borrower informs the servicer that a borrower is working in public service, including whether phone representatives assess the borrower's current circumstances and disclose the availability of any cancellation or loan forgiveness options reasonably believed to be the most appropriate to the borrower (e.g., PSLF, Teacher Loan Forgiveness, Perkins Loan Cancellation).

[Click&type]

8. Determine whether the servicer processes requests for borrower benefits, including benefits or protections available under Title IV of the Higher Education Act (e.g., PSLF, TPD discharge, DTR), in a timely and accurate manner.

[Click&type]

9. Determine whether the servicer has procedures, and whether the servicer follows its procedures, for circumstances where a servicer is informed that a borrower is serving in the military, including whether phone representatives assess a military borrower's current circumstances and disclose the availabililty of any borrower benefits or consumer protections appropriate to the military borrower (e.g., IDR and PSLF, military deferment,[23] Perkins Loan Cancellation).

[Click&type]

10. For private loans, determine whether the servicer offers military deferment, what the criteria are, whether the criteria are appropriately applied, and whether the servicer communicates its reasoning for denying deferments.

[Click&type]

11. Determine whether the servicer has procedures, and whether the servicer follows its procedures, for circumstances where a servicer is informed that a borrower is serving in an area of hostilities and received special pay, including whether phone representatives assess a military borrower's current circumstances and disclose the availabililty of an interest rate reduction to zero percent for eligible military borrowers (e.g., certain Direct Loans, Perkins Loans).

[Click&type]

12. Determine whether the servicer has procedures, and whether the servicer follows its procedures, for circumstances where a servicer is informed that a borrower is serving in the military, including whether phone representatives assess a military borrower's current circumstances and disclose, where applicable, the availabililty of a waiver of the requirement to annually recertify under an income driven repayment plan when a servicemember is on active duty under certain circumstances.

[Click&type]

NOTE: In assessing risks to consumers, examiners may find evidence of violations of – or an absence of compliance policies and procedures with respect to – other laws. In these circumstances, examiners should identify such matters for appropriate action, such as, where authorized, possible referral to federal or state regulators.

For example, the Servicemembers Civil Relief Act (SCRA) requires a servicer to reduce the interest rate that a servicemember must pay on private and federal student loans to six percent in specific circumstances.

[23] For federal student loans, criteria for military deferment are defined under Title IV of the Higher Education Act. 20 USC Section 1088(d). National Guard and Reservists can request deferment when called to active duty during a time of war, other military operation, or during national emergency. Active duty servicemembers can request deferment if serving (1) during an a time of war, other military operation, or during a national emergency, and (2) at a duty station at which they are not normally assigned.

Variable Interest Rates

1. Determine whether the servicer informs the borrower of any interest rate changes, and when and how this information is provided.

[Click&type]

2. Determine whether the servicer has a process to verify that interest rate and payment changes to borrowers' accounts based on a change to a variable interest rate are accurate.

[Click&type]

Additional Concerns for Institutional Loans

Examiners should pay particular attention to an entity's CMS, communications with borrowers about repayment options, and collection practices. In addition to performing all analyses relevant to private education loans, for institutional loans examiners should:

1. Determine whether the supervised entity calculates fees and tuition in connection with the credit product and, if so, if it calculates these items in accordance with the terms of the program the borrower attended.

[Click&type]

2. Determine whether the supervised entity accurately and timely credits account transactions, including calculations of account balances following distribution or return of aid.

[Click&type]

3. Determine whether a supervised entity uses payment plans or temporary credits for all or any portion of its programs.

[Click&type]

4. Determine how the supervised entity calculates and issues refunds to borrowers who withdraw from a school or program short of completing the program or term for which the loans were taken out.

[Click&type]

5. Determine whether and under what circumstances the supervised entity withholds transcripts (or engages in any other type of refusal to certify a student's completion of a program) from students who owe a debt.

[Click&type]

6. Determine whether and under what circumstances the supervised entity imposes any enrollment restrictions upon institutional loan borrowers based on their repayment status.

[Click&type]

7. Determine whether and under what circumstances the supervised entity imposes additional fees or increased tuition upon institutional loan borrowers based on their repayment status.

[Click&type]

8. Determine whether the supervised entity uses acceleration clauses with its institutional loans in situations where a borrower who withdraws from a school or program owes more than the proportional cost of the time they were enrolled in the program. If the supervised entity uses acceleration clauses, compare the entity's policies to those for the return of unused federal funds for similar programs (i.e., Perkins Loans, Pell Grants, Direct Loans).

[Click&type]

9. Determine whether a loan product is a private education loan as defined by Regulation Z, and, if so, the supervised entity's compliance with TILA's prohibition on the use of prepayment penalties for private education loans. (*See* 15 U.S.C. 1650(e))

[Click&type]

Public Student Loan Forgiveness (PSLF)

The Public Service Loan Forgiveness (PSLF) program is a federal benefit provided under the Higher Education Act (HEA) implemented by the Department of Education that forgives the remainder of a borrower's Direct Loan balance after the borrower has made 120 qualifying payments (10 years) while working full-time for a qualifying employer.

Qualifying employers include governments (federal, state, local, tribal), nonprofits that are tax-exempt under Section 501(c)(3) of the Internal Revenue Code, and other types of non-profit organizations that provide certain types of qualifying public service. For-profit organizations, labor unions, partisan political organizations, and nonprofits that are not tax-exempt under Section 501(c)(3) and that do not provide a qualifying service do not qualify.

Qualifying payments include payments for the full amount billed that are made after October 1, 2007, and no later than 15 days after the due date under certain repayment plans. Payments while a borrower's loans are in an in-school status, a grace period, deferment, forbearance, or default do not qualify. [24] Only payments made under an Income-Driven Repayment plan (e.g., REPAYE, PAYE, IBR), the 10-year Standard Repayment Plan, or a different repayment plan with payments that are at least equal to the 10-year Standard Repayment Plan amount count towards forgiveness. Payments under an Extended Repayment Plan do not count, and payments under a Graduated Repayment Plan initially will not count because payments start out lower than the 10-year Standard Repayment amount, and then gradually rise to an amount that exceeds the standard 10-year

[24] A primary exception is that the months of administrative forbearance under the CARES Act do count towards PSLF eligibility. *See* Pub. L. No: 116-136, § 3513(c), 134 Stat. 286 (2020).

payment amount. Graduated payment amounts that exceed the standard 10-year payment amount can be counted toward the PSLF eligibility.

Outside of the temporary limited waiver discussed below, PSLF is only available for borrowers who make 120 qualifying payments on a Direct Loan. That means payments made on other types of federal loans, like FFELP or Perkins loans, traditionally do not qualify. However, many of these borrowers can consolidate these loans into a Direct Consolidation Loan, and then payments on the Direct Consolidation Loan can qualify. PSLF is not available for private loans.

On October 6, 2021, the U.S. Department of Education issued a limited waiver of PSLF requirements that provides borrowers a temporary chance to receive credit for previously unqualifying payments. Pursuant to the waiver, borrowers can receive credit towards PSLF for any month they worked in a qualifying public service job and were not in default on their federal student loans. The waiver is available to borrowers with almost any type of federal loan or repayment plan.[25] To take advantage of this waiver, the borrower must: 1) consolidate into a Direct Loan; and 2) certify their public service employment history. A borrower must complete both steps before the waiver expires on October 31, 2022.

At any point once a borrower leaves school and enters repayment, a borrower can submit a Public Service Loan Forgiveness (PSLF) & Temporary Expanded PSLF (TEPSLF) Certification & Application(Application) to indicate intent to pursue PSLF. The Application will initiate a process through which a borrower's student loan servicer can verify the borrower's qualifying employment and validate any on-time, qualifying payments made toward an eligible loan. The borrower and employer usually each fill out a part of this form. The borrower or employer can then submit the form to the borrower's servicer or the servicer the Department of Education uses for PSLF processing. For all borrowers, the servicer that the Department of Education uses for PSLF processing will determine whether the borrower's employer is a qualified employer. If the borrower's employer is a qualified employer, the borrower's loans will be transferred to the servicer the Department of Education uses for PSLF processing, and that servicer will handle the loans until the borrower has made 120 qualifying payments.

1. Determine whether information the servicer provides about PSLF, including online materials, is accurate, clear, and understandable, and whether relevant information borrowers need to make informed decisions about the program is missing.

[Click&type]

2. Assess the servicer's call scripts and other materials to determine if or when phone representatives are directed to ask whether borrowers work for a government or non-profit entity.

[Click&type]

[25] The PSLF waiver is not available to borrowers with Parent Plus loans.

3. Determine whether the servicer informs borrowers about the availability of PSLF when they indicate they are employed in the government or non-profit sectors.

[Click&type]

4. When borrowers express interest in using PSLF, determine whether the servicer informs borrowers about the benefits of and process for submitting an Application.

[Click&type]

5. After the borrower has already submitted an Application for at least one period of eligible employment, determine whether the servicer informs the borrower about the benefits of submitting additional Applications.

[Click&type]

6. When borrowers express interest in using PSLF, determine whether the servicer checks to make sure the borrower has qualifying Direct Loans, and if the borrower has FFELP or Perkins loans, accurately describes the need to obtain a Direct Consolidation Loan to benefit from PSLF.

[Click&type]

7. When borrowers express interest in using PSLF, determine whether the servicer confirms that the borrower is repaying using an Income-Driven Repayment plan, and if the borrower is not, accurately describes which payment plans are eligible for PSLF, and how an Income-Driven Repayment plan will maximize the benefit.

[Click&type]

8. Determine whether the servicer informs all borrowers of Direct Loans who are inquiring about a Direct Consolidation Loan that their progress towards PSLF will reset once they consolidate.

[Click&type]

9. Determine whether the servicer informs borrowers with both Direct Loans and other federal loans who are inquiring about a Direct Consolidation Loan that they may elect to exclude the existing Direct Loans for which they have already made Qualifying Payments from the Direct Consolidation Loan.

[Click&type]

10. Determine whether the servicer accurately calculates the number of qualifying payments during periods of employment for which the borrower has submitted valid employment certification and the estimated loan forgiveness eligibility dates.

[Click&type]

11. Determine whether processing delays or errors relating to Income-Driven Repayment plan applications or recertifications resulted in months of forbearance that do not qualify towards PSLF.

[Click&type]

12. Determine whether the servicer has appropriate policies and procedures to send information on payment histories, repayment plans, loan types, etc., to subsequent servicers so that they, or a future servicer, can make an accurate determination about the number of qualifying payments the borrower made during the entire period of repayment.

[Click&type]

13. Determine whether the servicer has appropriate policies and procedures to collect information on payment histories, repayment plans, loan types, etc., from prior servicers so that the servicer, or a future servicer, can make an accurate determination about the number of qualifying payments the borrower made during the entire period of repayment.

[Click&type]

14. Assess the servicer's policy for determining whether a payment is a qualifying payment under the following scenarios, and determine whether the servicer followed the policy:

    a. Payment or non-payment when zero dollars is billed because a borrower's account is paid ahead or because the borrower has a zero dollar IDR payment;

    b. Payments made when less than the full payment under a borrower's chosen repayment plan is billed because a borrower's account is partially paid ahead;

    c. How late after a due date a payment can be received and count as a qualified payment;

    d. How early before a due date a payment can be received and count as a qualified payment;

    e. Multiple payments in one month that combine to cover the monthly payment; and

    f. IDR payment amounts made beyond a 12-month period because the borrower submitted a recertification application on time, but the servicer had not yet determined the new scheduled monthly payment amount.

[Click&type]

15. Assess the servicer's policy for identifying payments that do not count toward PSLF but do count toward the maximum number of payments under an IDR plan.

[Click&type]

Module 4: Borrower Inquiries and Complaints

Examiners should review borrower inquiries and complaints and call specific complaining borrowers to interview them regarding their experiences. Examiners should listen to live calls and taped calls to assess the quality and training of the servicer's call center personnel. Examiners should determine the root cause of borrower inquiries and complaints, whether they were resolved adequately (including appropriate remediation for all borrowers affected by the root cause), and whether they were resolved in a timely manner. In addition to reviewing individual inquiries and complaints, examiners should review the related policies and procedures. As part of this review, examiners should assess whether complaints drive adjustments to business practices, where appropriate. Examiners should also review the escalation paths available to borrowers, including those available for borrowers facing financial hardship.

Other Risks to Consumers

1. Identify all channels and physical locations provided for receipt of borrower complaints and inquiries.

[Click&type]

2. Evaluate the comprehensiveness of systems policies, and procedures for capturing, logging, tracking, handling, and reporting complaints and their resolutions, including for repeat consumer complaints.

[Click&type]

3. Assess the effectiveness of any telephone line available for submitting inquiries or complaints, including (a) whether it is toll-free, (b) the ease of accessing a live person, (c) the hold times, and (d) the call abandonment rates.

[Click&type]

4. Assess the effectiveness of other means available for submitting inquiries or complaints, including written submissions and any online portal.

[Click&type]

5. Evaluate the processes for and speed of responses to borrower complaints. Review reports to management and the board of directors (or principals). Review the consumer complaint log(s), performance metrics, and exception/trend reports to determine whether borrower complaints are captured, correctly categorized, and handled appropriately.

[Click&type]

6. Determine whether staffing levels are sufficient for call volume, and determine whether assumptions used for staffing determinations are validated or supported by analysis.

[Click&type]

7. Listen to live calls and taped calls to assess the quality and training of call center personnel.

[Click&type]

8. Determine whether the servicer provides borrowers with an adequate process to escalate, appeal, or ask for reconsideration of the resolution of complaints and inquiries.

[Click&type]

9. Assess whether the servicer responds to borrower inquiries within a reasonable time period. For federal student loan borrowers, servicers must respond within 30 days after receiving any borrower inquiry.

[Click&type]

10. Determine whether, when the servicer takes action or makes adjustments to a borrower's account in light of a complaint, the servicer determines whether other borrowers were affected by the same issue and seeks to resolve the issue systemically.

[Click&type]

Module 5: Collections, Accounts in Default, and Credit Reporting

Examiners should obtain a sample of servicing records for customers in default. Examiners should obtain collection call records and listen to a sample of collection calls. If consumer complaints or document review indicate potential violations in these areas, examiners also may conduct interviews of consumers from the sample and ask questions relevant to each topic area below. In connection with these steps, examiners should evaluate the following.

Collections and Accounts in Default

Under the FDCPA, a *debt collector* is generally defined as any person who regularly collects, or attempts to collect, consumer debts due another person or institution or uses some name other than its own when collecting its own consumer debts, with certain exceptions. The definition includes, for example, an institution that regularly collects debts for an unrelated institution.

The debt collector definition has an exception that frequently applies to loan servicing: an institution is not a debt collector under the FDCPA when it collects debts that were ***not*** in default when they were obtained by the servicer.[26] Thus, a servicer that purchases the servicing rights for a portfolio of loans will be a debt collector only for loans that were in "default" at the time of the purchase.[27]

Examiners should obtain a sample of collection call records and assess whether collectors complied with the requirements listed in the FDCPA procedures. Examiners should also listen to a sample of collection calls.

Fair Debt Collection Practices Act (FDCPA)

1. Assess compliance with FDCPA. Refer to the FDCPA examination procedures for more information.

[Click&type]

Other Risks to Consumers

1. Determine whether the servicer contacts borrowers in an appropriate manner:

   a. Employees and third-party contractors clearly indicate to consumers whom they are calling about the collection of a debt.

[26] 15 USC 1692a (6)(F)(iii).

[27] The Fair Debt Collection Practices Act (FDCPA) itself does not contain a definition of the term *default*. The standard private student loan note often states that the debt is in default if the payment is 15 or 30 days late. federal loans go into default at 270 days past due.

b. Employees and third-party contractors do not disclose the existence of a consumer's debt to the public without the consent of the consumer, except as permitted by law.

c. The entity avoids repeated telephone calls to consumers that annoy, abuse, or harass any person at the number called.

[Click&type]

2. Determine whether the servicer's representatives make omissions or misrepresentations, or use inappropriate methods to collect debts.

[Click&type]

3. Determine whether collections staff transfer borrowers to loss mitigation staff, in accordance with the institution's policies and procedures, to discuss loss mitigation alternatives.

[Click&type]

4. Determine whether the supervised entity automatically ceases all collection efforts for borrowers that have filed bankruptcy petitions under Chapter 7 or Chapter 13 of the U.S. Bankruptcy Code.

[Click&type]

5. Determine whether the supervised entity attempts to collect, transfer, sell, or place debts that have been discharged in bankruptcy.

[Click&type]

6. Determine whether the supervised entity withholds academic transcripts from borrowers who have filed bankruptcy.

[Click&type]

The Use of Service Providers for Collections

1. For regulated entities utilizing service providers for collection activity, determine whether the lender has policies and procedures in place to monitor the service provider for compliance with Federal consumer financial laws.

[Click&type]

Workouts for Accounts in Default

1. Determine when and how a borrower is notified that their account is past due, and when a past due account is sent to collections.

[Click&type]

2. Determine whether the servicer reviews defaulted borrowers for all repayment status options before sending the account to collections.

[Click&type]

3. Determine whether the lender, or servicer, offers formal or informal workout programs for borrowers in default. If so:

   a. Determine whether the lender, or servicer, discloses the requirements and any associated fees when providing workout options to borrowers in default.

   b. Determine whether the lender, or servicer, that offers workout programs provides each option available to borrowers.

   c. Determine whether the lender or servicer provides payment options for borrowers in default, and, if so, whether the lender or servicer is providing the options consistently to all borrowers in similar situations.

   d. Determine whether the lender or servicer prioritizes workout options based on loan type (federal loans versus private loans), and, if so, whether the lender or servicer has policies and procedures that document the prioritization rationale.

   e. Examiners should obtain a sample of collection call records for accounts that are in default and assess whether collectors follow policies and procedures for handling such accounts.

[Click&type]

Collecting Delinquent Accounts through Legal Action

Determine whether the lender or servicer has policies and controls in place to ensure the accuracy of information used to collect delinquent accounts through legal action.

[Click&type]

FCRA and Implementing Regulation V – Furnisher Requirements

Examiners should obtain a sample of loan servicing records. For the loans in the sample, compare the information in the servicer's system of record with the information reported to the credit reporting agencies. Examiners should also review consumer complaints or review documents for potential violations of the Fair Credit Reporting Act and implementing Regulation V.

1. Assess compliance with the FCRA Furnisher Requirements. Refer to the FCRA examination procedures, 12 CFR 1022.40-43, for more information.

[Click&type]

2. If the servicer is a financial institution, determine whether the servicer offers a private education loan rehabilitation program under FCRA Section 623(a)(1)(E), which includes,

without limitation, a requirement of the consumer to make consecutive on-time monthly payments in a number that demonstrates, in the assessment of the financial institution, a renewed ability and willingness to repay the loan.

[Click&type]

3. If the servicer is a financial institution, determine whether the servicer removes reported defaults from consumer reports upon the consumer's completion of such rehabilitation program described in step 2 above and upon the consumer's request to remove the reported default.

[Click&type]

Module 6: Information Sharing and Privacy

Gramm-Leach-Bliley Act (GLBA) and Implementing Regulation P – Privacy Notices

1. Assess compliance with Privacy of Consumer Financial Information Regulations that implement GLBA. Refer to the GLBA examination procedures, 12 CFR 1016.4 and 1016.5, for more information.

[Click&type]

FCRA and Regulation Implementing V – Information Sharing with Affiliates

1. Assess compliance with the FCRA Affiliate Marketing Rule. Refer to the FCRA examination procedures, 12 CFR 1022.21, for more information.

[Click&type]

Module 7 – Examination Conclusions and Wrap-Up

To conclude this supervisory activity, examiners must complete all steps under this section, regardless of the entity's risk profile.

1. Summarize the findings, supervisory concerns, and regulatory violations.

[Click&type]

2. For the violations noted, determine the root cause by identifying weaknesses in internal controls, audit and compliance reviews, training, management oversight, or other factors. Determine whether the violation(s) are pattern or practice, or isolated.

[Click&type]

3. Identify action needed to correct violations and weaknesses in the institution's compliance management system, as appropriate.

[Click&type]

4. Discuss findings with the institution's management and, if necessary, obtain a commitment for corrective action.

[Click&type]

5. Record violations according to agency policy in the Report of Examination/Supervisory Letter and the CFPB's electronic database system to facilitate analysis and reporting.

[Click&type]

6. Determine if enforcement action is appropriate. If so, contact appropriate agency personnel for guidance.

[Click&type]

7. Prepare a memorandum for inclusion in the workpapers and CFPB's official system of record that outlines planning and strategy considerations for the next examination and, if appropriate, interim follow-up.

[Click&type]

Mortgage Origination

Exam Date:	[Click&type]
Exam ID No.	[Click&type]
Prepared By:	[Click&type]
Reviewer:	[Click&type]
Docket #:	[Click&type]
Entity Name:	[Click&type]

These Mortgage Origination Examination Procedures (Procedures) consist of modules covering the various elements of the mortgage origination process; each module identifies specific matters for review. Examiners will use the Procedures in examinations of mortgage brokers and mortgage lenders. Before using the Procedures, examiners should complete a risk assessment and examination scope memorandum in accordance with general CFPB procedures. After completing the risk assessment and examination scoping in accordance with CFPB-approved mortgage originations strategy, examiners are to use these procedures to conduct a mortgage origination examination.

These procedures include guidance for examination of all aspects of mortgage origination. The examination procedures include a series of modules that group similar requirements together. Depending on the scope of the examination, and in conjunction with the compliance management system review, including consumer complaint review, each examination will cover one or more of the following modules. Module 8 – Examiner Conclusions and Wrap-Up is a required module and must be completed. The modules are as follows:

Module 1 Company Business Model

Module 2 Advertising and Marketing

Module 3 Loan Originators

Module 4 Loan Disclosures and Terms - Closed-End Residential Mortgage Loans

Module 5 Loan Disclosures and Terms - Other Residential Mortgage Loans

Module 6 Appraisals

Module 7 Underwriting

Module 8 Examiner Conclusions and Wrap-Up

Examination Objectives

1. To assess the quality of a supervised entity's compliance management systems in its mortgage origination business.
2. To identify acts or practices that materially increase the risk of violations of Federal consumer financial law, and associated harm to consumers, in connection with mortgage origination.
3. To gather facts that help determine whether a supervised entity engages in acts or practices that are likely to violate Federal consumer financial law in connection with mortgage origination.
4. To determine, in accordance with CFPB internal consultation requirements, whether a violation of a federal consumer financial law has occurred and whether further supervisory or enforcement actions are appropriate.

Background

This section of the Procedures provides background on the mortgage business and the federal consumer financial law requirements that apply.

1. Mortgage Types

Residential mortgage loans have a variety of features to meet differing consumer needs. The length of a mortgage is usually 30 years or less, but can vary from one year to 50 years. Interest rates can be fixed or adjustable. Some adjustable rate mortgage loans (ARMs) are "hybrid," having a fixed interest rate for a certain period of time and then changing to an adjustable rate. Hybrid ARMs often are identified informally using two numbers, such as 5/1. The first number identifies the number of years the interest rate will be fixed, and the second number identifies the frequency with which the interest rate will adjust after the fixed interest rate period ends. A "5/1" loan would have a fixed interest rate for five years, and then the interest rate would adjust one time per year. Alternatively, the second number can denote the number of years the loan will have an adjustable rate: in a "2/28 loan," the loan would have a fixed interest rate for two years, and after the two-year fixed interest rate period, then the interest rate would adjust periodically over the subsequent 28 years based on an index plus a margin. Typically, the initial two-year rate is low, but the adjustable rate can rise based on rate fluctuations in the marketplace.

Most, but not all, loans are "fully amortizing," meaning that the borrower pays down part of the principal and the full amount of interest that is due each month so that at the end of the loan term, the principal is paid off. Other loans might not amortize fully over their terms. One type of loan that does not fully amortize over its term is a balloon payment mortgage where payments may be made for a period of time, with the remaining balance due in one lump sum, or "balloon." Another type is an "interest-only" (I-O) loan, in which only the interest is paid for a certain time period at the beginning of the loan; after the initial period, the borrower either makes increased principal and interest payments to amortize the principal over the remaining term, or pays a large "balloon" payment, usually at the end of the term. These loans can have a fixed or adjustable rate. In addition, for a period of time, payment option adjustable rate mortgages (Pay Option ARMs, or Option Payment ARMs) were offered to many consumers, although this practice is not common in today's mortgage marketplace. These loans provided borrowers with several payment choices each month during the loan's introductory period, including a minimum payment that was less than the interest accruing and due with the principal each month. If the borrower chose the minimum payment option, the accrued but unpaid interest was added to the loan balance, so the principal amount actually increased. This outcome, where the outstanding loan balance increase as opposed to decreases, is known as negative amortization. Eventually the loan would be recast after the introductory period (typically five years), and the borrower's fully amortizing payments increased in order to repay the increased principal (which included the unpaid interest added to the original principal balance) and interest. Balloon loans, interest-only loans, and Pay Option ARMs often are called "non-traditional loans."

Mortgage originators offer various mortgage products that may be classified in different ways, such as:

a. Purpose

Mortgages often are categorized by whether they are used to purchase real property (called purchase money loans) or to refinance an existing loan (refinances). Refinance loans can either be "no cash out" or "cash out" loans. "No cash out" loans are refinance transactions where the proceeds of the new loan are used to pay off existing liens and can sometimes include the closing costs associated with the transaction. There is typically a small amount of funds that the borrower can receive back from the transaction and it still be considered a "no cash out" transaction. "Cash out" loans are loans made for more than the existing loan's outstanding principal balance. The borrower receives the cash borrowed in excess of the amount necessary to pay off the existing loan and associated closing costs. Additional loans (junior liens) other than the primary loan (first lien) may also be paid off with the proceeds of the new transaction. The purpose of these junior loans and secondary market requirements will determine if the new transaction would be considered a "cash out" or a "no cash out" transaction.

Construction loans, bridge loans, temporary loans, or combined construction to permanent financing loans are examples of short-term loans for other purposes. Another type of loan is a "home equity" loan, in which the borrower can receive funds to use for any purpose by borrowing against home equity. Equity is the amount the property is currently worth, minus the outstanding principal balance of any other mortgage the consumer has. Reverse mortgages are available to older homeowners to borrow against the equity they have in their homes. (See below for fuller discussion of reverse mortgages.)

b. Lien position

Lien position determines which mortgage loan receives priority over other loans in the event of a foreclosure or bankruptcy. A mortgage that is in a first lien position, sometimes called a senior loan, has priority for payment over a mortgage in a junior lien position if there is a foreclosure or bankruptcy proceeding. The proceeds from the foreclosure sale are divided according to lien position. A "simultaneous second lien" is a second lien originated at the same time as a first lien mortgage, which may allow a consumer to borrow an amount that is 100 percent of the value of the home. Sometimes lenders have allowed consumers to borrow an amount greater than the value of the property, although this practice is not common in today's mortgage marketplace. Payments necessary for a simultaneous second lien will have an impact on the borrower's ability to repay the mortgage.

c. Closed-end or open-end

Most purchase money and refinance mortgages are considered "closed-end credit" under the Truth in Lending Act, generally consisting of installment financing where the amount borrowed and repayment schedule are set at the transaction's outset. Closed-end mortgages can take first or junior lien positions.

In contrast, home equity lines of credit (HELOCs) are "open-end credit," extended to a consumer under a plan in which:

i. the creditor reasonably contemplates repeated transactions;

ii. the credit line generally is made available to the consumer to the extent that any unpaid balance is repaid; and

iii. the creditor may impose a finance charge from time to time on an outstanding unpaid balance.[1]

During the time while borrowers are able to draw down funds, they usually must pay a monthly interest charge on the outstanding balance. If the borrower owes funds after a fixed period of years, called the "draw period," the consumer enters the "repayment period" and must pay off the outstanding balance in regular periodic payments of principal and interest. The repayment period is also a fixed term of years. HELOCs are often, but not always, in a junior lien position.

Depending upon the lender and the HELOC agreement, the consumer may have to pay back the entire outstanding balance as soon as the draw period ends. In these cases, there is no repayment period, just a balloon payment in the amount of the outstanding balance when the draw period ends. HELOCs usually have an adjustable interest rate that changes over time, so the consumer's payments may not be the same from month to month.

[1] 12 CFR 1026.2(a)(20).

d. Reverse Mortgages

A reverse mortgage is a special type of loan that allows homeowners 62 and older to borrow against the equity in their homes. It is called "reverse" because the consumer receives payments ***from*** the lender, without making loan payments ***to*** the lender. In exchange for borrowing the money and receiving these payments, the borrower grants the lender a lien interest in the home. The lender charges interest each month and is paid off when the borrower leaves the home.

In taking out a reverse mortgage loan, a consumer can receive a lump-sum payment, regular monthly payments, or a line of credit. The borrower does not have to pay back the loan as long as the borrower continues to live in the home, maintain it, and stay current on expenses like homeowner's insurance and property taxes. If the borrower moves, passes away, or goes into assisted living or a nursing home on a long-term basis, the loan has to be paid off, including the outstanding principal and interest accrued during the life of the loan, usually by selling the house. However, a non-borrowing spouse may be permitted to remain in the home after the borrower has left the home under certain circumstances.[2]

The vast majority of reverse mortgages extended today are through the Home Equity Conversion Mortgage (HECM) program, which is the reverse mortgage product insured by the Federal Housing Administration.

Because of the unique features of reverse mortgages, examiners should follow the procedures that are specific to reverse mortgages and be aware that other mortgage origination and servicing examination procedures may not apply to reverse mortgages.

e. Ability-to-Repay

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the Truth in Lending Act (TILA) to require that creditors make a reasonable, good faith determination that the consumer can repay almost all closed-end transactions secured by a dwelling. The requirement applies generally to closed-end loans secured by a dwelling, including manufactured housing, conventional and governmental loans, and prime and subprime loans (see below). One way that lenders can meet TILA's ability-to-repay (ATR) requirement is by making qualified mortgages (QMs)—loans with certain features determined, by rule, meet TILA's ATR standards. If lenders do not choose to originate QM loans, they must demonstrate that loans otherwise meet TILA's ATR requirement. As a result, mortgages are usually referred to as either QM loans, which are presumed to comply with TILA's ATR requirement, or Non-QM loans, which must comply with the general ability-to-repay requirements directly.

[2] For more information, *see* https://www.hud.gov/program_offices/housing/sfh/hecm/surviving_non_borrowing_spouse.

The ATR rule does not apply to HELOCs, timeshares, reverse mortgages, temporary or bridge loans, or loans to finance the initial construction of a dwelling. It also does not apply to certain types of creditors making loans under programs for low- and middle- income borrowers, such as housing finance agencies, Community Development Financial Institutions and certain nonprofit organizations.

f. Conventional Lending

Conventional lending generally refers to prime standardized mortgage products that are not government-backed loans (discussed below). Conventional loans can be "conforming" or "non-conforming." Conventional conforming mortgages meet the underwriting and documentation standards set by the government sponsored enterprises (GSEs): Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac). Loans that are *eligible* for purchase by the GSEs have QM status under a temporary provision that expires October 1, 2022 (or whenever the GSEs exit conservatorship, whichever is earlier). Non-conforming mortgages may have, among other attributes, principal balances that exceed the loan limits set by the GSEs.

g. Governmental Support

Government-backed lending includes mortgage lending that is insured by the Federal Housing Administration (FHA) or guaranteed by either the U.S. Department of Veteran Affairs (VA) or the U.S. Department of Agriculture's (USDA) Rural Housing Service (RHS), among other agencies. Government-supported loans generally offer terms similar to conventional loans, but these loans provide additional benefits to consumers such as smaller down payments, higher loan-to-value ratios (amount of loan in proportion to the appraised value of the home), less restrictive qualifying criteria or lower interest rates. Consumers that qualify for these loans must pay additional insurance or guarantee fees in order to obtain the government backing. FHA, VA, and USDA have defined what constitutes a QM under the authority granted to them under the Dodd-Frank Act.. All of these loans are collectively referred to as "Agency" loans in these examination procedures.

h. Subprime and Alt-A Lending

Subprime mortgages carry interest rates higher than the rates of prime mortgages. These loans might also be called "higher-priced" or "high cost" mortgages, depending on how much the interest rate exceeds the average prime offer rate. A subprime mortgage generally has a higher cost and is offered to prospective borrowers with impaired credit records – those borrowers whose credit rating is "subprime." The higher interest rate is intended to compensate the lender for accepting the greater risk in lending to such borrowers. Traditionally, "subprime" has been the riskiest lending category, followed by "Alt-A," or Alternative-A, and then A-paper, or "prime," as the least risky. Alt-A borrowers may have prime credit, but some aspect of the loan makes it riskier.

2. Business of Mortgage Origination

Mortgage lending generally occurs through retail, wholesale, or correspondent lending channels. Sometimes there are no clear lines of demarcation among the channels, as a participant may operate in more than one of them. Each channel is described in more detail below.

a. Retail Channel

In the retail channel, the lender conducts the origination process directly with the consumer, either in person or through an online application. An employee of the lender, generally called a loan officer, solicits the loan, takes the application, and tracks the application through to the closing process.

b. Wholesale Channel – Mortgage Brokers

In the wholesale channel, a mortgage broker solicits the loan and takes the application from the consumer. Mortgage brokers are independent contractors and are not employees of the lender. The broker establishes relationships with multiple mortgage lenders and offers different mortgage loan products from these lenders. Mortgage brokers generally do not make underwriting decisions and do not actually fund the loans. In this channel, it is the mortgage lender that makes the underwriting decision, based on information provided by the broker. These mortgage lenders, called wholesale lenders, often are divisions of larger depository institutions. Generally, a wholesale lender requires a broker to enter into a wholesale lending agreement before the broker may originate loans on the lender's behalf.

In a variant of standard wholesale mortgage originations, some brokers "table fund" loans. In a table-funded transaction, the mortgage broker closes the loan as the lender of record and then assigns the loan to a purchaser at or immediately after the closing. The loan purchaser provides the funding for the loan, but the documents name the mortgage broker as the creditor.

c. Correspondent Channel – Small Mortgage Lenders

Correspondent lending, a form of retail lending, is often comprised of smaller institutions, or mortgage bankers. Correspondent lenders are the primary interface with consumers, conducting all steps in the mortgage origination process and funding their own loans. They generally originate and deliver loans pursuant to underwriting standards set by other lenders or investors, usually larger depository lenders. What differentiates a correspondent lender from a retail lender is that correspondent lenders will not portfolio or securitize these loans but will always sell their loans to another aggregator or investor. In addition to soliciting consumers directly, correspondent lenders may also receive applications and mortgage documents from mortgage brokers. Generally, an investor will require a correspondent lender to enter into a written correspondent lending agreement before the correspondent may originate loans for sale to the wholesale investor.

There are instances where mortgage brokers desire to make a transition and become correspondent lenders. These mortgage brokers typically identify themselves as a mini-correspondent lender. The mini-correspondent model is a non-delegated arrangement where the mortgage "broker" performs a subset of the mortgage origination activities in partnership with a traditional wholesale lender, who—in this instance—acts as the investor. The mini-correspondent will fund the loan in its name, usually using a warehouse line of credit, and then sells the loan to the wholesale lender/investor. While some mortgage brokers successfully transition into a mortgage banker, there may be instances where a mortgage broker remains as a mini-correspondent lender and never makes the complete transition to being an independent mortgage banker for various business-related reasons. Instead, the mortgage broker continues to conduct certain activities as a traditional mortgage broker, despite entering into mini-correspondent arrangements with particular wholesale lenders.

3. Federal Consumer Financial Law Requirements and Supporting Guidance

Mortgage originators must comply with several federal consumer financial laws:

a. The Real Estate Settlement Procedures Act (RESPA) and its implementing regulation, Regulation X, require lenders or mortgage brokers, with respect to mortgage origination, to provide borrowers with disclosures regarding the nature and costs of the real estate settlement process. RESPA also protects borrowers against certain abusive practices, such as fees or kickbacks for the referral of settlement service business and arrangements to evade the RESPA requirements. RESPA also places requirements on the administration of, and limitations upon required deposits into, escrow accounts. Generally, for closed-end loans secured by a dwelling, application and closing disclosures are provided under Regulation Z, pursuant to the TILA-RESPA Integrated Disclosure rule, which requires a Loan Estimate and a Closing Disclosure (collectively, Integrated Disclosures) to be provided for loans with applications received on or after October 3, 2015. For closed-end loans secured by a dwelling whose applications are received before October 3, 2015, and for reverse mortgages, HELOCs, chattel mortgage loans, and loans made by an entity that does not fit the Regulation Z definition of a creditor, the RESPA disclosures required at or before origination include, as applicable:

   i. Good Faith Estimate (GFE) of settlement costs within three business days after application (note that the GFE is not required to be provided if the TILA open-end disclosures are provided to the borrower, as required by Regulation Z);

   ii. An initial notice explaining whether the servicing rights to the loan may be transferred (note that this requirement does not apply to HELOCs); and

   iii. For loans other than HELOCs subject to TILA and Regulation Z, a settlement statement (HUD-1/1A) provided at or before closing that reflects the actual costs to be paid by the borrower and seller or the borrower when there is no seller, respectively.

b. The Truth in Lending Act (TILA) and its implementing regulation, Regulation Z, provide a uniform system for creditors' disclosures of credit terms. Generally, for closed-end loans secured by a dwelling, application and closing disclosures are provided under Regulation Z, pursuant to the TILA-RESPA Integrated Disclosure rule, which requires the Integrated Disclosures to be provided for loans with applications received on or after October 3, 2015. For applications received before October 3, 2015, reverse mortgages, HELOCs, chattel mortgage loans, and loans made by an entity that does not fit the Regulation Z definition of a creditor, the TILA disclosures required at or before origination include:

   i. Initial Truth-in-Lending (initial TIL) disclosure within three business days after application; and

   ii. Final Truth-in-Lending (final TIL) disclosure at least three business days before closing.

c. In addition, Regulation Z:

   i. Imposes certain advertising rules;

   ii. Requires written disclosure and re-disclosure of certain loan terms;

   iii. Requires that creditors make a good faith determination of the borrower's ability to repay and verify information they relied on to do so;

   iv. Provides consumers with rescission rights in certain circumstances;

   v. Provides consumers with legal remedies if the creditor fails to consider ability to repay;

   vi. Delineates and prohibits certain unfair and deceptive mortgage lending practices;

   vii. Restricts certain mortgage loan originator compensation;

   viii. Requires certain mortgage loan originator qualifications;

   ix. Requires loan originator identification on certain loan documents;

   x. Requires depository institutions to have policies and procedures to ensure and monitor compliance with certain requirements;

   xi. Prohibits certain terms and practices in the origination of "higher-priced" loans and prohibit additional terms and practices on a subset of these loans known as "high cost loans;"

   xii. Requires escrow accounts for certain "higher-priced" mortgage loans;

   xiii. Prohibits certain appraisal practices; and

xiv. Prohibits mandatory arbitration, the financing of credit insurance, or waivers of federal rights.

For loans covered by either the Integrated Disclosures or the pre-existing TILA and RESPA requirements, several additional disclosures are necessary, depending on the type of loan.

i. Provision of a written list of homeownership counseling organizations that provide relevant counseling services in the loan applicant's location;

ii. Disclosure of affiliated business arrangements;

iii. Special information booklet, otherwise known as "Your home loan toolkit: A step-by-step guide;" and

iv. Consumer Handbook on Adjustable Rate Mortgages (CHARM) booklet.

d. The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) and its implementing regulations, Regulation G (Federal) and Regulation H (State), establish requirements for registration and, when applicable, standards for licensing of individuals who are residential mortgage loan originators. The registration and licensing requirements are administered, in part, through the Nationwide Mortgage Licensing System and Registry (NMLSR). Each loan originator, unless exempt, must obtain and maintain a state loan originator's license if not an employee of a covered financial institution, register through the NMLSR, obtain a unique identifier, and provide it to consumers in certain circumstances, and maintain registration through the NMLSR.

e. The Gramm-Leach-Bliley Act (GLBA), through its implementing regulation, Regulation P, requires covered entities to provide privacy notices and limits the sharing of certain consumer information without providing the consumer notice and an opportunity to opt-out.

f. The Fair Credit Reporting Act (FCRA) and its implementing regulation, Regulation V, impose disclosure and other requirements on mortgage lenders that obtain information from a consumer reporting agency to determine a consumer's credit worthiness. These include the disclosure of credit score information, disclosure of adverse action, and disclosure of risk-based pricing.

g. Mortgage Acts and Practices – Advertising Rule (MAP Rule), also known as Regulation N, applies only to non-depository mortgage lenders and state-chartered credit unions, as well as entities that market and advertise mortgage products but are not mortgage lenders, such as mortgage brokers, real estate brokers, advertising agencies, lead generators, and rate aggregators. The MAP Rule sets forth specific deceptive acts and practices in the advertising of mortgage loan products and prohibits misrepresentation in any commercial communication concerning terms of mortgage loan products.[3]

h. The Equal Credit Opportunity Act (ECOA) and its implementing regulation, Regulation B, prohibit creditors from discriminating against any applicant with respect to any aspect of a credit transaction:

   i. On the basis of race, color, religion, national origin, sex,[4] marital status, or age (provided the applicant has the capacity to contract);

   ii. Because all or part of the applicant's income derives from any public assistance program; or

   iii. Because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.[5]

   Creditors also are prohibited from making any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage, on a prohibited basis, a reasonable person from making or pursuing an application. ECOA's fair lending requirements are predominately covered in the Bureau's fair lending examinations.

   In addition, ECOA and Regulation B require lenders to retain information related to applications, existing accounts, and prescreened solicitations for a specified period of time, and to provide adverse action notices and appraisal and other written valuations to consumers, such as those generated by automated valuation models (AVMs) and broker price opinions.

i. The Home Mortgage Disclosure Act (HMDA) and its implementing regulation, Regulation C, require mortgage lenders that meet certain threshold conditions to collect, report to federal regulators, and disclose to the public certain data about applications for, and originations and purchases of, home purchase loans, home improvement loans, and refinancings for each calendar year. The data include information about the loan or application (e.g., loan amount, loan purpose, action taken), the applicant (e.g., sex, ethnicity and race), and the property (e.g., property type and geographic information such

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[3] The MAP Rule became effective on August 19, 2011. Mortgage Acts and Practices – Advertising, 76 Fed. Reg. 43826 (July 22, 2011).

[4] The term "sex," as used in ECOA and Regulation B includes discrimination based on sexual orientation and gender identity. *See* Equal Credit Opportunity (Regulation B); Discrimination on the Bases of Sexual Orientation and Gender Identity, 86 Fed. Reg. 14363 (Mar. 16, 2021), *available at* https://www.federalregister.gov/documents/2021/03/16/2021-05233/equal-credit-opportunity-regulation-b-discrimination-on-the-bases-of-sexual-orientation-and-gender.

[5] The Consumer Credit Protection Act, 15 U.S.C. 1601 *et seq.*, is the collection of federal statutes that protects consumers when applying for or receiving credit. The Act includes statutes that have certain rights for consumers, such as dispute rights under the Fair Credit Reporting Act. The ECOA prohibits discriminating against an applicant who has exercised a right, such as a dispute right pursuant to one of the statutes outlined in the Act.

as census tract, state and metropolitan statistical area (MSA)). HMDA's requirements are covered in the Bureau's HMDA exams.

These laws historically have been implemented by regulations published by one or more of seven federal agencies, including the Federal Trade Commission, the Department of Housing and Urban Development, the Board of Governors of the Federal Reserve System, and other prudential regulators. The Dodd-Frank Act generally transferred these agencies' rulemaking authority under those laws to the Bureau, which published implementing regulations under its authority, effective beginning December 30, 2011. When examiners observe violations of regulatory requirements, they should cite to the regulation that was in effect at the time the act occurred.

The CFPB has issued policy guidance discussing the above regulations and detailing how the Bureau intends to exercise its supervision and enforcement authority. Below are descriptions and links to two guidance documents regarding mini-correspondent lenders and third-party service providers.

j. As discussed above, some mortgage brokers take on the title of a "mini-correspondent lender" as they transition to correspondent lending. However, just because a party calls itself a "mini-correspondent lender" does not mean that it is automatically exempt from regulations applicable to transactions involving mortgage brokers. See Policy Guidance on Supervisory and Enforcement Considerations Relevant to Mortgage Brokers Transitioning to Mini-Correspondent Lenders (July 9, 2014), CFPB Policy Guidance, http://files.consumerfinance.gov/f/201407_cfpb_guidance_mini-correspondent-lenders.pdf.

k. Third-party service providers for supervised banks and non-banks are expected to comply with federal consumer financial law. However, the outsourcing of mortgage origination activities to third-party service providers (e.g., software vendors, mortgage brokers, and settlement agents) does not limit or remove a supervised bank or non-bank's obligations under consumer financial services law. Supervised banks and non-banks are expected to oversee their business relationships with service providers in a manner that ensures compliance with federal consumer financial law by all parties. See CFPB Bulletin 2016-0262, Service Providers (October 31, 2016), https://files.consumerfinance.gov/f/documents/102016_cfpb_OfficialGuidanceServiceProviderBulletin.pdf

To carry out the objectives set forth in the Examination Objectives section, the examination process also will include assessing other risks to consumers generally prohibited by the Dodd-Frank Act. These risks may include potentially unfair, deceptive, or abusive acts or practices (UDAAPs) with respect to mortgage originators' interactions with consumers.[6]

[6] Sec. 1036 of the Dodd Frank Act (July 21, 2010).

Please refer to CFPB's examination procedures regarding UDAAPs for more information about the legal standards and the CFPB's approach to examining for UDAAPs.

The particular facts in a case are crucial to a determination of unfair, deceptive, or abusive acts or practices. As set out in the Examination Objectives section, examiners should consult with Headquarters to determine whether the applicable legal standards have been met before a violation of any federal consumer financial law can be cited, including a UDAAP violation.

General Considerations

Completing the following examination modules will allow examiners to develop a thorough understanding of mortgage brokers' and lenders' practices and operations. To complete the modules, examiners should obtain and review, as applicable, each entity's:

1. organizational charts and process flowcharts;
2. board minutes, annual reports, or the equivalent to the extent available;
3. relevant management reporting;
4. policies and procedures;
5. rate sheets;
6. loan applications, verification of information relied on in determining ability to repay;
7. loan account documentation, notes, disclosures, and all other contents of loan underwriting and closing files;
8. operating checklists, worksheets, and review documents;
9. relevant computer program and system details;
10. wholesale and correspondent lending agreements, due diligence and monitoring procedures, and lending procedures;
11. underwriting guidelines; compensation policies;
12. historical examination information;
13. audit and compliance reports; management's responses to findings;
14. training programs and materials;

15. service provider contracts;[7]

16. advertisements; and

17. complaints.

Information requests for mortgage origination examinations are geared towards obtaining the type of information examiners need prior to an examination team's scheduled on-site review of an institution. The information requests should be tailored to reflect an institution's specific risk profile or the scope of the particular examination.

Transaction testing should occur for all mortgage origination focused examinations. In selecting a sample of files for transaction testing, examiners should use reasonable sampling methods, which may require use of a judgmental or statistical sample. The sample size selected for transaction testing should reflect the size, product line, and risk profile of the institution and the scope of the examination. The sample size should allow examiners to gain a thorough understanding of the nature of the institution's mortgage origination business line(s).

Examiners should obtain a list of consumer files, as requested in the mortgage origination information requests, and select a valid sample for further review.

1. Consider weighting the sample to review more loans from branches with a larger volume of complaints or product type that presents a greater risk of consumer financial harm.
2. Obtain complete loan files, which contain the disclosures required by federal consumer financial laws and other legal documents, as well as underwriting documents, rate sheets, and all documents provided to and by the consumer.

When on-site, examiners should review the sample of loan origination files to assess an institution's compliance with the federal consumer financial laws as further described in the individual modules below.

As resources permit, examiners also should conduct interviews with management, staff and third parties to determine whether they understand and consistently follow the policies, procedures, and regulatory requirements applicable to mortgage lending; manage change appropriately, including implementation of new requirements; and implement effective controls. Examiners also should consider observing consumer interactions and, if consumer complaints or the document review indicate potential concerns, interviewing consumers.

[7] CFPB issued a bulletin highlighting its expectation that supervised banks and non-banks oversee their business relationships with service providers in a manner that ensures compliance with federal consumer financial law. See CFPB Bulletin 2016-02, Service Providers (October 31, 2016), https://www.consumerfinance.gov/policy-compliance/guidance/supervisory-guidance/compliance-bulletin-and-policy-guidance-2016-02-service-providers.

Examination Procedures

Module 1 – Company Business Model

Conduct initial interviews for all relevant departments. This may occur during deep-dive meetings held with the institution at the beginning of on-site examination activities. Some of the information outlined below may have already been gathered during the pre-scoping and information gathering portion of the examination.

1. Determine the type of mortgage origination channel(s) used by the entity. Is the entity:
    a. Acting as a broker;
    b. Acting as a correspondent;
    c. Lending through a retail system;
    d. Lending through a wholesale or correspondent system; or
    e. Using a combination of these strategies?
2. Determine the funding source(s) the entity uses.
3. Ascertain the product volume, mix, trends, and concentrations across all branches.
4. Review the organizational chart and reporting structure for mortgage loan origination to determine the reporting structure and responsibilities of key managers.
5. Review and list the types of products the entity offers. Determine whether the entity offers hybrid ARMs, interest-only loans, simultaneous second liens, Alt- A loans, or subprime loans. If the entity offers reverse mortgages, determine whether it offers HECMs and, if so, what percentage of the reverse mortgages originated are HECMs.
6. Determine whether the quality control (or audit, as applicable), underwriting, and appraisal functions operate independently of the production function (sales unit).
7. If the examination includes assessment of the entity's compliance with RESPA:
    a. Determine whether the entity allows borrowers to choose their title insurer or requires the borrowers to use an affiliated settlement service provider. **Please refer to the RESPA examination procedures, Purchase of Title Insurance, 12 CFR 1024.16; Payment or Receipt of Referral or Unearned Fees, 12 CFR 1024.14; and Affiliated Business Arrangements, 12 CFR 1024.15, for more information.**
    b. Assess whether fees, payments, advances, loans, services, discounts, free website advertising, rebate, or other consideration given or received from any settlement service provider may be considered a kickback, unearned fee, or thing of value in

return for the referral of settlement services business. **Please refer to the RESPA examination procedures, 12 CFR 1024.14, for more information.**

Mini-Correspondent Lenders

Some mortgage brokers take on the title of a “mini-correspondent lender” as they transition to correspondent lending. However, just because a party calls itself a “mini-correspondent lender” does not mean that it is automatically exempt from regulations applicable to transactions involving mortgage brokers. Therefore, to determine the true nature of a mini-correspondent:

1. Determine whether the mini-correspondent still acts as a mortgage broker in some transactions, either brokering to the same wholesale lender that supplies the warehouse in of credit or otherwise.
    a. If so, determine what distinguishes the mini-correspondent’s mortgage brokerage transactions from its lender transactions.
2. Determine the number of investors the mini-correspondent has available to purchase its loans.
3. Determine whether the mini-correspondent is using a bona fide warehouse line of credit as the source to fund the loans that it originates.
    a. Determine how thorough the process was for the mini-correspondent to get approved for that warehouse line of credit.
    b. Determine whether the mini-correspondent has more than one warehouse line of credit.
    c. Determine whether the warehouse lender providing the line of credit affiliated with any of the mini-correspondent’s investors that purchase loans from the mini-correspondent.
    d. If the warehouse line of credit is provided by an investor to whom the mini-correspondent will sell loans to, determine whether the warehouse line is a “captive” line (i.e., the mini-correspondent is required to sell the loans to investors providing the warehouse lines or affiliates of the investors).
    e. Determine what percentage of the mini-correspondent’s total monthly originated volume is sold by the mini-correspondent to the entity providing the warehouse line of credit to the mini-correspondent or to an investor related to the entity providing the warehouse line of credit.
    f. Determine whether the mini-correspondent’s total warehouse line of credit capacity bear a reasonable relationship, consistent with correspondent lenders generally, to its size (i.e., its assets or net worth).

4. Determine what changes the mini-correspondent has made to staff, procedures, and infrastructure to support the transition from mortgage broker to mini-correspondent.

5. Determine what training or guidance has the mini-correspondent received to understand the additional compliance risk associated with being the lender or creditor of a residential mortgage transaction.

6. Determine which entity (mini-correspondent, warehouse lender, or investor) is performing the majority of the mortgage origination activities.

   a. Determine which entity underwrites the mortgage loan before consummation and otherwise makes the final credit decision.

   b. Determine what percentage of the mortgage origination activities (such as the taking of loan applications, loan processing, and pre-consummation underwriting) is being performed by the mini-correspondent or an independent agent of the mini-correspondent.

   c. If the majority of the mortgage origination activities are being performed by an investor, determine whether there is a plan in place to transition these activities to the mini-correspondent. Determine what conditions must be met to make this transition.

Module 2 – Advertising and Marketing

This module applies to both mortgage brokers and mortgage lenders. Examiners should evaluate the originator's advertising materials and disclosures across all media, including print, television, radio, telephone solicitation scripts, and electronic media (including the Internet, email, and text messages) for any material misrepresentations. If the entity engages in telemarketing, examiners also should listen to a selection of the sales calls. Finally, examiners should determine whether the entity employs or acts as a third-party lead generator, and should understand the extent of any relationships that the entity has with affiliated or other service providers (i.e., as a broker or agent) to advertise, offer, or provide loans or other products and services.

Transaction Testing

TILA, Regulation Z

1. Assess compliance with TILA, Advertising Provisions, for advertisements concerning open-end accounts. **Please refer to the TILA examination procedures, Advertising, regarding 12 CFR 1026.16, for more information**.

2. Assess compliance with TILA, Advertising Provisions, for advertisements concerning closed-end loans. **Please refer to the TILA examination procedures, Advertising, regarding 12 CFR 1026.24, for more information**.

RESPA, Regulation X

1. Assess whether the entity complies with the RESPA Section 8 prohibitions against giving or accepting kickbacks for the referral of settlement service business and a split or portion of unearned fees.[8] **Please refer to the examination procedures regarding RESPA, 12 CFR 1024.14, for more information.**

SAFE Act, Regulation G

1. Assess whether mortgage loan originator employees of depository institutions disclose NMLS numbers on all advertisements, whether those advertisements are made on paper or electronically. (12 CFR 1007.105)

FCRA, Regulation V

1. Assess compliance with Fair Credit Reporting Act prescreening obligations. **For more information please refer to the FCRA examination procedures on Prescreened Consumer Reports and Opt-Out Notice, Sections 604(c) and 615(d); 15 U.S.C. 1681b(c)**

[8] If the testing required to complete this procedure has been completed under Module 1, Procedure 8, please refer to those results without repeating the procedure here.

and 15 U.S.C. 1681m(d); and 12 CFR 1022.54, in Module 3 – Disclosures to Consumers and Miscellaneous Requirements.

2. Assess compliance with FCRA's affiliate marketing rule. **Please refer to the FCRA examination procedures, 12 CFR 1022.20 – 1022.27, for more information**.

Mortgage Acts and Practices, Regulation N (12 CFR 1014.3)

1. For non-depositories and state-chartered credit unions, determine whether advertisements, promotional materials, and other "commercial communications"[9] for mortgage credit products contain material misrepresentations, expressly or by implication, of the following:[10]

   f. the interest rate charged for the product, including, but not limited to the amount of interest owed each month that is included in the consumer's payments, loan amount, or total amount due, or whether the difference between the interest owed and the interest paid is added to the total amount due from the consumer (12 CFR 1014.3(a)(1)-(2));

   g. the annual percentage rate, simple annual rate, periodic rate, or any other rate (12 CFR 1014.3(b));

   h. the existence, nature, or amount of fees or other costs associated with the product, including, but not limited to misrepresentations that no fees are charged (12 CFR 1014.3(c));

   i. the existence, cost, payment terms, or other terms associated with any additional product or feature that may be sold with the product, including, but not limited to credit insurance or credit disability insurance (12 CFR (1014.3(d));

   j. the terms, amounts, payments, or other requirements related to taxes or insurance associated with the product, including, but not limited to whether separate payment of taxes or insurance are required or the extent to which tax or insurance payments are included in the loan payments, loan amount, or total amount due from the consumer (12 CFR 1014.3(e)(1)-(2));

   k. the existence, nature, or amount of prepayment penalties (12 CFR 1014.3(f));

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[9] The MAP Rule, 12 CFR 1014, which applies to non-banks and state-chartered credit unions, defines "commercial communication" broadly as "any written or oral statement, illustration, or depiction, whether in English or any other language, that is designed to effect a sale or create interest in purchasing goods or services, whether it appears on or in a label, package, package insert, radio, television, cable television, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, film, slide, audio program transmitted over a telephone system, telemarketing script, on-hold script, upsell script, training materials provided to telemarketing firms, program-length commercial ("infomercial"), the internet, cellular network, or any other medium. Promotional materials and items and Web pages are included in the term *commercial communication*." 12 CFR 1014.2.

[10] The MAP Rule lists 19 examples of specific prohibited claims, including the claims described in this item.

l. the variability of interest, payments, or other terms of the product, including but not limited to misrepresentations using the word "fixed" (12 CFR 1014.3(g));

m. comparisons between rates or payments available for a period less than the full length of the product and actual or hypothetical rates or payments (12 CFR 1014.3(h)(1)-(2));

n. product type, including whether the loan amortizes (12 CFR 1014.3(i));

o. amount of the obligation, or the existence, nature, or amount of cash or credit available to the consumer (12 CFR 1014.3(j));

p. existence, number, amount, or timing of any minimum or required payments, including misrepresentations about whether payments are required in a reverse mortgage or other mortgage credit product (12 CFR 1014.3(k));

q. potential for default, including misrepresentations concerning the circumstances when the consumer could default for nonpayment of taxes, insurance, or maintenance, or for failure to meet other obligations (12 CFR 1014.3(l));

r. product effectiveness with respect to debt reduction, elimination, restructuring, or waiver or forgiveness of the debt in whole or in part (12 CFR 1014.3(m));

s. the affiliation of a mortgage credit product or product provider to a governmental entity or other organization (12 CFR 1014.3(n)(1));

t. the relation of a mortgage credit product to a governmental benefit, or that the mortgage credit product advertised is endorsed, sponsored, or affiliated with any government or other program (12 CFR 1014.3(n)(2));

u. the source of any commercial communication, including but not limited to whether the commercial communication is made by or on behalf of the consumer's current mortgage lender or servicer (12 CFR 1014.3(o));

v. the right of a consumer to reside in the dwelling subject to the mortgage credit product or the duration of that right, including but not limited to what conditions a consumer with a reverse mortgage can stay in the dwelling (12 CFR 1014.3(p));

w. a consumer's credit qualifications for a particular product or program, including whether the consumer has been preapproved or guaranteed for any such product or term (12 CFR 1014.3(q));

x. the consumer's likelihood to obtain a refinancing or modification, including misrepresentations concerning whether the consumer has been preapproved or guaranteed for refinancing or modification (12 CFR 1014.3(r));

y. the availability, nature, or substance of counseling services, including, but not limited to the qualifications of those offering the services or advice (12 CFR 1014.3(s)).

2. For non-depositories and state-chartered credit unions, determine whether the entity keeps and maintains records of all advertisements and promotions for a period of twenty-four months from the last date the entity made or disseminated the applicable advertisement or promotion (12 CFR 1014.5(a)).

Other Risks to Consumers - General

1. Determine whether advertisements and promotional materials for mortgage loan products contain misleading representations that a lender or broker is acting in a fiduciary capacity or in the consumer's best interest.
2. Determine whether advertisements and promotional materials for mortgage loan products clearly disclose all material limitations or conditions on the terms or availability of products or services, such as:
   a. special interest rates for a limited time period (teaser rates);
   b. the expiration date for terms that apply only during an introductory period;
   c. interest rate resets that could cause significant increases in payments;
   d. material prerequisites for obtaining particular products, services, or benefits (e.g., discounts, refunds or rebates);
   e. non-amortizing or less-than-fully amortizing loan terms;
   f. balloon payments; or
   g. prepayment penalties.
3. Determine whether advertisements and promotional materials avoid using fine print, separate statements, or inconspicuous disclosures to correct potentially misleading headlines.
4. If additional products or services are sold or offered in connection with the loan, such as credit insurance products, home warranties, or annuities, determine whether advertisements and promotional materials provide timely, clear, and understandable information about the existence of costs, payment terms, penalties, or other terms and charges, the reasons for their imposition, and the salesperson's compensation from cross-sales.
5. Determine the target audience for each type of advertisement and product. Assess whether the entity designs advertisements, promotional materials, disclosures and scripts to be comprehensible by the target audience.

Please refer to the UDAAP examination procedures, Marketing and Disclosures, for more information.

Other Risks to Consumers – Non-traditional Mortgage Loans

1. Determine whether advertisements and promotional materials:

   a. Provide timely, clear, and understandable information about the costs, key terms, and features associated with non-traditional mortgage loans, including information about balloon clauses, negative or less than full amortization, prepayment penalties, and the cost of reduced documentation that are important in enabling the consumer to make an informed decision whether the product meets the consumer's needs.

Please refer to the UDAAP examination procedures, Marketing and Disclosures, for more information.

Other Risks to Consumers – Reverse Mortgages

1. Determine whether the entity offers or receives compensation from those offering other financial products, like an annuity or long-term care insurance, to be paid for with the proceeds of the reverse mortgage. If so, determine whether the entity provides timely, clear, and understandable information about these products.

2. Determine whether the entity provides timely, clear, and understandable information about the costs and relative risks of reverse mortgages.

3. Determine whether the entity provides timely, clear, and understandable information about the requirements to pay property taxes, insurance, utilities, maintenance, and other expenses after obtaining a reverse mortgage.

4. Determine whether the entity provides timely, clear, and understandable information about the circumstances under which the borrower may be required to pay the loan in full.

5. Determine whether the entity provides timely, clear, and understandable information about the ability of a non-borrowing spouse to stay in the home if the borrowing spouse no longer resides there or passes away, if applicable.

6. Determine whether the entity provides timely, clear, and understandable information regarding the ability of the borrower's estate or heirs to retain the home after the borrower passes away.

7. Determine whether the entity has adequate safeguards against improper marketing of reverse mortgages to seniors who have medical or cognitive problems or in situations raising concerns about undue influence by third parties.

Please refer to the UDAAP examination procedures, Marketing and Disclosures, for more information.

Module 3 - Loan Originators

This module focuses on an entity's compliance with the compensation, qualification, identification, and policy and procedure requirements for loan originators. Examiners should be prepared to review compensation agreements, tax records, receipts and other appropriate documentation in order to identify all compensation and incentive plans and confirm compliance with the Loan Originator Rule. For the qualification and documentation aspect of the Loan Originator Rule, examiners should be prepared to assess whether loan originators are appropriately registered and are identified on the required documents. For loan originators that are not required to be registered, examiners should be prepared to assess whether background qualification requirements have been met by the institution.

Transaction Testing

TILA, Regulation Z

Prohibited Payments to Loan Originators (12 CFR 1026.36(d)(1))

1. Review loan files, loan originator compensation agreements (including incentive programs), payment records, and other applicable records to confirm that loan originators are not receiving prohibited payments. **Please refer to the TILA examination procedures Prohibited Payments to Loan Originators, 12 CFR 1026.36(d)(1)(i), for more information.**

2. Interview loan originators, including highly compensated loan originators, to verify information obtained from written records provided by the creditor. **Please refer to sample questions at the TILA examination procedures Prohibited Payments to Loan Originators, 12 CFR 1026.36(d)(1)(i),end of this module for more information.**

3. Assess whether, in connection with a consumer credit transaction secured by a dwelling, no loan originator receives and no person pays to a loan originator, directly or indirectly, compensation that is based on any of the transaction's terms or a factor that is a proxy for a term. (12 CFR 1026.36(d)(1)(i)).[11] **Please refer to the TILA examination procedures Prohibited Payments to Loan Originators, 12 CFR 1026.36(d)(1)(i), for more information.**

4. Assess whether, in connection with a consumer credit transaction secured by a dwelling, a loan originator receives and a person pays an originator, directly or indirectly, compensation that is based on loan product type.[12] **Please refer to the TILA examination procedures**

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[11] The amount of credit extended is not deemed to be a transaction term, provided compensation received by or paid to a loan originator, directly or indirectly, is based on a fixed percentage of the amount of credit extended. Such compensation may be subject to a minimum or maximum dollar amount.

[12] Compensation based on loan product type often will violate Regulation Z because many "products" in the market refer to different bundles of specific transaction terms. *See* Loan Originator Compensation Requirements under the Truth in Lending Act

Prohibited Payments to Loan Originators, 12 CFR 1026.36(d)(1)(i), for more information.

5. Assess whether, in connection with a consumer credit transaction secured by a dwelling, an institution uses point banks, marketing service agreements, or other similar devices to provide prohibited compensation to an individual loan originator based on transaction terms or the terms of multiple transactions conducted by that individual loan originator. **Please refer to the TILA examination procedures, Prohibited Payments to Loan Originators, 12 CFR 1026.36(d)(1)(i) for more information.**

6. Determine whether creditors and loan originator organizations have retained records related to loan originator compensation and compensation agreements for three years after the date of payment. **Please refer to the TILA examination procedures General Procedures, for more information.**

7. Assess whether any of the proceeds from a consumer credit transaction secured by a dwelling are placed into an account from which payments are made back to the individual loan originator or an entity owned in whole or part by that individual loan originator and those payments are not reflected on the final settlement statement for the transaction. **Please refer to the TILA examination procedures Prohibited Payments to Loan Originators, 12 CFR 1026.36(d)(1)(i), for more information.**

8. If loan originators receive compensation pursuant to a non-deferred compensation plan, determine whether the 10 percent total compensation limit applies. If it does, determine whether non-deferred compensation received by the loan originator complies with the 10 percent total compensation limit. **Please refer to the TILA examination procedures, Prohibited Payments to Loan Originators, for more information.**

Prohibition on Dual Compensation (12 CFR 1026.36(d)(2))

1. Determine whether any loan originator receives compensation directly from a consumer and from any person other than the consumer in a consumer credit transaction secured by a dwelling. **Please refer to the TILA examination procedures Prohibition on Dual Compensation regarding Regulation Z, 12 CFR 1026.36(d) for more information.**

Prohibition on Steering (12 CFR 1026.36(e))

1. Confirm 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

(Regulation Z), 78 Fed. Reg. 11,279, 11,327 n. 82 (Feb. 15, 2013). *See also*, 2013 Loan Originator Rule Small Entity Compliance Guide (Feb. 2013), *available at* https://files.consumerfinance.gov/f/201503_cfpb_2013-loan-originator-rule-small-entity-compliance-guide.pdf.

the consummated transaction is in the consumer's interest. **Please refer to the TILA examination procedures, Prohibition on Steering, 12 CFR 1026.36(e)(1), for more information.**

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 specific conditions for each type of transaction in which the consumer expressed an interest.

Loan Originator Qualifications and Documentation (12 CFR 1007, 1008, and 1026.36(f))

1. Determine whether an individual is a loan originator. **Please refer to the SAFE Act Regulations G, 12 CFR 1007.102, and Appendix A, and Regulation H, 12 CFR 1008.103 and its corresponding Appendix A for examples.**

2. Determine whether the loan originator organization and its individual loan originators are registered or licensed as required by applicable state and federal law, including the SAFE Act.

3. Determine whether the financial institution's written policies and procedures comply with SAFE Act requirements and the institution conducts annual independent compliance tests to assure compliance with the SAFE Act regulation.

Please refer to the SAFE Act examination procedures for supervised financial institutions regarding Regulation G, 12 CFR 1007.104. For loan originators required to be registered under state law, see Regulation Z, 12 CFR 1026.36(f).

4. Determine whether the loan originator organization, including a creditor:

   a. complies with state law qualification requirements for legal existence and foreign qualification, to the extent applicable;

   b. ensures its individual loan originators are licensed and/or registered to the extent required under the SAFE Act and state law; and

5. Determine whether the loan originator organization, for individual loan originator employees who are not licensed and do not have to be licensed, prior to acting as loan originators:

   a. obtains, among other things, a criminal background check, a credit report, and information about administrative, civil or criminal findings;

   b. makes certain determinations, including financial responsibility, where applicable; and

   c. provides periodic training.

6. Confirm that the NMLSR ID information for the loan originator organization and the primary individual loan originator is disclosed on the credit application; the Loan Estimate and the Closing Disclosure; the note or loan contract; and the security instrument.

Please refer to the TILA examination procedures Loan Originator Qualifications and Documentation regarding Regulation Z, 12 CFR 1026.36(f).

Module 4 – Loan Disclosures and Terms - Closed-End Residential Mortgage Loans

This module focuses on the disclosures required for closed-end residential transactions subject to the TILA-RESPA Integrated Disclosure rule, effective October 3, 2015. The Loan Estimate and Closing Disclosure (collectively, Integrated Disclosures) are required for most closed-end loans secured by a dwelling for which applications are received on or after the effective date. Examiners should obtain and review a sample of complete loan files to assess the entity's compliance. If consumer complaints regarding mortgage origination and closing indicate potential violations of disclosure requirements, examiners may also conduct interviews of consumers from the sample and ask questions relevant to each topic area below.

Transaction Testing

Loan Estimate

TILA, Regulation Z

***Estimates Prior to the Loan Estimates* (12 CFR 1026.19(e)(2))**

1. If the creditor has provided the consumer with a written estimate of terms or costs prior to delivery of the Loan Estimate, determine whether:

   a. the creditor 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

   b. the estimate does not use a format or content substantially similar to the Loan Estimate (form H-24 of Appendix H).

Please refer to the TILA examination procedures, Pre-Disclosure Activity, for more information.

2. Determine whether the creditor or mortgage broker imposed a fee (other than for a credit report) before the consumer received the Loan Estimate and indicated intent to proceed with the transaction. **Please refer to the TILA examination procedures, Pre-Disclosure Activity, for more information.**

***Timing* (12 CFR 1026.19(e)(1)(iii))**

1. Determine whether the Loan Estimate was delivered or placed in the mail no later than three business days after receipt of the consumer's application. **Please refer to the TILA examination procedures, Mortgage Loans Secured by Real Property – Early Disclosures (Loan Estimate), 12 CFR 1026.19: Timing, for more information.**

2. Determine whether the Loan Estimate was delivered or placed in the mail no later than seven business days before consummation of the transaction (other than a timeshare transaction).**Please refer to the TILA examination procedures, Mortgage Loans**

Secured by Real Property – Early Disclosures (Loan Estimate), 12 CFR 1026.19: Timing, for more information.

3. If the consumer waived the seven business day waiting period, determine whether the creditor obtained a dated written statement describing the personal financial emergency, modifying or waiving the waiting period, and containing signatures by all consumers who are primarily liable on the obligation. **Please refer to the TILA examination procedures, Mortgage Loans Secured by Real Property – Early Disclosures (Loan Estimate), 12 CFR 1026.19: Timing, for more information.**

Accurate Completion of the Loan Estimate **(12 CFR 1026.37)**

1. Determine whether the creditor accurately disclosed the Loan Estimate disclosures on Page 1 of the Loan Estimate. **Please refer to the TILA examination procedures, Loan Estimate, 12 CFR 1026.37(a), for more information.**

2. Determine whether the creditor has accurately calculated, including compliance with rounding rules, and completed the Loan Terms table on Page 1 of the Loan Estimate. **Please refer to the TILA examination procedures, Loan Terms – 12 CFR 1026.37(b) and Form of Disclosures, 12 CFR 1026.37(o), for more information.**

3. Determine whether the creditor has accurately calculated, including compliance with rounding rules, and completed the Projected Payments table on Page 1 of the Loan Estimate. **Please refer to the TILA examination procedures, Projected Payments, 12 CFR 1026.37(c) and Form of Disclosures, 12 CFR 1026.37(o), for more information.**

4. Determine whether the creditor has accurately completed the Costs at Closing table on Page 1 of the Loan Estimate. If reviewing a transaction without a seller, determine whether the creditor or mortgage broker used the alternative Cash to Close table. **Please refer to the TILA examination procedures, Costs at Closing, 12 CFR 1026.37(d), for more information.**

5. 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). **Please refer to the TILA examination procedures, Website Disclosure, 12 CFR 1026.37, for more information.**

6. Determine whether the creditor accurately itemized, including compliance with rounding rules, the transaction's loan closing costs on Page 2 of the Loan Estimate. **Please refer to the TILA examination procedures, Closing Cost Details: Loan Costs, 12 CFR 1026.37(f) and Form of Disclosures, 12 CFR 1026.37(o), for more information**.

7. Determine whether the creditor accurately itemized, including compliance with rounding rules, the transaction's other closing costs on Page 2 of the Loan Estimate. **Please refer to the TILA examination procedures, Closing Cost Details: Other Costs, 12 CFR 1026.37(g) and Form of Disclosures, 12 CFR 1026.37(o), for more information**.

8. Determine whether the creditor accurately itemized, including compliance with rounding rules, the amount of cash or funds required from the consumer at closing on Page 2 of the Loan Estimate. **Please refer to the TILA examination procedures, Closing Cost Details: Calculating Cash to Close, 12 CFR 1026.37(h) and Form of Disclosures, 12 CFR 1026.37(o), for more information**.

9. For a transaction without a seller, determine whether the creditor used the alternative Cash to Close table. **If so, please refer to the TILA examination procedures, Closing Cost Details: Alternative Calculating Cash to Close Table for Transactions without a Seller, 12 CFR 1026.37(h)(2), for more information**.

Adjustable Payment **(12 CFR 1026.37(o))**

1. If the loan includes an adjustable payment feature (e.g., interest only, optional payments, step or seasonal payments), determine whether the creditor included and accurately completed, including compliance with rounding rules, the adjustable payment table. **Please refer to the TILA examination procedures, Closing Cost Details: Adjustable Payment (AP) Table, 1026.37(i) and Form of Disclosures, 12 CFR 1026.37(o), for more information.**

Adjustable Rate Mortgage **(12 CFR 1026.37(j))**

1. If the loan includes an adjustable interest rate, determine whether the creditor included and accurately completed the adjustable interest rate table. **Please refer to the TILA examination procedures, Closing Cost Details: Adjustable Interest Rate (AIR) Table, 12 CFR 1026.37(j), for more information.**

NMLSR Information **(12 CFR 1026.37(k))**

1. Determine whether the creditor correctly completed the NMLSR information for the transaction including information for the individual loan originator who is the primary contact for the consumer at the mortgage broker if the consumer is uses a mortgage broker. **Please refer to the TILA examination procedures, Additional Information About This Loan, 12 CFR 1026.37(k), for more information.**

2. Determine whether the creditor accurately calculated and itemized, including compliance with rounding rules, the appropriate comparison information. **Please refer to the TILA examination procedures, Additional Information About This Loan: Comparisons, 12 CFR 1026.37(l) and Form of Disclosures, 12 CFR 1026.37(o), for more information.**

Additional Disclosures on the Loan Estimate **(12 CFR 1026.37(m))**

1. Determine whether the creditor has provided the disclosures regarding appraisal, assumption, homeowner's insurance, late payments, refinancing, servicing of the loan, liability after foreclosure, and construction loans. **Please refer to the TILA examination procedures, Additional Information About This Loan: Other Considerations, 12 CFR 1026.37(m) for more information.**

Confirmation of Receipt **(12 CFR 1026.37(n))**

1. Assess whether the creditor has chosen to have the consumer sign the receipt of the Loan Estimate. Determine whether the creditor has included all required language. If the creditor has not chosen to include a signature line, determine whether the creditor has included the label "Loan Acceptance" and the appropriate language. **Please refer to the TILA examination procedures, Additional Information About This Loan: Confirm Receipt, 12 CFR 1026.37(n) for more information.**

Revised Loan Estimate **(12 CFR 1026.19(e)(3)(iv))**

1. If a revised or corrected Loan Estimate(s) was provided to the consumer, determine whether an appropriate changed circumstance occurred that affects settlement charges; the consumer's eligibility; credit terms or settlement as requested by the consumer; points or lender credits due to rate lock; or because the initial Loan Estimate expired. **Please refer to the TILA examination procedures, Revised Loan Estimates, for more information.**

Interest Rate Lock **(12 CFR 1026.19(e)(3)(iv)(D))**

1. If the interest rate was locked, determine whether the creditor provided a revised Loan Estimate, including the revised interest rate, any points paid to reduce the interest rate, lender credits, and any other interest rate dependent charges and terms within three business days after the rate has been locked. **Please refer to the TILA examination procedures, Revised Loan Estimates, for more information.**

Timing Prior to Closing **(12 CFR 1026.19(e)(4))**

1. If a revised Loan Estimate(s) was provided to the consumer, determine whether it was provided after a consumer received a Closing Disclosure form. Determine whether the revised or corrected Loan Estimate was delivered or placed in the mail no later than four business days before consummation of the transaction. **Please refer to the TILA examination procedures, Provision and Receipt of Revised Disclosures for more information.**

Closing Disclosure

TILA, Regulation Z

Timing **(12 CFR 1026.19(f)(1))**

1. Determine whether the Closing Disclosure (form H-25 of Appendix H) was delivered or placed in the mail no later than three business days before consummation of the consumer's transaction. **Please refer to the TILA examination procedures, Mortgage Loans Secured by Real Property – Final Disclosures (Closing Disclosures), 12 CFR 1026.19(f), for more information**.

2. If the consumer waived the three-business-day waiting period, determine whether the creditor obtained a dated written statement describing the personal financial emergency, modifying or waiving the waiting period, and containing signatures by all consumers who are primarily liable on the obligation. **Please refer to the TILA examination procedures, Mortgage Loans Secured by Real Property, Final Disclosures (Closing Disclosures), 12 CFR 1026.19(f), for more information**.

Accurate Completion of Closing Disclosure **(12 CFR 1026.38)**

1. Determine whether the creditor accurately disclosed the Closing Information disclosures on Page 1 of the Closing Disclosure. **Please refer to the TILA examination procedures, Closing Information, 12 CFR 1026.38(a)(3), for more information**. If a transaction does not have a seller, determine whether the creditor included the appraised property value, using the term *"Estimated Prop. Value."*

2. Determine whether the creditor accurately disclosed the Transaction Information disclosures on page 1 of the Closing Disclosure. **Please refer to the TILA examination procedures, Transaction Information, 12 CFR 1026.38(a)(4), for more information**.

3. Determine whether the creditor accurately disclosed the Loan Information disclosures on page 1 of the Closing Disclosure. **Please refer to the TILA examination procedures, Loan Information, 12 CFR 1026.38(a)(5), for more information**.

4. Determine whether the creditor has accurately calculated, including compliance with rounding rules, and completed the Loan Terms table on Page 1 of the Closing Disclosure. **Please refer to the TILA examination procedures, Loan Terms, 12 CFR 1026.38(b) and Form of Disclosures, 12 CFR 1026.38(t), for more information**.

5. Determine whether the creditor has accurately calculated, including compliance with rounding rules, and completed the Projected Payments table on Page 1 of the Closing Disclosure. **Please refer to the TILA examination procedures, Projected Payments, 12 CFR 1026.38(c) and Form of Disclosures, 12 CFR 1026.38(t), for more information**.

6. Determine whether the creditor has accurately completed the Costs at Closing table on Page 1 of the Closing Disclosure. If reviewing a transaction that does not have a seller, determine whether the creditor chose to use the alternative calculating Cash to Close table and accurately determined the amount due from or to the consumer. **Please refer to the TILA examination procedures, Costs at Closing, 12 CFR 1026.38(d), for more information**.

7. Determine whether the creditor accurately disclosed all loan costs associated with the loan transaction. Costs must be noted as either being paid at or before closing and whether they were paid by the borrower, the seller, or others. **Please refer to the TILA examination procedures, Closing Costs Details: Loan Costs, 12 CFR 1026.38(f), for more information**.

8. Determine whether the creditor accurately disclosed all other costs associated with the loan transaction. Costs must be noted as either being paid at or before closing and whether they were paid by the borrower, the seller, or others. **Please refer to the TILA examination procedures, Closing Costs Details: Other Costs, 12 CFR 1026.38(g), for more information**.

9. Determine whether the creditor accurately disclosed the borrower's total closing costs. The creditor must disclose the total closing costs, the closing costs subtotals, and any applicable lender credits. Lender credits must be displayed as a negative number. **Please refer to the TILA examination procedures, Closing Costs Details: Total Closing Costs, 12 CFR 1026.38(h), for more information**.

10. Determine whether the creditor accurately compares the final amounts listed in the Calculating Cash to Close table to amounts previously disclosed and includes a notation of whether the amount changed prior to closing. **Please refer to the TILA examination procedures, Calculating Cash to Close, 12 CFR 1026.38(i), and Form of Disclosures, 12 CFR 1026.38(t), for more information**.

11. For a transaction that does not involve a seller, determine whether the creditor used the alternative Calculating Cash to Close table on the Loan Estimate. If so, determine whether the creditor accurately compares the amounts listed in the alternative Calculating Cash to Close table. **Please refer to the TILA examination procedures, Alternative Cash to Close Table for Transactions Without a Seller, 12 CFR 1026.38(e) and Form of Disclosures, 12 CFR 1026.38(t), for more information**.

12. Determine whether the creditor accurately completes the summary of the borrower's transaction and that all amounts are correct. **Please refer to the TILA examination procedures, Summaries of Transactions: Borrower's Transaction, 12 CFR 1026.38(j), for more information**.

13. Determine whether the creditor accurately completes the summary of the seller's transaction and that all amounts are correct. **Please refer to the TILA examination procedures, Summaries of Transactions: Seller's Transaction, Section 12 CFR 1026.38(k), for more information**.

14. For a transaction that does not involve a seller, determine whether the creditor used the optional Payoffs and Payments table and accurately completed the table to reflect the amounts paid to other parties from the loan proceeds**. Please refer to the TILA examination procedures, Payoffs and Payments table for Transactions without a Seller, 12 CFR 1026.38(t)(5)(vii)(B), for more information**.

15. Determine whether the creditor completes accurately all required components under the Loan Disclosures section. **Please refer to the TILA examination procedures, Additional Information About This Loan: Loan Disclosures, 12 CFR 1026.38(l), for more information**.

Adjustable Payment Table **(12 CFR 1026.38(t))**

1. If the loan includes an adjustable payment feature (e.g., interest only, optional payments, step or seasonal payments), determine whether the creditor included and accurately completed, including compliance with rounding rules, an Adjustable Payment (AP) Table as disclosed on the Loan Estimate. **Please refer to the TILA examination procedures, Additional Information About This Loan: Adjustable Payment (AP) Table, 12 CFR 1026.38(m) and Form of Disclosures, 12 CFR 1026.38(t), for more information**.

Adjustable Interest Rate Table **(12 CFR 1026.38(n), (o))**

1. If the loan includes an adjustable interest rate, determine whether the creditor included and accurately completed the Adjustable Interest Rate (AIR) Table as disclosed on the Loan Estimate. **Please refer to the TILA examination procedures, Additional Information About This Loan: Adjustable Interest Rate (AIR) Table, 12 CFR 1026.38(n), for more information.**

2. Determine whether the creditor accurately calculated and completed the Loan Calculations section on page 5 of the Closing Disclosure. **Please refer to the TILA examination procedures, Loan Calculations, 12 CFR 1026.38(o), for more information.**

Other Disclosures **(12 CFR 1026.38(p))**

1. Determine whether the creditor includes the disclosures required in the Other Disclosures section on page 5 of the Closing Disclosure, including the consumer's liability after foreclosure, and as required, the appropriate loan acceptance language. **Please refer to the TILA examination procedures, Other Disclosures, 12 CFR 1026.38(p), for more information.**

Questions **(12 CFR 1026.38(q))**

1. Determine whether the creditor includes a separate questions notice, containing all the information required and formatted per the regulation. **Please refer to the TILA examination procedures, Questions Notice, 12 CFR 1026.38(q)**.

NMLSR **(12 CFR 1026.38(r))**

1. Determine whether the creditor provides contact and NMLSR information for all relevant parties, including, as applicable, the Lender, the Mortgage Broker, the Real Estate Broker(s) and the Settlement Agent. **Please refer to the TILA examination procedures, Contact Information, 12 CFR 1026.38(r), for more information**.

Confirm Receipt **(12 CFR 1026.38(s))**

1. Assess whether the creditor has chosen to have the consumer sign the receipt of the Loan Estimate. Determine whether the creditor has included all required language. **Please refer to the TILA examination procedures, Confirm Receipt, 12 CFR 1026.38(s), for more information**.

Revised Closing Disclosure **(12 CFR 1026.19(f)(2))**

1. Determine whether a revised or corrected Closing Disclosure was provided to the consumer due to an inaccurate APR, a change to the loan product, or the addition of a pre-payment penalty. Confirm that the consumer received the revised or corrected Closing Disclosure three business days prior to consummation of the transaction. **Please refer to the TILA examination procedures, Subsequent Changes, for more information.** If the consumer waived the three-business-day waiting period, confirm that the creditor received a written statement of a bona-fide personal emergency. **Please refer to the TILA examination procedures, Provision of Closing Disclosures, for more information.**

2. If a revised or corrected Closing Disclosure was provided to the consumer for any other changes in loan terms or costs, confirm that the creditor provided the revised or corrected disclosure at or before consummation. **Please refer to the TILA examination procedures, Subsequent Changes, for more information.**

3. Confirm that the creditor does not exceed acceptable tolerance limits for the closing costs disclosed in the Closing Disclosure. **Please refer to the TILA examination procedures, Subsequent Changes, for more information.**

Tolerance Cure **(12 CFR 1026.19(f)(2)(v))**

1. If closing costs exceed acceptable tolerances, determine whether the creditor provided refunds to the consumer within 60 calendar days after consummation. **Please refer to the TILA examination procedures, Subsequent Changes, for more information. Providing a refund within 60 calendar days cures the tolerance violation.**

Revised or Corrected Closing Disclosure **(12 CFR 1026.19(f)(2)(iii))**

1. Determine whether the creditor was required to provide a revised or corrected Closing Disclosure within 30 calendar days after consummation due to an inaccuracy or change in amount paid by the consumer. **Please refer to the TILA examination procedures, Subsequent Changes, for more information.**

Additional Disclosures

TILA, Regulation Z

1. If the creditor allows consumers to shop for settlement services, determine whether the creditor provided the consumer with a written list of available settlement service providers within three business days after receipt of the consumer's application. **Please refer to the TILA examination procedures, Shopping for Settlement Service Providers, for more information.**

2. Determine whether each borrower received two (2) copies of the notice of the right to rescind required by Regulation Z for a non-purchase money loan secured by a principal dwelling. **Please refer to the TILA examination procedures, Closed-End Credit Transactional Testing Procedures and Open-End Credit Transactional Testing Procedures for more information**.

3. If reviewing a purchase transaction, determine whether the creditor or mortgage broker provided the consumer with the "Your home loan toolkit: A step-by-step guide" within three business days of receiving the consumer's application. If the application was denied before the end of the three-day period, providing the booklet is not required.

4. If reviewing an adjustable rate mortgage, determine whether the creditor or mortgage broker provided the consumer with the Consumer Handbook on Adjustable Rate Mortgages (CHARM) booklet.

RESPA, Regulation X

1. For mortgage lenders, determine whether the lender complies with RESPA List of Homeownership Counseling Organizations requirements. **Please refer to the RESPA examination procedures, 12 CFR 1024.20, for more information**.

2. For any person making a referral to an entity that is part of an affiliated business arrangement, determine whether the entity complies with RESPA requirements for affiliated business arrangements. **Please refer to the RESPA examination procedures, 12 CFR 1024.15, for more information**.

Homeowners Protection Act

1. Determine whether the entity provided a notice to the borrower of the borrower's ability to terminate private mortgage insurance. **Please refer to the examination procedures regarding the Homeowners Protection Act for more information**.

Loans Terms

TILA, Regulation Z

1. Determine whether agreements for consumer transactions secured by a dwelling contain terms that require arbitration or whether terms have been applied or interpreted to bar a consumer from bringing a claim in court. **Please refer to TILA examination procedures on Prohibition on Mandatory Arbitration Clauses and Waiver of Certain Consumer Rights, 12 CFR 1026.36(h).**

2. Determine whether a creditor finances, directly or indirectly, premiums or fees for credit insurance. **Please refer to TILA examination procedures on Prohibition on Financing Credit Insurance, 12 CFR 1026.36(i).**

Other Risks to Consumers

1. Compare Loan Estimates and Closing Disclosures for evidence of misrepresentations or other unfair, deceptive, or abusive acts or practices related to the interest rate, points, closing costs, the loan product, or the loan's features. **Please refer to the UDAAP examination procedures, Availability of Terms or Services as Advertised, for more information**.

2. Determine whether there are instances where consumers lose their rate locks prior to their expiration, resulting in the consumer being placed in more expensive mortgage products, despite obtaining a rate lock and submitting all required documentation within required time frames. **Please refer to the UDAAP examination procedures, Availability of Terms or Services as Advertised, for more information**.

Module 5 – Loan Disclosures and Terms - Other Residential Mortgage Loans

This module focuses on the disclosures required for closed- and open-end residential transactions that are not subject to the TILA-RESPA Integrated Disclosure rule. These transactions include reverse mortgages, HELOCs, and chattel-dwelling loans (e.g., loans secured by a mobile home or by a dwelling that is not attached to real property).They also include closed-end residential mortgages where the application was received prior to October 3, 2015, the effective date for the TILA-RESPA Integrated Disclosure requirements. The disclosures required for these loans include TILA disclosures, GFEs, HUD-1/HUD-1-A, the affiliated business arrangement disclosure, and servicing transfer notices. During transaction testing, examiners should identify acts, practices, and materials that indicate potential violations of federal consumer financial laws.

Transaction Testing

Disclosures

TILA, Regulation Z

1. For closed-end transactions, determine whether TILA disclosures are timely provided. **Please refer to the TILA Examination Procedures, Disclosures, Generally – Timing, for more information**.

2. For open-end transactions, determine whether the TILA disclosures are timely provided. **Please refer to the TILA examination procedures, Timing Requirements – Open-End Credit, for more information**.

3. For reverse mortgages, determine whether TILA disclosures are timely provided. **Please refer to the TILA examination procedures, Timing Requirements – Closed-End Credit Secured by a Dwelling, for more information**.

4. Assess whether the creditor has accurately calculated and disclosed the amount financed as required pursuant to 12 CFR 1026.18(b). **Please refer to the TILA narrative, Subpart C, Finance Charge, Amount Financed and APRs for more information**.

5. Assess whether the creditor has accurately calculated and disclosed the finance charge. **Please refer to the TILA narrative, Subpart C, Finance Charge, Amount Financed and APRs for more information**.

6. Assess whether the creditor has accurately calculated and disclosed the annual percentage rate (APR). **Please refer to the TILA narrative, Subpart C, Finance Charge, Amount Financed and APRs; and the TILA examination procedures, Closed-End Transactions Not Subject to 12 CFR 1026.19(e) and (f), for more information**.

7. Assess whether the creditor has accurately completed all payment schedules, rate schedules, and/or payment summary tables, as applicable. **Please refer to the TILA narrative, Subpart**

C, Finance Charge, Amount Financed and APRs and the TILA examination procedures, Closed-End Transactions Not Subject to 12 CFR 1026.19(e) and (f), for more information.

8. Determine whether each borrower received two (2) copies of the notice of the right to rescind required by Regulation Z for a non-purchase money loan secured by a principal dwelling. **Please refer to the TILA examination procedures, Closed-End Credit Transactional Testing Procedures and Open-End Credit Transactional Testing Procedures for more information**.

RESPA, Regulation X

Under RESPA and its implementing regulation, Regulation X, the lender/creditor is responsible for providing the Good Faith Estimate (GFE) and the "Your home loan toolkit: A step-by-step guide" (Settlement Cost Booklet) (see 12 CFR 1024.6). The regulations permit the mortgage broker to provide the disclosures, but the lender must ascertain whether the GFE has been provided.

1. During an examination of a mortgage broker, examiners should determine whether it has agreed to provide the GFE and Booklet and if so, whether it is doing so.

2. For mortgage lenders, determine whether the lender complies with RESPA GFE requirements. **Please refer to the RESPA examination procedures, 12 CFR 1024.7, for more information.**

3. For mortgage lenders, determine whether the creditor or mortgage broker provided the consumer financing a home purchase with the "Your home loan toolkit: A step-by-step guide" within three business days of receiving the consumer's application. If the application was denied before the end of the three-day period, providing the booklet is not required. **Please refer to the RESPA examination procedures, 12 CFR 1024.6, for more information.**

4. Assess whether the consumer has been charged a fee for an appraisal, inspection, or other similar settlement service prior to receiving the GFE and indicating an intention to proceed with the transaction. **Please refer to the RESPA narrative, GFE Application Requirements, for more information.**

5. For mortgage lenders, determine whether the lender complies with RESPA List of Homeownership Counseling Organizations requirements. **Please refer to the RESPA examination procedures, 12 CFR 1024.20, for more information**.

6. For any person making a referral to an entity that is part of an affiliated business arrangement, determine whether the entity complies with RESPA requirements for affiliated business arrangements. **Please refer to the RESPA examination procedures, 12 CFR 1024.15, for more information.**

7. For mortgage lenders, brokers, or dealers, determine whether the entity complies with RESPA requirements for providing the notice stating whether the servicing of the loan may be transferred. **Please refer to the RESPA examination procedures, 12 CFR 1024.33, for more information**.

8. Review the final settlement statement (HUD-1 or HUD-1A) and assess compliance with RESPA disclosure requirements and tolerance limits on settlement charges. **Please refer to the RESPA examination procedures, 12 CFR 1024.8, for more information.**

9. If escrow accounts were established, determine whether the borrower received an initial escrow account statement. **Please refer to the RESPA examination procedures, 12 CFR 1024.17, for more information.**

Homeowners Protection Act

1. Determine whether the entity provided a notice to the borrower of the borrower's ability to terminate private mortgage insurance (PMI). **Please refer to the examination procedures regarding the Homeowners Protection Act for more information**.

Reverse Mortgages

1. If the entity originates reverse mortgage loans, assess compliance with TILA provisions concerning those mortgage loans. **Please refer to the TILA examination procedures for Reverse Mortgages, 12 CFR 1026.33, for more information.**

Loans Terms

1. Determine whether agreements for consumer transactions secured by a dwelling contain terms that require arbitration or whether terms have been applied or interpreted to bar a consumer from bringing a claim in court. **Please refer to TILA examination procedures on Prohibition on Mandatory Arbitration Clauses and Waiver of Certain Consumer Rights, 12 CFR 1026.36(h).**

2. Determine whether a creditor finances, directly or indirectly, premiums or fees for credit insurance. **Please refer to TILA examination procedures on Prohibition on Financing Credit Insurance, 12 CFR 1026.36(i).**

Other Risks to Consumers

1. Compare the initial and subsequent GFEs and TILA disclosures with final HUD-1 settlement statements and final TILA disclosures for any evidence of unfair, deceptive, or abusive acts or practices with respect to the interest rate, points, closing costs, or the loan product or loan features. **Please refer to the UDAAP examination procedures, Availability of Terms or Services as Advertised for more information**.

2. Determine whether there are instances where consumers lose their rate locks prior to their expiration, resulting in the consumer being placed in more expensive mortgage products,

despite obtaining a rate lock and submitting all required documentation within required time frames. **Please refer to the UDAAP examination procedures, Availability of Terms or Services as Advertised, for more information**.

Module 6 - Appraisals

This module focuses on an entity's practices in connection with appraisals. Examiners should focus their transaction testing on whether an entity is meeting compliance obligations related to required appraisals for certain types of loans.

Transaction Testing

TILA, Regulation Z

1. For higher-priced mortgages that are not exempt from the appraisal requirement, determine whether the creditor obtained a written appraisal performed by a certified or licensed appraiser prior to consummation of the transaction. **Please refer to the TILA examination procedures, Higher-Priced Mortgage Loans: Appraisals, for more information.**

2. For certain higher-priced mortgage loans, determine whether the creditor properly assessed and, if required, obtained two written appraisals before consummation of the transaction. **Please refer to the TILA examination procedures, Higher-Priced Mortgage Loans: Appraisals, for more information.**

3. Determine whether the creditor provides a copy of each written appraisal no later than three business days prior to consummation of the loan or, if the loan is not consummated, no later than 30 days after that determination is made. **Please refer to the TILA examination procedures, Higher-Priced Mortgage Loans: Appraisals, for more information.**

4. Determine whether the lender complies with the Regulation Z requirements for valuation independence. **Please refer to the TILA examination procedures, Valuation Independence, 12 CFR 1026.42, for more information**.

ECOA, Regulation B

1. Determine whether the regulated entity provides 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 to applicants in accordance with Regulation B, 12 CFR 1002.14. **Please refer to the ECOA examination procedures, 12 CFR 1002.14(a), for more information.**

Other Risks to Consumers

1. Determine whether practices of the mortgage lender or its employees undermine appraisal independence. **Please refer to the UDAAP examination procedures, Employees and Third Parties Interacting with Consumers, for more information**.

2. Confirm that the entity maintains adequate oversight of the appraisers it uses (including termination where necessary) and safeguards against appraisal fraud. **Please refer to the UDAAP examination procedures, Employees and Third Parties Interacting with Consumers, for more information**.

Module 7 – Underwriting

This module focuses on an entity's underwriting practices. Examiners should focus their transaction testing on whether an entity is meeting ability-to-repay (ATR) underwriting obligations—specifically, the institution made a reasonable, good faith determination of a reasonable consumer's ability to repay the loan according to its terms. Examiners should be prepared to confirm an institution's reliance on third-party records to verify ability-to-repay factors. Examiners should also determine if high-cost or higher-priced mortgages are being made and assess the origination of these loans for compliance with the TILA.

Transaction Testing

This section of the Procedures applies only to mortgage lenders, not mortgage brokers.

TILA, Regulation Z

Ability-to-Repay Mortgages (12 CFR 1026.43(c))

1. Determine whether the lender meets the requirement to consider ATR for consumer-purpose, closed-end loans secured by a dwelling. Review the documentation used to make underwriting decisions, including applications, tax returns, verifications of income, assets, and employment, credit reports, and all other required documentation. **Please refer to the TILA examination procedures, Minimum Standards for Transactions Secured by a Dwelling, 12 CFR 1026.43, and Ability to Repay, 12 CFR 1026.43(c), for more information.**

2. Review a sample of loans that have been indemnified, repurchased, determined unsalable, or rejected during the review period. Assess the loans for compliance with ability-to-repay requirements. **Please refer to the TILA examination procedures, Ability-to-Repay, 12 CFR 1026.43(c), for more information.**

3. Review a sample of loans that have become delinquent within the first year during the review period. Assess the loans for compliance with ability-to-repay requirements. **Please refer to the TILA examination procedures, Ability-to-Repay, 12 CFR 1026.43(c), for more information.**

4. For loans made using automated underwriting systems, determine whether the originator entered the correct inputs and that all of the conditions on the feedback certificate were satisfied and documented before the loan was funded.

Qualified Mortgages (QMs) (12 CFR 1026.43(e))

1. If the creditor originates General QMQM loans as a way to meet TILA's ability-to-repay requirements, determine whether these loans directly meet the ATR requirements under 12 CFR 1026.43(c), or

a. Determine whether the QM loans contain all terms necessary for qualified mortgages and no prohibited terms. **Please refer to the TILA examination procedures, Qualified Mortgages 12 CFR 1026.43(e), for more information**;

b. Assess whether the points and fees are within the required limits. **Please refer to the TILA examination procedures, Qualified Mortgages, 12 CFR 1026.43(e), for more information**;

c. Determine whether the annual percentage rate does not exceed the average prime offer rate (APOR) for a comparable transaction as of the date the interest rate is set by the amounts specified in 12 CFR 1026.43(e)(2)(vi). **Please refer to the TILA examination procedures, Qualified Mortgages, 12 CFR 1026.43(e), for more information**.[13]

2. If the creditor originates Agency QM loans, determine:

a. Whether there is evidence in the loan file that the loan is eligible for purchase, insurance, or guarantee by (1) the GSEs (if operating under conservatorship and the consumer application is received by the creditor prior to October 1, 2022) or (2) the appropriate government agency. **Please refer to the TILA examination procedures for Qualified Mortgages – Other Agencies, 12 CFR 1026.43(e)(4) and Qualified Mortgages, 12 CFR 1026.43(e), for more information**;

b. Whether the loans contain any prohibited terms. **Please refer to the TILA examination procedures for Qualified Mortgages – Other Agencies, 12 CFR 1026.43(e)(4) and Qualified Mortgages 12 CFR 1026.43(e), for more information;**

c. Whether the loans 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). **Please refer to the TILA examination procedures for Qualified Mortgages – Other Agencies, 12 CFR 1026.43(e)(4) and Qualified Mortgages, 12 CFR 1026.43(e), for more information;**

d. Whether any Agency QM loans that the creditor is required to indemnify or repurchase after consummation met the ATR requirements. **Please refer to the TILA examination procedures, Ability-to-Repay, 12 CFR 1026.43(c), for more information.**

3. For qualified mortgages consummated on or before January 10, 2021, where the points and fees exceeded the applicable threshold and the creditor attempted to cure the error, determine that the creditor reimbursed the appropriate amount

[13] This subsection applies if the creditor chooses to rely on the price-based QM definition, which becomes compulsory for purposes of the General QM definition on October 1, 2022. Prior to that date, at the creditor's discretion, it may choose to rely on the previous debt-to-income based General QM definition, under which the ratio of the consumer's total monthly debt to total monthly income, at the time of consummation, does not exceed 43 percent in accordance with former Appendix Q.

a. within 210 days after consummation and

b. prior to the consumer instituting an action in connection with the loan, or

c. prior to the consumer providing written notice to the creditor of the error, or

d. prior to the consumer becoming 60 days past due on the legal obligation.

Please refer to the TILA examination procedures, Qualified Mortgages, 12 CFR 1026.43(e), for more information related to various QM categories, including Seasoned QM loans.

High-Cost Mortgages[14] (12 CFR 1026.32)

1. If the entity originates high-cost mortgage loans, assess compliance with TILA provisions concerning those mortgage loans. **Please refer to the TILA examination procedures for High-Cost Mortgages, 12 CFR 1026.32, for more information.**

Higher-Priced Mortgage Loans[15] (12 CFR 1026.35)

1. If the entity originates higher-priced mortgage loans, assess compliance with TILA provisions concerning those mortgage loans. **Please refer to the TILA examination procedures for Higher-Priced Mortgage Loans – 12 CFR 1026.35, for more information.**

2. Determine whether the entity originates higher-priced mortgage loans as defined under Regulation Z, 12 CFR 1026.35, and if so, whether these are not qualified mortgages as defined under Regulation Z, 12 CFR 1026.43, or other rules issued by HUD, USDA, or VA. **Please refer to the TILA examination procedures for Higher-Priced Mortgage Loans – 12 CFR 1026.35 and Qualified Mortgages – 12 CFR 1026.43(e) for more information.**

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[14]A "high-cost" loan is a consumer credit transaction secured by the consumer's principal dwelling, in which either:

- The APR at consummation will exceed by more than 6.5 percentage points for first-lien mortgage loans, or by more than 8.5 percentage points for subordinate-lien mortgage loans, the average prime offer rate (APOR); or
- The total points and fees (as defined in the regulation) payable by the consumer at or before loan closing will exceed the greater of 5 percent of the total loan amount or, for transactions of less than $20,000, the lesser of $1,000 or 8 percent of the loan amount; or
- There is a prepayment penalty over 2 percent of the amount prepaid that can be charged more than 36 months after consummation or account opening.

See the FFIEC rate spread calculator: http://www.ffiec.gov/ratespread/newcalc.aspx,andtheAPORspreadsheet at: http://www.ffiec.gov/ratespread/aportables.htm.

[15]A "higher-priced" mortgage loan is a 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;
- 2.5 or more percentage points for loans secured by a first lien with a principal obligation at consummation that exceeds the limit in effect as of the date the transaction's interest rate is set for 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.

3. Determine whether the entity established an escrow account prior to consummation of the higher-priced mortgage loan transaction**. Please refer to the TILA examination procedures, Higher-Priced Mortgage Loans: Escrow Accounts for more information**.

4. Determine whether the creditor structures a higher-priced mortgage loan as an open-end plan to evade the requirements of Regulation Z. **Please refer to the TILA examination procedures on Evasion of Minimum Standards for Loans Secured by a Dwelling – 12 CFR 1026.43(h).**

Home Equity Lines of Credit (HELOCs) (12 CFR 1026.40)

1. 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))

2. 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))

3. Additional variable rate testing: Verify that when accounts were opened or loans were consummated, the 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).

Evasion

1. Determine whether the creditor structures a mortgage loan as an open-end plan to evade the requirements of Regulation Z. **Please refer to the TILA examination procedures on Evasion of Minimum Standards for Loans Secured by a Dwelling – 12 CFR 1026.43(h)**.

Other Risks to Consumers

1. Review communication logs or notes in the mortgage loan files, and interview sales and production staff of the mortgage lender or broker to determine the independence of underwriters from the sales or production unit, with an emphasis on any influence mortgage loan originators may have over underwriters. **Please refer to the UDAAP examination procedures, Employees and Third Parties Interacting with Consumers, for more information.**

2. Review the loan file to determine whether loan documentation, including income documentation, has been altered or forged. Any indications of fraud should be handled in accordance with CFPB internal consultation procedures, and examiners should refer them to other authorities as appropriate.

3. Determine whether the compensation systems for underwriters (whether in-house or contracted) affect their incentives concerning the speed and quality of their underwriting. **Please refer to the UDAAP examination procedures, Employees and Third Parties Interacting with Consumers, for more information.**

4. If the lender offers non-traditional or subprime loan products:

   a. Determine if underwriting standards take adjusted payments into account in considering borrower ability to repay at expected payment change dates.

   b. If the lender offers loans that have two or more risky characteristics (called "risk layering"), determine whether risk layering is taken into account as part of the underwriting policies, whether any mitigating factors are required for approval, and whether actual underwriting practices conform with policies. Risky characteristics are any of the following:

      i. Limited or no documentation of income, assets, and/or employment;

      ii. Simultaneous second lien;

      iii. Negative amortization, option payment, or interest-only features;

      iv. Introductory rate 200 basis points or more below fully-indexed rate;

      v. Borrowers with subprime characteristics;

      vi. No escrow for property taxes and homeowner's insurance;

      vii. Extended amortization period or extended loan terms; or

      viii. Balloon clauses.

   c. Determine whether a customer is referred up to a prime loan if he qualifies for a prime loan and whether the referral is structured or framed to discourage the customer from applying for a prime loan.

Please refer to the UDAAP examination procedures for more information.

<u>Record Retention</u> **(12 CFR 1026.25)**

1. Assess whether the lender verifies and maintains a record of the information relied on for all ATR loans (QM and non-QM) for a period of three years. **Please refer to the TILA examination procedures, General Procedures, for more information**.

Module 8 – Examiner Conclusions and Wrap-Up

To conclude this supervisory activity, examiners must complete all steps under this section, regardless of the entity's risk profile.

1. Summarize the findings, supervisory concerns, and regulatory violations.
2. For the violations noted, determine the root cause by identifying weaknesses in internal controls, audit and compliance reviews, training, management oversight, or other factors. Determine whether the violation(s) are pattern or practice, or isolated.
3. Identify actions needed to correct violations and weaknesses in the institution's compliance management system that were identified during the examination, as appropriate.
4. Discuss all examination findings with the institution's management, including violations, recommendations and conclusions about risks and risk management. If necessary, obtain commitments for corrective action.

1. Compose conclusion comments, highlighting any issues that should be included in the Report of Examination or Supervisory letter. If necessary, compose a Matters Requiring Attention (MRA) comment.
2. Record violations according to Bureau policy in the Report of Examination or Supervisory Letter and CFPB's electronic database system to facilitate analysis and reporting.
3. If the examiner believes enforcement action may be appropriate, contact appropriate agency personnel for guidance.
4. Prepare a memorandum for inclusion in the work papers and CFPB's official system of record that outlines planning and strategy considerations for the next examination and, if appropriate, interim follow-up.
5. Update, organize and reference workpaper documentation in accordance with Bureau policy.
6. Ensure any paper or electronic media that contain sensitive entity sensitive or customer information are appropriately disposed of or secured.

Mortgage Servicing

Exam Date:	[Click&type]
Exam ID No.	[Click&type]
Prepared By:	[Click&type]
Reviewer:	[Click&type]
Docket #:	[Click&type]
Entity Name:	[Click&type]

After completing the risk assessment and examination scoping, examiners should use these procedures, in conjunction with the compliance management system review procedures, to conduct a mortgage servicing examination. The examination procedures contain a series of modules, grouping similar requirements together. Depending on the scope, each examination will cover one or more of the following modules:

Routine Servicing

Module 1 Servicing and Loan Ownership Transfers

Module 2 Payment Processing, Account Maintenance, and Optional Products

Module 3 Error Resolution, Consumer Inquiries, and Complaint Procedures

Module 4 Maintenance of Escrow Accounts and Insurance Products

Module 5 Consumer Reporting

Module 6 Information Sharing and Privacy

Default Servicing

Module 7 Collections and Accounts in Bankruptcy

Module 8 Loss Mitigation, Early Intervention, and Continuity of Contact

Foreclosure

Module 9 Foreclosures

Conclusions

Module 10 Examiner Conclusions and Wrap-Up

Examination Objectives

1. To assess the quality of the regulated entity's compliance risk management systems, including internal controls and policies and procedures, for preventing violations of Federal consumer financial law in its mortgage servicing business.
2. To identify acts or practices that materially increase the risk of violations of Federal consumer financial law in connection with mortgage servicing.
3. To gather facts that help determine whether a regulated entity engages in acts or practices that are likely to violate Federal consumer financial law in connection with mortgage servicing.
4. To determine, in consultation with Headquarters, whether a violation of a Federal consumer financial law has occurred and whether further supervisory or enforcement actions are appropriate.

Background

A servicer may service loans on behalf of itself or an affiliate. It may service as a contractor of the trustee where a mortgage is included in a mortgage-backed security, or it may service whole loans for an outside third-party investor.[1] A servicer may sell the rights to service the loan separately from any ownership transfers. This is because some entities have expertise in payment processing and other servicing responsibilities, while others seek to invest in the underlying mortgages. These procedures apply whether the servicer obtained the servicing rights from another entity or the servicing responsibility is transferred within a company from the origination platform to the servicing platform.

Servicers must comply with various laws to the extent that the law applies to the particular servicer and its activities:

- The Real Estate Settlement Procedures Act (RESPA) and its implementing regulation, Regulation X, impose requirements for servicing transfers, written consumer information requests, resolution of notices of error, force-placed insurance, early intervention and continuity of contact for delinquent borrowers, loss mitigation procedures, general servicing policies and procedures, and escrow account maintenance.
- The Truth in Lending Act (TILA) and its implementing regulation, Regulation Z, impose requirements on servicers regarding periodic billing statements, crediting of payments, imposition of late fee and delinquency charges, provision of payoff statements with respect to closed-end consumer credit transactions secured by a principal dwelling, and disclosures regarding rate changes for adjustable rate mortgages. For open-end mortgages, Regulation Z provisions related to payment crediting and error resolution apply to the extent that the servicer is a creditor. Additionally, TILA and Regulation Z generally impose requirements on loan owners for loan ownership transfers.

[1] If the owner is a separate entity, the servicer generally has contractual commitments to the owner of the loan. In the private securitization market, the contracts generally are called Pooling and Servicing Agreements or PSAs. If Fannie Mae or Freddie Mac owns the loan, the commitments are set forth in the company's seller/servicer guides.

- The Electronic Funds Transfer Act (EFTA) and its implementing regulation, Regulation E, impose requirements if servicers within the scope of coverage obtain electronic payments from borrowers.
- The Fair Debt Collection Practices Act (FDCPA) governs collection activities and prohibits deceptive, unfair, and abusive collection practices. The FDCPA applies to entities that constitute "debt collectors" under the Act, which generally includes: (1) third parties such as servicers, collection agencies, debt buyers, and collection attorneys that collect debts on behalf of lenders if they obtain the debt at a time when it is already in default; and (2) lenders collecting their own debts using an assumed name. The FDCPA applies to debts incurred or allegedly incurred primarily for the consumer's personal, family or household purposes.
- The Homeowners Protection Act (HPA) limits private mortgage insurance that can be assessed on consumer accounts.
- The Fair Credit Reporting Act (FCRA) and its implementing regulation, Regulation V, impose requirements on servicers regarding the accuracy and integrity of information that they furnish to consumer reporting agencies. Additionally, the FCRA and Regulation V impose requirements on furnishers to investigate disputes concerning the accuracy of any information contained in a consumer report related to the account or other relationship the furnisher has or had with the consumer. The FCRA also limits certain information sharing between company affiliates.
- The Gramm-Leach-Bliley Act (GLBA) requires servicers within the scope of coverage to provide privacy notices and limit information sharing in particular ways.
- The Equal Credit Opportunity Act (ECOA) and its implementing regulation, Regulation B, apply to those servicers that are creditors, such as those who participate in a credit decision about whether to approve a mortgage loan modification. The statute makes it unlawful to discriminate against any borrower with respect to any aspect of a credit transaction:
    - On the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to 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.[2]

Servicers should review CFPB guidance issued in the following bulletins and guidance:

- CFPB Bulletin 2012-03: Service Providers (April 13, 2012), http://files.consumerfinance.gov/f/201204_cfpb_bulletin_service-providers.pdf.

[2] The Consumer Credit Protection Act, 15 U.S.C. 1601 et seq., is the collection of federal statutes that protects consumers when applying for or receiving credit. The Act includes statutes that have dispute rights for consumers, such as the Fair Credit Reporting Act. The ECOA prohibits discriminating against an applicant who has exercised a dispute right pursuant to one of the statutes outlined in the Act.

- Interagency Guidance on Mortgage Servicing Practices Concerning Military Homeowners with Permanent Change of Station Orders (June 21, 2012), http://files.consumerfinance.gov/f/201206_cfpb_PCS_Orders_Guidance.pdf.
- CFPB Bulletin 2013-07: Prohibition of Unfair, Deceptive, or Abusive Acts or Practices in the Collection of Consumer Debts (July 10, 2013), http://files.consumerfinance.gov/f/201307_cfpb_bulletin_unfair-deceptive-abusive-practices.pdf.
- CFPB Bulletin 2013-09: The FCRA's requirement to investigate disputes and review "all relevant" information provided by consumer reporting agencies (CRAs) about the dispute (September 4, 2013), http://files.consumerfinance.gov/f/201309_cfpb_bulletin_furnishers.pdf.
- CFPB Bulletin 2013-12: Implementation Guidance for Certain Mortgage Servicing Rules (October 15, 2013), http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_bulletin.pdf.
- CFPB Bulletin 2014-01: The FCRA's requirement that furnishers conduct investigations of disputed information (February 27, 2014), http://files.consumerfinance.gov/f/201402_cfpb_bulletin_fair-credit-reporting-act.pdf.
- CFPB Bulletin 2014-01, Compliance Bulletin and Policy Guidance: Mortgage Servicing Transfers (August 19, 2014), http://files.consumerfinance.gov/f/201408_cfpb_bulletin_mortgage-servicing-transfer.pdf.
- CFPB Bulletin 2015-03: Private Mortgage Insurance Cancellation and Termination (August 4, 2015), http://files.consumerfinance.gov/f/201508_cfpb_compliance-bulletin_private-mortgage-insurance-cancellation-and-termination.pdf.
- CFPB Bulletin 2015-06: Requirements for Consumer Authorizations for Preauthorized Electronic Fund Transfers (November 23, 2015), http://files.consumerfinance.gov/f/201511_cfpb_compliance-bulletin-2015-06-requirements-for-consumer-authorizations-for-preauthorized-electronic-fund-transfers.pdf.
- CFPB Bulletin 2016-01: The FCRA's Requirement that Furnishers Establish and Implement Reasonable Written Policies and Procedures Regarding the Accuracy and Integrity of Information Furnished to all Consumer Reporting Agencies (February 3, 2016), http://files.consumerfinance.gov/f/201602_cfpb_supervisory-bulletin-furnisher-accuracy-obligations.pdf.

To carry out the objectives set forth in the **Examination Objectives** section, the examination process also will include assessing other risks to consumers that are not governed by specific statutory or regulatory provisions. These risks may include potentially unfair, deceptive, or abusive acts or practices (UDAAPs) with respect to servicers' interactions with consumers.[3]

[3] Dodd-Frank Act, Sec. 1036, PL 111-203 (July 21, 2010)(12 U.S.C. 5531, 5536).

Collecting information about risks to consumers, whether or not there are specific legal guidelines addressing such risks, can help inform the Bureau's policymaking. The standards the CFPB will use in assessing UDAAPs are:

- A representation, omission, act, or practice is deceptive when:

1. the representation, omission, act, or practice misleads or is likely to mislead the consumer;
2. the consumer's interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and
3. the misleading representation, omission, act, or practice is material.

- An act or practice is unfair when:

1. it causes or is likely to cause substantial injury to consumers;
2. the injury is not reasonably avoidable by consumers; and
3. the injury is not outweighed by countervailing benefits to consumers or to competition.

- An abusive act or practice:
    1. materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service or
    2. takes unreasonable advantage of –
        - a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;
        - the inability of the consumer to protect its interests in selecting or using a consumer financial product or service; or
        - the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

Please refer to the examination procedures regarding UDAAPs for more information about the legal standards and the CFPB's approach to examining for UDAAPs.

The particular facts in a case are crucial to a determination of unfair, deceptive, or abusive acts or practices. As set out in the **Examination Objectives** section, examiners should consult with Headquarters to determine whether the applicable legal standards have been met before a violation of any federal consumer financial law could be cited, including a UDAAP violation.

Compliance Management System

1. Review the entity's compliance management system using the Compliance Management Review section of the CFPB examination procedures.

[Click&type]

RESPA/Regulation X

Service Provider Oversight

Depending on the facts and circumstances, mortgage servicers may be legally responsible for the activities of service providers. Examiners should ensure that such entities appropriately manage their relationships with service providers. Examiners should evaluate policies, procedures, complaints, and copies of any agreements between entities and service providers acting on behalf of the entity for purposes of assessing risks to consumers.

2. Assess compliance with the Regulation X General Servicing Policies, Procedures, and Requirements – Accessing and Providing Timely and Accurate Information provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(a) and (b)(1), for more information.

[Click&type]

3. Assess compliance with the Regulation X General Servicing Policies, Procedures, and Requirements – Facilitating Oversight of, and Compliance by, Service Providers provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(a) and (b)(3), for more information.

   As a framework for the analysis of whether the servicer's policies and procedures are reasonably designed to achieve the objective of facilitating oversight of, and compliance by, service providers, please refer to CFPB Bulletin 2012-03 (April 13, 2012) regarding service providers.[4] Assess the level of risk of consumer injury presented by a service provider and then determine whether the servicer has policies and procedures[5] that achieve the required objectives related to service provider oversight for each major service provider, as appropriate based on risk assessments and other circumstances.

[4] CFPB issued a bulletin highlighting its expectation that supervised banks and nonbanks oversee their business relationships with service providers in a manner that ensures compliance with Federal consumer financial law. *See* CFPB Bulletin 2012-03, Service Providers (April 13, 2012), http://files.consumerfinance.gov/f/201204_cfpb_bulletin_service-providers.pdf.

[5] For each reference to the procedures required by Regulation X (12 CFR 1024.38) in this section and subsequent modules, the term "procedures" refers to the actual practices followed by a servicer for achieving the objectives set forth in 12 CFR 1024.38(b) (12 CFR part 1024 Supplement I, Comment 1024.38(a)-2).

[Click&type]

Record Retention and Servicing File

4. Assess compliance with the Regulation X General Servicing Policies, Procedures, and Requirements – Record Retention provision. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(c)(1), for more information.

   [Click&type]

5. Assess compliance with the Regulation X General Servicing Policies, Procedures, and Requirements – Servicing File provision. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(c)(2), for more information

   [Click&type]

Module 1 – Servicing and Loan Ownership Transfers

Examiners should engage in several steps to assess potential violations of law in connection with servicing and loan ownership transfers. First, examiners should review policies and procedures and obtain a sample of servicing records, for loans transferred within the previous year. Examiners also may need to review copies of the electronic and paper documents transferred from the prior servicer. Additionally, they should review relevant records such as copies of monthly statements sent to consumers, copies of the RESPA disclosures, and evidence of delivery. If consumer complaints or document review indicate potential violations in these areas, examiners also may conduct interviews of consumers from the sample and ask questions relevant to each topic area below. For more information, please also refer to CFPB Bulletin 2014-01 (August 19, 2014) regarding servicing transfers.[6]

RESPA/Regulation X

Servicing Transfers

1. Assess compliance with the Regulation X Mortgage Servicing Transfers provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.33, for more information.

   [Click&type]

2. Assess compliance with the Regulation X Error Resolution Procedures and Requests for Information provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.35 and .36, for more information.

   [Click&type]

3. Assess compliance with the Regulation X General Servicing Policies, Procedures, and Requirements – Accessing and Providing Timely and Accurate Information and Facilitating Transfer of Information During Servicing Transfers provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(a), (b)(1)(i), (b)(1)(ii), and (b)(4), for more information.

   [Click&type]

4. Assess compliance with the Regulation X General Servicing Policies, Procedures, and Requirements – Record Retention provision. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(c)(1), for more information.

   [Click&type]

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[6] CFPB issued a bulletin highlighting its expectations of supervised banks and nonbanks for mortgage servicing transfers. *See* CFPB Bulletin 2014-01, Compliance Bulletin and Policy Guidance: Mortgage Servicing Transfers (August 19, 2014), http://files.consumerfinance.gov/f/201408_cfpb_bulletin_mortgage-servicing-transfer.pdf.

Escrow Transfers

To assess whether the servicer is complying with obligations under Regulation X to notify consumers of changes in the escrow account requirements resulting from a transfer of servicing, examiners should sample from the list of loans transferred within the previous year that included escrow accounts. For the loans in the sample, examiners should review copies of consumer disclosures regarding the escrow accounts and evidence of delivery.

5. Assess compliance with the Regulation X Escrow Accounts provisions. Please refer to the examination procedures regarding RESPA, 12 CFR 1024.17(e) and (i)(4), for more information.

   [Click&type]

FDCPA

6. Assess compliance with the FDCPA provisions regarding Notice of Debt and Disputed Debts provisions. Please refer to the examination procedures regarding debt collection, 15 U.S.C. 1692g(a) and (b), for more information.

   [Click&type]

Other Risks to Consumers

7. Determine whether the servicer takes steps to facilitate the transfer of the consumer’s automated clearing house (ACH) payments in connection with the transfer of servicing rights. For example, determine whether the servicer takes steps, including making disclosures, so that consumers do not inadvertently fail to make a timely mortgage payment or make a double mortgage payment following the transfer.

   [Click&type]

8. Determine whether a servicer who receives servicing transfers complies with the terms of loss mitigation agreements entered into by the borrower and the prior servicer.

   [Click&type]

TILA/Regulation Z

Ownership Transfer

Examiners should determine whether the servicer is required to transmit the loan ownership transfer notice. The institution would have this obligation if it acquired legal title to more than one mortgage loan debt obligation, whether through a purchase, an assignment, or other transfer, in any twelve-month period. A mortgage loan is defined as a closed-end consumer credit loan secured by a dwelling or real property and an open-end consumer credit loan that is secured by the principal dwelling of a consumer. (12 CFR 1026.39(a)(1) and (2)).[7]

To assess whether the servicer is complying with obligations under Regulation Z to notify consumers of changes in the loan ownership, examiners should sample from the list of loans in which the servicer acquired legal title to the mortgage loan within the previous year. For the loans in the sample, examiners should review copies of consumer disclosures regarding loan ownership and evidence of delivery.

9. Assess compliance with the Regulation Z Mortgage Transfer Disclosures provisions. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.39, for more information.

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[7] A servicer of a mortgage loan is not treated as an owner of the obligation 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 obligation.

Contractually, the loan owner may have delegated the Regulation Z obligation to the servicer. Although the loan owner cannot delegate its obligation under law, examiners should assess whether the servicer is fulfilling its commitment, if applicable.

Module 2 – Payment Processing, Account Maintenance, and Optional Products

To assess payment processing, account maintenance, and optional product posting and fee practices, examiners should review policies, procedures, complaints, and a sample of servicing records from consumer accounts including periodic statements, consumer payment records, and bills from vendors *documenting* any services related to the consumer's loan account. If consumer complaints or document review indicates potential violations in these areas, examiners also may conduct interviews of consumers from the sample and ask questions relevant to each topic area below.

Payment Processing

TILA/Regulation Z

1. Assess compliance with the Regulation Z Payment Processing and No Pyramiding of Late Fees provisions. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.36(c)(1) and (2), for more information.

   [Click&type]

2. Assess compliance with the Regulation Z Payments provisions for open-end mortgages. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.10, for more information.

   [Click&type]

Other Risks to Consumers

3. Determine whether payments are applied and fees are assessed according to the terms of the note.

   [Click&type]

Optional Products and Services

4. Determine whether the servicer offers optional products or services (such as debt cancellation, bi-weekly payment plans, payment protection, or credit protection) and, if so, which products and/or services the servicer offers.

   [Click&type]

ECOA

5. Determine whether each such optional product or service is offered and provided in a manner consistent with ECOA. Targeted marketing of these products on the basis of race, for example, may indicate an increased risk of potential ECOA violations and require further inquiry. In consultation with Headquarters, assess whether marketing is targeted on such a basis to particular consumers or in particular areas.

[Click&type]

Other Risks to Consumers

6. Review marketing materials, whether they are telemarketing scripts, direct mail, web- based, or other media, and determine whether each optional product's costs and terms are clearly and prominently disclosed. If consumer complaints or document review indicates potential violations in these areas and the servicer engages in telemarketing, monitor call center activity, and statements of representatives marketing the products. If the servicer engages in web-based marketing, monitor Internet communications related to the marketing.

   [Click&type]

7. Determine whether the servicer added on optional products or services without obtaining explicit authorization from the consumer. If the servicer obtains written authorization, review records of consumers who received additional products or services to ensure that written authorization has been provided and retained.

   [Click&type]

8. For bi-weekly payment plan solicitations, determine whether the servicer clearly and conspicuously explains the terms and conditions, including, where applicable, whether the servicer will be crediting payments bi-weekly or only monthly.

   [Click&type]

9. In assessing risks to consumers, examiners may find evidence of violations of—or an absence of compliance policies and procedures with respect to—other laws, in which case examiners should identify such matters for appropriate actions, such as, where authorized, possible referral to other regulators. For example, the Servicemembers Civil Relief Act requires a servicer to reduce the interest rate that a servicemember must pay on private and federal student loans to 6 percent upon receiving a written request and a copy of the servicemember's military orders calling them into military service. The servicer must reduce the servicemember's interest rate to 6 percent when:

   - The loan is a pre-service obligation – entered into prior to the borrower entering military service;
   - The borrower has submitted a written request to the servicer; and
   - The borrower has provided a copy of their military orders to the servicer.

   [Click&type]

Periodic Statements and Other Disclosures

Examiners must review the servicer's policies, procedures, and systems to assess the adequacy of periodic statements and other required disclosures, including whether applicable disclosures are furnished when required by Regulation Z. Examiners also should review a sample of periodic statements and other required disclosures.

RESPA/Regulation X and TILA/Regulation Z

Periodic Statements

10. Assess compliance with the Regulation Z General Disclosure Requirements and Periodic Statements provisions for open-end mortgages. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.5 and .7, for more information.

    [Click&type]

11. Assess compliance with the Regulation Z General Rules and Periodic Statements for Residential Mortgage Loans provisions and the Regulation X General Servicing Policies, Procedures, and Requirements – Accessing and Providing Timely and Accurate Information provisions. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.31 and .41 and Regulation X, 12 CFR 1024.38(a) and (b)(1)(i), for more information.

    [Click&type]

12. Assess compliance with the Regulation Z General Rules and Requirements for Home Equity Plans provisions. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.31 and .40, for more information.

    [Click&type]

Adjustable Rate Mortgage Disclosures

13. Assess compliance with the Regulation Z General Disclosure Requirements and Initial Rate Adjustment provisions and the Regulation X General Servicing Policies, Procedures, and Requirements – Accessing and Providing Timely and Accurate Information provisions. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.17 and .20(d), and Regulation X, 12 CFR 1024.38(a) and (b)(1)(i), for more information.

    [Click&type]

14. Assess compliance with the Regulation Z General Disclosure Requirements and Rate Adjustments with a Corresponding Change in Payment provisions and the Regulation X General Servicing Policies, Procedures, and Requirements – Accessing and Providing Timely and Accurate Information provisions. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.17 and .20(c), and Regulation X, 12 CFR 1024.38(a) and (b)(1)(i),

for more information. See also CFPB Bulletin 2013-12 (October 15, 2013), providing implementation guidance for certain mortgage servicing rules.[8]

[Click&type]

EFTA/Regulation E and RESPA/Regulation X

15. If the servicer is within the scope of coverage and obtains electronic payments from borrowers, assess compliance with the Regulation E Electronic Fund Transfers provisions and the Regulation X General Servicing Policies, Procedures, and Requirements – Accessing and Providing Timely and Accurate Information provisions. Please refer to the examination procedures regarding Regulation E, 12 CFR 1005 and Regulation X, 12 CFR 1024.38(a) and (b)(1)(i), for more information. See also CFPB Bulletin 2015-06 (November 23, 2015) regarding preauthorized electronic fund transfers.[9]

[Click&type]

Payoff Statements

TILA/Regulation Z

16. Assess compliance with the Regulation Z General Rules and Payoff Statements provisions. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.31 and .36(c)(3), for more information.

[Click&type]

Treatment of Credit Balances

TILA/Regulation Z

17. Assess compliance with the Regulation Z Treatment of Credit Balances provisions. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.11 and .21, for more information.

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[8] *See* CFPB Bulletin 2013-12: Implementation Guidance for Certain Mortgage Servicing Rules (October 15, 2013), http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_bulletin.pdf.

[9] CFPB issued a bulletin highlighting its expectations of supervised banks and nonbanks for preauthorized electronic fund transfers. *See* CFPB Bulletin 2015-06: Requirements for Consumer Authorizations for Preauthorized Electronic Fund Transfers (November 23, 2015), http://files.consumerfinance.gov/f/201511_cfpb_compliance-bulletin-2015-06-requirements-for-consumer-authorizations-for-preauthorized-electronic-fund-transfers.pdf.

Successors in Interest

RESPA/Regulation X

18. Assess compliance with the Regulation X General Servicing Policies, Procedures, and Requirements – Accessing and Providing Timely and Accurate Information provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(a) and (b)(1)(vi), for more information. See also CFPB Bulletin 2013-12 (October 15, 2013) providing implementation guidance for certain mortgage servicing rules.[10]

[Click&type]

[10] *See* CFPB Bulletin 2013-12: Implementation Guidance for Certain Mortgage Servicing Rules (October 15, 2013), http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_bulletin.pdf.

Module 3 – Error Resolution, Consumer Inquiries, and Complaint Procedures

Examiners should review notices of error, consumer inquiries (including requests for information), and complaints and call specific complaining consumers to interview them regarding their experiences. Examiners should listen to live calls and taped calls to assess the quality and training of call center personnel. Examiners should determine the root cause of notices of error, consumer inquiries, and complaints, whether they were resolved adequately (including appropriate remediation for all consumers affected by the root cause), whether they were resolved in a timely manner. In addition to reviewing individual notices of error, inquiries, and complaints, examiners should review the related policies and procedures. As part of this review, examiners should assess whether complaints drive adjustments to business practices, where appropriate. Examiners should also review the escalation paths available to borrowers, including those available for borrowers facing imminent foreclosure.

RESPA/Regulation X

Error Resolution Procedures

1. Assess compliance with the Regulation X Error Resolution Procedures provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.35, for more information.

   [Click&type]

Requests for Information

2. Assess compliance with the Regulation X Requests for Information provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.36, for more information.

   [Click&type]

Policies and Procedures

3. Assess compliance with the Regulation X General Servicing Policies, Procedures, and Requirements – Accessing and Providing Timely and Accurate Information provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(a), (b)(1)(ii) and (b)(1)(iii), for more information. See also the Consumer Complaint Response part of the Compliance Management Review section of the CFPB examination procedures.

4. Assess compliance with the Regulation X General Servicing Policies, Procedures, and Requirements – Informing Borrowers of the Written Error Resolution and Information Request Procedures provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(a) and (b)(5), for more information.

   [Click&type]

TILA/Regulation Z

Billing Error Resolution

5. Assess compliance with the Regulation Z Billing Error Resolution provisions for open-end mortgages. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.13, for more information.

   [Click&type]

Other Risks to Consumers

6. Determine whether the servicer has an adequate process to identify and escalate requests for information, notices of error, or complaints that may involve regulatory compliance issues.

   [Click&type]

7. Where the borrower is facing imminent foreclosure, determine whether the servicer has an adequate process for expedited evaluation and resolution of requests for information, notices of error, or complaints that may involve regulatory compliance issues. Such an adequate process could include a dedicated phone line that connects directly to a live representative or another path for borrowers or borrower advocates to resolve identified regulatory compliance issues in advance of an imminent foreclosure.

   [Click&type]

Module 4 – Maintenance of Escrow Accounts and Insurance Products

Examiners should review policies and procedures and obtain a sample of servicing records. For the loans in the sample, examiners should assess whether the servicer is complying with the law in the areas listed below. If the file review indicates potential risks, examiners also should conduct interviews of a sample of consumers and staff, if appropriate, to assess consumer experiences with escrow accounts, force-placed insurance products, and private mortgage insurance.

RESPA/Regulation X and TILA/Regulation Z

Escrow Account Requirements

1. Assess compliance with the Regulation X Escrow Accounts provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.17, for more information.

   [Click&type]

2. Assess compliance with the Regulation X Timely Escrow Payments and Treatment of Escrow Account Balances provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.34, for more information.

   [Click&type]

3. Assess compliance with the Regulation Z Escrow Account Cancellation Notice for Certain Mortgage Transactions provisions. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.20(e), for more information.

   [Click&type]

Force-Placed Insurance

4. Assess compliance with the Regulation X Escrow Accounts (Timely Payment of Hazard Insurance) provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.17(k)(5), for more information.

   [Click&type]

5. Assess compliance with the Regulation X Force-Placed Insurance provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.37, for more information.

   [Click&type]

Policies and Procedures

6. Assess compliance with the Regulation X General Servicing Policies, Procedures, and Requirements – Accessing and Providing Timely and Accurate Information provisions. Please

refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(a) and (b)(1)(i), for more information.

[Click&type]

Other Risks to Consumers

7. Determine whether the servicer informs delinquent consumers that they will receive a refund of escrow surplus where the servicer does not plan to send a refund.

[Click&type]

Homeowners Protection Act of 1998

Treatment of Private Mortgage Insurance

8. Assess compliance with Homeowners Protection Act. Please refer to the examination procedures regarding the HPA, 12 U.S.C. 4902, 4903(a)(3), and 4904 for more information. See also CFPB Bulletin 2015-03 (August 4, 2015) regarding private mortgage insurance.[11]

[Click&type]

Policies and Procedures

9. Assess compliance with the Regulation X General Servicing Policies, Procedures, and Requirements – Accessing and Providing Timely and Accurate Information provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(a) and (b)(1)(i), for more information.

[Click&type]

Other Risks to Consumers

10. Determine whether the servicer informs borrowers of private mortgage insurance cancellation standards that are inconsistent with the HPA.

[Click&type]

[11] CFPB issued a bulletin highlighting its expectation of supervised banks and nonbanks for private mortgage insurance cancellation and termination. *See* CFPB Bulletin 2015-03: Private Mortgage Insurance Cancellation and Termination (August 4, 2015), http://files.consumerfinance.gov/f/201508_cfpb_compliance-bulletin_private-mortgage-insurance-cancellation-and-termination.pdf.

Module 5 – Consumer Reporting

Examiners should review policies, procedures, direct disputes, indirect disputes, complaints, and obtain a sample of loan servicing records. For the loans in the sample, compare the information in the servicer's system of record with the information reported to the consumer reporting agencies. Particular concerns in the mortgage servicing context include ensuring that servicers report short sales accurately, instead of reporting transactions as resulting in a foreclosure when they actually resulted in a short sale, and ensuring that servicers report loan modification outcomes accurately. If consumer complaints or document review indicates potential FCRA violations, examiners also may conduct interviews of consumers from the sample.

FCRA/Regulation V Furnisher Requirements

1. Assess compliance with the FCRA/Regulation V Furnisher Requirements. Please refer to the FCRA examination procedures, 12 CFR 1022.40-43 and 15 U.S.C. 1681s-2, for more information. See also CFPB Bulletin 2013-09 (September 4, 2013) regarding furnishers' responsibilities to investigate disputes, CFPB Bulletin 2014-01 (February 27, 2014) regarding investigations of disputed information, and CFPB Bulletin 2016-01 (February 3, 2016) regarding required policies and procedures.[12]

   [Click&type]

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[12] CFPB has issued three bulletins highlighting its expectations of supervised banks and nonbanks with respect to certain FCRA compliance issues, *see*:

- CFPB Bulletin 2013-09: The FCRA's Requirement to Investigate Disputes and Review "All Relevant" Information Provided by Consumer Reporting Agencies (CRAs) About the Dispute (September 4, 2013), http://files.consumerfinance.gov/f/201309_cfpb_bulletin_furnishers.pdf;
- CFPB Bulletin 2014-01: The FCRA's Requirement that Furnishers Conduct Investigations of Disputed Information (February 27, 2014), http://files.consumerfinance.gov/f/201402_cfpb_bulletin_fair-credit-reporting-act.pdf; and
- CFPB Bulletin 2016-01: The FCRA's Requirement that Furnishers Establish and Implement Reasonable Written Policies and Procedures Regarding the Accuracy and Integrity of Information Furnished to all Consumer Reporting Agencies (February 3, 2015), http://files.consumerfinance.gov/f/201602_cfpb_supervisory-bulletin-furnisher-accuracy-obligations.pdf.

Module 6 – Information Sharing and Privacy

Privacy Notices

1. Assess compliance with Privacy of Consumer Financial Information Regulation that implements the GLBA. Please refer to the GLBA examination procedures, 12 CFR 1016.4 and.5, for more information.

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Information Sharing With Affiliates

2. Assess compliance with the FCRA Affiliate Marketing Rule. Please refer to the FCRA examination procedures, 12 CFR 1022.21, for more information.

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Module 7 – Collections and Accounts in Bankruptcy

Examiners should review policies, procedures, complaints, and obtain a sample of servicing records of consumers in default, including a sufficient number of loans in which the consumer has filed for bankruptcy, to assess collection practices. Examiners should obtain collection call records and listen to a sample of collection calls. If consumer complaints or document review indicates potential violations in these areas, examiners also may conduct interviews of consumers from the sample and ask questions relevant to each topic area below. In connection with these steps, examiners should evaluate the following.

Under the 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 interstate commerce or the mail in a business the principal purpose of which is consumer debt collection, or uses some name other than its own when collecting its own consumer debts, with certain exceptions. The definition includes, for example, an institution that regularly collects debts for an unrelated institution.

The debt collector definition has an exception that frequently applies to mortgage servicing: an institution is not a debt collector under the FDCPA when it collects debts that were ***not*** in default when they were obtained by the servicer.[13] Thus, a servicer that purchases the servicing rights for a portfolio of loans will be a debt collector to the extent it meets the general definition of debt collector only for loans that were in "default" when the servicer obtained them.[14]

Examiners should obtain a sample of collection call records and assess whether collectors complied with the requirements listed in the debt collection examination procedures. Examiners should also assess collection activities and listen to a sample of collection calls to identify potential risks to consumers where the FDCPA may not apply. For more information, please also refer to CFPB Bulletin 2013-07 (July 10, 2013), which provides guidance on unfair, deceptive, or abusive acts or practices in the collection of consumer debts.[15]

FDCPA

1. Assess compliance with the FDCPA. Please refer to the examination procedures regarding debt collection for more information.

   [Click&type]

Other Risks to Consumers

2. Determine whether the servicer contacts borrowers in an appropriate manner:

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[13] 15 U.S.C. 1692a (6)(F)(iii).

[14] The FDCPA itself does not contain a definition of the term "default." In determining whether a debt is in default, the following factors, among others, are generally considered: the creditor's customary policies and practices; terms of the contract; determinations by the originator; and State law.

[15] *See* CFPB Bulletin 2013-07: Prohibition of Unfair, Deceptive, or Abusive Acts or Practices in the Collection of Consumer Debts (July 10, 2013), http://files.consumerfinance.gov/f/201307_cfpb_bulletin_unfair-deceptive-abusive-practices.pdf.

a. Employees and third-party contractors clearly indicate to consumers that they are calling about the collection of a debt.

b. Employees and third-party contractors do not disclose the existence of a consumer's debt to the public without the consent of the consumer, except as permitted by law.

c. The entity has policies on avoiding repeated telephone calls to consumers that annoy, abuse, or harass any person at the number called.

[Click&type]

3. Determine whether the servicer's representatives make misrepresentations or use deceptive means to collect debts.

[Click&type]

4. Determine whether collections staff transfer borrowers to loss mitigation staff, in accordance with the institution's policies and procedures, to discuss loss mitigation alternatives.

[Click&type]

Bankruptcy

Other Risks to Consumers

5. Determine whether the servicer properly identifies accounts as being in active bankruptcy to ensure that the servicer provides protection from foreclosure or collections to which the borrower is entitled under federal bankruptcy law.

[Click&type]

6. For consumers who have filed for bankruptcy, determine whether the servicer informs the debtor of the total amount due, including principal, interest, fees, expenses, or other charges, as of the date the debtor filed for bankruptcy, and whether the servicer provides the debtor with an escrow account statement prepared as of the date the debtor filed for bankruptcy.

[Click&type]

7. For consumers who have filed for chapter 13 bankruptcy, determine whether the servicer provides notice of any change in the payment amount due, including any change that results from an interest rate or escrow account adjustment, to the debtor, the debtor's counsel, the bankruptcy trustee, and the court, before a payment in the new amount is due.

[Click&type]

8. For consumers who have filed for chapter 13 bankruptcy, determine whether the servicer provides notice of fees or other amounts charged to the account to the debtor, the debtor's counsel, the bankruptcy trustee, and the court during the pendency of the bankruptcy case.

[Click&type]

9. Determine whether payments received from a consumer or bankruptcy trustee are properly applied to the consumer's account.

   [Click&type]

Module 8 – Loss Mitigation, Early Intervention, and Continuity of Contact

Examiners should review policies, procedures, complaints, and obtain a sample of servicing records of consumers who are delinquent or at imminent risk of default to assess loss mitigation activity. If consumer complaints or document review indicates potential concerns in these areas, examiners also may conduct interviews of consumers from the sample who sought loss mitigation in the prior year and ask questions relevant to each topic area below. For more information, please also refer to CFPB Bulletin 2013-12 (October 15, 2013), which provides implementation guidance for certain mortgage servicing rules.[16]

RESPA/Regulation X

Early Intervention Requirements for Certain Borrowers

1. Assess compliance with the Regulation X Early Intervention Requirements for Certain Borrowers – Live Contact provisions. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.39(a), for more information. See also CFPB Bulletin 2013-12 (October 15, 2013) providing implementation guidance for certain mortgage servicing rules.[17]

   [Click&type]

2. Assess compliance with the Regulation X Early Intervention Requirements for Certain Borrowers – Written Notice provisions. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.39(b), for more information.

   [Click&type]

Continuity of Contact

3. Assess compliance with the Regulation X Continuity of Contact provisions. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.40, for more information.

   [Click&type]

Loss Mitigation Procedures

4. Assess compliance with the Regulation X General Servicing Policies, Procedures, and Requirements – Properly Evaluating Loss Mitigation Applications provisions. Please refer to the

[16] *See* CFPB Bulletin 2013-12: Implementation Guidance for Certain Mortgage Servicing Rules (October 15, 2013), http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_bulletin.pdf.

[17] *See* CFPB Bulletin 2013-12: Implementation Guidance for Certain Mortgage Servicing Rules (October 15, 2013), http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_bulletin.pdf.

examination procedures regarding Regulation X, 12 CFR 1024.38(a) and (b)(2), for more information.

[Click&type]

5. Assess compliance with the Regulation X Receipt of a Loss Mitigation Application provisions. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.41(b), for more information.

   [Click&type]

6. Assess compliance with the Regulation X Evaluation of Loss Mitigation Applications provisions. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.41(c), for more information.

   [Click&type]

7. Assess compliance with the Regulation X Denial of Loan Modification Options provisions. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.41(d), for more information.

   [Click&type]

8. Assess compliance with the Regulation X Borrower Response provisions. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.41(e), for more information.

   [Click&type]

9. Assess compliance with the Regulation X Appeal Process provisions. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.41(h), for more information.

   [Click&type]

Other Risks to Consumers

Application Process

10. Determine whether information provided to consumers about loss mitigation alternatives is clear, prominent, and readily understandable.

    [Click&type]

11. Determine whether the servicer is providing military homeowners who have informed the servicer that they have received military Permanent Change of Station orders with accurate,

clear, and readily understandable information about available assistance options for which the consumer may qualify.[18]

[Click&type]

12. Determine whether the servicer advises consumers to stop payments in order to qualify for loss mitigation relief.

[Click&type]

13. Determine whether the servicer timely converts consumers who successfully complete trial modifications to permanent modifications.

[Click&type]

Consequences of Loss Mitigation

14. Determine whether the servicer discloses any rescheduling of payments that may occur under an existing obligation in a clear, prominent, and understandable manner.

[Click&type]

15. Determine whether the servicer discloses any material negative consequences that may occur as a result of the borrower's failing to make payments during the loss mitigation process.

[Click&type]

16. Determine whether the servicer discloses any material negative consequences that may occur as a result of a completed loan modification (e.g., decreased credit score, income tax implications if principal reduction is offered, and any increase in monthly payment amount).

[Click&type]

17. Determine whether the servicer discloses future changes in the modified loan terms (e.g., with respect to any principal forbearance or temporary interest rate reductions).

[Click&type]

18. Determine whether the servicer asks consumers to waive their legal rights under the Servicemembers Civil Relief Act or any other law as a prerequisite to the servicer either providing information to the consumer about available options or evaluating the consumer's eligibility for assistance.

[Click&type]

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[18] *See* Interagency Guidance on Mortgage Servicing Practices Concerning Military Homeowners with Permanent Change of Station Orders (June 21, 2012), http://files.consumerfinance.gov/f/201206_cfpb_PCS_Orders_Guidance.pdf.

19. Determine whether the servicer includes any waiver of legal rights in its loan modification or other foreclosure alternative agreements.

    [Click&type]

20. Determine whether the servicer accurately captures escrow amounts due when evaluating borrowers for loss mitigation.

    [Click&type]

21. Determine whether the servicer applies payments and assesses fees according to the terms of loss mitigation agreements.

    [Click&type]

Short Sales

22. If the servicer is offering short sales as a loss mitigation tool, determine whether it provides clear, timely disclosures to the consumer about the process.

    [Click&type]

23. If the servicer demands deficiency payments upon agreeing to a short sale to recoup any principal not recovered through the short sale, determine whether the servicer discloses in a clear, prominent, and understandable manner that it or an investor will demand a deficiency payment or related cash contribution and the approximate amount of that deficiency.

    [Click&type]

Deeds In Lieu of Foreclosures

24. If the servicer offers deeds in lieu of foreclosures, determine whether it provides clear, timely disclosures about requirements and cost to the consumer.

    [Click&type]

ECOA

Providing Appraisals and Other Valuations

25. Assess compliance with the Regulation B Providing Appraisals and Other Valuations provisions. Please refer to examination procedures regarding Regulation B, 12 CFR 1002.14(a)(1) and (2), for more information.

    [Click&type]

Disparate Treatment in Loss Mitigation

As discussed above, examiners should obtain a sample of servicing records of consumers in default or at imminent risk of default to assess loss mitigation activity. While conducting the review of the servicer's loss mitigation activities discussed above, examiners must be mindful of activities that may indicate disparate treatment of consumers in violation of the ECOA on the bases of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to 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. An examination of whether a servicer's loss mitigation program involves disparate treatment of consumers in violation of the ECOA will rely on procedures outlined in the CFPB's ECOA Examination Program Manual, including the ECOA Baseline Review Modules, and the Interagency Fair Lending Examination Procedures.

Examiners should:

26. Determine whether the file documents indicate that decisions were made based upon any protected status.

    [Click&type]

27. Determine whether there were clear policies and procedures for making loss mitigation decisions or whether there was broad employee discretion. If employees have discretion, determine whether the procedures, controls, and monitoring that govern the exercise of discretion are adequate to mitigate the risk of disparate treatment.

    [Click&type]

28. Assess policies and procedures for assessing fees, with a specific focus on discretion.

    [Click&type]

29. Determine whether there were adequate processes and controls for policy exceptions and adequate documentation of decisions.

    [Click&type]

30. Review complaints of discrimination and litigation alleging discrimination.

    [Click&type]

31. Review any internal fair lending audits or reports.

    [Click&type]

32. Assess policies and procedures for considering various types of income of an applicant or the spouse of an applicant.

    [Click&type]

33. Assess policies and procedures for servicing loans held by borrowers with limited English proficiency (LEP borrowers). Among other things, assess whether the institution (a) identifies borrowers that may require non-English language assistance; (b) provides an option for customer service calls in a language other than English; (c) has customer service personnel available to provide assistance in languages other than English and, if so, (i) whether they are dedicated service personnel and (ii) whether they receive the same training, and have the same authority, as other customer service personnel; and (d) provides translations of English language documents to LEP borrowers.

    [Click&type]

Disparate Impact in Loss Mitigation

An examination of whether a servicer's loss mitigation program results in adverse impact on a prohibited basis group will rely on procedures outlined in the CFPB's ECOA Examination Program Manual, including the ECOA Baseline Review Modules, and the Interagency Fair Lending Examination Procedures.

Examiners, in consultation with Headquarters, should:

34. Obtain information sufficient to determine whether loss mitigation workouts have been provided to consumers in compliance with ECOA and Regulation B. For example, this may involve an analysis of the distribution of members of a particular prohibited basis group in the pool of delinquent borrowers versus the distribution receiving a range of loss mitigation outcomes, including: reinstatement, repayment plan, forbearance, loan modification, short sale, deed-in-lieu, and foreclosure.

    [Click&type]

35. Obtain information sufficient to determine whether loan modifications have been provided in compliance with ECOA and Regulation B. For example, this may involve an analysis of processing times and loan modification attributes including interest rate, principal, and monthly payment reductions for members of a particular prohibited basis group compared to other borrowers.

    [Click&type]

36. Obtain information sufficient to determine whether the rate and timing of foreclosures are in compliance with ECOA and Regulation B. For example, this may include analyzing the representation of members of particular prohibited basis groups among seriously delinquent borrowers versus their representation among borrowers who lose their homes to foreclosure.

    [Click&type]

To complete a disparate impact analysis of a servicer's loss mitigation program, and determine whether a facially neutral policy or practice that has an adverse effect on a prohibited basis group meets a legitimate business need that cannot reasonably be achieved by a less discriminatory alternative, refer to Section B of the CFPB's Fair Lending Examination Procedures and consult with Headquarters.

Module 9 – Foreclosures

Examiners should review policies, procedures, complaints, and obtain a sample of servicing records of consumers whose loans have been referred to foreclosure. For the loans in the sample, examiners should focus on whether the consumer is in fact in default and whether all amounts due are correct. Examiners should review amounts set forth in foreclosure affidavits, compare them to amounts recorded in the servicer's primary computer system, and compare them to all statements made in communications from the borrower, including consumer complaints. In appropriate cases, examiners should compare the filing dates reflected in the servicer's records to the dates identified in public records. Examiners also should review all complaints of consumers whose loans were referred to foreclosure in the prior year. In reviewing foreclosure practices, examiners should focus on the following areas:

RESPA/Regulation X

Dual Tracking

1. Assess compliance with the Regulation X Prohibition on Foreclosure Referral provisions. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.41(f), for more information.

   [Click&type]

2. Assess compliance with the Regulation X Prohibition on Foreclosure Sale provisions. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.41(g), for more information.

   [Click&type]

3. If the servicer is a small servicer, assess compliance with Regulation X Small Servicer Requirements. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.41(j).

   [Click&type]

Policies and Procedures

4. Assess compliance with the Regulation X General Servicing Policies, Procedures, and Requirements – Accessing and Providing Timely and Accurate Information provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(a), (b)(1)(ii), (b)(1)(iv), and (b)(1)(v), for more information.

   [Click&type]

5. Assess compliance with the Regulation X General Servicing Policies, Procedures, and Requirements – Facilitating Oversight of, and Compliance by, Service Providers provisions (including both service providers performing foreclosure-related services and service providers

performing other services). Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(a) and (b)(3), for more information.

[Click&type]

Other Risks to Consumers

6. Determine whether the servicer has foreclosed on any consumers paying on a trial modification agreement, permanent modification agreement, forbearance agreement, or other similar agreement.

   [Click&type]

7. Determine whether the servicer has foreclosed on any consumer with whom the servicer had agreed to a modification agreement, forbearance agreement, or other similar agreement, but the first payment was not yet due.

   [Click&type]

8. In assessing risks to consumers, examiners may find evidence of violations of—or an absence of compliance policies and procedures with respect to—other laws, in which case examiners should identify such matters for appropriate actions, such as, where authorized, possible referral to other regulators. For example, the Servicemembers Civil Relief Act prohibits servicers from foreclosing on any active duty military consumer, or any consumer within one year of active duty servicer, with pre-service obligations, unless the servicer satisfies certain requirements. Examiners should determine whether compliance policies and procedures include checking the Department of Defense's Manpower Database prior to completing a foreclosure and documenting the results.

   [Click&type]

Walkaways

9. Evaluate the servicer's process for informing consumers about changes in the foreclosure process, including decisions not to go forward.

   [Click&type]

10. Evaluate the servicer's process for informing consumers about determinations to charge off loans for accounting purposes or to release liens but not related debts prior to full repayment of the loan.

    [Click&type]

ECOA

11. See above, Module 8. Examiners should collect information sufficient to determine whether there has been disparate treatment discrimination in violation of the ECOA and Regulation B in the servicer's foreclosure processing as part of the file review. Examiners should work with

OFLEO to determine whether there has been disparate impact discrimination in foreclosure processing as part of the loss mitigation data analysis discussed above.

[Click&type]

Module 10 – Examiner Conclusions and Wrap-Up

To conclude this supervisory activity, examiners must complete all steps under this section, regardless of the entity's risk profile.

1. Summarize the findings, supervisory concerns, and regulatory violations.
2. For the violations noted, determine the root cause by identifying weaknesses in internal controls, audit and compliance reviews, training, management oversight, or other factors. Determine whether each violation is a pattern or practice, or an isolated situation that occurred despite appropriate controls.
3. Identify action needed to correct violations and weaknesses in the institution's compliance management system, as appropriate.
4. Discuss findings with the institution's management and, if necessary, obtain a commitment for corrective action
5. Record violations according to Bureau policy in the Report of Examination/Supervisory Letter and CFPB's electronic database system to facilitate analysis and reporting.
6. If the examiner believes enforcement action may be appropriate, contact appropriate agency personnel for guidance.
7. Prepare a memorandum for inclusion in the work papers and CFPB's official system of record that outlines planning and strategy considerations for the next examination and, if appropriate, interim follow-up.

GLOSSARY

BPOs: broker price opinions, which provide estimates of the property value.

Consumer Reporting Agency: a person which, for monetary fees, dues, or on a cooperative non-profit 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.

Deed in Lieu of Foreclosure: a foreclosure alternative in which the consumer voluntarily transfers the property title to the servicer in exchange for cancellation of the remainder of the debt.

Escrow Account: an account the servicer maintains to pay property taxes and insurance on behalf of the borrower.

Forbearance: a foreclosure alternative in which the servicer reduces or suspends the consumer's mortgage payments for an agreed period of time. At the end of that time, the consumer resumes making the regular payments as well as a lump sum payment or additional monthly payments to bring the loan current. Forbearance may be an option if the consumer's income is reduced temporarily and the mortgage is affordable.

Force-Placed Insurance: an insurance policy taken out by a lender or creditor when it determines that a consumer has breached the mortgage contract by failing to carry appropriate insurance on the home that is collateral for the mortgage.

Foreclosure Trustee: an individual or company chosen to administer the assets of the beneficiary and facilitate the foreclosure process.

HAMP: The Home Affordable Modification Program (HAMP) is a temporary government program established by the U.S. Treasury to encourage loan modifications through use of financial incentives paid to borrowers, mortgage servicers, and investors. The deadline for HAMP eligibility is December 31, 2016. More information is available at www.makinghomeaffordable.gov.

Loan Instruments: the promissory note and the security instrument that detail the rights and obligations of the parties.

Loan Modification: a foreclosure alternative in which the servicer changes one or more of the terms of the mortgage contract, typically to lower the monthly payments. Modifications may include reducing the interest rate, extending the term of the loan, or adding missed payments to the loan balance. A modification also may involve reducing the amount of money the consumer owes by forgiving a portion of the mortgage debt, which is known as "principal forgiveness."

Loss Mitigation: a process for considering alternatives to foreclosure when consumers fall behind on their mortgage payments or are at risk of default.

PITI Payment: principal, interest, taxes, and insurance payment

Promissory Note: a document that evidences the debt and the promise to repay.

Property Inspection Fees: fees for inspections of the property so that the servicer can make sure that it is occupied and not abandoned.

Property Preservation Fees: fees for services purchased to maintain the property in good condition and typically include lawn mowing, winterizing, and making repairs.

Proprietary Loan Modifications: loan modifications other than HAMP modifications. The eligibility requirements and structure of these modifications depend on the servicer and the investor that owns the particular loan.

Reinstatement: a process by which, after going into default, the consumer pays the loan servicer the entire past-due amount, plus any late fees or penalties, by an agreed date. This option may be appropriate if the consumer's problem paying the mortgage is temporary.

Repayment Plan: a foreclosure alternative in which the servicer allows the consumer a fixed amount of time to repay the amount he is behind by adding a portion of what is past due to the regular payment. This option may be appropriate if the consumer has missed a small number of payments and can afford the mortgage.

Security Instrument: a document that evidences the lien on the property. Depending on the state, the security instrument is called either a deed of trust or mortgage deed.

Short Sale: a foreclosure alternative in which the servicer allows the consumer to sell the home for less than the mortgage balance before it forecloses on the property and may agree to forgive any shortfall between the sale price and the mortgage balance.

Suspense Account: an account holding funds that are earmarked for — but not immediately credited to — the consumer's loan account. Also called an unapplied funds account.

Uniform Instruments: form instruments developed by Fannie Mae and Freddie Mac that are used to document the large majority of mortgage loans.

Prepaid Account Examination Procedures

Exam Date:	[Click&type]
Exam ID No.:	[Click&type]
Prepared By:	[Click&type]
Reviewer:	[Click&type]
Docket #:	[Click&type]
Entity Name:	[Click&type]
Event #:	[Click&type]

These procedures should be used to examine institutions that offer prepaid accounts for compliance with required disclosures and protections afforded to prepaid account holders (including government benefit accounts and payroll card accounts). Examiners should complete a risk assessment, conduct necessary scoping, and use these procedures, in conjunction with the compliance management system review procedures, to conduct a prepaid examination.

These prepaid account procedures include guidance for all types of covered prepaid accounts, including government benefit accounts and payroll card accounts. The examination procedures contain a series of modules, grouping similar requirements together. Depending on the scope of the examination, and in conjunction with the compliance management system and consumer complaint responses review procedures, each examiner will cover parts of one or more of the following modules. Module 8 – UDAAP and Examiner's Summary is a required module and must be completed. The modules include:

1. Pre-Acquisition Disclosures
2. Initial Disclosures
3. Periodic Statements and the Periodic Statement Alternative
4. Error Resolution and Limitations on Liability
5. Receipts at electronic terminals, Preauthorized EFTs, and Access Devices
6. Compulsory Use, Submission of Agreements, and Record Retention
7. Overdraft Credit Features
8. UDAAP and Summary

Prepaid Account Examination Objectives

1. To assess the quality of the regulated entity's compliance risk management systems, including internal controls and policies and procedures, for preventing violations of Federal consumer financial law in its prepaid account business.
2. To identify acts or practices that materially increase the risk of violations of Federal consumer financial law and associated harm to consumers in connection with prepaid accounts.
3. To gather facts that help to determine whether a supervised entity engages in acts or practices that are likely to violate Federal consumer financial law in connection with prepaid accounts.
4. To determine, in consultation with CFPB headquarters, whether a violation of a Federal consumer financial law has occurred and whether further supervisory or enforcement actions are appropriate.

Background

Regulatory History

On October 5, 2016, the Consumer Financial Protection Bureau (CFPB or Bureau) issued a final rule to create comprehensive protections for prepaid accounts under Regulation E, which implements the Electronic Fund Transfer Act (EFTA), and Regulation Z, which implements the Truth in Lending Act (TILA) (2016 Final Rule) (81 FR 83934) (November 22, 2016). On April 20, 2017, the Bureau issued a final rule delaying the general October 1, 2017 effective date in the 2016 Final Rule to April 1, 2018 (the April 2017 Effective Date Delay) (82 FR 18975) (April 25, 2017). On January 25, 2018, the Bureau issued a final rule amending and clarifying certain provisions of Regulation E and Regulation Z related to prepaid accounts and extending the 2016 Final Rule's effective date to April 1, 2019 (the 2018 Prepaid Amendments) (83 FR 6364) (February 13, 2018). Collectively, the 2016 Final Rule, the April 2017 Effective Date Delay, and the 2018 Prepaid Amendments are referred to as the Prepaid Rule.

Effect of the Prepaid Rule on Prepaid Practices

The Prepaid Rule generally extends the requirements set forth in Subpart A of Regulation E to prepaid accounts with some modifications. The rule adds the term "prepaid account" to the definition of "account" in Regulation E. The Prepaid Rule also adds tailored provisions governing disclosures, limited liability and error resolution, and access to account information specifically for prepaid accounts, along with new requirements regarding the posting and submission of prepaid account agreements. In addition, the Prepaid Rule addressed regulation of credit features that institutions may offer under certain circumstances in conjunction with prepaid accounts and creates new requirements that apply to hybrid prepaid-credit cards.

Additional guidance and citations are provided in the Supplemental Information attached to these procedures.

Consumer Risks Addressed Outside the Prepaid Rule

To carry out the objectives set forth in the Examination Objectives section, the examination process should also include assessing consumer risks addressed outside the Prepaid Rule. These risks may include potentially unfair, deceptive, or abusive acts or practices (UDAAPs). Examiners should refer to the procedures that address UDAAPs for information about the relevant legal standards and the CFPB's approach to examining for UDAAPs. Because the particular facts and circumstances in a case are crucial to the determination of UDAAPs, examiners should consult with CFPB Headquarters to determine whether the applicable legal standards have been met before a UDAAP violation is cited.

In addition, examiners should consider whether an entity has complied with privacy provisions enacted as part of the Gramm-Leach-Bliley Act (GLBA) and implemented through Regulation P. These provisions impose limitations on when financial institutions can share nonpublic personal information with third parties. They also require under certain circumstances that financial institutions disclose their privacy policies and permit customers to opt out of certain sharing practices with unaffiliated entities.

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 Federal consumer financial law, including Regulation E and Regulation Z (as applicable), not only within the entity but also concerning key business partners, agents, correspondent banks, and software providers, to the extent relevant.

[Click&type]

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 workpapers 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 and Regulation Z (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.

[Click&type]

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 and Regulation Z (as applicable) area(s) under review. Consider among other things:

   a. Organizational charts;

   b. Process flowcharts;

   c. Board minutes, annual reports, or equivalent to the extent available;

   d. Relevant management reporting;

   e. Policies and procedures;

   f. Periodic review, reporting cycles;

   g. Account (if applicable) and transaction documentation;

   h. Checklists;

   i. Computer program documentation; and

   j. Complaints.

[Click&type]

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 and Regulation Z (as applicable) compliance and operational procedures.

   b. The training is comprehensive and covers the sections of Regulation E and Regulation Z (as applicable) that apply to the individual entity's prepaid 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.

[Click&type]

Transaction-Related Examination Procedures

As applicable, conduct transaction testing using the following examination procedures:

Obtain all available information as it relates to the entity's prepaid account program. Examples of this include but are not limited to:

a. List of divisions or departments involved in offering or providing prepaid accounts (*e.g.,* retail, high net worth, bill payment, payroll card, online or mobile banking, government benefits, and foreign exchange and/or treasury departments);

b. Prepaid account products offered;

c. Disclosure forms (short and long forms and initial disclosures) in all languages (as applicable);

d. List of all third-party service providers or business partners involved in prepaid accounts, including correspondent banks, payment networks, payment processors, software providers, program managers, retail sales agents, agents in the U.S., or similar entities;

e. Change-in-terms notices;

f. Applicable documentation related to prepaid account operations (*e.g.*, transaction logs, periodic statement or periodic statement alternative, service provider agreements (including those allocating compliance responsibilities), advertising and marketing material including any done in foreign languages, and overdraft credit feature disclosures / details (as applicable));

g. Procedural manuals and written policies;

h. Error resolution files (including limited liability files);

i. Foreign language prepaid services and products; and

j. Consumer complaint files.

[Click&type]

Definition of Prepaid Account

Confirm that the product in question meets the definition of "prepaid account" in the Prepaid Rule. A consumer asset account that is established primarily for personal, family, or household purposes and is not held by a financial institution under a bona fide trust agreement is a prepaid account if it meets any of the following four tests:

a. It is a "payroll card account," which is an account that is directly or indirectly established through an employer and to which electronic fund transfers (EFTs) of the consumer's wages, salary, or other employee compensation (such as commissions), are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution or any other person (1005.2(b)(3)(A));

b. It is a "government benefit account," which is an account established by a government agency for distributing government benefits to a consumer electronically, such as through automated teller machines or point-of-sale 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 (1005.2(b)(3)(B), 1005.15(a)(2));

c. It is an account that is marketed and labeled as "prepaid" and that is redeemable upon presentation at multiple, unaffiliated merchants for goods or services or usable at automated teller machines (1005.2(b)(3)(C)); or

d. It is 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 automated teller machines, or to conduct personal transfers; and (3) that is not a checking account, share draft account, or negotiable order of withdrawal account.

NOTE: There are a number of exceptions to the third and fourth tests (1005.2(b)(3)(ii)). A product that meets one of these exceptions may instead be subject to 1005.20, which contains requirements for gift cards and gift certificates as defined in that section.

Module 1 - Pre-Acquisition Disclosures

5. Obtain and review a sample of the entity's pre-acquisition disclosure forms (short form and long form for the entity's various prepaid account products. Include disclosures as provided through various channels (*e.g.*, retail acquisitions, other in-person acquisitions, through a website, by telephone, through a mobile phone application, or a text message). Verify that:

   a. Disclosures are in the appropriate form (written, unless the prepaid account is acquired through electronic means or telephone), and are clear and conspicuous (1005.18(b)(6)(i)(B));

   b. Text used is in a single, easy-to-read type that is all black or one color on a background that provides a clear contrast to the easy-to-read type (1005.18(b)(7)(ii)(A));

   c. Pre-acquisition disclosures are given *prior* to acquiring a prepaid account, with limited exceptions (1005.18(b)(1))[1];

[1] These exceptions, where the long form disclosure is not required to be provided prior to the consumer acquiring the prepaid account include the "retail location exception" and prepaid accounts acquired orally by telephone (1005.18(b)(1)(ii) and (iii)).

NOTE: For payroll accounts, the disclosures must be given prior to the consumer electing to be paid via the prepaid card, however it is acceptable for the consumer to have been given the access device (the physical card) earlier (comment 1005.18(b)(1)(i)-1(i)(B)).

d. Copies of scripts used for oral disclosures comply with the content requirements of the pre-acquisition disclosures; and

e. The disclosures are in a form that a consumer can keep (with limited exceptions for accounts acquired orally or via the "retail location exception," as set forth below) (1005.18(b)(6)(ii)).

[Click&type]

6. For oral disclosures, verify that the entity provides the short form disclosure and the information required outside but in close proximity to the short form disclosure at the time the consumer acquires a prepaid account by telephone, unless previously provided in writing to that consumer (1005.18(b)(6)(i)(C)).

[Click&type]

7. For accounts acquired orally, verify that the entity makes the information in the long form disclosure available both by telephone and on a website and orally discloses this availability to each consumer before acquiring the account while also providing the long form disclosure after the consumer acquires the account (1005.18(b)(1)(iii)).

[Click&type]

8. For accounts satisfying the "retail location exception" (1005.18(b)(1)(ii) and (b)(2)(xiii)), verify that the prepaid account access device is contained inside the packaging materials; the short form disclosure is provided on or is visible through the packaging; the short form includes a telephone number and website URL that a consumer may use to access the long form; the long form disclosure is available orally at that telephone number and via the website; and the long form is provided post-acquisition in writing or electronically. (1005.18(b)(6)(i)(C)).

[Click&type]

9. For pre-acquisition disclosures provided electronically, verify that the disclosures are viewable regardless of screen size; use machine readable text that is accessible via web browsers or mobile applications, and via screen readers; and are provided in a manner that is reasonably expected to be accessible to the consumer given the way the consumer is

acquiring the prepaid account (1005.18(b)(6)(i)(B)).[2] Verify that the consumer must view the webpage contained the short form and long form disclosures before choosing to accept the prepaid account (1005.18(b)(1)(i)-2).

[Click&type]

10. Verify that the short form and long form disclosures are segregated from other information and contain only information that is required or specifically permitted (1005.18(b)(7)(iii)).

    NOTE: These disclosures can be on the same page or in the same document as other disclosures or information.

[Click&type]

11. Verify that fee names and other terms are used consistently within and across all pre-acquisition disclosures for each prepaid account program (1005.18(b)(8)).

[Click&type]

12. Verify that an entity provides pre-acquisition disclosures in a foreign language if the entity uses that same foreign language in connection with the acquisition of the prepaid account in any of the following circumstances:

    a. The entity principally uses a foreign language on the prepaid account packaging material, as determined with regard to the specific packaging material (1005.18(b)(9)(i)(A));

    b. The entity principally uses a foreign language to advertise, solicit, or market a prepaid account and provides a means in the advertisement, solicitation, or marketing material that the consumer uses to acquire the prepaid account by telephone or electronically (1005.18(b)(9)(i)(B)); or

    c. The entity provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in a foreign language (1005.18(b)(9)(i)(C)).[3]

[Click&type]

Short Form Disclosure

13. Verify that the short form disclosure includes the name of all “static fees” (explained below) even if the feature for which the fee is charged is not offered or there is no cost to the

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[2] *See* comment 1005.18(b)(6)(i)(B)-1 for more on reasonable expectations and -2 for more on small screen allowances.

[3] Foreign language disclosures are not required for payroll card or government benefit accounts where the foreign language is offered by telephone via a real-time language interpretation service provided by a third-party or by the employer or government agency on an informal or ad hoc basis as an accommodation to the prospective payroll card account or government benefit account holders.

consumer associated with that feature. If the feature is not offered, the entity must disclose the fee amount as "N/A;" if it is offered and there is no charge, entities must disclose the fee amount as zero dollars (comment 1005.18(b)(2)-1). If the fees for any feature could vary, the entity must disclose the *highest* amount the entity could charge for the feature.[4] Except with regard to the cash reload fee, the short form disclosure must not include third-party fees (1005.18(b)(3)(iv) and (v)). The static fees are:

a. *Periodic fee* – the fee for holding the prepaid account for a specific time period, using "Monthly fee," "Annual fee," or a substantially similar term.

b. *Per purchase fee* – the fee for making a purchase with the prepaid account using "Per purchase" or a substantially similar term (1005.18(b)(2)(ii)).

c. *ATM withdrawal fees* – the two fees for withdrawing cash in the United States: the fee charged for such a withdrawal at an ATMs located within the entity's network, using "ATM withdrawal" and "in-network" or substantially similar terms and the fee charged for such a withdrawal at an ATM outside the entity's network using "out-of-network" or a substantially similar term (1005.18(b)(2)(iii)).[5]

d. *Cash reload fee* – the fee for reloading funds in the form of cash into the prepaid account using "Cash reload" or a substantially similar term (1005.18(b)(2)(iv)). The fee may be disclosed using "Cash deposit" if the entity does not permit cash reloads via a third-party reload network but instead permits cash deposits as, for example, in a bank branch (1005.18(b)(2)(iv)-2). The cash reload fee must include the total of all charges that the entity and any third party may charge for a cash reload (1005.18(b)(2)(iv)).[6]

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[4] Generally, the fee amount must be followed by a symbol, such as an asterisk, linked to the statement "This fee can be lower depending on how and where this card is used" or substantially similar language (1005.18(b)(3)(i) and (ii)). The entity must use the same symbol and statement for all fees that could vary, except for a variable periodic fee. For a periodic fee that may vary, the entity may alternatively disclose the highest periodic fee followed by a symbol that is different from the one used for other fees that may vary, such as a dagger, that links to a separate statement disclosing the waiver or reduced fee amount and circumstances under which the reduction or waiver could occur (1005.18(b)(3)(ii)). The linked separate statement, if used, must appear above or in place of the linked statement for other variable fees and may not take up more than one line of text (comment 1005.18(b)(3)(ii)-1).

[5] If the entity charges the same amount for all withdrawals at ATMs located in the United States it can disclose one fee amount and does not need to include the two tiers "in-network" and "out-of-network" in the short form disclosure (1005.18(b)(3)(iii); comment 1005.18(b)(3)-1.i).

[6] The cash reload fee includes the cost of adding cash to a prepaid account at a point of sale (POS) terminal, the cost of purchasing an additional card or other device on which cash is reloaded and then transferred to the prepaid account, or any other method a consumer may use to reload cash into the prepaid account (comment 1005.18(b)(2)(iv)-1). Because it is only for cash reloads, it does not include fees for reloading the prepaid account electronically or by check (comment 1005.18(b)(2)(viii)(A)-2.i).

NOTE: An entity is not required to revise its short form disclosure to reflect changes in a third party's cash reload fee until the entity manufactures, prints, or otherwise produces new prepaid account packaging materials or otherwise updates its short form disclosure (comment 1005.18(b)(3)(v)-1).

e. *ATM balance inquiry fees* – the two fees for checking prepaid account balances at ATMs in the United States, one disclosing the fee charged for a balance inquiry at an ATM within its network or affiliated network, using "ATM balance inquiry" and "in-network" or substantially similar term and one disclosing a fee charged at an ATM outside its network using "out-of-network" or substantially similar term (1005.18(b)(2)(v)).[7]

f. *Customer service fees* – the two fees for calling the financial institution about the prepaid account, using "Customer service" or a substantially similar term; and then, for calling an IVR system, "automated" or a substantially similar term; and, for calling a live customer service agent, "live agent" or a substantially similar term. The short form disclosure must also inform the consumer that the fee is charged for each call, using "per call" or a substantially similar term (1005.18(b)(2)(vi)).[8]

g. *Inactivity fee* – the fee charged for non-use, dormancy, or inactivity of the prepaid account using the term "Inactivity" or substantially similar term while also disclosing the conditions under which the fee will be imposed (1005.18(b)(2)(vii)).

[Click&type]

14. Verify that the short form disclosure includes the following information on additional fee types:

a. *Disclosure of the number of additional fee types* –"We charge [x] other types of fees" or substantially similar language (1005.18(b)(2)(viii)(A)).[9] If there are no additional fee types, the entity must disclose "0."

b. *Transitional statement* – If the entity disclosed any additional fees types (pursuant to 1005.18(b)(ix)), the statement "Here are some of them" or substantially similar language after, but on the same line as, the disclosure of the number of additional fee types (1005.18(b)(2)(viii)(B)).

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[7] If the entity charges the same amount for all ATM balance inquiries located in the United States, it can disclose one fee amount and does not need to include the two tiers "in-network" and "out-of-network" in the short form disclosure (1005.18(b)(3)(iii)).

[8] If the entity charges the same amount for IVR and live agent calls, it can disclose one fee amount without including the two tiers in the short form disclosure (1005.18(b)(3)(iii)). If the entity is providing a short form disclosure for multiple service plans, it only needs to disclose the fee for calling the live agent customer service, using the term "Live customer service" or a substantially similar term and "per call" or substantially similar term (1005.18(b)(2)(vi) and (b)(6)(iii)(B)(*2*)).

[9] *See* comment 1005.18(b)(2)(viii)(A)-2 for more information on what constitutes "additional fee types" and for examples of "additional fee types."

NOTE: The disclosure of the number of additional fee types, as well as the disclosure of the additional fee types themselves (pursuant to 1005.18(b)(2)(ix(A)), exclude: static fees (i.e., fees disclosed pursuant to 1005.18(b)(2)(i)-(vii)), fees disclosed outside the short form pursuant to 1005.18(b)(5), and any finance charges imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61 (1005.18(b)(2)(viii) and (ix) and1005.18(b)(3)(vi)).

c. *Listing of the fees* –the two additional fee types that generate the highest revenue from consumers for the prepaid account program or across prepaid account programs that share the same fee schedule during the appropriate 24-month period (1005.18(b)(2)(ix)(A)).[10]

[Click&type]

15. Verify that the additional fee types listed are the two highest revenue-generating fees within the last 24-month period and if any updates are required. Verify that the additional fee type disclosures are updated within three months of the end of the 24-month period (1005.18(b)(2)(ix)(A) and (E)(*1*) and (*2*)).[11] Check to see if the "update printing exception" applies if the disclosures are not updated timely (1005.18(b)(2)(ix)(E)(*4*)). An entity may update more frequently but still must use 24 consecutive months of data and update the disclosure within three months (1005.18(b)(2)(ix)(E)(*2*); comment 1005.18(b)(2)(ix)(E)(*2*)-2).

    NOTE: A fee schedule change resets the 24-month period for reassessment. The entity must conduct a reassessment prior to implementing a fee schedule change and determine whether it "reasonably anticipates" that the additional fee types will remain compliant. If not, the entity must update the disclosures at that time (1005.18(b)(2)(ix)(E)(3); comment 1005.18(b)(2)(ix)(E)(3)-1).

[Click&type]

16. Verify that the listing of the additional fee types is consistent with the requirements of the Prepaid Rule based on how many fee variations are within the additional fee type and whether the financial institutions is providing the short form disclosure for multiple service plans from one of these options, depending on the fees (1005.18(b)(2)(ix)(C)):

    a. *One fee variation charged under an additional fee type* – must disclose the name of the additional fee type and fee amount. The entity may choose to also disclose the name of the one fee variation (comment 1005.18(b)(2)(ix)(C)-2).

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[10] If any entity does not charge any fees other than the ones listed in the static fees, it will not list any additional fees types in the short form disclosure. Further, the Prepaid Rule does not require the entity to include in its determination of additional fee types any fee types that generated less than five percent of total revenue from consumers for the prepaid account program or across prepaid account programs that share the same fee schedule during the relevant period, so it is possible the entity will be required to list fewer than two additional fee types (1005.18(b)(2)(ix)(A) and (B)). An entity may list two fee types, at its election, if less than two fee types generate at least five percent of the total revenue from consumers for the prepaid account program or across prepaid account programs that share the same fee schedule during the relevant period (1005.18(b)(2)(ix)(B); comment 1005.18(b)(2)(ix)(B)-1). Note that, hereafter, each time this guide references the highest revenue-generating fees it refers to total revenue *from consumers for the particular prepaid program or across prepaid account programs that share the same fee schedule during the relevant time period*.

[11] For prepaid account programs created after April 1, 2019 or that lack 24 months of fee revenue data, the entity must disclose the two additional fee types based on the revenue it "reasonably anticipates" the program will generate during the first 24 months (1005.18(b)(ix)(D)(2) and (3)). Existing prepaid account programs must disclose additional fee types based on a 24-month period that begins no earlier than October 1, 2014 (1005.18(b)(ix)(D)(1)).

b. *Two fee variations charged under an additional fee type* – if exactly two variations, the entity must disclose the name of the additional fee type as well as the names and amounts of both fee variations in a format substantially similar to the two-tiered disclosure of the two fees under ATM withdrawal and Customer service (1005.18(b)(2)(ix)(C) and comment 1005.18(b)(ix)(C)-1.i). If the charge for the two variations is the same, see comment 1005.18(b)(ix)(C)-1.iii and 1005.18(b)(3)(iii).

c. *More than two fee variations charged under an additional fee type* – The entity must either:

   i. Disclose the name of the additional fee type and the highest fee amount among the fee variations followed by a symbol linked to a statement explaining that the fee could be lower depending on how and where the card is used (1005.18(b)(2)(ix)(C) and comment 1005.18(b)(2)(ix)(C)-1.ii), or

   ii. Consolidate the fee variations into two categories and disclose the names of those two categories and fee amounts in a format substantially similar to the two-tiered disclosure of the two fees under ATM withdrawal and Customer service (1005.18(b)(2)(ix)(C); comment 1005.18(b)(ix)(C)-1.i).

NOTE: If the entity provides the short form disclosure for multiple service plans, the entity must disclose the name of the additional fee type and the highest fee amount among the variations (comment 1005.18(b)(2)(ix)(C)-1.iv).

[Click&type]

17. Verify that the short form disclosure states either, “You may be offered overdraft/credit after [x] days. Fees would apply” or “No overdraft/credit feature” or substantially similar language depending on if a consumer may be offered a separate credit feature at any point in connection with the prepaid account (1005.18(b)(2)(x)).

[Click&type]

18. Verify that the short form disclosure includes a statement that:

    a. Informs a consumer about whether the prepaid account program is set up to be eligible for FDIC deposit insurance or NCUA share insurance; and

    b. Directs a consumer to register the prepaid account for insurance and other protections (if applicable).

    1005.18(b)(2)(xi)

    This language should use the appropriate model language or substantially similar language, which depends on the specific scenario offered with the product, as found in 1005.18(b)(2)(xi)(A) through (E).

[Click&type]

19. Verify that the short form disclosure includes the statement "For general information about prepaid accounts, visit *cfpb.gov/prepaid*" or substantially similar language (1005.18(b)(2)(xii)).

[Click&type]

20. Verify, after determining if the entity is relying on the retail location exception or not, the short form disclosure includes a statement directing the consumer to the long form disclosure:

    a. *If the prepaid product is not relying on the retail location exemption* – "Find details and conditions for all fees and services in [location]" or substantially similar language.

    b. *If the prepaid product is relying on the retail location exemption* – "Find details and conditions for all fees and services inside the package, or call [telephone number], or visit [website]" or substantially similar language. If an SMS code also fits on the same line of text, an entity may also disclose an SMS code at the end of the statement.

       i. Verify that the telephone number provided in the statement above provides direct access, for example, if the consumer only navigates one or two prompts to reach the oral version of the long form disclosure (comment 1005.18(b)(2)(xiii)-1).

       ii. Verify that the website URL provided in the statement above provides direct access to an electronic version of the long form disclosure. The website URL must not exceed 22 characters and must be meaningfully named (1002.18(b)(2)(xiii)). Direct access is not achieved, for example, if the consumer must navigate various other webpages before viewing the long form disclosure (comment 1005.18(b)(2)(xiii)-2).

[Click&type]

21. For short form disclosures provided as part of a payroll card account, verify the disclosure includes one of the following statements, or a substantially similar statement, and appears above the static fees section and in a minimum type size of eight points (or 11 pixels) and appears in a type size no larger than that used for the static fee headings:

    a. *Option 1* – "You do not have to accept this payroll account. Ask your employer about other ways to receive your wages."

    b. *Option 2* – "You have several options to receive your wages: [list of options available to consumer]; or this payroll card. Tell your employer which option you choose."

    1005.18(b)(2)(xiv)(A) and 1005.18(b)(7)(2)(B)(iii)

NOTE: In either option, the entity is permitted to provide more specificity as to whom a consumer must ask or inform of his or her choice of wage payment method (comment 1005.18(b)(2)(xiv)(A)-1).

ALSO NOTE: The entity may also choose for payroll card accounts to include a statement in its short form disclosure a statement, up to one additional line of text, directing a consumer to a particular location outside the short form disclosure for information on ways the consumer may access payroll card account funds and balance information for free or for a reduced charge (1005.18(b)(2))(xiv)(B)). This statement must be located below the statements disclosed pursuant to 1005.18(b)(3)(i) and (ii) or, if there are no such statements, above the statement required by 1005.18(b)(2)(x).

[Click&type]

22. For short form disclosures provided for a government benefit account, verify the disclosure includes one of the following or a substantially similar statement and appears above the static fees section and in a minimum type size of eight points (or 11 pixels) and appears in a type size no larger than that used for the static fee headings:

    a. *Option 1* – "You do not have to accept this benefits card. Ask about other ways to receive your benefits."

    b. *Option 2* – "You have several options to receive your payments: [list of options available to consumer]; or this benefits card. Tell the benefits office which option you choose."

    1005.15(c)(2)(i)

    NOTE: For government benefit accounts, a government agency can choose to include in its short form disclosure a statement, up to one additional line of text and directly below the linked statement for fees that can vary in amount or directly above the statement regarding overdraft/credit features if no linked statement, directing a consumer to a particular location outside 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 charge (1005.15(c)(2)(ii)).[12]

[Click&type]

23. Verify that written and electronic short form disclosures are in the required format to include:[13]

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[12] *See* Model Form A-10(a) for an illustration of the disclosure. https://www.consumerfinance.gov/documents/1043/102016_cfpb_PrepaidDisclosures.pdf

[13] *See* https://www.consumerfinance.gov/documents/6332/cfpb_prepaid_guide-to-short-form-disclosure.pdf.

a. Disclosing the static fees and all disclosures regarding additional fee types in the form of a table (1005.15(c)(3); 1005.18(b)(6)(iii)).[14]

b. Specific type size, grouping, and other formatting requirements for the short form disclosure as set forth in 1005.18(b)(6) and (7), including, but not limited to:

i. Single, easy-to-read type that is all back or one color and printed on a background that provides a clear contrast (1005.18(b)(7)(ii)(A));

ii. Contains only information that is required or specifically permitted by the Prepaid Rule and segregated from other information (1005.18(b)(7)(iii));

iii. Minimum type size (1005.18(b)(7)(ii)(B)(*1*) and *(2)*);

iv. Tabular format that is substantially similar to the model form (1005.18(b)(6)(iii)(A));

v. Groupings (A-D) as specified (1005.18(b)(7)(i)(A)).

c. For multiple service plans, the entity may use the regular short form disclosure format for the service plan in which a consumer is initially enrolled (1005.18(b)(6)(iii)(B)(*1*). Alternatively, for multiple service plans, an entity can make the required fee disclosures in the form of a table with separate columns for each service plan (1005.18(b)(6)(iii)(B)(*2*)).[15]

NOTE: A loyalty plan, where a consumer receives preferred rates or fees for using a non-prepaid service, qualifies as a multiple service plan. Pricing variations based on whether a consumer chooses to use a particular feature of a prepaid account, such as direct deposit, does not qualify as a multiple service plan (comment 1005.18(b)(6)(iii)(B)(2)-1).

[Click&type]

Information Required to be Disclosed Outside but in Close Proximity to the Short Form Disclosure

24. Verify that the entity, at the time that it provides the short form disclosure to the consumer, it also discloses:

a. Financial institution's name;[16]

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[14] Unless an entity is disclosing multiple service plans in a single form, the short form disclosure must be provided in a form substantially similar to Model Forms A-10(a) through (d), as applicable.

[15] If an entity elects to use the separate-column option in the short form disclosure, it must be substantially similar to Model Form A-10(e) (1005.18(b)(6)(iii)(B)(*2*)).

[16] For government benefit accounts, the name of the entity that directly holds the account or issues the account's access device must be disclosed (comment 1005.15(c)-4).

b. Name of the prepaid account program;

c. Purchase price for the prepaid account (if any); and

d. Activation fee (if any).

1005.18(b)(5)

NOTE: An entity may also choose to disclose the name of the program manager or other service provider involved in the prepaid account program (comment 1005.18(b)(5)-1).

[Click&type]

25. Verify the information in procedure #24 is in close proximity to the short form disclosure, for example:

    a. If the entity provides the short form disclosure online, the information appears on the same web page as the short form disclosure.

    b. If the entity offers the prepaid account in its own branch locations, it provides the information and the short form disclosure on the exterior of a prepaid card's preprinted packaging materials.

    c. If the entity provides written short form disclosures in a manner other than on preprinted packaging materials, such as on paper, the information is on the same piece of paper.

    d. If the entity provides the short form disclosures orally, the information is provided immediately before or after disclosing the fees and information required to be included in the short form disclosure.

    Comment 1005.18(b)(5)-2

[Click&type]

26. Verify, for prepaid accounts sold pursuant to the retail location exception, that the purchase price is disclosed either on the exterior of or in close proximity to the access device's packaging material.[17] The other information, discussed in procedure #24, must be disclosed on the exterior of the access device's packaging materials (1005.18(b)(5) and comment 1005.18(b)(5)-2).

[Click&type]

[17] Disclosure of the purchase price on or near the sales rack or display for the packaging material is in close proximity to the short form disclosure (comment 1005.18(b)(5)-2).

Long Form Disclosure[18]

NOTE: The long form disclosure is the companion to the short form disclosure and provides more comprehensive fee information, including a list of all fees that may be imposed in connection with the prepaid account.

27. Verify that the first line of the long form disclosure is a title or heading that states the name of the prepaid account program and tells a consumer that the long form disclosure contains a list of all fees for the prepaid account program (1005.18(b)(4)(i) and (b)(7)(i)(B)).

[Click&type]

28. Review the long form disclosure to ensure that it includes all fees that may be imposed in connection with a prepaid account. Verify that the long form disclosure:

    a. Discloses the amount of each fee that may be imposed;

    b. Discloses the conditions, if any, under which the fee may be imposed, waived, or reduced;[19]

    c. Does not use any symbols, such as an asterisk, to explain conditions under which any fee may be imposed;

    d. Includes finance charges imposed on the prepaid account in connection with a covered separate credit feature;[20]

    e. Includes third-party fee amounts known to the entity. If the entity knows that a third-party fee may apply but it does not know the amount of that fee, the entity must include a statement indicating that the third-party fee may apply without specifying the fee amount;[21]

    f. Includes the same information about FDIC or NCUA insurance and registration that is included in the short form disclosure (procedure #18) for the prepaid account program

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[18] *See generally* the sample long form disclosure, Sample Form A-10(f), available at: https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/102016_cfpb_PrepaidDisclosures.pdf. Note that there is a sample form, not a model form, for the long form disclosure.

[19] An entity need not disclose individual fee waivers or reductions granted to a particular consumer or group of consumers on a discretionary or case-by-case basis (comment 1005.18(b)(4)(ii)-2).

[20] Finance charges imposed on the covered separate credit feature itself are not included in the long form disclosure's fee table (comment 1005.18(b)(4)(ii)-1).

[21] An entity is not required to revise the long form disclosure to reflect a change to a third-party fee until it manufactures, prints or otherwise produces new prepaid account packaging materials or otherwise updates the long form disclosure (1005.18(b)(4)(ii)).

and, in addition, includes 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;

g. Includes the same statement about overdraft credit features that is included in the short form disclosure (procedure #17) for the prepaid account program;[22]

h. Includes a statement directing consumers to a telephone number, mailing address, and website for the person or office that a consumer may contact to learn about the prepaid account's terms and conditions, to obtain prepaid account balance information, to request an account transaction history (if the entity does not provide periodic statements), or to notify the entity when the consumer believes an unauthorized EFT has occurred;

i. Includes a statement with the following or substantially similar language: "For general information about prepaid accounts, visit *cfpb.gov/prepaid*. If you have a complaint about a prepaid account, call the Consumer Financial Protection Bureau at 1-855-411-2372 or visit *cfpb.gov/complaint*"; and

j. Includes the Regulation Z application and solicitation disclosures required by 12 CFR 1026.60(e)(1) if, at any point, a covered separate credit feature may be offered in connection with the prepaid account.[23]

NOTE: An entity may also choose whether to disclose any service or feature it provides or offers at no charge to the consumer.

1005.18(b)(4)(ii)-(vii)

[Click&type]

29. Verify the long form disclosure, when provided in writing or electronically, discloses the fees and conditions under which they may be imposed in the form of a table[24] (1005.18(b)(6)(iii)(A)), which includes verifying that:

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[22] "You may be offered overdraft/credit after [x] days. Fees would apply" or "No overdraft/ credit feature" or substantially similar language depending on whether a consumer may be offered a separate credit feature at any point in connection with the prepaid account (1005.18(b)(2)(x)).

[23] If these Regulation Z disclosures are required to be included, they must appear below the statements directing the consumer to the Bureau's website and telephone number (comment 1005.18(b)(5)-2) and must be provided in accordance with the requirements for such disclosures set forth in 12 CFR 1026.60 and, to the extent possible, on the same page as the other fees and statements in the long form disclosure (1005.18(b)(4)(vii); comment 1005.18(b)(4)(vii)-1). Also, an entity is not required to revise the long form disclosure to reflect a change in the fees or other terms included in the Regulation Z disclosures until it manufactures, prints or otherwise produces new prepaid account packaging materials or otherwise updates the long form disclosure (1005.18(b)(4)(vii)).

[24] If providing a long form disclosure for multiple service plans, the entity must present the fees and conditions under which each fee may be imposed in the form of a table for all service plans (1005.18(b)(6)(iii)(B)(3)).

a. The fees and conditions under which they may be imposed are generally grouped together;

b. The fees are organized under subheadings by the "categories of functions" for which they may be imposed;

c. The conditions are disclosed in close proximity to the fee amount;

d. The statements are generally grouped together and appear below the table containing the fees and conditions; and

e. The minimum type size is eight points (or 11 pixels).

1005.18(b)(7)(i)(B) and (b)(7)(ii)(C)

[Click&type]

Disclosures on the access device

30. Verify that the entity includes the following two disclosures on the card or other access device:[25]

    a. The entity's name. For a government benefit account, the name of the entity that directly holds the account or issues the account's access device is disclosed (comment 1005.15(f)-1); and

    b. A telephone number and a website URL that the consumer can use to contact the entity about the prepaid card (*e.g.*, to learn about the terms and conditions, obtain account balance information, request an account transaction history, or notify the entity of an unauthorized transaction) (comment 1005.18(f)-3).

    1005.18(f)(3)

    NOTE: If an entity does not provide a physical access device for a prepaid account, these disclosures must appear on the website, mobile application, or other entry point that a consumer must visit to access the prepaid account electronically (1005.18(f)(3)).

[Click&type]

[25] Placing these disclosures on the packaging or other material (such as terms and conditions document) that accompanies the card or device or on a sticker or label affixed to the card or device is not sufficient (comment 1005.18(f)-3).

Module 2 - Initial Disclosures and Change-in-Terms Notices

Initial Disclosures

31. Verify that the entity provides the Regulation E initial disclosures in writing (or electronically if the entity complies with the E-Sign Act) that are clear, readily understandable, and provided in a form the consumer may keep, at the time a consumer contracts for an EFT service or before the first EFT is made involving the consumer's account (1005.4(a)(1) and 1005.7(a)).

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32. Verify that the content of the initial disclosures includes all of the information required in the long form disclosure for the prepaid account as well as the information required to be included in the initial disclosures for other accounts subject to Regulation E, including:

    a. *Liability of consumers for unauthorized EFTs* – a summary of the consumer's liability for unauthorized EFTs (1005.7(b)(1)).[26]

       NOTE: For prepaid account programs that do not have a consumer identification and verification process, describe its error resolution process and limitations on consumers' liability for unauthorized transfers or, if none, state that there are no such protections, the entity is required only to comply with the process (if any) it discloses (1005.18(d)(1)(ii)).

    b. *Telephone number and address* – the telephone number and address of the person or office to be notified when the consumer believes an unauthorized EFT has been or may be made on the prepaid account (1005.7(b)(2)).

    c. *Business days* – the entity's business days (1005.7(b)(3)).

    d. *Types of EFTs the consumer may make and limitations on frequency and dollar amount of EFTs* (1005.7(b)(4)).

    e. *Fees and other information required to be in the long form disclosure* – for prepaid accounts, initial disclosures must include all of the information required to be included in the long form disclosure (procedure #28), including all fee information (*i.e.*, information about all fees that the entity may charge, not just fees for EFTs or the right to make EFTs) (1005.7(b)(5); 1005.18(f)(1); comment 1005.18(f)-1).

    f. *Documentation* – a summary of the consumer's right to receipts and periodic statements and notices regarding preauthorized EFTs under Regulations E (1005.7(b)(6)).

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[26] If the entity does not impose any liability on the consumer, it does not need to provide the liability disclosure. If it later decides to impose liability, it must first disclose a summary of the consumer's liability (comment 1005.7(b)(1)-1).

g. *Stop Payment* – a summary of the consumer's right to stop payment of a preauthorized EFT and the procedure for placing a stop-payment order (1005.7(b)(7)).

h. *Liability of institution* – a summary of the entity's liability to the consumer under section 910 of EFTA for failure to make or to stop certain EFTs (1005.7(b)(8)).

i. *Confidentiality* – the circumstances under which, in the ordinary course of business, the entity may provide information concerning the consumer's account to third parties, including the entity's affiliates (1005.7(b)(9)).

j. *Error Resolution* – an error resolution notice that is substantially similar to Model Form A-3.

NOTE: For prepaid accounts that do not have a consumer identification and verification process, the entity must provide a description of any error resolution process that applies to the prepaid account. If the entity does not provide any error resolution protections, the initial disclosures must state that there are no such protections (1005.18(d)(1)(ii)).

k. *ATM fees* – a notice that a fee may be imposed by an ATM operator for an EFT or for a balance inquiry, and by any network used to complete the transaction (1005.7(b)(11)).

[Click&type]

33. Determine if the entity relies on the alternative to providing periodic statements for prepaid accounts. If the entity uses the alternative to providing periodic statements, verify that the initial disclosures inform the consumer how to access prepaid account information and includes:

a. A telephone number that a consumer may call to obtain the account balance;

b. The means by which a consumer can obtain an electronic account transaction history, such as the address of a website; and

c. A summary of a consumer's right to receive written account transaction history upon request, including a number to call to request a history.

1005.18(d)(1)(i)

NOTE: For prepaid accounts other than government benefits accounts, an entity may make these modified disclosures by providing a notice substantially similar to Model Clauses A-7(a) (1005.18(d)(1)(i)). For government benefit accounts, the government agency may make these disclosures by providing a notice substantially similar to Model Clauses A-5(a) (1005.15(e)(1)(i)).

[Click&type]

34. If the entity uses the alternative to providing periodic statements, verify that it provides a modified error resolution notice substantially similar to the notice contained in Model Clauses A-7(b) (1005.18(d)(1)(ii)).

    NOTE: For government benefit accounts, the government agency must provide a notice that is substantially similar to the notice in Model Clauses A-5(b) (1005.1(e)(1)(ii)).

[Click&type]

Change-in-terms notices

35. Determine if the entity mailed or delivered a change-in-terms notice, as required, to the consumer when:

    a. A term or condition required to be disclosed in the initial disclosures (including any of the information required in the long form disclosure changes); and

    b. The change results in any of the following:

       i. *Increased fees for the consumer*. The Prepaid Rule requires that the initial disclosures for a prepaid account include all of the information required to be disclosed in the long form disclosure. As a result, a change-in-terms notice for a prepaid account is required under Regulation E if an entity adds or increases a fee (1005.18(f)(1) and (2)).[27]

       ii. *Increased liability for the consumer*.

       iii. *Fewer types of available EFTs*.

       iv. *Stricter limitations on the frequency or dollar amounts of EFTs*.

    1005.8(a)(1) and 1005.18(f)(2); 1005.15(f) for government benefit accounts

[Click&type]

36. Verify that the entity mailed or delivered in writing, or electronically if it complies with the E-Sign Act, any change-in-terms notice required under Regulation E (procedure #35) at least

[27] The Prepaid Rule does not require an entity to provide a change-in-terms notice under Regulation E solely to reflect a change to a third-party fee, though fees charged by a service provider for a service performed on behalf of the entity are not third-party fees (comment 1005.18(b)(4)(ii)-4). Similarly, if the entity is required to include Regulation Z disclosures for a separate covered credit feature in the long form disclosure and initial disclosures, the entity is not required to provide a change-in-terms notice under Regulation E solely to reflect a change in the fees or terms imposed on the separate credit feature, unless a finance charge imposed on the prepaid account is added or increased; however, a change-in-terms notice may otherwise be required under Regulation Z (comment 1005.18(b)(4)(ii)-1 and (f)-2).

21 days before the effective date of the change in a clear and readily understandable form the consumer can keep (1005.8(a)(1) and 1005.4(a)(1)).[28]

NOTE: The notice may appear on a periodic statement, or can be given by sending a copy of a revised disclosure statement if the entity directs the consumer's attention to the change or changes (comment 1005.8(a)-1).

NOTE ALSO: The cancelation of an access device, such as a prepaid card, or the closing of some of the financial institution's ATMs does not require a change-in-terms notice under Regulation E (comment 1005.8(a)-2).

[Click&type]

Module 3 - Periodic Statements and the Periodic Statement Alternative

37. Determine if the entity either provides a periodic statement (procedure #38) or makes certain account information available to consumers under the periodic statement alternative (procedure #40) (1005.9(b); 1005.18(c)(1)).

[Click&type]

38. If the entity provides a periodic statement, verify that it is in writing, and sent for each monthly cycle in which an EFT has occurred and at least quarterly if no EFT has occurred (1005.9(b)).[29]

[Click&type]

39. Verify the periodic statement includes, as applicable:

    a. For each EFT occurring during the statement cycle:

        i. The amount of the EFT;

        ii. The date the EFT was credited or debited to the prepaid account;

        iii. The type of EFT and type of account to or from which the funds were transferred;

[28] If an immediate change in the terms or conditions is necessary to maintain or restore the security of a prepaid account or an EFT system, an entity does not need to give prior notice of the change. If the entity makes the change permanent and disclosure would not jeopardize the security of the account or system, the entity must notify the consumer in writing of the change on or with the next regularly scheduled periodic statement or within 30 days of making the change permanent (1005.8(a)(2)).

[29] An entity may comply with the "in writing" requirement by providing an electronic statement to the consumer provided that the entity also complies with the E-Sign Act (1005.4(a)(1)).

iv. If the EFT (other than a deposit of cash or check, a draft, or similar paper instrument) was initiated by the consumer at an electronic terminal, the terminal location (or an identification such as a code or terminal number) where the EFT was initiated; and

v. The name of any third party to or from whom funds were transferred (1005.9(b)(1)).

b. The prepaid account number (1005.9(b)(2)).

c. The amount of <u>any fee</u> assessed against the prepaid account during the statement cycle (1005.9(b)(3); 1005.18(c)(4)).[30]

d. The balance in the account at the beginning of the statement period and the balance at the end of the statement period (1005.9(b)(4)).

e. The address and telephone number that a consumer can use for inquiries or notices of error. The address and phone number must be preceded by "Direct inquiries to" or similar language (1005.9(b)(5)).

f. If an entity uses the telephone notice option for preauthorized EFTs pursuant to 1005.10(a)(1)(iii), a telephone number that the consumer can call to determine if preauthorized EFTs to the prepaid account have occurred (1005.9(b)(6)).

g. A summary total of the account of all fees assessed by the entity against the consumer's prepaid account for the prior calendar month and for the calendar year to date (1005.18(c)(5)).[31]

[Click&type]

40. If the entity does not furnish a periodic statement for a prepaid account, verify that it instead makes available or provides (as applicable) all of the following:[32]

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[30] Unlike the Regulation E requirement for other accounts, the requirement to include the amount of any fee assessed against a prepaid account during the statement cycle is not limited to fees for EFTs, fees for the right to make EFTs, or account maintenance fees.

[31] These totals must be displayed on any periodic statements as well as on any account transaction histories an entity provides or makes available (1005.18(c)(5)). An entity may, but is not required to, include third-party fees in the summary totals and may choose to inform consumers of third-party fees such as by providing a disclaimer that the summary does not include certain third-party fees, or to explain when third-party fees may occur, or through some other method (comment 1005.18(c)-8.ii). An entity also may choose to include sub-totals of the types of fees that make up the summary totals, as long as it also presents the combined totals of all fees (comment 1005.18(c)-9).

[32] If, on April 1, 2019, an entity does not have readily accessible data necessary to make available or provide an account transaction history for 12 or 24 months (as applicable), it can instead make available or provide the history for the time period it has until it has accumulated the data necessary to comply in full with the rule. All entities must comply no later than April 1, 2020 for electronic account transaction history and no later than April 1, 2021 for written account transaction history (comment 1005.18(h)-6.i). For summary totals, if the entity does not have the data necessary to calculate the summary totals of fees, it may use the data it has until it accumulates the data necessary to display the summary totals as required by 1005.18(c)(5) (comment 1005.18(h)-6.ii). For year-to-date totals in 2019, the entity may use April 1, 2019 as the year-to-date, rather than January 1, 2019,

a. *Account balance information* – the entity must make a consumer's prepaid account balance available through a readily available telephone line (1005.18(c)(1)(i)).

NOTE: For government benefit accounts, the account balance must also be made available at a terminal, such as by providing balance information at a balance inquiry terminal, or providing it, routinely or upon request, on a terminal receipt (1005.15(d)(1)(i)).

b. *Electronic account transaction histories* – the entity must make available an electronic account transaction history that covers at least 12 months preceding the date on which the consumer electronically accesses the prepaid account (1005.18(c)(1)(ii); for government benefit accounts 1005.15(d)(1)(ii)).[33]

NOTE: *Electronic account transaction histories must display all of the information required to be included in periodic statements for prepaid accounts, including the amount of any fees assessed against the account and the summary totals of all fees assessed by the entity against the account for the prior calendar month and calendar year to date (see procedure #39; 1005.18(c)(3) through (5)). The electronic history must be made available in a form consumers may keep. Financial institutions may satisfy this requirement if they make the electronic history available in a format that is capable of being retained, such as on a website in a format that is capable of being printed or stored electronically using a web browser (comment 1005.18(c)-2).*

c. *Written account transactions histories* – the entity must provide a written account transaction history for a prepaid account promptly in response to the consumer's oral or written request, covering at least 24 months preceding the date the entity receives the consumer's request for the written account history, and that displays all of the information required to be included in periodic statements (*see* procedure #39; 1005.18(c)(1)(iii); for government benefit accounts 1005.15(d)(1)(iii)).[34]

NOTE: For prepaid accounts other than payroll card accounts and government benefit accounts, an entity is not required to provide a written account transaction history for a

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provided this is disclosed to the consumer. Starting January 1, 2020, year-to-date fees must be displayed for the calendar year (comment 1005.18(h)-6.ii).

[33] If a prepaid account has been open for fewer than 12 months, the entity need only provide the electronic history for the period since the time of account opening. If a prepaid account is closed or becomes inactive, as defined by the entity, the entity does not need to make an electronic account history available for that prepaid account. However, if an inactive prepaid account becomes active, the entity must again make available 12 months of electronic account transaction history (comment 1005.18(c)-4).

[34] An entity may provide fewer than 24 months of written account transaction history if a consumer requests a shorter time period or if the account has been open for fewer than 24 months, providing only the written history for the period since account opening. Even if a prepaid account is closed or becomes inactive, an entity must continue to provide a written account transaction history covering at least 24 months prior to the date the entity receives the consumer's request. However, when the account has been closed or inactive for 24 months or longer, an entity is no longer required to provide written account transaction histories (comment 1005.18(c)-5).

prepaid account if the entity has not completed its consumer identification and verification process for that prepaid account (1005.18(c)(2)).

NOTE ALSO: An entity may only charge a fee if the consumer's request exceeds the requirements of the Prepaid Rule (e.g., an account history for longer than 24 months; automatic mailing of written account transaction histories on a periodic basis; multiple requests within a single month (for the subsequent requests) (comment 1005.18(c)-3).

[Click&type]

Module 4 - Error Resolution and Limitations on Liability

41. Determine if the entity has a consumer identification and verification process for the prepaid account program. If it does not have this process, the program is not a payroll card account or government benefit card account program, and the program:

    a. Provides the alternative initial disclosure required pursuant to the Prepaid Rule (procedure #32; 1005.18(d)(1)(ii); (e)(ii)(C)) and,

    b. Complies with the error resolution process and limitations on liability (if any) it has disclosed (procedure #32; 1005.18(e)(3)(ii)(C)).

    The entity is not required to comply with the error resolution and limitations on liability provisions of Regulation E with respect to that program. Document this fact and skip the rest of this Module for that program.

[Click&type]

If the entity is required to comply with the error resolution and limitations on liability provisions of Regulation E, complete procedures #42-49.

NOTE: For an individual account, the entity is not required to comply with Regulation E's error resolution and limitation of liability provisions until it has successfully completed its consumer identification and verification process for that account (1005.18(e)(3)). An entity that collects and verifies consumer identifying information, or that obtains such information after it has been collected and verified by a third party, prior to or as part of the account acquisition process, is deemed to have successfully completed its consumer identification process with respect to that account (comment 1005.18(e)-6).

42. Verify the entity does not delay completing its consumer identification and verification process or refuse to verify a consumer's identity based on the consumer's assertion of an error (comment 1005.18(e)-5).

[Click&type]

Limited Liability

43. Review the entity's policies and procedures on limited liability to ensure compliance either with 1005.6(b) timing requirements[35] and notice to the entity or (if the entity has provided the periodic statement alternative disclosures described in 1005.18(c)(1)) by limiting the consumer's liability for any unauthorized EFT reported by the consumer within 120 days after the EFT was credited or debited to the consumer's prepaid account (1005.18(e)(1); for government benefit accounts 1005.15(e)(3)). Verify, through transaction testing, that policies and procedures are followed.[36]

    NOTE: For prepaid accounts that are not payroll card accounts or government benefit accounts, the entity is not required to comply with the liability limits in 1005.6 for any prepaid account for which it has not successfully completed its consumer identification and verification process (1005.18(e)(3)).

[Click&type]

44. Verify the entity has provided the following written (or electronic, if the entity complies with the E-Sign Act) disclosures, required as part of the initial disclosures (procedure #5), to the consumer in order to impose any consumer liability for an unauthorized EFT:

    a. A summary of the consumer's liability for unauthorized EFTs;

    b. A telephone number and address for reporting that an unauthorized EFT has been or may be made; and

    c. The entity's business days.

    1005.6(a), 1005.7(b)(1)-(3)

If the unauthorized EFT involved an access device, such as a prepaid card, verify two additional conditions are met for those transactions before the entity imposes liability on the consumer:[37]

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[35] Generally the 60- day period for reporting is the earlier of (a) the date the consumer electronically accesses the consumer's account, provided that the electronic history made available to the consumer reflects the untheorized, or (b) the date the entity sends a written history of the consumer's account transactions requested by the consumer in which the unauthorized transfer is first reflected (1005.18(e)(1)).

[36] An entity that follows the periodic statement alternative and chooses to investigate notices of error provided up to 120 days from the date a transaction has posted to a consumer's account may still disclose the error resolution time period otherwise required by the Prepaid Rule (as set forth in paragraph (b) of Model Clauses A-7). Similarly, the summary of the consumer's liability in the initial disclosures may disclose that liability is based on the consumer providing notice of error within 60 days of the consumer electronically accessing an account or receiving a written history reflecting the error, even if, for some or all transactions, the entity allows a consumer to assert a notice of error up to 120 days from the date of posting of the alleged error (comment 1005.18(e)-1).

[37] Also consult procedure #55 as it relates to the issuance of an access device.

a. *The access device is an accepted access device* – an access device becomes an accepted access device when the consumer requests and receives the access device, signs it, or uses (or authorizes someone else to use) it to transfer money or obtain money, property, or services. An access device also becomes an accepted access device when the consumer requests validation of an access device issued on an unsolicited basis or received an access device in renewal of or substitution for an accepted access device from either the entity that initially issued the device or a successor (1005.2(a)(2)).

b. *The entity provided a means to identify the consumer to whom the access device was issued* – an entity may use various means for identifying the consumer, such as electronic or mechanical confirmation (*e.g.*, a PIN) or comparison of the consumer's signature, fingerprint or photograph (comment 1005.6(a)-1).

1005.6(a)

[Click&type]

Procedures for resolving errors

45. Review the entity's policies and procedures on error resolution ensuring compliance including investigating and responding to a "notice of error" about a consumer's account within certain timeframes (1005.11). Verify, through transaction testing, that policies and procedures are followed.

[Click&type]

46. Verify that an entity initiates an investigation of "errors." An error includes any of the following:

    a. An unauthorized EFT.[38]

    b. An incorrect EFT to or from a consumer's account (*e.g.*, transfer for an incorrect amount).

    c. Omission of an EFT from a periodic statement.

    d. An entity's computational or bookkeeping error relating to an EFT.

    e. A consumer's receipt of an incorrect amount of money from an electronic terminal (*e.g.*, an ATM).

    f. An EFT not identified in accordance with Regulation E.

[38] An entity is required to comply with the error resolution procedures when a consumer reports a lost or stolen access device if the consumer also alleges possible unauthorized use as a consequence of the loss or theft (comment 1005.11(a)-3).

g. A consumer's request for certain documentation required under Regulation E (*e.g.*, a periodic statement, receipt, written account transaction history), or for additional information or clarification concerning an EFT.

1005.11(a)(1)[39]

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47. Verify that the entity initiates an investigation once it has received a notice that satisfies all of the following:

    a. Enables the entity to identify the consumer's name and account number;

    b. Indicates why the consumer believes an error exists and includes, to the extent possible, the type, date, and amount of the error; and

    c. Is received within the time period specified in Regulation E.

        i. If an entity provides periodic statements for a prepaid account, it must comply with Regulation E's error resolution procedures if it receives notice not later than 60 days after sending the periodic statement first reflecting the alleged error (1005.11(b)(1)(i)).

        ii. If the entity relies on the periodic statement alternative for a prepaid account, it must comply with Regulation E's error resolution procedures if it receives notice by the earlier of:

            i. 60 days after the date a consumer electronically accesses the consumer's account, provided that the electronic account transaction history made available to the consumer reflects the alleged error.[40]

            ii. 60 days after the date the entity sends, in response to a consumer's request, the first written account transaction history reflecting the alleged error.

        1005.18(e)(2)(i)

        iii. Alternatively, an entity that relies on the periodic statement alternative may choose to comply with amended Regulation E by investigating notices of error received within 120 days after the EFT allegedly in error was credited or debited

[39] *See* 1005.11(a)(2) for examples of what the term "error" does not include.

[40] *See* comment 1005.18(e)-2 for specifics on what does and does not constitute "electronically accessing" the consumer's prepaid account.

to the consumer's prepaid account (1005.18(e)(2)(ii); for government benefit cards 1005.15(e)(4)).

iv. When a notice of error is based on documentation or clarification that the consumer previously requested under Regulation E's error resolution procedures, the consumer's notice of error is timely if the entity receives it no later than 60 days after the entity sent the documentation or clarification that the consumer requested (1005.11(b)(3)).

NOTE: The Prepaid Rule modifies Regulation E to specify timeframes that apply if an entity relies on the periodic statement alternative and to provide an alternative "safe harbor" timeframe for an entity that relies on the periodic statement alternative, as described above. An entity may disclose to prepaid account holders the entity will investigate any notice of error provided within 60 days or provide that liability be limited for notices of error received within 60 days, even if for some or all transactions, the entity allows a consumer to assert a notice of error up to 120 days from the date of positing of the alleged error (comment 1005.18(e)-1).

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48. Verify that after receiving a proper notice of error from a consumer, the entity does all of the following:

NOTE: For prepaid accounts that are not payroll card accounts or government benefit accounts, the entity is not required to comply with the error resolution requirements in 1005.11 for any prepaid account for which it has not successfully completed its identification and verification process with respect to the prepaid account (1005.18(e)(3)).

a. *Promptly investigates the oral or written notice of error* – the entity must investigate to determine whether an error occurred and may not delay initiating or completing an investigation pending receipt of written confirmation of an oral notice of error (1005.11(c); comment 1005.11(b)(1)-2).

b. *Within the required timeframe, completes its investigation and determines whether an error occurred* – generally the entity must complete its investigation and determine whether an error occurred within 10 business days (1005.11(c)(1)). However:

i. The entity may take up to 45 days to complete its investigation if it:

- Provisionally credits the amount of the alleged error to the consumer's account within 10 business days of receiving the notice of error, including interest where applicable;[41]

[41] An entity can withhold a maximum of $50 if it has a reasonable basis for believing an unauthorized EFT has occurred and the entity has provided the required disclosures. If the unauthorized EFT involved an access device, the access devices must be an

- Informs the consumer, within two business days after the provisional crediting, of the amount and date of the credit; and
- Gives the consumer full use of the funds during the investigation.[42]

1005.11(c)(2)

c. *Correct the error, if any, within one business day after determining that an error has occurred* – including crediting of interest and refunding of fees, if applicable (1005.11(c)(1); comment 1005.11(c)-6).

d. *Report the results of its investigation to the consumer within three business days after completing its investigation* – including if the provisional credit has been made final, should the entity determine the alleged error occurred, as applicable (1005.11(c)(2)(iii) and (iv)). If the entity determines no error occurred or the error occurred in a different manner or amount, the entity must also include a written explanation of its findings and a notice of the consumer's right to request the documents upon which the entity relied in making its determination. Upon request, the entity must promptly provide those documents to the consumer (1005.11(d)).[43] Additionally, if the entity debits a provisionally credited amount, it must notify the consumer of the date and amount of the debit and of the fact that the entity will honor checks, drafts, or similar instruments payable to third parties and preauthorized EFTs from the consumer's account for five business days after the notification (1005.11(d)(2)).[44]

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49. Verify that the entity mails or delivers to a consumer, at least once each calendar year, an error notice substantially similar to the applicable Model Form (see below for details) for accounts to or from which EFTs can be made (1005.8(b)).

    a. If the entity provides periodic statements, the notice must be substantially similar to paragraph (a) of Model Form A-3.

accepted device, and the entity must provide a means to identify the consumer in order for the entity to withhold $50 (1005.11(c)(2); 1005.6(a)).

[42] A entity need not provisionally credit the prepaid account to take up to 45 days to complete its investigation if the entity requires but does not receive written confirmation of an oral notice of error within 10 business days, or if the alleged error involves an account subject to Regulation T, 12 CFR part 220 (credit by brokers and dealers) (1005.11(c)(2)(i)).

[43] *See* 1005.11(e) for additional information on reinvestigation requirements.

[44] Alternatively, an entity may notify the consumer that the consumer's account will be debited five business days from the transmittal of the notice, provided that the notice tells the consumer the calendar date that the entity will debit the amount (comment 1005.11(d)(2)-1).

b. If the entity relies on the periodic statement alternative (see procedure #40) and the account is a government benefit account, the notice must be substantially similar to paragraph (b) of Model Clauses A-5 (1005.15(e)(2)).

c. If the entity relies on the periodic statement alternative (see procedure #40) and the account is any other type of prepaid account (*i.e.*, not a government benefit account), the notice must be substantially similar to paragraph (b) of Model Clauses A-7 (1005.18(d)(2)).

d. An entity may, alternatively, provide an abbreviated notice on each periodic statement or on each electronic account transaction history and written account transaction history provided it is substantially similar to the abbreviated notice in paragraph (b) of Model Form A-3. If the entity relies on the periodic statement alternative, the abbreviated notice must be modified as necessary to reflect the applicable error resolution procedures (1005.15(e)(2); 1005.18(d)(2)).

[Click&type]

Module 5 - Receipts at Electronic Terminals, Preauthorized EFTs, and Access Devices

Receipts at electronic terminals

50. Verify that the entity makes a receipt available to a consumer who initiates an EFT to or from a prepaid account at an electronic terminal in an amount of more than $15 (1005.9(a) and (e)).[45] The receipt must be made available at the time the consumer initiates the EFT and must include the following, as applicable:

a. The amount of the EFT.

b. The date the consumer initiates the EFT.

c. The type of EFT and the type of account to or from which the funds are transferred.[46]

d. A number or code that identifies the consumer’s account(s), or the access device used to initiate the EFT (the number or code need not exceed four digits or letters).

e. The terminal’s location, or an identification such as a code or terminal number.

f. The name of any third party to or from who funds are transferred.

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[45] An account-holding institution may make receipts available through third parties such as merchants or other entities (comment 1005.9(a)-2).

[46] The type of account may be omitted if the access device used is able to access only one account at that terminal.

1005.9(a)

[Click&type]

Preauthorized EFTs

51. Verify that for any prepaid account that receives a preauthorized EFT at least once every 60 days, the entity that holds the prepaid account:

    a. Provides notice to the consumer, unless the payor initiating the EFT notifies the consumer, that the EFT has been initiated (1005.10(a)(1) and (2)) through either:

        i. Oral or written notice within two business days after the EFT occurs or the date on which the EFT was scheduled to occur if it does not occur (1005.10(a)(1)(i) and (ii)), or

        ii. Providing a readily available telephone line that the consumer can call to determine if the EFT occurred, provided the telephone number is disclosed in the initial disclosures and on each periodic statement, or, if the entity relies on the periodic statement alternative, in each account transaction history (1005.9(a)(1)(iii)).

[Click&type]

52. Verify that the entity that receives a preauthorized EFT credits the amount of the EFT to the consumer's prepaid account as of the date the funds are received (1005.10(a)(3)).

[Click&type]

53. Verify that for any preauthorized EFT from a consumer's account:

    a. The consumer signed or similarly authenticated an authorization, in writing, for the preauthorized EFT (1005.10(b));[47]

    b. The person that obtained the authorization from a consumer provided the consumer with a copy of the authorization (1005.10(b)); and

    c. The payee or the entity provided additional notice to the consumer when a preauthorized EFT under the same authorization varies in amount by either:

        i. Sending the consumer a written notice of the amount and date of an EFT that varies in amount from the preauthorized amount of the previous EFT at least 10 days before the scheduled date of the EFT (1005.10(d)(1)), or

[47] The authorization may be obtained electronically if the E-Sign Act's consumer consent and other applicable requirements are met (comment 1005.10(b)-5).

ii. Providing the consumer with the option of receiving notice only when an EFT is outside of a specified range or varies from the most recent EFT by more than an agreed-upon amount, provided the payee or entity also informed the consumer that it has the right to receive a notice for all varying EFTs (1005.10(d); (d)(2)).

[Click&type]

54. Verify that the entity stops any preauthorized EFT from a prepaid account when it is notified orally or in writing at least three business days before the scheduled EFT and is consistent with the entity's policy and procedures (1005.10(c)(1)).[48]

[Click&type]

Issuance of an Access Device

55. Verify that the entity only issues an access device, defined as a card (such as prepaid card), code, or other means of access to a consumer's account that may be used to initiate EFTs when one or both of the following apply, unless it complies, alternatively, with the requirements for an unsolicited access device (procedure #56) (1005.2(a)(1)):

    a. *The entity is issuing the access device in response to an oral or written request for the device* – a consumer is deemed to request an access device for a prepaid account when, for example, the consumer acquires a prepaid account in a retail location or applies for a prepaid account by telephone or online (comment 1005.18(a)-1).

    NOTE: *For government benefit accounts, a consumer is deemed to request an access device when the consumer applies for government benefits that the government agency disburses or will disburse by means of an EFT (1005.15(b)). For payroll card accounts, a consumer is deemed to request an access device when the consumer chooses to receive salary or other compensation through a payroll card account (comment 1005.18(a)-1).*

    b. *The entity is issuing the access device as a renewal of, or in substitution for, an accepted device issued by the entity or a successor* – an access device becomes an accepted access device when the consumer requests and receives the access device, signs it, or uses (or authorizes someone else to use) it to transfer money between account or obtain money, property, or services. The access device also becomes an accepted access device when the consumer requests validation of an unsolicited access device or receives an access device in renewal or substation for an accepted access device (1005.2(a)(2)).[49]

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[48] If the consumer notifies the entity orally, the entity may require the consumer to provide written confirmation within 14 days of the oral notice. The oral notice ceases to be binding after the 14-day period if the consumer fails to provide the written confirmation (1005.10(c)(2)).

[49] Only one renewal or substitution card or device may replace a previously issued device. An entity may provide additional devices at the time of renewal or substation, provided the institution complies with the requirements for issuing an unsolicited access device for the additional devices (comments 1005.5(a)(2)-1 and 1005.5(b)-5).

1005.5(a)

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56. If the entity issues an unsolicited access device, verify that the access device is:

    a. Not validated, meaning that the entity has not performed all the procedures that would enable a consumer to initiate an EFT using the access device;

    b. Accompanied by a clear explanation that the access device is not validated and how the consumer may dispose of the device if validation is not desired;

    c. Accompanied by initial disclosure of the consumer's rights and liabilities under Regulation E that will apply if the device is validated; and

    d. Validated only in response to the consumer's oral or written request for validation, after the entity as verified the consumer's identity by a reasonable means.[50]

    1005.5(b)

    NOTE: If credit is offered in connection with a prepaid account, an access device for the prepaid account may also be subject to Regulation Z. For issuance rules that apply under Regulation Z if an access device is a hybrid prepaid-credit card, see 1026.12(a) and the related commentary.

    NOTE ALSO: If an access device for a prepaid account is issued on an unsolicited basis where the prepaid account is used for disbursing funds to a consumer, and the entity or a 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 1005.5(b)(2) the entity 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 (comment 1005.18(a)-1).

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[50] For purposes of this requirement, the entity may use any reasonable means to verify the consumer's liability. However, even if reasonable means were used, if the institution failed to verify correctly the consumer's identity and an imposter succeeds in having the access device validated, the consumer is not liable for any unauthorized transfers from the account (comment 1005.5(b)-4).

Module 6 - Compulsory Use, Submission of Agreements, and Record Retention

Compulsory use prohibition

57. Verify that the financial institution does not require compulsory use of EFTs, except as authorized (12 CFR 1005.10(e)).[51]

[Click&type]

Submission and posting of prepaid account agreements

The term "issuer," as used here and below, is the entity to which the consumer is legally obligated or would be obligated, under the terms of the prepaid agreement (1005.19(a)(4)).[52]

58. Verify that the issuer has made the required (agreement or notice of withdrawal) submission no later than 30 days after a triggering event for any prepaid account it offers, unless it falls under one of the two exceptions described below (1005.19(b)(1)).[53]

    NOTE: An issuer no longer offers a prepaid account agreement when it no longer allows a consumer to activate or register a new prepaid account in connection with a given prepaid account agreement (comment 1005.19(b)(3)-1).

[Click&type]

59. A "prepaid account agreement" includes:

    a. The written document or documents evidencing the terms of the legal obligation (or prospective legal obligation) between an issuer and a consumer of a prepaid account;[54]

    b. The short form disclosure for the prepaid account; and

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[51] A government agency or employer may require direct deposit by electronic means if the consumer is allowed to choose the institution that will receive the direct deposit. However, state law may affect which alternatives must be offered.

[52] The issuer generally may use a third-party service provider to satisfy its obligations under 1005.19, provided that the issuer acts in accordance with regulatory guidance regarding use of third-party service providers and other applicable regulatory guidance (comment 1005.19(a)(4)-2).

[53] A triggering event is when an issuer offers a new prepaid account agreement (1005.19(a)(5)), substantively amends a prepaid account agreement (1005.19(a)(2) and 1005.19(b)(2)), or ceases to offer or withdraws a prepaid agreement (1005.19(b)(3)). (See also comment 1005.19(a)(2)-1 for examples of substantive changes and comment 1005.19(a)(2)-2 for examples of non-substantive changes). The issuer "offers" a prepaid account agreement if the issuer markets, solicits applications for, or otherwise makes available a prepaid account that would be subject to the agreement. It is not relevant here whether the issuer offers the prepaid account agreement to the general public (1005.19(a)(5)).

[54] An agreement may consist of several documents that, taken together, define the legal obligations between the parties. Each document is part of the "prepaid account agreement" (comment 1005.19(a)(1)-1).

c. The fee information and statements required to be disclosed in the long form disclosure for the prepaid account.

1005.19(a)(1) and (a)(3)[55]

An issuer is not required to make submissions to the Bureau if qualifies for either of these two exceptions:

f. *De minimis exception* – The issuer has fewer than 3,000 open prepaid accounts on the last day of each calendar quarter (1005.19(b)(4)(i))[56], or

g. *Product testing exception* –The agreement:

   a. Is offered as part of a product test offered only to a limited group of consumers for a limited period of time;

   b. Is used for fewer than 3,000 open prepaid accounts; and

   c. Is not offered other than in connection with such product test.

   1005.19(b)(5)[57]

If the entity is required to make prepaid account agreement submissions to the CFPB, or has previously submitted prepaid account agreements, complete procedures #60-66, if not document that fact and move on.

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60. Verify that the issuer has submitted agreements to the CFPB for all the prepaid account programs that it offers. This includes the applicable agreements:

    a. As of May 1, 2019,

    b. New agreements after May 1, 2019,

    c. Amended existing agreements, and

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[55] See 1005.19(b)(6)(i)(C) for items deemed not to part of the prepaid agreement.

[56] If an issuer previously qualified for the *de minimis* exception but later ceases to qualify, it must begin making submissions to the Bureau no later than 30 days after the last day of the calendar quarter in which it ceases to qualify. It does not matter if the issuer had fewer than 3,000 open prepaid accounts during the calendar quarter. If the issuer previously made submissions to the Bureau but now qualifies for this exception, it can either notify the Bureau that it is withdrawing the prepaid account agreements it previously submitted and stop making submissions, or it can continue to make rolling submissions as otherwise required under the Prepaid Rule (1005.19(b)(4); comment 1005.19(b)(4)-5).

[57] If the agreement fails to meet any of these criteria as of the last day of a calendar quarter, the issuer must submit the prepaid card agreement no later than 30 days after the last day of the calendar quarter (1005.19(b)(5)(i)).

d. Withdrawn agreements.

1005.19(b)

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61. Verify that the total agreement submitted to the CFPB, as described below, each contain the provisions of the agreement (procedure #59) and the fee Information in effect at the time of submission, in the form and manner specific by the CFPB, to the Bureau[58] and contains, as applicable:

    a. Identifying information about the issuer that must include the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number);

    b. Any prepaid account agreement offered by the issuer that has not been previously submitted to the Bureau;

    c. Any prepaid account agreement previously submitted to the Bureau that has been amended;

    d. Identifying information about the prepaid account agreement(s) that the issuer is submitting including:

        i. The effective date of each prepaid account agreement;

        ii. The name of the program manager, if any, for each agreement; and

        iii. The names of other relevant parties, if applicable, for each agreement (*e.g.*, an employer for a payroll card program or the agency for a government benefit program);[59] and

    e. Notification regarding any prepaid account agreement previously submitted to the Bureau that the issuer is withdrawing.

    1005.19(b)(1)

    f. And does not include any personal identifiable information relating to any consumer, such as name, address, telephone number, or account number (1005.19(b)(6)(i)(B)).

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[58] 1005.19(b)(6)(i)(A).

[59] Section 1005.19(b)(2)(ii) permits an issuer to delay making a submission to the CFPB regarding a change in the list of other relevant parties to a particular agreement until the earlier of when the issuer is otherwise submitting an amended agreement *or* changes to other identifying information about the issuer and its submitted agreements pursuant to 1005.19(b)(1)(i); *or* May 1 of each year, for any updates to the list of names of other relevant parties that occurred between the issuer's last submission of relevant party information for that agreement and April 1 of that year. This ensures the CFPB has a list of names of other relevant parties for all submitted agreements that is up-to-date as of April 1 of each year. *See* 1005.19(b)(2)(ii) for examples.

NOTE: The fee information for prepaid accounts under the same program may vary from one consumer to another based on the consumer's state of residency or other factors. In these cases, the variations do not constitute separate prepaid account agreements and the issuer must submit one prepaid account agreement with fee information that lists the possible fee variations and includes relevant information about the variations (comment 1005.19(b)(6)-2).

[Click&type]

62. Verify that the issuer posts and maintains all prepaid account agreements on a publically available website in a prominent location that is readily accessible to the public without the submission of personally identifiable information when:[60]

    a. The issuer is required to submit the agreement to the Bureau, and

    b. The prepaid account agreement is offered to the general public.[61]

    1005.19(c)(1)

    NOTE: Prepaid account agreements posted on the publicly available portion of the issuer's website cannot contain any personally identifiable information. (1005.19(b)(6)(i)(B)). However, an issuer may include personal identifiable information on other prepaid agreements, such as those provided to individual consumers or posted on a portion of the issuer's website that is not publically available, provided the issuer takes appropriate measures to make that agreement accessible only to the consumer or other authorized persons (1005.19(d)(2)(iii)).

[Click&type]

63. Verify that the issuer posts and updates prepaid card agreements on its publically available website as frequently as the issuer is required to submit new or amended agreements to the CFPB, generally no later than 30 days after the issuer offers or amends the agreement, as applicable (1005.19(c)(3)).

[Click&type]

[60] 1005.19(c)(4). See also comment 1005.19(c)-2 and comment 1005.19(a)(4)-3 for additional information on the use of a third party's website to satisfy the posting requirements.

[61] A prepaid account agreement is offered to the general public even if the issuer markets, solicits applications for, or otherwise makes the account available to the general public, even if the account is available only to a limited group of people (1005.19(a); comment 1005.19(a)(6)-1). However, it is not offered to the general public when it is only offered by virtue of a consumer's relationship with a third party, such as agreements for government benefit accounts, payroll accounts, and prepaid accounts used to disburse student financial aid or insurance proceeds (comment 1005.19(a)(6)-2).

64. For all open prepaid accounts, verify that the entity either:[62]

   a. *Posts and maintains the consumer's prepaid account agreement on the issuer's website* (procedure # 59; 1005.19(d)(1)(i)) – by posting the agreement on a publically available website or elsewhere on the entity's website after the consumer logs in, including updating it as frequently as the issuer is required to submit amended agreements to the Bureau (1005.19(d)(2)(v)) or, if not posted on a website,

   b. *Promptly provides a copy of the consumer's prepaid account agreement to the consumer upon the consumer's request* – If the issuer elects this options it also must:

      i. Allow the consumer to request a copy by telephone (1005.19(d)(1)(ii));

      ii. Send a copy of the agreement no later than five business days after the receiving the request (comment 1005.19(d)-2); and

      iii. Provide the agreement in paper form, unless the consumer agrees to receive it electronically (1005.19(d)(2)(vi)).

   NOTE: The prepaid agreements posted or sent to the consumer must set forth the specific provisions and fee information applicable to the particular consumer and must conform to the form and content requirements for agreements submitted to the Bureau (1005.19(d)(2)(i) and (iv)).

[Click&type]

65. If an entity ceases to offer a prepaid account agreement previously submitted to the Bureau, verify that the entity submitted a notification of withdrawal no later than 30 days after it ceases to offer the agreement (1005.19(b)(3)).

[Click&type]

66. Verify for those prepaid account card agreements in which the entity has submitted a notification of withdrawal the accounts are no longer offered to consumers (1005.19(b)(3)).

[Click&type]

[62] A prepaid account is an "open prepaid account" if (1) there is an outstanding balance on the account, (2) a consumer can load funds to the account even if the account does not currently have a balance, or (3) a consumer can access credit from a covered separate credit feature in connection with the account, regardless of whether the issuer considers the account inactive or if the prepaid account has been suspended temporarily (1005.19(a)(7); comment 1005.19(a)(7)-1).

Record Retention

67. Verify the entity has maintained evidence of compliance for at least two years from the date a disclosure is required to be made or action is required to be taken (1005.13(b)(1)).[63]

[Click&type]

68. Verify that to the extent the entity has actual notice that it is the subject of an investigation or enforcement proceeding by its enforcement agency, or has been served with notice of an action filed under sections 910, 916, or 917(a) of EFTA, the entity has retained the records that pertain to the investigation, action, or proceeding until final disposition of the proceeding unless an earlier time is allowed by court or agency order (1005.13(b)(2)).

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Module 7 - Overdraft Credit Features

69. Determine if the entity offers any overdraft credit on its prepaid cards such that the prepaid card is a hybrid prepaid-credit card. A prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature if all the following criteria are met:

    a. *The prepaid card is a single device that can be used from time to time to access credit from the separate credit feature* (1026.61(a)(2)(i)(A)) – a prepaid card that can only be used to access credit on a single occasion does not qualify (comment 1026.61(a)(1)-3). A card that can be used to access credit from time to time qualifies even if the person that can extend credit through that credit feature does not agree in writing to extend the credit, the person retains discretion not to extend credit, or the person does not extend credit once the consumer has exceeded a certain amount of credit (comment 1026.61(a)(1)-1).

    b. *The prepaid 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, to obtain cash, or to conduct P2P transfers* (1026.61(a)(2)(A)(*1*) – The "course of authorizing, settling, or otherwise completing" means if it occurs during the authorization phase of the transaction or in later periods up to the settlement of the transaction (comment 1026.61(a)(2)-2).

    c. *The separate credit feature that the prepaid card can access is offered by the prepaid account issuer, its affiliate, or its business partner* (1026.61(a)(2)(i)(A)(*2*) – The prepaid account issuer is the financial institution (as defined by Regulation E) with respect to the

[63] The entity need not retain records that it has given disclosures and documentation to each consumer. It need only retain evidence demonstrating that its procedures reasonably ensure the consumers' receipt of required disclosures and documentation. Evidence of compliance can be retained electronically if the electronic system accurately reproduces the information (comment 1005.13(b)-1).

prepaid account (1026.61(a)(5)(vi)). An affiliate is any company that controls, is controlled by, or is under common control with another company as set forth in the Bank Holding Company Act of 1956[64] (1026.61(a)(5)(i)). A business partner is a person (other than the prepaid account issuer or its affiliates) that can extend credit through a separate credit feature where the person or its affiliate has an "arrangement," as set forth in Regulation Z, with the prepaid account issuer or its affiliate (1026.61(a)(5)(iii)).[65]

NOTE: If these criteria are met with respect to a separate credit feature, that separate credit feature is a "covered separate credit feature" under the Prepaid Rule. (1026.61(a)(2)(i); comments 1026.61(a)(2)-1.i. and 1026.61(a)(2)-4.) If one or more of the criteria is not met with respect to a separate credit feature, that separate credit feature is a "non-covered separate credit feature" (1026.61(a)(2)(ii); comment 1026.61(a)(2)-5). A prepaid card may be a hybrid prepaid-credit card when accessing certain credit features and not when accessing others (comment 1026.61(a)(2)-6.) It is important to review access to each credit feature separately.

[Click&type]

70. Verify that an entity is not offering credit through a negative balance on a prepaid account's asset feature except in the circumstances described below (*see* 1026.61(a)(3)(ii), (a)(4), and (b)). Determine if the entity falls into the permissible circumstance for offering credit through a negative balance on a prepaid account's asset feature if all three conditions are met, and thus the prepaid card is not a hybrid prepaid-credit card with respect to credit extended through a negative balance on the prepaid account's asset feature and the entity is not a creditor and therefore not subject to Regulation Z with respect to the credit extended through the negative balance on the asset feature of the prepaid account, but generally covered under Regulation E (*see* comments 1026.2(a)(15)-2.ii.F; 1026.61(a)(4)-1.v).

    a. The entity has an established policy and practice of either:

        i. Declining to authorize transactions where it reasonably believes the consumer has insufficient or unavailable funds in the prepaid account's asset feature to cover the transaction at the time it is authorized; or

        ii. Declining to authorize transactions except when: (A) the amount of the transaction will not cause the asset feature balance to be negative by more than $10 at the time of authorization (aka the "purchase cushion"); or (B) the transaction is conducted when incoming deposits are pending and the transaction

64 12 USC 1841 *et seq.*

65 See 1026.61(a)(5)(iii)(A)-(C) and comment 1026.61(a)(5)(iii)-2 for specifics of what constitutes a "business partner" and 1026.61(a)(5)(iii)(D) and its related commentary, and comment 1026.61(a)(5)(iii)-1 for what does not constitute a "business partner."

will not cause the prepaid account to be negative at the time of authorization by more than the amount of the pending deposit (aka the "delayed load cushion").[66]

1026(a)(4)(ii)(A)[67]

b. The entity does not charge credit-related fees on the prepaid account asset feature including:[68]

   i. Fees or charges for opening, issuing, or holding a negative balance on the asset feature, or the availability of credit (1026.61(a)(4)(ii)(B)(*1*)).

   ii. Fees or charges that are imposed on the prepaid account's asset feature only when credit is extended on the asset feature or when there is a negative balance on the asset feature (1026.61(a)(4)(ii)(B)(*2*)).[69]

   iii. Fees or charges on prepaid account's asset feature that are higher when credit is extended on the asset feature or when there is a negative balance on the asset feature (1026.61(a)(4)(ii)(B)(*3*)).

   NOTE: A fee or charge does not become a credit-related fee simply because there are insufficient or unavailable funds in the asset feature of the prepaid account to pay the fee when it is imposed (1026.61(a)(4)(ii)(C); comment 1026.61(a)(4)(ii)(C)-1).

AND

c. The prepaid card cannot access credit from a covered separate credit feature that is offered by a prepaid account issuer or its affiliate (1026.61(a)(4)(i)).

NOTE: If the above three conditions are met and the prepaid card can access credit from a covered separate credit feature that is offered by a business partner, then prepaid card is a hybrid prepaid-credit card with respect to the covered separate credit feature but is not a hybrid prepaid-credit card with respect to credit extended by the entity through the negative balance that meets the conditions discussed above or with respect to a non-covered separate credit feature (comment 1026.61(a)(4)-1.ii).

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[66] For the delayed load cushion, the entity must have received either an instruction or confirmation from an incoming EFT from a separate asset account to load funds to the prepaid account or a request from the consumer to load funds to the prepaid account from a separate asset account. In either case, the funds must not have settled yet (1026.61(a)(4)(ii)(A)(*2*)).

[67] These two circumstances are not mutually exclusive and therefore an issuer could adopt the $10 purchase cushion and the delayed load cushion (comment 1026.61(a)(4)(ii)(A)-4).

[68] This condition does not prohibit the entity from imposing different terms on different prepaid account programs (comment 1026.61(a)(4)(ii)(B)-1).

[69] Credit related fees do not include fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law (comment 1026.61(a)(4)(ii)(B)(*2*)-1).

[Click&type]

71. If the circumstances described in procedure #69 are not met, verify that the entity does not allow the asset feature of a prepaid account to become negative. The credit must instead be structured as a separate credit feature, either as a separate credit account or as a separate credit subaccount (1026.61(a)(3)(ii), (a)(4), 1026.61(b)). If the circumstances described in procedure #69 are not met, verify that the entity has set up the hybrid prepaid-credit card so that:

    a. If, at the time a prepaid card transaction is initiated, there are insufficient or unavailable funds in the asset feature of the prepaid account to complete the transaction, credit is drawn, transferred, or authorized to be drawn or transferred from the covered separate credit feature at the time the transaction is authorized. The card issuer may not allow the asset feature to become negative and must comply with applicable provisions of Regulation Z with respect to the credit extension from the time the prepaid card transaction is authorized.

    b. For transactions where there are insufficient of unavailable funds in the asset feature of the prepaid account to cover that transaction at the time it settles and the prepaid transaction either was not authorized in advance or the transaction was authorized and there was sufficient of available funds in the prepaid account at the time of authorization to cover the transaction, credit must be drawn from the covered separate credit feature to settle these transactions. The card issuer may not allow the asset feature on the prepaid account to become negative. The card issuer must comply with the applicable provisions of Regulation Z from the time the transaction is settled.

    c. If a negative balance would result on the asset feature in circumstances other than those described in (a) or (b) above, credit must be drawn from the covered separate credit feature to avoid a negative balance. The card issuer may not allow the asset feature to become negative and must comply with applicable provisions of Regulation Z with respect to the credit extension from the time credit is drawn from the covered separate credit feature.

Comment 1026.61(b)-2

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72. If the entity offers a covered separate credit feature with any of its prepaid card accounts, continue. Only complete the remainder of this section for those prepaid accounts that offer a covered separate credit feature. **If the entity does not offer any covered separate credit feature, skip and move on.**

[Click&type]

73. Verify that if the prepaid program includes both prepaid accounts with a covered separate credit feature and prepaid accounts without a covered separate credit feature, the entity

generally provides to any prepaid account without a covered separate credit feature the same account terms, conditions, and features on the asset feature of the prepaid account that it provides on prepaid accounts in the same program that have such a credit feature (1005.18(g); comment 1005.18(g)-2; comment 1005.18(g)-5; for government benefit cards 1005.15(g)). The entity, however, may impose a higher fee or charge on the asset feature of a prepaid account with a covered separate credit feature than the amount of a comparable fee or charge that is imposes on any prepaid account in the same prepaid account program that does not have such a credit feature. The account terms, conditions and features subject to this requirement include, but are not limited to:

a. Interest (if any) paid on funds deposited into the asset feature of the prepaid account;

b. Fees or charges imposed on the asset feature of the prepaid account;

c. The type of access device provided to the consumer (*i.e.*, an institution may not provide a PIN-only card on prepaid accounts without a covered separate credit feature while providing a prepaid card with both PIN and signature-debit functionality for prepaid accounts in the same prepaid account program with such a credit feature);

d. Minimum balance requirements on the asset feature of the prepaid account; and

e. Account features offered in connection with the asset feature of the prepaid account, such as online bill payment services.

Comment 1005.18(g)-4

NOTE: The requirement to provide the same terms, conditions, and features only applies to prepaid accounts in the same prepaid account program. The terms, conditions, and features could differ between a prepaid account program where a covered separate credit feature is not offered in connection with any prepaid accounts within the program, and a prepaid account program where a covered separate credit feature may be offered to some consumers in connection with their prepaid accounts (comment 1005.18(g)-3).

[Click&type]

74. Verify that the entity has treated a prepaid card that is a hybrid prepaid-credit card as a credit card under Regulation Z with respect to the covered separate credit feature and complied with the applicable requirements of Regulation Z, as amended by the Prepaid Rule (1026.2(a)(15)(i); 1026.61(a)(1)).

    NOTE: If the covered separate credit feature is offered by the prepaid account issuer, the prepaid account issuer is a card issuer and creditor under Regulation Z. If the covered separate credit feature is offered by an affiliate or business partner, that entity would also have responsibilities under Regulation Z as a card issuer and creditor (1026.2(a)(7); 1026(a)(17)(iii); comment 1026.2(a)(7)-1.ii).

[Click&type]

75. Verify that the entity does not require by electronic means on a preauthorized, reoccurring basis repayment of credit extended under a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 1026.61 (1005.10(e)(1)).

NOTE: The prohibition applies to any credit extended under such a credit feature including preauthorized checks (comment 61(a)(1)-3).

[Click&type]

76. Verify that the entity does not, within 30 days of successfully completing the registration process, or opening of, the prepaid account, whichever is later:

   a. Open a covered separate credit feature that could be accessible by the hybrid prepaid-credit card;

   b. Make a solicitation or provide an application to open a covered separate credit feature that could be accessible by the hybrid prepaid-credit card[70]; or

   c. 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.

   1026.61(c); comment 1026.61(c)-1

[Click&type]

Module 8 – UDAAP and Summary

77. Using the examination procedures that address unfair, deceptive, or abusive acts or practices (UDAAPs), consider whether any aspect of the entity's prepaid account programs and operations constitute unfair, deceptive or abusive acts or practices. The particular facts and circumstances in a case are crucial to the determination of UDAAPs. Examiners should consult with headquarters to determine whether the applicable legal standards have been met before a UDAAP violation is cited.

[Click&type]

[70] *See* 1026.60(a)(1) for the definition of *solicitation* as used here.

Examiner's Summary, Recommendations, and Comments

To conclude this supervisory activity, examiners must complete all steps under this section, regardless of entity's risk profile.

1. Summarize the findings, supervisory concerns, and regulatory violations.

2. For the violations noted, determine the root cause by identifying weaknesses in internal controls, audit and compliance reviews, training, management oversight, or other factors. Determine whether the violation(s) are pattern or practice, or isolated.

3. Identify action needed to correct violations and weaknesses in the entity's compliance management system, as appropriate.

4. Discuss findings with the institution's management and, if necessary, obtain a commitment for corrective action.

5. Record violations according to CFPB policy in the Report of Examination/Supervisory Letter and CFPB's electronic database system to facilitate analysis and reporting.

6. If the examiner believes enforcement action may be appropriate, contact appropriate CFPB personnel for guidance.

7. Prepare a memorandum for inclusion in the work papers and CFPB's official system of record that outlines planning and strategy considerations for the next examination and, if appropriate, interim follow-up.

[Click&type]

SUPPLEMENTAL INFORMATION

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)).

Administrative Enforcement and Record Retention

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 are subject to an enforcement proceeding must retain records until disposition of the proceeding (12 CFR 1005.13).

Records may be stored on microfiche, microfilm, magnetic tape, or in any other manner capable of accurately retaining and reproducing the information.

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, an agreement may grant a consumer 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.

Other Risks to Consumers

1. The Gramm-Leach-Bliley Act (GLBA) and its implementing regulations, subject to certain exceptions, prohibit financial institutions from disclosing nonpublic personal information about a consumer to nonaffiliated third parties, unless the institution satisfies various notice and opt-out requirements, and provided that the consumer has not elected to opt out of the disclosure. They further require financial institutions to provide notice of their privacy policies and practices to their customers.

2. The Dodd-Frank Act prohibits unfair, deceptive, or abusive acts or practices (UDAAPs) including those that involve prepaid account providers' interactions with consumers. To assess such practices, the CFPB will apply the following standards:

    a. A representation, omission, act, or practice is deceptive when:

        i. The representation, omission, act, or practice misleads or is likely to mislead the consumer;

        ii. The consumer's interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and

        iii. The misleading representation, omission, act, or practice is material.

    b. An act or practice is unfair when:

        i. It causes or is likely to cause substantial injury to consumers;

        ii. The injury is not reasonably avoidable by consumers; and

        iii. The injury is not outweighed by countervailing benefits to consumers or to competition.

    c. An abusive act or practice:

        i. Materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or

        ii. Takes unreasonable advantage of –

            a) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;

            b) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or

            c) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

Examiners should refer to the CFPB's examination procedures regarding UDAAPs for more information about these legal standards and the CFPB's approach to examining for UDAAPs. The particular facts in a case are crucial to a determination of unfair, deceptive, or abusive acts or practices. Consequently, examiners should consult with headquarters to determine whether the applicable legal standards have been met before a UDAAP violation is cited.

Model clauses and forms - Appendix A

Appendix A of Regulation E contains model clauses and forms that entities may use to comply with the disclosure requirements of Regulation E. Subject to specific requirements of the Prepaid Rule, use of the model clauses and forms is optional and an institution that uses these clauses accurately to reflect its service is protected from civil and criminal liability under Sections 916 and 917 of the EFTA.

The model clauses and forms specifically for prepaid accounts are:

A-5 – Model Clauses for Government Agencies (1005.15(e)(1) and (2))

A-7 – Model Clauses for Financial Institutions Offering Prepaid Accounts (1005.18(d) and (e)(3))

A-10(a) – Model Form for Short Form Disclosures for Government Benefit Accounts (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 (1005.18(b)(2), (3), (6), and (7))

A-10(c) – Model Form for Short Form Disclosures for Prepaid Accounts Example 1 (1005.18(b)(2), (3), (6), and (7))

A-10(d) – Model Form for Short Form Disclosures for Prepaid Accounts Example 2 (1005.18(b)(2), (3), (6), and (7))

A-10(e) – Model Form for Short Form Disclosures for Prepaid Accounts With Multiple Service Plans (1005.18(b)(2), (3), (6), and (7))

A-10(f) – Sample Form for Long Form Disclosures and Prepaid Accounts (1005.18(b)(4), (6), (6), and (7))

References

Laws

15 U.S.C. 1601 et seq.	Truth in Lending Act
15 U.S.C. 1693 et seq.	Electronic Fund Transfer Act
15 U.S.C. 7001 et seq.	Electronic Signatures in Global and National Commerce
15 U.S.C. 6802-6809	Sections 502 through 509 of the Gramm-Leach-Bliley Act, except for section 505 as it applies to section 501(b)
12 U.S.C. 5531 and 5536	Unfair, deceptive, or abusive acts or practices

Consumer Financial Protection Bureau Regulations (12 CFR)

Part 1005	Electronic Fund Transfers (Regulation E)
Part 1026	Truth in Lending (Regulation Z)

Remittance Transfer Examination Procedures

Exam Date:	[Click&type]
Exam ID No.	[Click&type]
Prepared By:	[Click&type]
Reviewer:	[Click&type]
Docket #:	[Click&type]
Entity Name:	[Click&type]
Event #:	[Click&type]

These procedures should be used to examine institutions that provide remittances in the normal course of business for compliance with protections afforded consumers in the United States who send remittances to individuals and businesses in foreign countries (including to accounts abroad).

Examiners should complete a risk assessment, conduct necessary scoping, and use these procedures, in conjunction with the compliance management system review procedures, to conduct a remittance transfer examination.

Examination Objectives

1. To assess the quality of the regulated entity's compliance risk management systems in its remittance transfer business.
2. To identify acts or practices that materially increase the risk of violations of federal consumer financial law and associated harm to consumers in connection with remittance transfers.
3. To gather facts that help to determine whether a supervised entity engages in acts or practices that are likely to violate Federal consumer financial law in connection with remittance transfers.
4. To determine, in accordance with CFPB internal consultation requirements, whether a violation of a federal consumer financial law has occurred and whether further supervisory or enforcement actions are appropriate.

Background

Regulatory History

The Wall Street Reform and Dodd-Frank Act amended the Electronic Fund Transfer Act (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) (December 27, 2011). In February 2012, the CFPB published 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) (February 7, 2012).[1]

Following a series of amendments published later in 2012 and early 2013, the Bureau published another amendment in May 2013 to, among other things, establish a new effective date of October

[1] The amendment designated 12 CFR 1005.1 through 1005.20 as Subpart A.

28, 2013 (78 Fed. Reg. 30661) (May 22, 2013). In 2014, the Bureau extended a temporary exception within the remittance rule (that has since expired) and provided some basic clarifications and technical corrections to the rule effective November 17, 2014 (79 Fed. Reg. 55970)(September 18, 2014). Minor clerical and non-substantive edits were made in 2016, effective November 14, 2016 (81 Fed. Reg. 70319)(October 12, 2016).

The Bureau further amended Regulation E in November 2016. These amendments were finalized and effective as of April 1, 2019 (83 Fed. Reg. 6364) (February 13, 2018). The latest amendments to Regulation E occurred in May 2020 further amending Subpart B, effective July 21, 2020 (85 Fed. Reg. 34870 (June 5, 2020).

Effect of Remittance Rules on Transaction Practices

A "remittance transfer" is an electronic transfer of money from a consumer in the U.S. to a person or business in a foreign country. It can include transfers from retail non-depository "money transmitters" as well as banks and credit unions that transfer funds through wire transfers, automated clearing house transactions, or other methods.

The rule requires providers to disclose to consumers who send these transfers, certain fees, the exchange rate, and an indication of the amount to be received by the recipient. Disclosures must generally be provided when the consumer first requests a transfer and again when payment is made. The rule also contains specific provisions applicable to transfers that consumers schedule in advance and for transfers that are scheduled to recur on a regular basis. In addition, the rule also generally requires that:

1. Consumers receive the opportunity to cancel a transfer and get their money back.
2. Companies investigate if a consumer reports a problem with a transfer. For certain errors, consumers can generally get a refund or have the transfer sent again free of charge if the money did not arrive as promised.
3. Companies that provide remittance transfers are responsible for mistakes made by certain people who work for them.

Additional guidance in the form of a narrative summary of the remittance transfer rule and an examiner checklist are provided in the Supplemental Information attached to these procedures.

Consumer Risks Addressed Outside the Remittance Rule

To carry out the objectives set forth in the Examination Objectives section, the examination process should also include assessing consumer risks addressed outside the remittance rules. These risks may include potentially unfair, deceptive, or abusive acts or practices (UDAAPs). Examiners should refer to the procedures that address UDAAPs for information about the relevant legal standards and the CFPB's approach to examining for UDAAPs. Because the particular facts and circumstances in a case are crucial to the determination of UDAAPs, examiners should consult with Headquarters to determine whether the applicable legal standards have been met before a UDAAP violation is cited.

Moreover, examiners should ensure that the Remittance Transfer Provider's account agreement does not waive the consumer's rights under the Electronic Funds Transfer Act (EFTA) or Regulation E. Section 914 of EFTA (15 USC 1693l) provides that an agreement or writing between the consumer and the institution cannot contain language that constitutes a waiver of any consumer's right or cause of action created by EFTA or Regulation E. An example of this, which has been cited on previous deposits examinations, is including a requirement that the consumer must agree to "cooperate" with an investigation before the institution will conduct an error investigation.

Further, examiners should consider whether a remittance provider has complied with privacy provisions enacted as part of the Gramm-Leach-Bliley Act (GLBA) and implemented through Regulation P. These provisions impose limitations on when financial institutions can share nonpublic personal information with third parties. They also require under certain circumstances that financial institutions disclose their privacy policies and permit customers to opt-out of certain sharing practices with unaffiliated entities.

Scoping Considerations

The remittance transfer protections provided by Regulation E apply to entities that offer remittances as part of their "normal course of business." Under Regulation E, entities that provide 500 or fewer remittance transfers in the relevant time frame fall outside this definition. Instead, they fall within a 500-transfer "safe harbor." For an entity to qualify for this "safe harbor," it must have provided 500 or fewer remittance transfers in both the current calendar year and the previous calendar year. If an entity sends more than 500 transfers either in the previous calendar year or the current calendar year, it no longer qualifies for the "normal course of business" safe harbor, and therefore, generally, it must begin complying with the rule within a reasonable period of time (not to exceed six months).

Examiners should consider the volume of remittance transfers that an entity provides before proceeding further. Only entities that provide more than 500 remittance transfers in the relevant time frame should be examined for compliance with the remittance transfer rules.

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 federal consumer financial law, including Regulation E, not only within the entity but also concerning key business partners, agents, correspondent banks, and software providers, to the extent relevant.

[Click&type]

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 workpapers 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); and

   h. The frequency of review is appropriate.

[Click&type]

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.

[Click&type]

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; and

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.

[Click&type]

Transaction-Related Examination Procedures

As applicable, conduct transaction testing using the following examination procedures:

Obtain 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;

a. List of all third-party service providers or business partners involved in remittance transfers, including correspondent banks, payment networks, payment processors, software providers, foreign currency providers, agents in the U.S. or abroad, or similar entities;

b. Locations of U.S. and foreign agents;

c. 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);

d. Procedural manuals and written policies;

e. Error resolution files;

f. Form letters used in case of errors or questions concerning a remittance transfer (including any provided in foreign languages);

g. Any agreements with third parties allocating compliance responsibilities; and

h. Consumer Complaint Files.

[Click&type]

Module 1: Disclosures

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, or a text message, or through online bill pay). Verify that:
   a. Disclosures are in the appropriate form, and are clear and conspicuous (for transfers conducted online or by telephone via mobile application, determine which screen(s) shown to the consumer are the provider's disclosures);

      Note: It may be helpful to request a walkthrough of the remittance provider's product to understand where and at what time consumers encounter the required disclosures.

   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;

   e. Copies of scripts used for oral disclosures comply with the regulation;

   f. Disclosures comply with the format requirements regarding the 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.

[Click&type]

2. If applicable, determine whether the provider complies with the foreign language disclosure requirements as outlined under 12 CFR 1005.31(g).

[Click&type]

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 that it appropriately categorizes third-party fees as covered or non-covered.

[Click&type]

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.

[Click&type]

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 (unless the transfer is conducted entirely by mobile application, then this statement must be provided prior to payment of the remittance transfer);

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.

[Click&type]

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 canceled.

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 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.

[Click&type]

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; and

   d. In the case of estimates pursuant to 1005.32(b)(1), (b)(2), (b)(4) and (b)(5) 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.

[Click&type]

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; and

   b. Determine whether receipts are provided when payment is made, or in accordance with 1005.31(e)(2) for transactions conducted by telephone.

[Click&type]

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.

[Click&type]

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.

[Click&type]

11. Review sample notices to determine that they use the 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.

[Click&type]

Module 2: Estimates

Temporary Exception for Insured Institutions – 12 CFR 1005.32(a)

12. The temporary exception for insured institutions expired on July 21, 2020. Procedures relating to 12 CFR 1005.32(a)(1) have been removed.

Permanent Exception for Transfers to Certain Countries– 12 CFR 1005.32(b)(1)

13. 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.

[Click&type]

14. 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.

[Click&type]

15. 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.

[Click&type]

16. 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 amount as, or a greater amount than, the amount of funds that 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.

[Click&type]

Permanent Exception for Transfers Scheduled Before the Date of Transfer – 12 CFR 1005.32(b)(2)

17. 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.

[Click&type]

18. 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).

[Click&type]

Permanent Exception for Estimation of the Exchange Rate by an Insured Institution – 12 CFR 1005.32(b)(4)

19. Determine that the remittance transfer provider is an insured institution within the definition provided in 12 CFR 1005.32(a)(3).

    a. If the remittance transfer provider is not an insured institution, skip this section.

[Click&type]

20. Review the appropriate information including transaction log/records, etc., to identify and create a list of remittance transfer transactions that were sent from the following:

    a. The sender's account with the institution, excluding prepaid accounts, unless that prepaid account is a payroll card account or a government benefit account.

[Click&type]

21. From the list identified in 20, identify transactions for which estimates were used.

[Click&type]

22. For each transaction identified in 21 for which estimates were used:

a. Determine whether the designated recipient of the remittance received funds in the country's local currency;

b. Determine whether the insured institution could not determine the exact exchange rate required to be disclosed under 12 CFR 1005.31(b)(1)(iv) for that remittance transfer at the time the insured institution must provide, as applicable, the disclosure required by 12 CFR 1005.31(b)(1) through (3) or 12 CFR 1005.36(a)(1) or (2); and

c. Determine whether the insured institution made 1,000 or fewer remittance transfers in the prior calendar year to the particular country for which the designated recipients of those transfers received funds in the country's local currency.

[Click&type]

NOTE: An insured institution acting as an agent on behalf of another in connection with a remittance transfer is not a remittance transfer provider.

Permanent Exception for Estimation of Covered Third-party Fees by an Insured Institution – 12 CFR 1005.32(b)(5)

23. Determine that the remittance transfer provider is an insured institution within the definition provided in 12 CFR 1005.32(a)(3).

    a. If the remittance transfer provider is not an insured institution, skip this section.

[Click&type]

24. Review the appropriate information including transaction log/records, etc., to identify and create a list of remittance transfer transactions that were sent from the following:

    a. The sender's account with the institution, excluding prepaid accounts, unless that prepaid account is a payroll card account or a government benefit account.

[Click&type]

25. From the list identified in 24, identify transactions for which estimates were used.

[Click&type]

26. For each transaction identified in 25 for which estimates were used:

    a. Determine whether the insured institution could not determine the exact covered third-party fees required to be disclosed by 12 CFR 1005.32(b)(1)(vi) at the time the insured institution must provide, as applicable, the disclosure required by 12 CFR 1005.31(b)(1) through (3) or 12 CFR 1005.36(a)(1) or (2).; and

b. Either determine whether the provider made 500 or fewer remittance transfers in the prior calendar year to the designated recipient's institution; or

c. Determine whether the institution identified a United States Federal statute or regulation prohibiting the insured institution from being able to determine the exact covered third-party fees required to be disclosed. If so, determine whether you agree.

[Click&type]

NOTE: Your OSP point of contact can help evaluate whether the statute or regulation is applicable.

Module 3: Error Resolution

Procedures for Resolving Errors – 12 CFR 1005.33

27. Review the provider's policies and procedures on error resolution.

[Click&type]

28. Review relevant error resolution statements/files, consumer complaints, form letters, etc., used in addressing errors or questions concerning remittance transfer transactions.

[Click&type]

29. 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.

[Click&type]

30. Determine the extent of the provider's compliance with its policies and procedures on error resolution.

[Click&type]

31. Determine the provider's compliance with the regulatory requirements regarding the investigation of alleged errors, and notification of consumers within the allotted time frames.

[Click&type]

32. Determine the timeliness and adequacy of remedies the provider uses 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 gave 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.

[Click&type]

Remedies – 12 CFR 1005.33(c)(2)

33. 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; or

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.

[Click&type]

Record Retention – 12 CFR 1005.33(g) & 12 CFR 1005.13

34. 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.

[Click&type]

Module 4: Cancellation and Refunds

Procedures for Cancellation and Refund of Remittance Transfers – 12 CFR 1005.34 and 12 CFR 1005.36(c)

35. 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; and
    c. The procedures for issuing refunds.

[Click&type]

36. Determine the extent of the provider's compliance with its own policies and procedures on cancellation and refund.

[Click&type]

37. Determine the provider's compliance with the regulatory requirements regarding senders' requests for cancellation and refund.

[Click&type]

38. 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.

[Click&type]

Module 5: Agents

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.

39. Review the provider's agreements with agents used for remittance transfers to determine whether they are appropriate for the activities delegated.

[Click&type]

40. 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.

[Click&type]

41. 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.

[Click&type]

Module 6: Pre-scheduled Transfers

Transfers Scheduled Before the Date of Transfer – 12 CFR 1005.36

42. Review and assess the adequacy of the provider's policies and procedures regarding transfers scheduled before the date of transfer.

[Click&type]

43. 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, the 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 offers 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 gives 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; and

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.

[Click&type]

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.

Module 7: Other Risks to Consumers

To carry out the objectives set forth in the Examination Objectives section, examiners also should assess the other consumer risks described below.

44. Determine whether the entity's privacy and information-sharing practices are consistent with the requirements of Sections 502 to 509 of the Gramm-Leach-Bliley Act (15 USC 6802-09) and Regulation P (12 CFR Part 1016), to the extent they apply. Refer to the Privacy of Consumer Financial Information examination procedures for more information.

[Click&type]

45. Determine whether any agreement or writing between the consumer and institution contains language that may constitute a waiver of any right or cause of action created by EFTA (15 USC 1693) or Regulation E (12 CFR Part 1005). Consider the institution's account agreement with consumers.

[Click&type]

46. Using the examination procedures that address unfair, deceptive, or abusive acts or practices (UDAAPs), consider whether any aspect of the provider's remittance practices and operations constitute unfair, deceptive or abusive acts or practices. The particular facts and circumstances in a case are crucial to the determination of UDAAPs. Examiners should consult with headquarters to determine whether the applicable legal standards have been met before a UDAAP violation is cited.

[Click&type]

Module 8: Examination Conclusions and Wrap-Up

To conclude this supervisory activity, examiners must complete all steps under this section, regardless of the entity's risk profile.

47. Summarize the findings, supervisory concerns, and regulatory violations.

[Click&type]

48. For the violations noted, determine the root cause by identifying weaknesses in internal controls, audit and compliance reviews, training, management oversight, or other factors. Determine whether the violation(s) are pattern or practice, or isolated.

[Click&type]

49. Identify action needed to correct violations and weaknesses in the institution's compliance management system, as appropriate.

[Click&type]

50. Discuss findings with the institution's management and, if necessary, obtain a commitment for corrective action.

[Click&type]

51. Record violations according to agency policy in the Report of Examination/Supervisory Letter and the CFPB's electronic database system to facilitate analysis and reporting.

[Click&type]

52. Determine if enforcement action is appropriate. If so, contact appropriate agency personnel for guidance.

[Click&type]

53. Prepare a memorandum for inclusion in the workpapers and CFPB's official system of record that outlines planning and strategy considerations for the next examination and, if appropriate, interim follow-up.

[Click&type]

SUPPLEMENTAL INFORMATION

Subpart B of Regulation E — Requirements for Remittance Transfers

Subpart B of Regulation E provides disclosures, error resolution, and cancellation and refund rights to consumers who send remittance transfers to be received by other consumers or businesses in a foreign country.

I. Definitions – 12 CFR 1005.2 and 30

The definitions in Subpart A of Regulation E (12 CFR 1005.2) also apply to Subpart B unless specifically modified or limited by Subpart B.

Key Definitions in Subpart A — 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:

a. Magnetic tape or other devices used internally by a financial institution to initiate electronic transfers; or

b. 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 (Comments 2(a)-1 and 2(a)-2).

Accepted access device is an access device that a consumer:

a. Requests and receives, signs, or uses (or authorizes another to use) to transfer money between accounts or to obtain money, property, or services;

b. Requests to be validated even if it was issued on an unsolicited basis;

c. 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:

a. A demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution and established primarily for personal, family, or household purposes (12 CFR 1005.2(b)(3)(ii)(A)).

b. The term includes a prepaid account which includes the following:

   i. A "payroll card account," which is an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary, or other employee compensation (such as commissions) are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution, or any other person (1005.2(b)(3)(A)); or

   ii. A "government benefit account," which is an account established by a government agency for distributing government benefits to a consumer electronically, such as through automated teller machines or point-of-sale 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 (1005.2(b)(3)(B), 1005.15(a)(2));); or

   iii. 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 automated teller machines (1005.2(b)(3)(C)); or

   iv. 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 automated teller machines, or to conduct person-to-person transfers; and

      3. That is not a checking account, share draft account, or negotiable order of withdrawal account.

NOTE: There are a number of exceptions to the third and fourth tests (1005.2(b)(3)(ii)). A product that meets one of these exceptions may instead be subject to 1005.20, which contains requirements for gift cards and gift certificates as defined in that section.

An account does <u>not</u> include:

a. An account held by a financial institution under a bona fide trust agreement (12 CFR 1005.2(b)(2);

b. Profit-sharing and pension accounts established under a bona fide trust agreement (12 CFR 1005.2(b), Comment 2(b)-2.i);

c. Escrow accounts such as for payments of real estate taxes, insurance premiums, or completion of repairs (12 CFR 1005.2(b), Comment 2(b)-2.ii); or

d. Accounts for purchasing U.S. savings bonds (12 CFR 1005.2(b), Comment 2(b)-2.iii).

A ***payroll card account*** does not include a card used:

a. 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;

b. Solely to make disbursements unrelated to compensation, such as petty cash reimbursements or travel per diem payments; or

c. In isolated instances to which an employer typically does not make recurring payments (Comment 2(b)(3)(i)-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 online 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 (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))

a. Useable solely for telephone services;

b. 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;

c. 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));

d. Not marketed to the general public;

e. Issued in paper form only; or

f. 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:

a. 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

b. 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:

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;

b. Funds transferred from another account held individually or jointly by the consumer; or

c. A line of credit or other transaction from a securities or commodities account held by a broker-dealer registered with the Securities and Exchange Commission (SEC) or the Commodity Futures Trading Commission (CFTC) (12 CFR 1005.17(a)).

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 U.S.; 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 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:

a. 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;

b. With fraudulent intent by the consumer or any person acting in concert with the consumer; or

c. By the financial institution or its employee (12 CFR 1005.2(m)).

The following 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 that person 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; and

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. A sender located on a U.S. military installation that is physically located in a foreign country 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).

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. If the funds will be received at a location on a U.S. military installation that is physically located in a foreign country, the transfer will be received in a State.

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 500 or fewer remittance transfers in the previous calendar year and provides 500 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).

II. 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 (12 CFR 1005.31(a); Comments 31(a)(1)-1 and 31(a)(2)-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).

Written and electronic disclosures generally must be made in a retainable form. Pre-payment disclosures provided via mobile application or text message (to the extent permitted by the rule) need not be retainable. In some cases, disclosures may be disclosed orally. For example, pre-payment disclosures may be disclosed orally if the transaction is conducted orally and entirely by telephone and the remittance transfer provider complies with certain other disclosure requirements. A Remittance Transfer Provider may treat a written or electronic communication as an inquiry when it believes that treating the communication as a request would be impractical and thus may comply with oral disclosure requirements instead of the written requirements discussed above (12 CFR 1005.31(a)(2), (a)(3), and (a)(3)-2).

For purposes of disclosures required to be provided pursuant to 1005.31 or 1005.36, disclosures provided by facsimile transmission (i.e., fax) are considered to be provided in writing (12 CFR 1005.31(a)(2)-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 are 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).

Pre-payment Disclosures — 12 CFR 1005.31(b)(1)

A remittance transfer provider must provide the pre-payment disclosure when the sender requests the remittance transfer, but prior to payment for the transfer. The provider must disclose:

a. The amount to be transferred (transfer amount);

b. Front-end fees imposed by the provider and any taxes collected on the remittance transfer by the provider (transfer fees and transfer taxes);

c. Total amount of the transaction (the sum of the transfer amount and front-end fees and taxes);

d. The exchange rate;

e. Any covered third-party fees (other fees);

f. The total amount to be received by the designated recipient (total amount of the transaction minus covered third-party fees); and

g. 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 pre-payment 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 affects 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 a 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)-4).

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 the 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 Disclosures — 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 generally must 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 the 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 (Comment31(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

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 the 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).

III. 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)

The temporary exception provision of the regulation expired on July 21, 2020.

Insured Institution — 12 CFR 1005.32(a)(3)

The term "insured institution" means insured depository institutions (which includes uninsured U.S. branches and agencies of foreign depository institutions) as defined in Section 3 of the Federal Deposit Insurance Act (12 USC 1813), and insured credit unions as defined in Section 101 of the Federal Credit Union Act (12 USC 1752).

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 U.S. 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 remittance transfer provider may rely on a list of countries published by the CFPB to determine whether estimates may be provided for the exchange rate, the transfer amount, covered third-party fees and total amount to the recipient. If a country is on the CFPB's list, the provider may give estimates under this section, unless it 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 give 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).

Change in laws of the 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 give 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 the 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).

Permanent Exception for Estimation of the Exchange Rate by an Insured Institution — 12 CFR 1005.32(b)(4)

A remittance transfer provider that is an insured institution (as defined in Section 1005.32(a)(3)), may estimate the exchange rate for a remittance transfer to a particular country if all of the following conditions are met:

a. the designated recipient will receive funds in the country's local currency;

b. the insured institution cannot determine the exact exchange rate for that particular remittance transfer at the time the Rule requires it to provide the applicable exchange rate;

c. the insured institution made 1,000 or fewer remittance transfers in the prior calendar year to that country when the designated recipient received funds in the country's local currency; and

d. the remittance transfer is sent from the sender's account with the insured institution, excluding prepaid accounts unless the prepaid account is a payroll card account or a government benefit account.

Determining the exact exchange rate. An insured institution meets the requirements in (b)(4)(i)(B) for being unable to determine the exact exchange rate if a person other than the insured institution sets the exchange rate for that transfer, except where that person has a correspondent relationship with the insured institution, that person is a service provider for the insured institution, or that person acts as an agent of the insured institution (Comment 32(b)(4)-1).

Threshold. Determining whether an insured institution made 1,000 of fewer remittance transfers in the prior calendar year to a particular country requires inquiring into what currency the recipient obtained the transfer. The number of remittance transfers does include those received in the country's local currency, regardless of whether the exchange rate was estimated for those transfers. Conversely, the number of remittances transfers does not include transfers made to a country when the recipient did not receive the funds in the country's local currency (Comments 32(b)(4)-2.i and 32(b)(4)-2.ii).

Transition Period. If an insured institution did not exceed the 1,000 transfer threshold in the previous calendar year, but does in the current calendar year, the insured institution has a reasonable amount of time after exceeding 1,000 transfers to begin providing exact exchange rates in disclosures. The reasonable time must not exceed the later of six months or January 1 of the next year (Comment 32(b)(4)-3).

Permanent Exception for Estimation of Covered Third-party Fees by an Insured Institution — 12 CFR 1005.32(b)(5)

A remittance transfer provider that is an insured institution (as defined in Section 1005.32(a)(3), may estimate covered third-party fees (and other amounts affected by the estimation of such fees) when the following conditions are met:

a. the insured institution cannot determine the exact covered third-party fees for a transfer to a particular designated recipient's institution at the time the Rule requires it to provide the disclosures;

b. the insured institution made 500 or fewer remittance transfers to that designated recipient's institution in the prior calendar year or a United States Federal statute or regulation prohibits the insured institution from being able to determine the exact covered third-party fees; and

c. the remittance transfer is sent from the sender's account with the insured institution, excluding prepaid accounts unless the prepaid account is a payroll card account or a government benefit account.

Determining the Exact Covered Third-Party Fees. An insured institution meets the requirements under (b)(5)(i)(B) for being unable to determine the exact covered third-party fees when 1) the insured institution does not have a correspondent relationship with the designated recipient's institution; 2) the designated recipient's institution does not act as an agent of the insured institution; 3) the insured institution does not have an agreement with the designated recipient's institution with respect to the imposition of covered third-party fees on the remittance transfer; and 4) the insured institution does not know at the time disclosures are given that the only intermediary financial institutions that will impose covered third-party fees on the transfer are those institutions that have a correspondent relationship with or act as an agent for the insured institution, or have otherwise agreed upon the covered third-party fees with the insured institution. The insured institution may not use the exception if any of the above conditions are not met (Comments 32(b)(5)-1 and 32(b)(5)-2).

Threshold. Determining whether an insured institution made 500 or fewer remittance transfers in the prior calendar year should include transfers regardless of whether the covered third-party fees were estimated for those transfers. Moreover, the number of remittance transfers includes transfers regardless of whether the amount was received in the country's local currency (unlike Section 1005.32(b)(4)). Further the number includes transfers provided to the designated recipient's institution and any of its branches in the country to which the particular transfer is being sent (Comment 32(b)(5)-3).

United States Federal Statute or Regulation. Even if the insured institution has sent more than 500 transfers to the designated recipient's institution in the prior calendar year, an insured institution may still estimate covered third-party fees if a United States Federal statute or regulation prohibits it. The statute or regulation may either directly prohibit the insured institution from disclosing exact covered third-party fees in disclosures for transfers to a designated recipient's institution or make it infeasible for the insured institution to form a relationship with the designated recipient's institution and that relationship is necessary for the insured institution to be able to determine, at the time it must provide the applicable disclosures, exact covered third-party fees (Comment 32(b)(5)-4).

Transition Period. If an insured institution did not exceed the 500 transfer threshold to a particular designated recipient's institution in the previous calendar year, but does in the current calendar year, the insured institution has a reasonable amount of time after exceeding 500 transfers to begin providing exact exchange rates in disclosures. The reasonable time must not exceed the later of six months or January 1 of the next year. This reasonable period assumes there is no United States Federal statute or regulation that prohibits the insured institution from determining the exact covered third-party fees (Comment 32(b)(5)-5).

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 the 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)).

IV. 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 in 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;

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.

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; or

2. The provider gives 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. 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. 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 of errors for failure to make funds available by the disclosed date of availability 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.

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 the remittance transfer provider's fraud screening procedures or in accordance with the Bank Secrecy Act, Office of Foreign Assets Control requirements, or similar laws or requirements;

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, and the remittance transfer provider:

    i. can demonstrate that the sender provided an incorrect account number or recipient institution identifier to the provider in connection with the remittance transfer;

    ii. prior to or when sending the transfer, used reasonably available means 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;

    iii. 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;

iv. 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

v. promptly used reasonable efforts to recover the amount that was to be received by the designated recipient.

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 the 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).

Failure to make funds available by disclosed date of availability - fraud and other screening procedures. A remittance transfer provider's failure to deliver funds by the disclosed date of availability is not an error if such delay is related to the provider's or any third party's investigation necessary to address potentially suspicious, blocked or prohibited activity, and the provider did not and could not have reasonably foreseen the delay so as to enable it to timely disclose an accurate date of availability when providing the sender with a receipt or combined disclosure. However, if a delay could have been reasonably foreseen, the exception in § 1005.33(a)(1)(iv)(B) would not apply (Comment 33(a)-7).

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)). But 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 the 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 the 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 (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;

then 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.

1. <u>Where failure to make funds available by the disclosed date of availability occurred due to incorrect or insufficient information provided by the sender:</u>

   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 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).

2. <u>All other instances of failure to make funds available by the disclosed date of availability:</u> As applicable, the remittance transfer provider must either:

    i. Refund to the sender, the amount of funds which was not properly transmitted or the amount appropriate to resolve the error; or

    ii. Make available to the designated recipient the amount appropriate to resolve the error without additional cost to the sender or to the designated recipient; *<u>and</u>*

    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, 10 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 the 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 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.

V. 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).

VI. 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)).

VII. 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.

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 provision 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 (Comments 31(b)(2)-4 and -5).

VIII. 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)).

IX. 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.

X. Miscellaneous

The EFTA contains several additional provisions that are not directly reflected in the language of Regulation E. Most significantly, 15 USC 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 USC 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 USC 1693m and 15 USC 1693n. Financial institutions may also be liable for damages under 15 USC 1693h due to failure to complete an EFT or failure to stop a preauthorized transfer when instructed to do so.

XI. Other Risks to Consumers

1. The Gramm-Leach-Bliley Act (GLBA) and its implementing regulations, subject to certain exceptions, prohibit financial institutions from disclosing nonpublic personal information about a consumer to nonaffiliated third parties, unless the institution satisfies various notice and opt-out requirements, and provided that the consumer has not elected to opt out of the disclosure. They further require financial institutions to provide notice of their privacy policies and practices to their customers.

2. The Dodd-Frank Act prohibits unfair, deceptive, or abusive acts or practices (UDAAPs) including those that involve remittance transfer providers' interactions with consumers. To assess such practices, the CFPB will apply the following standards:

    a. A representation, omission, act, or practice is deceptive when:

        I. The representation, omission, act, or practice misleads or is likely to mislead the consumer;

II. The consumer's interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and

III. The misleading representation, omission, act, or practice is material.

b. An act or practice is unfair when:

I. It causes or is likely to cause substantial injury to consumers;

II. The injury is not reasonably avoidable by consumers; and

III. The injury is not outweighed by countervailing benefits to consumers or to competition.

c. An abusive act or practice:

I. Materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or

II. Takes unreasonable advantage of:

i. a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;

ii. the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or

iii. the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

Examiners should refer to CFPB's examination procedures regarding UDAAPs for more information about these legal standards and the CFPB's approach to examining for UDAAPs. The particular facts in a case are crucial to a determination of unfair, deceptive, or abusive acts or practices. Consequently, examiners should consult with headquarters to determine whether the applicable legal standards have been met before a UDAAP violation is cited.

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 for remittance transfers are:

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))

References

Laws

15 USC 1693 et seq.	Electronic Fund Transfer Act
15 USC 7001 et seq.	Electronic Signatures in Global and National Commerce
15 USC Sections 6802-6809	Sections 502 through 509 of the Gramm-Leach-Bliley Act, except for Section 505 as it applies to Section 501(b)
12 USC Sections 5531 and 5536	Unfair, deceptive, or abusive acts or practices

Consumer Financial Protection Bureau Regulations (12 CFR)

Part 1005	Electronic Fund Transfers (Regulation E)
Part 1016	Privacy of Consumer Financial Information (Regulation P)

This checklist can be used to review audit workpapers, evaluate the entity's policies, perform transaction testing, and 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 the entity's 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."

Requirements for Remittance Transfers

		Yes	No	NA
1.	Does the provider offer remittance transfers in the normal course of business?	☐	☐	☐
2.	If the provider deems itself to not offer remittance transfers in the normal course of business as a result of the 500-transfer safe harbor, are the provider's methods for counting transfers appropriate and properly documented?	☐	☐	☐
	Complete the rest of the checklist if the provider offers remittance transfers in the normal course of business			
3.	Does the provider have written policies and operating procedures that govern its remittance transfer operations?	☐	☐	☐
4.	Do these policies and procedures adequately address the requirements of Subpart B?	☐	☐	☐
5.	Are the provider's personnel who are involved in remittance transfer operations knowledgeable about the requirements of Subpart B?	☐	☐	☐

Disclosures — 12 CFR 1005.31

(Unless otherwise indicated, the disclosure requirements apply to all remittance transfer transactions, including those scheduled before the date of transfer.)

		Yes	No	NA
6.	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*	☐	☐	☐
7.	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))?	☐	☐	☐

		Yes	No	NA
8.	Are written and electronic disclosures provided in compliance with the foreign language requirements of 12 CFR 1005.31(g)?	☐	☐	☐
9.	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)?	☐	☐	☐
10.	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)?	☐	☐	☐
11.	Does information in written or electronic disclosures comply with the grouping requirements of 12 CFR 1005.31(c)(1)?	☐	☐	☐
12.	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))?	☐	☐	☐
13.	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))?	☐	☐	☐
14.	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))?	☐	☐	☐
15.	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 disclosures are printed (12 CFR 1005.31(c)(3))?	☐	☐	☐
16.	For disclosures that are provided in writing or electronically:			
	☐ do they contain only information directly related to the disclosures; and	☐	☐	☐
	☐ are they segregated from other items that may be disclosed (12 CFR 1005.31(c)(4))?	☐	☐	☐
17.	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))?	☐	☐	☐
18.	Are disclosures provided in compliance with the timing requirements of 12 CFR 1005.31(e)?	☐	☐	☐

		Yes	No	NA
19.	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)).

Pre-payment Disclosures — 12 CFR 1005.31(b)(1)

		Yes	No	NA
20.	Does the provider appropriately distinguish between covered and non-covered third-party fees?	☐	☐	☐
21.	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)

		Yes	No	NA
22.	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)?	☐	☐	☐

Combined Disclosure — 12 CFR 1005.31(b)(3)

Complete this section only if the provider gives combined disclosures as an alternative to separate pre-payment disclosures and receipts.

		Yes	No	NA
23.	Does the combined disclosure contain all the information required to be provided on the receipt?	☐	☐	☐
24.	Does the provider offer the combined disclosure when the sender requests the remittance transfer, but prior to payment for the transfer; and provide 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 give 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.*

Long-form Error Resolution and Cancellation Notice — 12 CFR 1005.31(b)(4)

		Yes	No	NA
25.	Does the provider promptly give, at the sender's request, a notice describing the sender's error resolution and cancellation rights, using the language set forth in Model Form A-36 of Appendix A or substantially similar language? (12 CFR 1005.31(b)(4)).	☐	☐	☐

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).

Estimates — 12 CFR 1005.32

Permanent Exception for Transfers to Certain Countries – 12 CFR 1005.32(b)(1)

		Yes	No	N/A
26.	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?	☐	☐	☐
27.	If the provider offers estimates for transactions in a country that 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.*	☐	☐	☐

Permanent Exception for Transfers Scheduled Before the Date of Transfer – 12 CFR 1005.32(b)(2)

28.	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)?	☐	☐	☐

Permanent Exception for Transfers Scheduled Before the Date of Transfer – 12 CFR 1005.32(b)(2)

29.	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 with the institution, except for a prepaid account unless that prepaid account is a payroll card account or a government benefit account?	☐	☐	☐
30.	If so, is the provider using the exception only in	☐	☐	☐

		Yes	No	NA
	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(b)(4) and Comment 32(b)(4)-1.i)			
31.	Did the provider make 1,000 or fewer transfers			
	☐ in the prior calendar year?	☐	☐	☐
	☐ counting only transfers that were received in the local currency? (Comments 32(b)(4)-2.i, 32(b)(4)-2.ii)	☐	☐	☐

Permanent Exception for Insured Institutions for Covered Fees Estimates – 12 CFR 1005.32(b)(5)

		Yes	No	NA
32.	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 with the institution, except for a prepaid account unless that prepaid account is a payroll card account or a government benefit account?	☐	☐	☐
33.	If so, is the provider using the exception only 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 and is not acting as agent of the institution, sets the third-party fees required to be disclosed and has no agreement with the insured institution? (Comments 32(b)(5)-1.i, 32(b)(5)-1.ii, 32(b)(5)(iii))	☐	☐	☐
34.	Did the provider make 500 or fewer transfers	☐	☐	☐
	☐ in the prior calendar year?	☐	☐	☐
	☐ including non-estimated transfers to the recipient	☐	☐	☐

		Yes	No	NA
	institution? (Comment 32(b)(5)-3.i)			
	☐ including to any branches of the recipient institution within that country? (Comment 32(b)(5)-3.iii)	☐	☐	☐
35.	Does a Federal Statute or Regulation prevent the institution from determining the exact amount of covered third-party fees?	☐	☐	☐

Bases for Estimates – 12 CFR 1005.32(c)

		Yes	No	NA
36.	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.*	☐	☐	☐

		Yes	No	NA
37.	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?	☐	☐	☐
38.	If estimates are based on an approach that is not one of those listed, does the designated recipient receive the same, or greater, amount of funds than the remittance transfer provider disclosed?	☐	☐	☐

Procedures for Resolving Errors — 12 CFR 1005.33

		Yes	No	NA
39.	Does the provider have adequate policies and procedures to address the error resolution requirements applicable to remittance transfers (12 CFR 1005.33(g))?	☐	☐	☐
40.	Do the policies and procedures adequately state what constitutes an error and what does not as defined in 12	☐	☐	☐

CFR 1005.33(a)?

		Yes	No	NA
41.	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))?	☐	☐	☐
42.	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))? *NOTE: Discussions on the quality, or lack thereof, of an investigation can be had with your OSP counterparts. There is not a specific requirement that an error investigation must be reasonable in the regulation, unlike Regulation Z. Evaluate whether a determination was made at the first instance.*	☐	☐	☐

		Yes	No	NA
43.	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.*	☐	☐	☐

		Yes	No	NA
44.	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?	☐	☐	☐
45.	If the provider determines that no error or a different error occurred, does it provide a written 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))?	☐	☐	☐
46.	If the provider offers 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 designates that the remedy has passed? *NOTE: A default remedy is not applicable where the sender provided incorrect or insufficient information.*	☐	☐	☐
47.	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 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.*	☐	☐	☐
48.	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)?	☐	☐	☐
49.	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)?	☐	☐	☐

		Yes	No	NA
50.	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))?	☐	☐	☐
51.	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; <u>or</u> (ii) make available to the designated recipient the amount appropriate to resolve the error <u>and</u> ☐ 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))?	☐	☐	☐
52.	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)? (12 CFR 1005.33(c))?	☐	☐	☐

		Yes	No	NA
53.	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)?	☐	☐	☐

Procedures for Cancellation and Refund of Remittance Transfers – 12 CFR 1005.34

		Yes	No	NA
54.	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)).*	☐	☐	☐
55.	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)).*	☐	☐	☐

Acts of Agents — 12 CFR 1005.35

		Yes	No	NA
56.	Has the provider established and maintained policies or procedures, including policies, procedures for	☐	☐	☐

compliance, or other appropriate oversight measures designed to assure compliance by an agent or authorized delegate acting for such provider?

	Yes	No	NA
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.	☐	☐	☐

Transfers Scheduled Before the Date of Transfer – 12 CFR 1005.36

57. 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 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)).

58. For each subsequent preauthorized remittance transfer, does the provider give 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).*

		Yes	No	NA
59.	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))?	☐	☐	☐
60.	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))?	☐	☐	☐
61.	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 five 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)).*	☐	☐	☐
62.	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)).*

		Yes	No	NA
63.	As applicable, are the entity's privacy and information-sharing practices consistent with the requirements of Sections 502 to 509 of the Gramm-Leach-Bliley Act (15 USC 6802-09) and Regulation P (12 CFR Part 1016)?	☐	☐	☐
64.	Do all aspects of the entity's practices and operations involving remittance transfers and other financial products **not** raise concerns about unfair, deceptive, or abusive acts or practices?	☐	☐	☐

Examination Conclusions

[Click&type]

Reverse Mortgage Servicing

Exam Date:	[Click&type]
Exam ID No.	[Click&type]
Prepared By:	[Click&type]
Reviewer:	[Click&type]
Docket #:	[Click&type]
Entity Name:	[Click&type]

These examination procedures apply to reverse mortgage servicing and are a stand-alone resource to complete a reverse mortgage servicing review. Prior to using these procedures, however, examiners should complete a risk assessment and examination scope memorandum. Depending on the scope, in conjunction with the compliance management system and consumer complaint response review procedures, each reverse mortgage servicing examination will include one or more of the following modules:

Module 1 Servicing Transfers, Loan Ownership Transfers, and Escrow Disclosures

Module 2 Account Maintenance, Payments, and Disclosures

Module 3 Consumer Inquiries, Complaints, and Error Resolution Procedures

Module 4 Maintenance of Escrow Accounts or Set-Asides and Insurance Products

Module 5 Information Sharing and Privacy

Module 6 Events of Default and Death of Borrower

Module 7 Foreclosures

Module 8 Examiner Conclusions and Wrap-Up

Examination Objectives

In consultation with Headquarters:

1. To identify acts or practices that materially increase the risk of violations of Federal consumer financial laws in connection with reverse mortgage servicing and other risks to consumers.

2. To gather facts that help to determine whether a regulated entity engages in acts or practices that violate the requirements of Federal consumer financial laws.

3. To determine if a violation of a Federal consumer financial law has occurred and whether supervisory or enforcement actions are appropriate.

Background

Reverse Mortgage Origination

A reverse mortgage is a special type of loan that allows older homeowners to borrow against the equity (wealth) in their homes. Instead of making payments to the servicer, the borrower receives funds from the lender. The borrower may elect to receive the funds as monthly payments, a lump sum, or by accessing a line of credit. These funds, plus the interest charged on the loan, and any fees such as insurance premiums or servicing fees, increase the balance of the loan each month. Over time, the loan amount grows, and must be re-paid when the borrower dies or a default event occurs. Since equity is the value of the home minus any loans, the borrower has less and less equity in the home as the loan balance increases. A borrower may, but is not obligated to, make payments to reduce the loan balance.

The Federal Housing Administration (FHA), under the Home Equity Conversion Mortgage (HECM) program, insures most reverse mortgages. As with other FHA insured mortgage products, there is a maximum loan amount. Some lenders also offer proprietary (non-HECM) reverse mortgages, which generally are designed for borrowers with higher home values and more equity to borrow against. These proprietary reverse mortgages are not federally insured, but many companies that offer proprietary reverse mortgages emulate the consumer protections found in the HECM program, including mandatory counseling.

Generally, in order to qualify for a HECM reverse mortgage, a borrower must:

- Be at least 62 years old;
- Reside in an eligible home as their primary residence;[1] and
- Own the home free and clear, or have substantial equity in the home.
- Not be delinquent on any federal debt, such as federal income taxes or federal student loans. The borrower may, however, use funds from the reverse mortgage to pay off this debt;
- Have a home that is in good condition; and
- Receive counseling from a U.S. Department of Housing and Urban Development (HUD) approved reverse mortgage counseling agency.

Lenders will also conduct a financial assessment to ensure borrowers have the financial capacity to continue paying obligations, such as real estate taxes, and homeowner's or flood insurance. The

[1] Eligible property types include single-family homes, 2-4 unit properties, manufactured homes built after June 1976, condominiums, and townhouses. Co-ops do not qualify.

reverse mortgage also must be in first lien position, so the borrower must first pay any existing liens in full.

(1) There are different options for receiving funds from a reverse mortgage loan. With a HECM loan for example, a borrower can receive money as a line of credit; in monthly installments; or in a lump sum.

The borrower can also get a combination of monthly installments and a line of credit. There is a cap on the amount a borrower can take out in the first year on all HECM payout options. The lender will calculate the amount that the customer is authorized to borrow overall, based on age, the interest rate, and value of the home. This number is the initial principal limit. Generally, a borrower can take out up to 60 percent of the initial principal limit in the first year. However, if the amount owed on an existing mortgage (or other required payments) is more than 50 percent of the initial principal limit, the borrower can take out enough to pay off the mortgage (and any other required payments, including upfront loan fees) plus additional cash of up to 10 percent of the initial principal limit. The cost of this loan product is generally higher than traditional forward mortgage loans. Costs that accrue over time include interest and ongoing mortgage insurance premiums. The interest rate depends on which lender the borrower chooses, as well as other factors. The interest rate may be fixed or adjustable. On HECM loans, annual mortgage insurance currently adds an additional 0.5 percent of the outstanding mortgage balance on top of the interest rate. There are also upfront costs associated with a reverse mortgage. Below is a list of typical fees that lenders may charge at the start of a loan under the HECM program:[2]

- The upfront Mortgage Insurance Premium (MIP) is a one-time, nonrefundable charge currently set at 2 percent of the maximum claim amount. An Origination Fee is the amount the lender or mortgage broker charges the borrower for making the reverse mortgage loan. On HECM loans, lenders may currently charge an origination fee of up to $6,000, depending on the maximum claim amount.
- Real Estate Settlement Costs (closing costs) are similar to the costs a borrower pays to take out a traditional mortgage. They include appraisal, title insurance, and inspection fees.
- Reverse Mortgage Counseling Costs are the costs charged by a counseling agency for providing pre-loan counseling required of a HECM loan. HUD rules prohibit a lender from paying the counseling fee. Although not required, most companies that offer proprietary reverse mortgages emulate the mandatory counseling requirement found in the HECM program.

Many borrowers use a portion of their loan funds to pay for the upfront costs. Paying for upfront costs with loan funds is more expensive than paying for them out of pocket because the borrower will be

[2] There are other upfront requirements for taking out a reverse mortgage, which may include income and asset verification, repair set-asides, paying off prior liens, or paying off delinquent federal debt.

charged interest and ongoing mortgage insurance on these costs.

Reverse Mortgage Servicing

Although borrowers do not make monthly payments, servicers calculate monthly interest and mortgage insurance charges based on the current loan balance and then add these charges, along with monthly servicing fees, if applicable, to the loan balance. The amount paid in interest and mortgage insurance compounds the same way a balance on a credit card does. The loan balance used to calculate interest and mortgage insurance changes each month and includes the prior month's interest, mortgage insurance, and servicing fee charges. As the loan balance grows, the amount of the interest and mortgage insurance charged that month also grows.

Taxes, Insurance, and Maintenance

Reverse mortgage borrowers are obligated to pay taxes and insurance and to provide normal maintenance and upkeep of the property for the life of the loan. If taxes and insurance are not paid, or if the borrower allows the condition of the property to deteriorate without making the necessary repairs, the lender may consider the borrower to be in default on the loan and the servicer could foreclose on the home.

For many borrowers, payment of taxes and insurance from the reverse mortgage proceeds is easier and may help prevent default. For some borrowers a written understanding with the servicer for the payment of taxes and insurance, typically referred to as a set-aside, may even be required. For example, under the FHA's HECM program, at origination, the lender will determine if a Life-Expectancy Set-Aside (LESA) is required, and if so, whether it must be fully funded or partially funded, based on a financial assessment of the borrower. If required, the lender will then create a tax and insurance set-aside.[3] This will reduce the principal draw amount available to the borrower.

[3] For a Home Equity Conversion Mortgage (HECM) loan, a set-aside itself is not an escrow account as defined in 12 CFR 1024.17(b).

Occupancy

The following occupancy requirements apply to HECM reverse mortgage loans:

- The property must be occupied by the borrower, co-borrower, or eligible non-borrowing spouse4 as a principal residence.[5]
- The loan becomes due if the borrower and any co-borrower(s) transfer title.
- The borrower or, where applicable, the eligible non-borrowing spouse, must complete an annual occupancy certification.

Causes of Default

A borrower with a reverse mortgage loan may continue to reside in the property for life even if the total principal and interest due exceeds the initial principal amount and/or the value of the property. Principal and interest will continue to accrue through the duration of the loan, but no repayment is due unless one of the following default events occurs:

- The last borrower on the note dies, or if there is an eligible non-borrowing spouse on a HECM loan originated on or after August 4, 2014, the deferral period after the last borrower's death ends;[6]
- The borrower and, where applicable, an eligible non-borrowing spouse or the co-borrowers, no longer occupy the property or fail to certify occupancy;
- The borrower and any co-borrower transfer ownership;
- The borrower fails to comply with a requirement of the mortgage, such as if the borrower fails to pay taxes or insurance or commits waste.

Upon the borrower's death, the non-borrowing spouse may stay in the home if they pay off the loan. They may also be able to stay in the home depending on when the loan was taken out and whether they qualify under HUD's rules. For loans with case numbers assigned on or after August 4, 2014,

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[4] This applies generally to HECM reverse mortgages originated on or after August 4, 2014. The Federal Housing Administration (FHA) defines an *eligible non-borrowing spouse* to mean the spouse, as determined by the law of the state in which the spouse and mortgagor reside or the state of celebration, of the HECM mortgagor at the time of closing and who also is not a mortgagor; and who 1) has been the spouse of the mortgagor at the time of loan closing and has remained the spouse of such HECM mortgagor for the duration of the HECM mortgagor's lifetime; 2) has been properly disclosed to the mortgagee at origination and specifically named as a Non-Borrowing Spouse in the HECM documents; and 3) has occupied, and continues to occupy, the property securing the HECM as the Principal Residence of the Non-Borrowing Spouse.

[5] A HECM borrower must occupy the subject property as their principal place of residence. The 12 consecutive month exception applies only to borrowers who fail to occupy the subject property because of a physical or mental illness.

[6] HUD Mortgagee Letter 2014-07 stipulates on HECM loans originated on or after August 4, 2014, that the due and payable status that occurs because of the death of the last surviving borrower is deferred until the death of the last surviving non-borrowing spouse; or until another listed event occurs, if a borrower was married at the time of closing and the non-borrowing spouse was identified at the time of closing and has occupied and continues to occupy the property as the non-borrowing spouse's principal residence.

the servicer will determine if the non-borrowing spouse qualifies for a deferral of the due and payable status. If the spouse meets certain conditions set by HUD, the non-borrowing spouse will be able to stay in the home.[7] For loans with case numbers assigned before August 4, 2014, the servicer after the death of the borrower may either foreclose on the property[8] or may allow the non-borrowing spouse to stay in the home through a process called "Mortgagee Optional Election (MOE) Assignment."[9]

Some loss mitigation options may also be available if a loan default is due to non-payment of taxes or insurance, or maintaining the property in good condition. These may include short sale, deed-in-lieu of foreclosure; a repayment plan of advances for taxes or insurance made by the servicer;[10], an at-risk extension, or a refinance into another reverse mortgage.

The borrower may have the right to sell or refinance. The borrower may sell the property for the lesser of the appraised value or the mortgage balance.[11] A HECM borrower is not liable for the difference if the loan balance is greater than the property value. The borrower may refinance the property by paying off the total loan balance. If the property value exceeds the loan balance (including any costs of sale), the borrower is entitled to the difference, after the sale.

With respect to a HECM loan, if the cause of default is death of the last borrower, any successors have up to six months from the date of death to sell or refinance the property and may pay off the loan for 95 percent of the appraised value. If the successors sell the home, they are not liable for the difference if the loan balance is greater than the net proceeds from sale, and they retain all sale proceeds in excess

[7] To qualify for the deferral period the non-borrowing spouse must: (1) establish within 90 days of borrower's death their ownership interest to the property or a legal right to remain in the home for life; (2) have been married to the borrower at the time the loan documents were signed up until the borrower's death (for couples who were unable to be legally married based on gender at the time the reverse mortgage loan was made, they must show that they were legally married by the time of the borrower's death); (3) have been identified in the loan documents as a non-borrowing spouse; (4) have lived, and continues to live, in the home as their principal residence; and (5) continue to meet the loan requirements and make sure the loan does not become due and payable for any other reason.

[8]If the servicer decides to foreclose on the home or finds that the non-borrowing spouse does not qualify for MOE Assignment, they must begin foreclosure proceedings within six months of the borrower's death. If the non-borrowing spouse is actively trying to sell the property or satisfy the debt in some other way, they may request a delay with the foreclosure for up to a 180 days.

[9] To qualify for MOE Assignment the non-borrowing spouse must: (1) have been married to the borrower at the time the loan documents were signed up until the borrower's death (for couples who were unable to be legally married based on gender at the time the reverse mortgage loan was taken out, they must show that they were legally married by the time of the borrower's death); (2) have lived since the beginning of the loan, and continues to live, in the home as their principal residence; (3) provide their Social Security number or Tax Identification Number; (4) agree that they will no longer receive any payments from the reverse mortgage loan; (5) continue to meet all loan obligations, including paying property taxes and homeowners insurance. *See* Mortgagee Letter 2019-15.

[10] For HECM loans, HUD issued mortgagee letters 2015-11 and 2016-07 with guidance for establishing repayment plans in the event a servicer chooses to offer such plans. The servicer will set up a repayment plan with the borrower to repay advanced funds for defaulted real estate taxes and/or insurance. Use of repayment plans are at the servicer's discretion.

[11] For HECM loans that are due and payable, a borrower or an eligible non-borrowing spouse may sell for the lesser of the mortgage balance or five percent below the appraised value.

of the loan balance.

Applicable Law

The following Federal consumer financial laws and regulations apply to reverse mortgage servicing:

- The Real Estate Settlement Procedures Act (RESPA) and its implementing regulation, Regulation X, impose requirements for servicing transfers, responding to written information requests, resolution of notices of error, force-placed insurance, and escrow account maintenance.[12]
- The Truth in Lending Act (TILA) and its implementing regulation, Regulation Z, impose requirements on servicers regarding payment crediting, including imposition of late fee and delinquency charges, provision of payoff statements with respect to closed-end consumer credit transactions secured by a principal dwelling, and disclosures regarding rate changes for adjustable rate mortgages. For open-end mortgages, Regulation Z provisions related to error resolution apply to the extent that the servicer is a creditor. Additionally, TILA and Regulation Z generally impose requirements on loan owners for loan ownership transfers.[13]
- The Fair Debt Collection Practices Act (FDCPA) governs collection activities conducted by third-party collection agencies, as well as servicer collection activities if the servicer is a *debt collector* as defined by the FDCPA. Typically, a servicer who acquired the loan when it was already in default falls under that definition, but a servicer may not be covered if one of the exceptions to the FDCPA applies.
- The Gramm-Leach-Bliley Act (GLBA) requires servicers within the scope of coverage to provide privacy notices and limit information sharing in particular ways.
- The Equal Credit Opportunity Act (ECOA) and its implementing regulation, Regulation B, apply to those servicers that are creditors, such as those who participate in a credit decision. The statute makes it unlawful to discriminate against any borrower with respect to any aspect of a credit transaction:

    a. On the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract);

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[12] However, the general servicing requirements regarding policies and procedures; early intervention; continuity of contact; and loss mitigation procedures of Regulation X are generally inapplicable to servicers of reverse mortgage transactions. 12 CFR 1024.30(b)(2). Also, as noted, for a HECM loan, a set-aside itself is not an escrow account as defined in 12 CFR 1024.17(b).

[13] The periodic statement requirements of Regulation Z are inapplicable to servicers of reverse mortgage transactions. 12 CFR 1026.41(e)(1). However, under HUD regulations, the "mortgagee shall provide to the borrower a monthly statement regarding the activity of the mortgage for each month, as well as for the calendar year." The statement must summarize the total principal amount paid to the borrower during that calendar year, the mortgage insurance premiums charged to the borrower and paid to the FHA, the total amount of deferred interest added to the outstanding loan balance, the total outstanding loan balance, the current principal limit, and an accounting of all payments for property charges. 24 CFR 206.203(a).

b. Because all or part of the applicant's income derives from any public assistance program; or

c. Because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.[14]

To carry out the objectives set forth in the **Examination Objectives** section, the examination process also will include assessing other risks to consumers generally governed by the Dodd-Frank Act. These risks may include potentially unfair, deceptive, or abusive acts or practices (UDAAPs) with respect to servicers' interactions with consumers.[15] Collecting information about risks to consumers, whether or not there are specific legal guidelines addressing such risks, can help inform the Bureau's policymaking. The standards the CFPB will use in assessing UDAAPs are:

- An act or practice is unfair when:

    1) It causes or is likely to cause substantial injury to consumers;
    2) The injury is not reasonably avoidable by consumers; and
    3) The injury is not outweighed by countervailing benefits to consumers or to competition.

- A representation, omission, act, or practice is deceptive when:

    1) The representation, omission, act, or practice misleads or is likely to mislead the consumer;
    2) The consumer's interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and
    3) The misleading representation, omission, act, or practice is material.

- An abusive act or practice:

    1) Materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service or
    2) Takes unreasonable advantage of –

[14] The Consumer Credit Protection Act (the Act), 15 USC 1601 et seq., is the collection of federal statutes that protects consumers when applying for or receiving credit. The Act includes statutes that have dispute rights for consumers, such as the Fair Credit Reporting Act (FCRA). The Equal Credit Opportunity Act (ECOA) prohibits discriminating against an applicant who has exercised a dispute right pursuant to one of the statutes outlined in the Act.

[15] Dodd-Frank Act, Sec. 1036, PL 111-203 (July 21, 2010).

- A lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;
- The inability of the consumer to protect its interests in selecting or using a consumer financial product or service; or
- The reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

Please refer to the examination procedures regarding UDAAPs for more information about the legal standards and the CFPB's approach to examining for UDAAPs.

The particular facts in a case are crucial to a determination of unfair, deceptive, or abusive acts or practices. As set out in the **Examination Objectives** section, examiners should consult with Headquarters to determine whether the applicable legal standards have been met before concluding a violation of any Federal consumer financial law could be cited, including a UDAAP violation.

Reverse Mortgage Servicing Examination Procedures

Compliance Management System

1. Review the entity's compliance management system using the Compliance Management Review section of the CFPB examination procedures.

[Click&type]

Service Provider Oversight

2. Reverse mortgage servicers may be responsible for the activities of service providers. Examiners should ensure that such entities appropriately manage their relationships with service providers. Examiners should evaluate policies, procedures, complaints, and copies of any agreements between entities and service providers acting on behalf of the entity for purposes of assessing risks to consumers.

[Click&type]

Module 1 – Servicing Transfers, Loan Ownership Transfers, and Escrow Disclosures

Servicing Transfers

Examiners should engage in several steps to assess compliance with law in connection with servicing transfers and loan ownership transfers. If a servicer maintains escrow accounts on behalf of the borrower, examiners should review compliance with requirements for escrow accounts.[16] First, examiners should review a sample of servicing records, from the servicer's primary computer system, for loans transferred within the previous year. Examiners also may need to review copies of the electronic and paper documents transferred from the prior servicer. Additionally, they should review relevant records outside the servicer's primary computer system, such as copies of the RESPA disclosures, and evidence of delivery. If consumer complaints or document review indicate potential violations in these areas, examiners also may conduct interviews of consumers from the sample and ask questions relevant to each topic area below.

RESPA

1. Assess compliance with RESPA provisions regarding Mortgage Servicing Transfer Disclosures.[17] Please refer to the examination procedures for servicing transfers regarding RESPA, 12 CFR 1024.33, for more information.[18]

[Click&type]

[16] Under Regulation X, 12 CFR 1024.17, an escrow account means "any account that a servicer establishes or controls on behalf of a borrower to pay taxes, insurance premiums (including flood insurance), or other charges with respect to a federally related mortgage loan, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay. The definition encompasses any account established for this purpose, including a 'trust account', 'reserve account', 'impound account', or other term in different localities. An 'escrow account' includes any arrangement where the servicer adds a portion of the borrower's payments to principal and subsequently deducts from principal the disbursements for escrow account items. For purposes of [12 CFR 1024.17], the term 'escrow account' excludes any account that is under the borrower's total control." For a HECM loan, a set-aside itself is not an escrow account.

[17] For reverse mortgage loans, the effective date of transfer is the transfer date agreed upon by the transferee servicer and the transferor servicer.

[18] Note that under 12 CFR 1024.33(a), if a person who applies for a reverse mortgage transaction is denied credit within three days (excluding legal holidays, Saturdays, and Sundays) after applying, a servicing disclosure statement is not required to be delivered.

FDCPA

2. Assess the applicability of FDCPA and, if applicable, compliance with FDCPA, Right to Validation Notice for Certain Consumers. Please refer to the examination procedures regarding FDCPA, 15 USC 1692g(a), for more information.

    [Click&type]

Other Risks to Consumers

3. Determine whether the servicer accurately represents balances or amounts owed after transfer of account servicing.

    [Click&type]

4. Determine whether a servicer who receives servicing transfers complies with the terms of loss mitigation agreements entered into by the borrower and the prior servicer.

    [Click&type]

5. Determine whether the servicer who receives servicing accurately represents remaining loan proceeds and terms of the reverse mortgage agreement.

    [Click&type]

Ownership Transfers

Regulation Z

Examiners should determine whether the servicer is required to transmit the loan ownership transfer notice. The institution would have this obligation if (a) it 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 (b) acquires more than one mortgage loan in any twelve-month period, according to 12 CFR 1026.39(a)(1). For purposes of this requirement, a *mortgage loan* is either an open-end consumer credit transaction secured by the principal dwelling of the consumer, or a closed-end consumer credit transaction secured by a dwelling or real property, according to 1026.39(a)(2).[19]

[19] A servicer of a reverse mortgage loan is not treated as an owner of the obligation for purposes of 12 CFR 1026.39 if the servicer holds title to the loans, or title is assigned to the servicer, solely for the administrative convenience of the servicer in servicing the obligation. Contractually, the loan owner may have delegated the responsibility to send the notice to the servicer. Although the loan

To assess whether the servicer is complying with obligations under Regulation Z to notify consumers of changes in the loan ownership, examiners should sample from the list of loans in which the ***loan's owner*** changed within the previous year. For the loans in the sample, examiners should review copies of consumer disclosures regarding loan ownership and evidence of delivery.

6. Assess compliance with Regulation Z, Notice of Ownership Transfer Provision. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.39, for more information.

   [Click&type]

Escrow Transfers

RESPA

To assess whether the servicer is complying with obligations under Regulation X to notify consumers of changes in the escrow account requirements resulting from a transfer of servicing, examiners should sample from the list of loans transferred within the previous year that included escrow accounts. For the loans in the sample, examiners should review copies of consumer disclosures regarding escrow accounts and evidence of delivery.

7. If the servicer maintains escrow accounts, assess compliance with RESPA, Escrow Accounts, Transfer of Servicing Provisions. Please refer to the examination procedures regarding RESPA, 12 CFR 1024.17, for more information.[20]

   [Click&type]

owner cannot delegate its obligation under law, examiners should assess whether the servicer is fulfilling its commitment, if applicable.

[20] For a HECM loan, a set-aside itself is not an escrow account.

Module 2 – Account Maintenance, Payments, and Disclosures

Unlike a traditional mortgage, borrowers do not make periodic payments on reverse mortgages. Typically, servicers make payments to borrowers and calculate interest on the growing loan balance. Some borrowers, however, may: 1) make payments to offset the interest that accrues on the loan monthly or to reduce the principal balance; 2) make payments to pay advances made by the lender to pay taxes and insurance; or 3) make a full payment to pay off the loan. To assess payment posting and fee practices, examiners should review a sample of servicing records. Examiners should begin by reviewing a sample of records from the servicer's primary record system; if potential problems are found, examiners should review copies of relevant records outside the primary system, such as copies of consumer payment records, and copies of bills from vendors documenting any services related to the consumer's loan account. If consumer complaints or document review indicates potential violations in these areas, examiners also may conduct interviews of consumers from the sample and ask questions relevant to each topic area below.

Fees and Charges

1. Assess policies, procedures, and practices for assessing fees and charges, such as attorney's fees, property inspection fees, occupancy inspection fees, appraisal fees, and other charges, including whether the servicer ensures that fees are only assessed when the activity or service actually takes place. Document the timing and frequency of fees and determine whether the servicer has established reasonable intervals for repeat services.

   [Click&type]

2. Determine whether the servicer communicates the fees and charges to the borrower, and if so, determine whether the communication provides clear and conspicuous disclosure of fees and charges.

   [Click&type]

Payment Processing

Regulation Z

3. Assess compliance with Regulation Z, Payment Posting Provisions for closed-end mortgages secured by a consumer's principal dwelling and open-end credit. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.36(c)(1) and 1026.10, for more information.

   [Click&type]

Other Risks to Consumers

4. To the extent that the servicer markets optional products, review marketing materials, including telemarketing scripts, direct mail, web-based, or other media, and determine whether the servicer discloses each optional product's costs and terms clearly and prominently. In reviewing such disclosures, assess clarity and readability with enhanced scrutiny. Fine print and oral disclosures add additional barriers to consumer comprehension. If consumer complaints or document review indicates potential risks to consumer in these areas or the servicer engages in telemarketing, monitor call center activity and statements of representatives marketing the products. If the servicer engages in web-based marketing, monitor Internet communications related to the marketing.

   [Click&type]

5. Determine whether the servicer added on optional products or services without obtaining explicit authorization from the consumer. If the servicer obtains written authorization, review records of consumers who received additional products or services to ensure that the lender has provided and retained written authorization.

   [Click&type]

6. Assess policies, procedures and practices for determining whether the consumer is current on payment of taxes and insurance; and whether the servicer correctly represents amounts owed for taxes and insurance.

   [Click&type]

Other Reverse Mortgage Disclosures

7. Review the servicer's policies, procedures, and systems to assess the adequacy of whether the servicer furnishes applicable disclosures when required by Regulation Z. Examiners should review a sample of payoff statements.

   [Click&type]

Payoff Statements

8. Determine whether the servicer provided consumers, or verifiable persons acting on behalf of consumers, an accurate payoff statement upon request within a reasonable amount of time and in no case more than seven business days after receiving the request. Please refer to the examination procedures regarding TILA, 12 CFR 1026.36(c)(3), for more information.

   [Click&type]

Module 3 – Consumer Inquiries, Complaints, and Error Resolution Procedures

Examiners should review consumer complaints specific to reverse mortgages and may want to call specific complaining consumers to interview them regarding their experiences. Examiners should listen to live calls and taped calls to assess the quality and training of call center personnel. Examiners should determine whether complaints were resolved adequately, and whether they were resolved in a timely manner.

1. Determine whether the servicer has an adequate process to identify and escalate requests for information, notices of error, or complaints that may involve regulatory compliance issues.

[Click&type]

RESPA Error Resolution Procedures

2. Assess compliance with Regulation X, Notice of Error Provision. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.35, for more information.

[Click&type]

RESPA Requests for Information

3. Assess compliance with Regulation X, Written Information Request Provision. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.36, for more information.

[Click&type]

Other Risks to Consumers

4. Where the borrower is facing imminent foreclosure, determine whether the servicer has an adequate process for expedited evaluation and resolution of requests for information, notices of error, or complaints that may involve regulatory compliance issues. Such an adequate process could include a dedicated phone line that connects directly to a live representative or another path for borrowers or borrower advocates to resolve identified regulatory compliance issues in advance of an imminent foreclosure.

[Click&type]

Module 4 – Maintenance of Escrow Accounts or Set-Asides and Insurance Products

Maintenance of Escrow Accounts or Set-Asides

Under the HECM program, some borrowers with limited income may be required to have a set-aside for payment of taxes and insurance.[21] Depending on the set-aside, the servicer may pay the property tax and homeowner's insurance bills when they become due from the borrower's funds available, or the borrower may receive payments from the servicer to pay the tax and insurance bills when they become due. If the borrower has insufficient funds available to satisfy these unpaid property charges, the borrower is responsible for the payment of property taxes and homeowner's insurance and must provide evidence of payment to the servicer. If the borrower fails to pay the property taxes and homeowner's insurance in a timely manner, the servicer may advance its own funds on behalf of the borrower, and then set up a plan with the borrower for repayment. If the borrower is unable or unwilling to make payment, the servicer may consider the reverse mortgage to be in default. Proprietary reverse mortgages may also offer or require an escrow account or set-aside.

If the file review indicates potential risks to consumers, examiners also should conduct interviews of a sample of consumers and staff, if appropriate, to assess consumer experiences with set-aside accounts and any force-placed insurance products.

Disclosures

1. If the servicer maintains escrow accounts, assess compliance with Regulation X, Escrow Disclosures. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.17, for more information.

[Click&type]

[21] For a HECM loan, a set-aside itself is not an escrow account. Under Regulation X, 12 CFR 1024.17, an escrow account means "any account that a servicer establishes or controls on behalf of a borrower to pay taxes, insurance premiums (including flood insurance), or other charges with respect to a federally related mortgage loan, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay. The definition encompasses any account established for this purpose, including a 'trust account,' 'reserve account,' 'impound account,' or other term in different localities. An 'escrow account' includes any arrangement where the servicer adds a portion of the borrower's payments to principal and subsequently deducts from principal the disbursements for escrow account items. For purposes of [12 CFR 1024.17], the term 'escrow account' excludes any account that is under the borrower's total control."

Disbursements

2. If the servicer maintains escrow accounts, assess whether the servicer makes payments in a timely manner. Refer to the examination procedures regarding Regulation X, 12 CFR 1024.34, for more information.

[Click&type]

Force-Placed Insurance

3. Assess compliance with Regulation X, Force-Placed Insurance Provision. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.37, for more information.

[Click&type]

Other Risks to Consumers

4. Determine whether information provided to borrowers about set-aside accounts is clear, prominent, and readily understandable.

[Click&type]

5. Determine whether the borrower incurred penalties or unnecessary charges in the event the servicer failed to make disbursements of set-aside funds for insurance, taxes, and other charges with respect to the property in a timely manner.

[Click&type]

6. Determine whether the servicer advanced funds to pay for property taxes in any situation where the borrower was not behind on these payments either because the borrower already paid these expenses or had established with the taxing authority an installment payment plan.

[Click&type]

Module 5 – Information Sharing and Privacy

Privacy Notices

1. Assess compliance with Privacy of Consumer Financial Information Regulation that implements GLBA. Please refer to the GLBA examination procedures, 12 CFR 1016.4 and 1016.5, for more information.

[Click&type]

Information Sharing with Affiliates

2. Assess compliance with the FCRA Affiliate Marketing Rule. Please refer to the FCRA examination procedures, 12 CFR 1022.21, for more information.

[Click&type]

Module 6 – Events of Default and Death of Borrower

A reverse mortgage typically becomes due and payable because of the following reasons:

- The last borrower dies, and, when applicable, the non-borrowing spouse cannot continue to occupy the home under HUD's rules;
- The borrower and, where applicable, an eligible non-borrowing spouse or the co-borrowers, no longer occupy the property or fail to certify occupancy;
- The borrower and any co-borrower transfer ownership; or
- The borrower fails to fulfill the obligations of the reverse mortgage including paying property charges and keeping the home in good condition.

When a borrower dies, the reverse mortgage may become due and payable if the property is not the principal residence of at least one surviving borrower. However, for some reverse mortgages under the HECM program a non-borrowing spouse may be able to stay in the home depending when the loan was taken out and whether they qualify under HUD's rules. For loans with case numbers assigned on or after August 4, 2014, the servicer will determine if the non-borrowing spouse qualifies for a deferral of the due and payable status. If the spouse meets certain conditions set by HUD, the non-borrowing spouse will be able to stay in the home.[22] For loans with case numbers assigned before August 4, 2014, the servicer after the death of the borrower may either foreclose on the property[23] or may allow the non-borrowing spouse to stay in the home through a process called "Mortgagee Optional Election (MOE) Assignment."[24] When a loan becomes due and payable, a servicer may offer options to a borrower to help avoid foreclosure. These loss mitigation options may include short sale, deed-in-lieu of foreclosure; a repayment plan for advances made by the servicer for property taxes or homeowner's insurance; an at-risk extension, or a refinance into

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[22] To qualify for the deferral period the non-borrowing spouse must: (1) establish within 90 days of borrower's death their ownership interest to the property or a legal right to remain in the home for life; (2) have been married to the borrower at the time the loan documents were signed up until the borrower's death (for couples who were unable to be legally married based on gender at the time the reverse mortgage loan was made, they must show that they were legally married by the time of the borrower's death); (3) have been identified in the loan documents as a non-borrowing spouse; (4) have lived, and continues to live, in the home as their principal residence; and (5) continue to meet the loan requirements and make sure the loan does not become due and payable for any other reason.

[23] If the servicer decides to foreclose on the home or finds that the non-borrowing spouse does not qualify for MOE Assignment, they must begin foreclosure proceedings within six months of the borrower's death. If the non-borrowing spouse is actively trying to sell the property or satisfy the debt in some other way, they may request a delay with the foreclosure for up to a 180 days.

[24] To qualify for MOE Assignment the non-borrowing spouse must: (1) have been married to the borrower at the time the loan documents were signed up until the borrower's death (for couples who were unable to be legally married based on gender at the time the reverse mortgage loan was taken out, they must show that they were legally married by the time of the borrower's death); (2) have lived since the beginning of the loan, and continues to live, in the home as their principal residence; (3) provide their Social Security number or Tax Identification Number; (4) agree that they will no longer receive any payments from the reverse mortgage loan; (5) continue to meet all loan obligations, including paying property taxes and homeowners insurance. *See* Mortgagee Letter 2019-15.

another reverse mortgage.[25] Servicers must notify the borrower in writing that they have 30 days to respond to a Due and Payable Notice. All Due and Payable Notices must reference available loss mitigation options, if any, and inform the borrow that he/she may sell the property or execute a deed-in-lieu of foreclosure. Prior to initiating foreclosure, servicers must refer borrowers in default to a HUD-approved housing counseling agency.[26]

Examiners should obtain a sample of servicing records of consumers in default, including a sufficient number of loans in which the consumer has filed for bankruptcy, to assess collection and loss mitigation practices. Examiners should obtain collection call records and listen to a sample of collection calls. If consumer complaints or document review indicates potential violations in these areas, examiners also may conduct interviews of consumers from the sample and ask questions relevant to each topic area below.

The FDCPA defines a *debt collector* 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, with certain exceptions. The definition includes, for example, an institution that regularly collects debts for an unrelated institution.

The debt collector definition has an exception that frequently applies to reverse mortgage servicing: an institution is not a debt collector under the FDCPA when it collects debts that were ***not*** in default when they were obtained by the servicer.[27] Thus, a servicer that purchases the servicing rights for a portfolio of loans will typically be a debt collector only for loans that were in “default” at the time of the purchase.[28]

FDCPA

1. Determine if FDCPA covers collection activities of the servicer. If so, assess compliance with FDCPA. Please refer to the FDCPA examination procedures for more information.

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[25] For HECM loans, servicers are required to notify the borrower or the borrower’s successor that they can pay off the loan, sell the property in a short sale or execute a deed in lieu of foreclosure, regardless of the type of default. In the event of nonpayment of property charges (including non-payment of property taxes and homeowner’s insurance), the servicer must send a Property Charge Delinquency Letter as soon as the servicer receives notice of a missed payment. The letter must provide notice of any available loss mitigation options. The loss mitigation options offered by the servicer are discretionary and may include a repayment plan, at-risk extension, or a refinance if there remains enough equity in the home. *See* HUD Mortgagee Letter 2015-11.

[26] *See* HUD Mortgagee Letter 2015-11.

[27] 15 USC 1692a (6)(F)(iii).

[28] The Fair Debt Collection Practices Act (FDCPA) itself does not contain a definition of the term *default*. In determining whether a debt is in default, the following factors, among others, are generally considered: the creditor’s customary policies and practices; terms of the contract; determinations by the originator; and State law.

[Click&type]

2. Determine whether the servicer contacts borrowers in an appropriate manner:

   a. Employees and third-party contractors clearly indicate to consumers that they are calling about the collection of a debt.
   b. Employees and third-party contractors do not disclose the existence of a consumer's debt to the public without the consent of the consumer, except as permitted by law.
   c. The entity has policies on avoiding repeated telephone calls to consumers that annoy, abuse, or harass any person at the number called.

[Click&type]

Other Risks to Consumers

3. Determine whether the servicer's representatives make misrepresentations or use deceptive means to collect debts.

[Click&type]

ECOA

Disparate Treatment in Loss Mitigation

As discussed above, examiners should obtain a sample of servicing records of borrowers in default to assess loss mitigation activity. While conducting the review of the servicer's loss mitigation activities discussed above, examiners must be mindful of activities that may indicate disparate treatment of borrowers in violation of ECOA. These include discrimination on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to 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.

4. Determine whether the file documents indicate that the servicer made loss mitigation decisions based upon any protected status.

[Click&type]

5. Determine whether there were clear policies and procedures for making loss mitigation decisions or whether there was broad employee discretion, including in assessing fees. If employees have discretion, determine whether the procedures, controls, and monitoring that govern the exercise of discretion are adequate to mitigate the risk of disparate treatment.

[Click&type]

6. Determine whether there were adequate processes and controls for policy exceptions and adequate documentation of decisions.

[Click&type]

7. Review complaints of discrimination and litigation alleging discrimination.

[Click&type]

8. Review any internal fair lending audits or reports.

[Click&type]

9. Assess policies and procedures for considering various types of income of a loss mitigation applicant or the spouse of an applicant in the event of default.

[Click&type]

10. Assess policies and procedures for servicing loans held by borrowers with limited English proficiency (LEP borrowers). Among other things, assess whether the institution:

    a. Identifies borrowers that may require non-English language assistance;
    b. Provides an option for customer service calls in a language other than English;
    c. Has customer service personnel available to provide assistance in languages other than English and, if so:
        i. Whether they are dedicated service personnel; and
        ii. Whether they receive the same training, and have the same authority, as other customer service personnel; and
    d. Provides translations of English language documents to LEP borrowers.

[Click&type]

Disparate Impact in Loss Mitigation

An examination of whether a servicer's loss mitigation program results in adverse impact on a protected class will rely on procedures outlined in the CFPB's ECOA Examination Program Manual, including the ECOA Baseline Review Modules, and the Interagency Fair Lending Examination Procedures.

Examiners, in consultation with Headquarters, should:

11. Obtain information sufficient to determine whether the servicer provides loss mitigation workouts to consumers in compliance with ECOA and Regulation B. For example, this may involve an analysis of the distribution of protected class members in the pool of delinquent borrowers versus the distribution of protected class members receiving a range of loss mitigation outcomes, including a short sale; deed-in-lieu; a repayment plan of advances for taxes or insurance made by the servicer; or a refinance into another reverse mortgage.

    [Click&type]

12. Obtain information sufficient to determine whether the rate and timing of foreclosures are compliant with ECOA and Regulation B. For example, this may include analysis of the representation of protected classes in the group of seriously delinquent borrowers versus their representation among borrowers who lose their homes to foreclosure.

    [Click&type]

13. To complete a disparate impact analysis of a servicer's loss mitigation program and determine whether a facially neutral policy or practice that has an adverse effect on a protected class meets a legitimate business need that cannot reasonably be achieved by a less discriminatory alternative, refer to Section B of the CFPB's Fair Lending Examination Procedures and consult with Headquarters.

    [Click&type]

Other Risks to Consumers

Loss Mitigation Process

14. In cases where the servicer takes an application, determine whether information provided to borrowers about loss mitigation alternatives is clear, prominent, and readily understandable.

    [Click&type]

15. Determine whether the servicer provides adequate methods for borrowers to contact it for information about the loss mitigation process, and timely responds to those contacts.

    [Click&type]

16. Determine whether the servicer adequately documents its contacts with borrowers regarding loss mitigation. Appropriate documentation of oral contacts includes the dates of communications, names of contact person(s), and a summary of the conversation.

[Click&type]

17. Determine whether the servicer has procedures in place to ensure it collects and tracks all paperwork in an efficient and reliable manner.

[Click&type]

18. Determine whether the servicer is providing borrowers with timely information on the status of foreclosure alternatives.

[Click&type]

19. Determine if the servicer includes any waiver of legal rights in its foreclosure alternative agreements.

[Click&type]

20. Determine whether the servicer provides denial notifications of loss mitigation applications to borrowers timely and provides specific reasons for denial.

[Click&type]

Payoff

21. Determine whether the servicer accurately calculates the payoff amount when the loan becomes due and payable, or when the borrower decides to pay the loan in full.

[Click&type]

22. Determine whether the servicer provides the payoff amount in a reasonable amount of time[29] when the loan becomes due and payable, or when the borrower decides to pay the loan in full.

[Click&type]

Sale of Property

23. In the event the reverse mortgage becomes due and payable, triggering sale of the property, ensure that the servicer provides information to the borrower about sale options in a clear, timely manner.

[29] Section 12 CFR 1236(c)(3) states that a reasonable amount of time may be longer than seven days for reverse mortgages.

[Click&type]

24. Determine whether the servicer has an appraisal completed and conveyed to the borrower or borrower's heirs in a timely manner.

[Click&type]

Deeds-In-Lieu of Foreclosures

25. If the servicer offers deeds-in-lieu of foreclosures, determine whether it provides clear, timely information about requirements and cost to the borrower.

[Click&type]

Bankruptcy

26. Determine whether the servicer properly identifies accounts as being in active bankruptcy to ensure that the servicer provides protection from foreclosure or collections to which the borrower is entitled under federal bankruptcy law.

[Click&type]

27. As an event making the reverse mortgage due and payable, for borrowers who have filed for bankruptcy, determine whether the servicer notifies the debtor of the total amount due, including principal, interest, fees, expenses, or other charges, as of the date the debtor filed for bankruptcy, and whether the servicer provides the debtor with an escrow account statement, if applicable, prepared as of the date the debtor filed for bankruptcy.

[Click&type]

Death of Borrower

28. Determine if the servicer responds timely to communications from a non-borrowing spouse and/or successor of a deceased borrower upon notification of the death of a borrower.[30]

[Click&type]

[30] A reverse mortgage must be paid in full once it has been called due and payable because of the borrower's death. If there is not a co-borrower or eligible non-borrowing spouse, the borrower's successor must work with the servicer to ensure the reverse mortgage is paid in full in a timely manner. If arrangements to pay the reverse mortgage are not made with the loan servicer, the first notice or filing for foreclosure may be made between 30 days and six months from when the loan was called due and payable.

29. Determine whether the servicer provides accurate information, including payoff information, to successors of deceased borrowers once the mortgage reaches due and payable status.

[Click&type]

30. Determine whether the servicer informs borrowers' successors in HECM loans of their right pay off the loan balance for 95 percent of the property value.

[Click&type]

31. Assess the servicer's compliance management system as it relates to appraisals. For example, in the event the borrower dies, determine whether the servicer provides copies of appraisals and other written valuations to the borrower's successor, developed to determine property value in relation to loan value to facilitate sale of the property.[31]

[Click&type]

32. Determine whether the servicer referred a reverse mortgage to foreclosure improperly after the death of a borrower, such as when an eligible non-borrowing spouse occupies the home.[32]

[Click&type]

[31] On a HECM loan, if the mortgage is due and payable because of the last surviving borrower's death, the borrower's estate and/or successors have the ability to "sell" the property for at least the lesser of the outstanding balance or 95 percent of the appraised value.

[32] For HECM loans, reference mortgagee letter 2015-10 for FHA's specific timeframes for initiating foreclosure.

Module 7 – Foreclosures

A default on a reverse mortgage, that may trigger foreclosure, typically occurs because of the following reasons:

- The last borrower dies, and, when applicable, the non-borrowing spouse cannot continue to occupy the home under HUD's rules
- The borrower and, where applicable, any co-borrower and eligible non-borrowing spouse, no longer occupy the property or fail to certify occupancy;
- The borrower and any co-borrower transfer ownership;
- The borrower fails to fulfill the obligations of the reverse mortgage including paying property charges and keeping the home in good condition.

Examiners should obtain a sample of servicing records of borrowers where the servicer has made the first notice or filing for foreclosure. For the loans in the sample, examiners should focus on whether the borrower is in fact in default and whether all amounts due are correct. Examiners should review amounts set forth in foreclosure affidavits, compare them to amounts recorded in the servicer's primary computer system, and compare them to all statements made in communications from the borrower, including consumer complaints. In appropriate cases, examiners should compare the filing dates reflected in the servicer's records to the dates identified in public records. Examiners also should review all complaints of borrowers in instances where the servicer made the first notice or filing for foreclosure in the review period. In reviewing foreclosure practices, examiners should focus on the following areas:

Other Risks to Consumers

1. Evaluate the servicer's process for determining whether to refer a loan to foreclosure. Determine whether the servicer has reviewed adequate information to confirm the borrower's default, including the borrower's loan history; notes in the servicing system regarding communications with borrowers, non-borrowing spouses, and successors of borrowers; whether the borrower or non-borrowing spouse is entitled to protection from foreclosure under applicable law; and any complaints lodged with the servicer.

   [Click&type]

2. Determine whether the servicer has referred to foreclosure, or foreclosed upon, any borrower who is not in default under the terms of the obligation, including foreclosures initiated based on occupancy requirements.

   [Click&type]

3. Determine whether the factual assertions made in foreclosure documents filed by or on behalf of the financial institution are accurate and adequately supported by file documentation. Examiners should focus on whether the borrower is in default and statements regarding amounts owed.

[Click&type]

Module 8 – Examiner Conclusions and Wrap-Up

To conclude this supervisory activity, examiners must complete all steps under this section, regardless of the entity's risk profile.

1. Summarize the findings, supervisory concerns, and regulatory violations.

   [Click&type]

2. For the violations noted, determine the root cause by identifying weaknesses in internal controls, audit and compliance reviews, training, management oversight, or other factors. Determine whether each violation is a pattern or practice, or an isolated situation that occurred despite appropriate controls.

   [Click&type]

3. Identify action needed to correct violations and weaknesses in the institution's compliance management system, as appropriate.

   [Click&type]

4. Discuss findings with the institution's management and, if necessary, obtain a commitment for corrective action

   [Click&type]

5. Record violations according to Bureau policy in the Report of Examination/Supervisory Letter and CFPB's electronic database system to facilitate analysis and reporting.

   [Click&type]

6. If the examiner believes enforcement action may be appropriate, contact appropriate agency personnel for guidance.

   [Click&type]

7. Prepare a memorandum for inclusion in the work papers and CFPB's official system of record that outlines planning and strategy considerations for the next examination and, if appropriate, interim follow-up.

   [Click&type]

Short-Term, Small-Dollar Lending

Commonly Known as Payday Lending

Exam Date:	[Click&type]
Exam ID No.:	[Click&type]
Prepared By:	[Click&type]
Reviewer:	[Click&type]
Docket #:	[Click&type]
Entity Name:	[Click&type]
Event #:	[Click&type]

These examination procedures apply to the short-term, small-dollar credit market, commonly known as payday lending. The procedures are comprised of modules covering a payday loan's lifecycle, and each module identifies relevant matters for review. Prior to using the procedures, however, examiners should complete a risk assessment and examination scope memorandum. Depending on the scope, and in conjunction with the compliance management system and consumer complaint response review procedures, each examination will cover one or more of the following modules:

1. Marketing
2. Application and Origination
3. Payment Processing and Sustained Use
4. Collections, Accounts in Default, and Consumer Reporting
5. Service Provider Relationships

Examination Objectives

In consultation with headquarters:

1. To assess the quality of the regulated entity's compliance risk management systems, including its internal controls and policies, for its payday lending business.
2. To identify acts or practices that materially increase the risk of violations of federal consumer financial laws in connection with payday lending and other risks to consumers.
3. To gather facts that help to determine whether a regulated entity engages in acts or practices that violate the requirements of federal consumer financial laws.
4. To determine if a violation of a federal consumer financial law has occurred and whether supervisory or enforcement actions are appropriate.

Background

Lenders typically market payday loans to consumers as a means of bridging a cash-flow shortage between pay or benefits checks. Payday loans generally have three features: the loans are small-dollar; borrowers must repay loan proceeds quickly (i.e., they are short-term); and they require that a borrower give lenders access to repayment through a claim on the borrower's deposit account.

Other loan features vary. Although often structured to pay off in one balloon payment, installment payments and interest-only payments are not unusual. Loans may be open-end or closed-end, and although loans are commonly issued for terms under one month, others may have terms for as long as six months. Loans may be disbursed in cash, on a prepaid card, through the Automated Clearing House ("ACH") network, or by check.

Most loans are for several hundred dollars and have finance charges of $15 to $20 per each $100 borrowed. For the two-week term typical of a payday loan, these fees equate to an Annual Percentage Rate ("APR") ranging from 391 percent to 521 percent. Loan amounts and finance charges can vary due to factors including differences in state law.

Although lenders sometimes access third-party data about their customers, lenders generally do not underwrite their applicants using traditional credit criteria. Because consumers provide lenders with access to their bank accounts in advance — through, for example, a personal check in the amount of the outstanding balance (i.e., loan amount and finance charge) owed — consumers typically need only a regular source of income and a checking account in good standing to qualify.

If the consumer does not repay the loan in full by the due date, the loan agreement typically permits the lender to deposit the consumer's check to obtain payment. In the case of a web-originated loan, the loan agreement typically preauthorizes repayment through an electronic debit transaction (such as an ACH transaction). Store-front lenders may use ACH transactions as well.

Some banks market a payday loan variant they call an "advance" — a direct deposit advance, an early access advance, a ready advance, or a checking account advance[1]. A typical credit line is $500 and costs $10 per $100 borrowed. To qualify for an advance, a consumer must have a deposit account with the bank or credit union offering the advance and a recurring direct deposit of funds into that deposit account. The loan and accompanying fee generally must be repaid through the consumer's next direct deposit of funds or within 35 days of the extension of credit.

1 For clarity, this product is neither an overdraft line of credit nor an overdraft service. An overdraft service means a service under which a financial institution assesses a fee or charge on a consumer's account held by the institution for paying a transaction (including a check or other item) when the consumer has insufficient or unavailable funds in the account.

Once repaid, the line is replenished, and consumers are able to obtain additional funds without further application.

Regardless of the channel used by lenders to conduct business — whether through a lead generator, online, through a brick and mortar location, by mail, or by telephone — the following federal consumer financial laws and regulations apply to payday loans:

- The Truth in Lending Act (TILA) and its implementing regulation, Regulation Z, require lenders to disclose loan terms and Annual Percentage Rates. Regulation Z also requires lenders to provide advertising disclosures, credit payments properly, process credit balances in accordance with its requirements, and provide periodic disclosures. Note that the requirements for open-end and closed-end loans differ.

- The Electronic Fund Transfer Act (EFTA) and its implementing regulation, Regulation E, protect consumers engaging in electronic fund transfers. Among other things, Regulation E prohibits lenders from requiring, as a condition of loan approval, a customer's authorization for loan repayment through a recurring electronic funds transfer (EFT), except in limited circumstances.

- The Fair Debt Collection Practices Act (FDCPA) governs collection activities conducted by: (1) third-party collection agencies collecting on behalf of lenders; (2) lenders collecting their own debt using an assumed name, to suggest that a third person is collecting or attempting to collect such debt; and (3) any collection agency that acquires the debt if the collector acquired the debt when it already was in default.

- The Fair Credit Reporting Act (FCRA) and its implementing regulations require that furnishers of information to consumer reporting agencies ensure the accuracy of data placed in the consumer reporting system. Additionally, the FCRA prohibits the use of consumer reports for impermissible purposes, and it requires users of consumer reports to provide certain disclosures to consumers. The FCRA also limits certain information sharing between affiliated companies. Examiners should note that the FCRA's implementing regulations may differ for depository and non-depository institutions.

- The Gramm-Leach-Bliley Act (GLBA) and its implementing regulations prevent financial institutions from impermissibly sharing a consumer's nonpublic personal information with third parties, and it requires that financial institutions disclose their privacy policies. Examiners should note that the GLBA's implementing regulations may differ for depository and non-depository institutions.

- The Equal Credit Opportunity Act (ECOA) and its implementing regulation, Regulation B, set forth requirements for accepting applications and providing notice of any adverse action, and they prohibit discrimination against any borrower with respect to any aspect of a credit transaction:

- On the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to 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.

To carry out the objectives set forth in the Examination Objectives section, examiners also should assess other consumer risks, including potentially unfair, deceptive, or abusive acts or practices (UDAAPs) with respect to lenders' interactions with consumers. The CFPB is guided by the following standards when assessing UDAAPs are:

- A representation, omission, act, or practice is deceptive when:
  (1) the representation, omission, act, or practice misleads or is likely to mislead the consumer;
  (2) the consumer's interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and
  (3) the misleading representation, omission, act, or practice is material.
- An act or practice is unfair when:
  (1) it causes or is likely to cause substantial injury to consumers;
  (2) the injury is not reasonably avoidable by consumers; and
  (3) the injury is not outweighed by countervailing benefits to consumers or to competition.
- An abusive act or practice:
  (1) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or
  (2) takes unreasonable advantage of –
    - a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;
    - the inability of the consumer to protect its interests in selecting or using a consumer financial product or service; or
    - the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

Refer to the examination procedures regarding UDAAPs for more information about the legal standards and the CFPB's approach to examining for UDAAPs. The particular facts and circumstances in a case are crucial to the determination of UDAAPs. Examiners should consult with headquarters to determine whether the applicable legal standards have been met before a UDAAP violation is cited.

General Considerations

Completing the following examination modules will allow examiners to develop a thorough understanding of lenders' practices and operations. To complete the modules, examiners should obtain and review the following as applicable: organizational charts and process flowcharts; board minutes, annual reports, or the equivalent to the extent available; relevant management reporting, including aggregate loan data to the extent available; policies and procedures; price structure; loan applications, loan account documentation, telephone recordings, notes, and disclosures; operating checklists, worksheets, and review documents; relevant computer program and system details; historical examination information; audit and compliance reports; training programs and materials; service provider contracts; advertisements, marketing research, and website information; and complaints.

Depending on the scope of the examination, examiners should perform transaction testing using approved sampling procedures, which may require use of a judgmental or statistical sample. Examiners should also conduct interviews with management and staff to determine whether they understand and consistently follow the policies, procedures, and regulatory requirements applicable to payday lending; manage change appropriately; and implement effective controls. In consultation with headquarters, examiners may also consider using customer surveys.

For nonbank payday lenders, examiners should consider expanding the scope of payday examinations to cover any other consumer financial products or services offered by the lenders that warrant supervisory attention. Such items would include products and services commonly offered by nonbank payday lenders, such as title, installment or other loans, as well as money services, including remittance transfers, bill pay, prepaid cards, money order sales, and check cashing. Where an examination is expanded to cover these areas, examiners should refer to the relevant sections of this manual for guidance and consult the Office of Supervision Policy.

Module 1 – Marketing

Examiners should develop a detailed understanding of the lender's marketing program to determine whether its marketing policies, procedures, and practices are consistent with the requirements of applicable federal consumer financial laws and regulations.

- Identify a lender's marketing targets and its methods for reaching those targets.
- Evaluate the lender's advertising materials and disclosures across all media, including: print, television, radio, telephone solicitation scripts, and electronic media including the Internet, email, and text messages. The evaluation should include a review of advertising materials provided in languages other than English, the media used to distribute those materials, and a comparison to English language materials and media.
- Identify the practices and product features that are rewarded by any incentive compensation programs.
- Determine whether a lender employs or acts as a lead generator and the extent of any relationships that the lender has with affiliated or other third parties (e.g., as a broker or agent) to advertise, offer, or provide loans or other products and services.

Advertising Requirements

Truth in Lending Act/Regulation Z

1. Determine whether the loans being offered are closed end or open end.

[Click&type]

2. Determine whether the lender's advertisements are consistent with the requirements of Regulation Z. Examiners should conduct the advertising review by following the open-end and closed-end advertising procedures in the TILA examination procedures, as applicable, focusing carefully on whether advertisements contain triggering terms and include required statements, information, and disclosures.

[Click&type]

Equal Credit Opportunity Act/Regulation B

1. Assess how the lender reaches its potential customers through its statements, advertising, or other marketing representations. Examiners should review:

   a. Marketing and advertising materials, including signs or other displays and prescreened solicitations;

   b. The criteria used to determine the potential recipients of the particular solicitation;

c. Any scripts and interview forms used for sales and taking applications; and

d. Product information used in discussing available types of credit with applicants.

[Click&type]

Other Risks to Consumers

1. Assess whether the lender clearly and prominently discloses the material terms of the payday loan.

[Click&type]

2. Determine whether the promotional materials clearly and prominently disclose any material limitations, conditions, or restrictions on the offer. This is of particular importance when the lender uses terms such as “rewards,” “discounts,” or “free.”

[Click&type]

3. Assess (i) whether the lender clearly and prominently discloses the costs and any other material terms for any additional products marketed to the consumer (e.g., pre-paid debit card or credit insurance) in connection with the payday loan; and, (ii) whether the lender clearly and prominently discloses that the additional products are or are not required to obtain credit and are or are not considered in decisions to grant credit. If the cross-marketed product is mandatory, under the TILA, it may need to be disclosed in the APR. Refer to the TILA examination procedures for additional detail.

[Click&type]

4. Determine whether the lender reviews or monitors recorded telephone calls, transcripts of online communication, and websites to ensure that advertising and solicitations comply with applicable federal consumer financial laws.

[Click&type]

Compensation Practices

Evaluate compensation practices and programs. If the lender offers an incentive compensation program, identify the products, product features, services, referrals, and sales goals or behaviors that qualify for rewards under the program. Evaluate the quality and impact of controls on the compensation program. Finally, in consultation with headquarters, assess whether the program incentivizes behaviors or practices that result in heightened risk to consumers.

Lead Generation

Lenders both employ and are employed as lead generators, which are businesses that identify potential borrowers for lenders. A lead generator typically charges lenders for its services and, in some cases, may charge borrowers as well. Some lenders operate as lead generators when they are unable to originate a particular loan — when, for example, they are not licensed to originate loans in a particular state. In these instances, the lead generator will contract with another lender that is able to make the loan.

When examining lenders, examiners should:

1. Identify whether the lender is, or uses, a lead generator and, as applicable, review the advertising materials of:

    a. Lead generators or brokers employed by the lender.

    b. The lender, in its capacity of lead generator or broker.

[Click&type]

2. Determine whether the nature of the relationship between the parties is clearly disclosed, including whether the lead generator or broker represents to consumers that it is working on behalf of third-party organizations and whether the new lender is identified when referred to another party.

[Click&type]

3. Determine whether the statements and representations made by a company on another's behalf are accurate and non-deceptive.

[Click&type]

4. Determine whether all fees for referred services are appropriately disclosed to consumers.

[Click&type]

To the extent set forth in the scoping memorandum, examiners should further evaluate any service provider relationships under the provisions of the service provider management, privacy, and information sharing sections in the Service Provider Relationships Module.

Module 2 – Application and Origination

When lenders take applications, evaluate applicants, and originate payday loans, they are subject to the disclosure and other legal requirements discussed below. Examiners should identify acts, practices, or materials that indicate potential violations of federal consumer financial laws and regulations.

Equal Credit Opportunity Act/Regulation B

Examiners should use the CFPB's ECOA examination procedures to assess the lender's compliance with requirements for taking applications, evaluating customer qualifications, providing disclosures (i.e., adverse action), and extending and denying credit.

Fair Credit Reporting Act

As noted previously, lenders typically do not access traditional credit reporting agency data. However, alternative third-party data providers may be consumer reporting agencies, as defined by the FCRA. Lenders that obtain information from a consumer reporting agency to determine a consumer's credit worthiness must comply with the requirements of FCRA. When a lender does not offer a loan or provides a loan on materially less favorable terms to a consumer (e.g., charging a higher interest rate) because of the consumer report information it obtains, the lender must provide appropriate adverse action or risk-based pricing notices to the consumer. Examiners should refer to the CFPB's FCRA examination procedures for additional information.

Truth In Lending Act/Regulation Z

1. Determine whether the loans being offered are closed-end or open-end.

[Click&type]

2. Determine whether the appropriate disclosures required for the loan type (i.e., disclosures for closed-end credit vs. open-end credit) are being provided by the lender. Examiners should use the TILA/Regulation Z examination procedures to evaluate the lender's compliance with the open- and closed-end disclosure requirements of Regulation Z, as may be applicable depending on the products offered by the lender.

[Click&type]

3. Examine the loan product to verify that the product being offered conforms to the lender's representations or to determine if the lender has mischaracterized or misclassified its product and therefore is not complying with the proper set of requirements (e.g., the lender characterizes its loan product as closed-end where the product in fact is open-end, and the lender should be complying with TILA/Regulation Z's requirements for open-end credit).

[Click&type]

4. For refinanced loans, determine whether the appropriate disclosures are being provided by the lender.

[Click&type]

Electronic Fund Transfer Act/Regulation E

Depending on how the lender transfers funds to and from consumers, the lender may be required to comply with the requirements of the EFTA. If the lender has established electronic fund transfers from the borrower's account, examiners should use the CFPB's EFTA examination procedures to review the extent to which the lender is complying with the EFTA.

1. Determine if the agreement contemplates or involves initiating an electronic fund transfer subject to EFTA/Regulation E ("EFT"). Consider if the lender is using methods subject to EFTA or using remotely-created checks or other non-EFT methods, which are not subject to EFTA.

[Click&type]

2. Determine whether the EFT is a single or a recurring EFT that is a preauthorized electronic transfer. To qualify as a preauthorized electronic fund transfer, the transfer is one that is authorized in advance to recur at substantially regular intervals.

[Click&type]

3. If the lender initiates preauthorized EFTs, assess the lender's or financial institution's compliance with the applicable advance authorization, disclosures, and other requirements relating to preauthorized electronic fund transfers under the EFTA and Regulation E.

   a. Does the lender obtain proper written authorization for preauthorized electronic fund transfers from a consumer's account and provide a copy of the authorization to the consumer?

   b. Does the lender require compulsory use of EFTs and condition the extension of credit to consumers on the repayment of loans by preauthorized electronic debits?

      i. Examine the agreement for terms requiring that the borrower agree to electronic payment. Such terms may violate the EFTA's prohibition on requiring repayment by means of preauthorized electronic fund transfers as a condition of the extension of credit, except as authorized.

      ii. Determine if the lender offers the borrower an option to pay using a non-EFT method of payment.

   c. Will the preauthorized transfers vary in amount? If so, does the payee or financial institution, prior to each transfer, provide reasonable advance notice to the consumer, in accordance with applicable regulations, of the amount to be transferred and the scheduled date of transfer?

[Click&type]

4. If the loan agreement provides for a single or one-time EFT, assess whether the lender obtained authorization from the consumer to initiate an EFT.

[Click&type]

Other Risks to Consumers

1. Determine whether, in the application and origination process, the lender makes statements, representations, or claims, or provides information to consumers that may mislead the consumer regarding the cost, value, availability, cost savings, benefits, or terms of the product or service.

[Click&type]

2. Determine whether the lender accurately and non-deceptively represents the amount of potential, approved, or useable credit that the consumer will receive.

[Click&type]

3. Determine whether the lender clearly and prominently discloses its funds disbursement practices, including:

    a. Whether the lender clearly and prominently discloses all fees that the borrower might incur to gain access to loan funds. For example:

        i. If the lender disburses funds by check, does the lender disclose its check cashing fee?

        ii. If the lender disburses funds by prepaid debit card, does it disclose its ATM access fee?

[Click&type]

4. Determine whether the lender offers additional products or services, either related or unrelated to the payday loan in connection with the payday loan. If yes:

    a. Determine whether the lender clearly and prominently discloses material terms of the optional product or service, including costs.

    b. Determine whether the lender receives and documents the consumer's express authorization prior to adding optional products or services to the payday loan.

    c. Review to ensure authorizations were provided and documented. Review methods of obtaining authorization to ensure that customer affirmatively selects product.

[Click&type]

5. Determine whether the lender discloses its repayment and collection practices.

[Click&type]

6. Determine whether the lender clearly and prominently discloses the consumer's rights regarding payment methods.

[Click&type]

7. In assessing application risks to consumers, examiners may find evidence of violations of – or an absence of compliance policies and procedures with respect to – other laws applicable to payday lending. In these circumstances, examiners should identify such matters for possible referral to federal or state regulators or other appropriate action.

[Click&type]

Module 3 – Payment Processing and Sustained Use

As set forth in the examination scope memorandum, examiners should review a sample of customer accounts for the following issues:

Truth In Lending Act/Regulation Z

1. Determine whether the loans being offered are closed-end or open-end.

[Click&type]

2. Assess compliance, as applicable, with the open- or closed-end TILA requirements for payment processing, billing errors and inquiries, credit balances larger than $1, and periodic statements.

[Click&type]

Electronic Fund Transfer Act/Regulation E

1. Determine whether the lender is complying with the appropriate disclosure requirements if the lender is converting check payments from borrowers to electronic fund transfers.

[Click&type]

2. Determine whether the lender is complying with the appropriate disclosure requirements if the lender is collecting returned item fees by electronic fund transfer.

[Click&type]

Sustained Use

When a borrower cannot repay a loan by its due date, lenders may allow the borrower to modify or "roll over" the loan by paying an additional fee to extend the loan term. A lender may also engage in a transaction in which a borrower uses the proceeds from a new loan to satisfy and pay off an older loan. If these transaction types are prohibited by state law, a borrower may be asked to repay one loan before opening a new loan. This is often called a back-to-back transaction. All of these borrowing patterns may constitute sustained use. Note that in some instances, lenders may allow borrowers to convert a balloon payment into an installment plan.

Examiners first should determine whether the lender offers any of the above options. If yes, then:

1. Determine whether the lender represents accurately and non-deceptively the payment options that will be available to borrowers.

[Click&type]

2. Determine whether the lender provides borrowers with all available repayment options offered by the lender.

[Click&type]

3. Determine whether the lender discloses clearly and prominently all fees and material terms associated with the sustained use transactions.

[Click&type]

4. Determine whether the lender has policies and procedures related to sustained use of the loan product and whether the lender is adhering to its policies.

[Click&type]

5. If a sequential transaction is considered a refinance, determine whether the lender provides loan disclosures as required by Regulation Z.

[Click&type]

6. If a consumer's request for new terms is an application as defined by Regulation B, determine whether the lender's practices are consistent with the application and disclosure requirements of Regulation B. Refer to the ECOA examination procedures for additional information.

[Click&type]

7. Determine whether the lender monitors or limits a borrower's usage of payday loans on an ongoing basis.

[Click&type]

8. Determine whether the lender assesses income or other financial information to determine an applicant's ability to repay a loan without modifying or refinancing the loan.

[Click&type]

Other Risks to Consumers

1. Determine whether payments are applied properly.

[Click&type]

2. Determine whether the lender informs consumers in a clear and timely manner about fees, penalties, or other charges that have been imposed and the reasons for their imposition.

[Click&type]

Module 4 – Collections, Accounts in Default, and Consumer Reporting

A lender may collect a payday loan in default by directly engaging in collection activities on its own behalf, by assigning collection activity to third parties for a fee; or, by selling defaulted debts to a third party. The FDCPA does not apply to a lender collecting debts on its own behalf and under its own name. Practices that would otherwise violate the FDCPA, however, may be unfair, deceptive, or abusive.

In order to assess whether a lender's collection activities are in compliance with Federal consumer financial laws, examiners should obtain a sample of both in-house collection calls and collection calls made by the lender's debt collection service providers. Examiners should also closely review any complaints held in Sentinel, a database administered by Federal Trade Commission that is available to the Bureau. A thorough review of phone calls and Sentinel complaints is a critical part of any payday examination. For more information, examiners should refer to the debt collection examination procedures contained elsewhere in this manual.

Fair Debt Collection Practices Act

Assess compliance with the FDCPA when the lender is engaging in debt collection practices (e.g., they have purchased defaulted payday loans from another lender, or are using an assumed name). Refer to the FDCPA examination procedures for additional information.

Fair Credit Reporting Act

1. Note that, although lenders typically do not obtain a consumer report at the application stage, they may obtain a report for collection purposes. If a lender obtains a consumer report in the collection process, assess the lender's compliance with the FCRA. Refer to the FCRA examination procedures for additional information.

[Click&type]

2. Lenders may choose to report information about a borrower to a consumer reporting agency. This may include providing information to a traditional credit bureau, but may also include providing information to another type of consumer reporting company (e.g., check verification firms). Reported information may include the number of outstanding loans, loan balances, and defaulted loan balances. Assess whether lenders maintain written policies and procedures regarding data accuracy, report information accurately, and have procedures in place to ensure that inquiries and complaints concerning reported data are appropriately resolved in accordance with FCRA requirements.

[Click&type]

3. Assess compliance with the FCRA's furnisher requirements. Refer to the FCRA examination procedures for more information.

[Click&type]

Other Risks to Consumers

1. Determine whether the lender contacts borrowers in an appropriate manner by assessing whether:
   a. Employees and third-party contractors clearly disclose to consumers that they are contacting the consumer about the collection of a debt.
   b. Employees and third-party contractors do not disclose the existence of a consumer's debt to members of the public without the consent of the consumer, except as permitted by law.
   c. The lender has policies on avoiding repeated telephone calls that abuse or harass any person at the number called.

[Click&type]

2. Determine whether the lender makes misrepresentations or uses other deceptive means to collect debts. Determine whether the lender has appropriate controls to prevent such practices.

[Click&type]

Module 5 – Service Provider Relationships

Lenders sell and buy consumer information. Additionally, lenders often employ and may be employed by third parties to perform services, from marketing and origination to servicing and collection activities. The lender's use of information in these contexts is subject to GLBA and its implementing regulations, which primarily cover the sharing of nonpublic personal information among third parties. GLBA requires financial institutions to disclose their privacy policies to consumers and prohibits them from disclosing nonpublic personal information about a consumer to certain third parties unless the institution satisfies notice and opt-out requirements. GLBA also requires financial institutions to permit customers to opt out of certain sharing practices with unaffiliated entities.

FCRA covers information sharing between affiliates (e.g., any company that controls, is controlled by, or is under common control with another company). Generally, although financial institutions may share customer transaction and experience information with affiliated entities, an affiliated entity may not use that information for marketing purposes unless the consumer is given notice and an opportunity to opt out and the consumer does not opt out.

Moreover, lenders may be responsible for the activities of service providers. Examiners should ensure that such lenders appropriately manage their relationships with service providers. For more information please refer to CFPB Bulletin 2012-03 (April 13, 2012) regarding service providers.[2]

Gramm-Leach-Bliley Act and Fair Credit Reporting Act Requirements

1. Examiners should assess a lender's compliance with the GLBA examination procedures.

   a. Determine whether the lender's information-sharing practices are consistent with the requirements of the GLBA.

   b. Determine whether the lender accurately and timely discloses its sharing practices to consumers and customers. (For example, a person who applies for a payday loan is a consumer. A person who obtains a payday loan is a customer.)

   c. Determine whether the lender properly manages opt-out requests.

[Click&type]

[2] http://files.consumerfinance.gov/f/201204_cfpb_bulletin_service-providers.pdf

2. Assess compliance with the FCRA's affiliate marketing rule. Refer to the FCRA examination procedures for more information.

[Click&type]

Service Provider Management

Examiners should evaluate copies of any agreements between lenders and service providers acting on behalf of the lender for purposes of assessing risks to consumers.

1. Evaluate whether the lender has compliance management controls for selecting and monitoring affiliates and/or service providers.

[Click&type]

2. Evaluate whether the lender takes steps to ensure that the service providers it uses are licensed or registered to the extent required.

[Click&type]

3. Evaluate whether the lender performs initial due diligence concerning the service providers' prior regulatory compliance history before entering into an agreement (i.e., determining the existence and extent of any prior enforcement actions against the service providers).

[Click&type]

4. Evaluate whether the lender monitors the screening, hiring, and training practices of service providers' employees who perform services on the lender's behalf.

[Click&type]

5. Evaluate whether the lender takes steps to ensure service providers' compliance with the lender's privacy policy with respect to data that the service providers receive from or on behalf of the lender.

[Click&type]

6. Evaluate whether the lender conducts internal or external audits of the service providers' activities, reviews such audits in a timely manner, and responds appropriately to identified concerns.

[Click&type]

Consumer Leasing Act[1]

For consumers, leasing is an alternative to buying property 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 U.S.C. 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 simply the regulation and provide guidance on the electronic delivery of disclosures consistent with the E-Sign Act.[2]

The Dodd-Frank Act granted rulemaking authority under the CLA to the Consumer Financial Protection Bureau (CFPB) and, with respect to entities under its jurisdiction, granted authority to the CFPB to supervise for and enforce compliance with the CLA and its implementing regulations.[3] In December 2011, the CFPB restated the Federal Reserve's implementing regulation at 12 CFR Part 1013 (76 Fed. Reg. 78500)(December 19, 2011).

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.

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[1] These reflect FFIEC-approved procedures.

[2] 72 Fed. Reg. 63456, November 9, 2007. These amendments took effect December 10, 2007, with a mandatory compliance date of October 1, 2008.

[3] Dodd-Frank Act, Secs. 1002(12)(B), 1024(b)-(c), and 1025(b)-(c); 12 USC §§ 5481(12)(B), 5514(c), and 5515(c). Section 1029 of the Dodd-Frank Act generally excludes from this transfer of authority, subject to certain exceptions, any rulemaking 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.

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 into 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 four months (week-to-week and month-to-month leases do not meet this criterion, even though they may be extended beyond four months); and
- With a total contractual cost of no more than the threshold amount specified in Appendix C at 12 CFR 1013.2(e)-9.[4]

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 12 CFR 1026.2(a)(16).

[4] Appendix C states that a consumer lease is exempt from these requirements if the total contractual obligation exceeds the threshold amount in effect at the time of consummation. The threshold amount for the period January 1, 2012 through December 31, 2012 is $51,800. See Appendix C for the threshold amounts for different time periods.

A lease meeting all of these criteria is covered by the CLA and Regulation M. If any one of these criteria is not met, for example, if the leased property is used primarily for business purposes or if the total contractual cost exceeds the amount specified in 12 CFR 1013.2(e)-9, the CLA and Regulation M do not apply.

Consumer leases fall into one of two categories: closed end and open end. Since the information required to be disclosed to the consumer will vary with the kind of lease, it is important to note the difference between them. However, to properly understand the difference, realized value and residual value must first be defined.

Realized Value

The realized value is the price received by the lessor of the leased property at disposition, the highest offer for disposition of the leased property, or the fair market value of the leased property at the end of the lease term.

Residual Value

The residual value is the value of the leased property at the end of the lease, as estimated or assigned at consummation of the lease by the lessor.

Open-End Lease

An open-end lease is a lease in which the amount owed at the end of the lease term is based on the difference between the residual value of the leased property and its realized value. The consumer may pay all or part of the difference if the realized value is less than the residual value or he may get a refund if the realized value is greater than the residual value at scheduled termination.

Closed-End Lease

A closed-end lease is a lease other than an open-end lease. This type of lease allows the consumer to “walk away” at the end of the contract period, with no further payment obligation – unless the property has been damaged or has sustained abnormal wear and tear.

Gross Capitalized Cost

The gross capitalized cost is the amount agreed upon by the lessor and lessee as the value of the leased property, plus any items that are capitalized or amortized during the lease term. These items may include taxes, insurance, service agreements, and any outstanding prior credit or lease balance.

Capitalized Cost Reduction

This term means the total amount of any rebate, cash payment, net trade-in allowance, and noncash credit that reduces the gross capitalized cost.

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 institution may provide the general disclosures required by 12 CFR 1013 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. The institution must provide consumers with the following information before consumers can give consent:

- 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, after consent and 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.

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.

Institutions must provide disclosures 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 (e.g., 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 (12 CFR 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 website) 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 disclosures are required to be made or an action is required to be taken.

REFERENCES

Laws

15 U.S.C. 1667 et seq.	Consumer Leasing 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 1013	Consumer Leasing (Regulation M)

Consumer Leasing Act[1]

Exam Date:	[Click&type]
Prepared By:	[Click&type]
Reviewer:	[Click&type]
Docket #:	[Click&type]
Entity Name:	[Click&type]

Examination Objectives

- To assess the quality of the institution's compliance management system for the Consumer Leasing Act.
- To determine that lessees of personal property are given meaningful and accurate disclosures of lease terms.
- To determine if the limits of liability are clearly indicated to the lessees and correctly enforced by the institution.
- To ensure that the financial institution provides accurate disclosures of its leasing terms in all advertising.

Examination Procedures

General Disclosure Requirements

A. Review the institution's procedures for providing disclosures to ensure that there are adequate controls and procedures to effect compliance.

[Click&type]

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? 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)?[2] 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? (12 CFR 1013.3(a))
2. Are the disclosures given in a dated statement and in the prescribed format? (12 CFR 1013.3(a)(1))
3. Is the information required by 12 CFR 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? (12 CFR 1013.3(a)(2))
4. Are the disclosures timely? (12 CFR 1013.3(a)(3))
5. If the lease involves more than one lessee, are the disclosures provided to any lessee

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[1] These reflect FFIEC-approved procedures.

[2] The final amendment to Regulation M on the electronic delivery of disclosures, consistent with the requirements of the E-Sign Act, became effective December 10, 2007, and required mandatory compliance by October 1, 2008.

who is primarily liable? (12 CFR 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? (12 CFR 1013.3(b))
7. Are all estimates clearly identified and reasonable? (12 CFR 1013.3(d))
8. Are the disclosures accurate and do the disclosures contain the information required by 12 CFR 1013.4(a) through (t)? (12 CFR 1013.4)
9. Are disclosures given to lessees when they “renegotiate” or “extend” their leases? (12 CFR 1013.5)

[Click&type]

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:

1. At early termination:

— 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? (12 CFR 1013.4(g)(1))

— Are any early termination charges reasonable? (12 CFR 1013.4(g)(1), (q))

2. At end of lease term, for wear and use:

— 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? (12 CFR 1013.4(h)(3))

— Are standards for wear and use reasonable? (12 CFR 1013.4(h)(2))

3. At end of lease term (for open-end leases):

— Does the lessor disclose the limitations on the lessee’s liabilities at the end of the lease term? (12 CFR 1013.4(m)(2))

— Are the lessee and lessor permitted to make a mutually agreeable final adjustment regarding excess liability? (12 CFR 1013.4(m)(3))

4. In delinquency, default or late payment:

— Does the lessor disclose penalties or other charges for delinquency, default or late payments? (12 CFR 1013.4(q))

— Are the penalties or other charges reasonable? (12 CFR 1013.4(q))

[Click&type]

Advertising

A. Review advertising policies and procedures used by the institution to ensure that there are adequate controls and procedures to effect compliance.

[Click&type]

B. Review a sample of the institution's advertisements. Determine the following:

1. Do the advertisements advertise terms that are usually and customarily available? (12 CFR 1013.7(a))
2. Are the disclosures contained in the advertisements clear and conspicuous? (12 CFR 1013.7(b))
3. Do catalogs, multiple page advertisements and electronic advertisements comply with the page reference requirements? (12 CFR 1013.7(c))
4. When triggering terms are used, do the advertisements contain the additional required information? (12 CFR 1013.7(d))
5. Do merchandise tags that use triggering terms refer to a sign or display that contains the additional required disclosures? (12 CFR 1013.7(e))
6. If television or radio advertisements use triggering terms, if they do not contain the additional terms required by 12 CFR 1013.7(d)(2), do they use alternative disclosure methods (direct consumers to a toll-free number or written advertisement)? (12 CFR 1013.7(f))

[Click&type]

Miscellaneous

A. Are records and other evidence of compliance (other than for advertising requirements under 12 CFR 1013.7) retained for a period of no less than two (2) years? (12 CFR 1013.8)

[Click&type]

Examiner's Summary, Recommendations, and Comments

[Click&type]

Consumer Leasing Act[1]

Exam Date:	[Click&type]
Prepared By:	[Click&type]
Reviewer:	[Click&type]
Docket #:	[Click&type]
Entity Name:	[Click&type]

	YES	NO
1. Does the institution engage in consumer leasing or purchase consumer leases from lessors? (12 CFR 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? (12 CFR 1013.3(a)(3))	☐	☐
3. Are the disclosures clear and conspicuous and provided in writing in a form the consumer may keep? (12 CFR 1013.3(a))	☐	☐
4. Are disclosures in electronic form provided in compliance with the consumer consent and other applicable provisions of the Electronic Signature in Global and National Commerce Act (E-Sign Act)? (12 CFR 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? (12 CFR 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? (12 CFR 1013.3(a)(1))	☐	☐
7. Is the information required by 12 CFR 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? (12 CFR 1013.3(a)(2))	☐	☐
8. If the lease involves more than one lessee, are the disclosures provided to any lessee who is primarily liable? (12 CFR 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? (12 CFR 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? (12 CFR 1013.3(c))	☐	☐
11. Are all estimates clearly identified and reasonable? (12 CFR 1013.3(d))	☐	☐

[1] These reflect FFIEC-approved procedures.

	YES	NO
12. Are the following disclosures made in the lease?		
A. Description of property; (12 CFR 1013.4(a))	☐	☐
B. Amount due at lease signing or delivery; (12 CFR 1013.4(b))	☐	☐
C. Payment schedule and total amount of periodic payments; (12 CFR 1013.4(c))	☐	☐
D. Other charges; (12 CFR 1013.4(d))	☐	☐
E. Total of payments; (12 CFR 1013.4(e))	☐	☐
F. Regarding payment calculations:		
i. Gross capitalized cost; (12 CFR 1013.4(f)(1))	☐	☐
ii. Capitalized cost reduction; (12 CFR 1013.4(f)(2))	☐	☐
iii. Adjusted capitalized cost; (12 CFR 1013.4(f)(3))	☐	☐
iv. Residual value; (12 CFR 1013.4(f)(4))	☐	☐
v. Depreciation and any amortized amounts; (12 CFR 1013.4(f)(5))	☐	☐
vi. Rent charge; (12 CFR 1013.4(f)(6))	☐	☐
vii. Total of base periodic payments; (12 CFR 1013.4(f)(7))	☐	☐
viii. Lease payments; (12 CFR 1013.4(f)(8))	☐	☐
ix. Basic periodic payment; (12 CFR 1013.4(f)(9))	☐	☐
x. Itemization of other charges; (12 CFR 1013.4(f)(10))	☐	☐
xi. Total periodic payment. (12 CFR 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; (12 CFR 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; (12 CFR 1013.4(g)(1))	☐	☐
iii. In a form substantially similar to the sample; (12 CFR 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; (12 CFR 1013.4(h)(1))	☐	☐

	YES	NO
ii. A statement of the lessor’s standards for wear and use, which must be reasonable; (12 CFR 1013.4(h)(2))	☐	☐
iii. In a form substantially similar to the sample. (12 CFR 1013.4(h)(3))	☐	☐
I. Purchase option; (12 CFR 1013.4(i))	☐	☐
J. Statement referencing other non-segregated disclosures; (12 CFR 1013.4(j))	☐	☐
K. Liability between residual and realized values; (12 CFR 1013.4(k))	☐	☐
L. Right of appraisal; (12 CFR 1013.4(l))	☐	☐
M. For open-end leases:		
i. The rent and other charges paid by lessee; (12 CFR 1013.4(m)(1))	☐	☐
ii. Liability at end of lease term based on residual value and any excess liability; (12 CFR 1013.4 (m) and (m)(2))	☐	☐
iii. Mutually agreeable final adjustment. (12 CFR 1013.4(m)(3))	☐	☐
N. Fees and taxes; (12 CFR 1013.4(n))	☐	☐
O. Regarding insurance:		
i. Are the types and amounts of insurance that the lessee is required to have disclosed? (12 CFR 1013.4(o))	☐	☐
ii. If the lessor provides insurance, are the types, amounts, and cost also disclosed? (12 CFR 1013.4(o)(1))	☐	☐
P. Warranties or guarantees; (12 CFR 1013.4 (p))	☐	☐
Q. Penalties and other charges for late payments, delinquency, or default; (12 CFR 1013.4(q))	☐	☐
R. Security interest other than a security deposit; (12 CFR 1013.4(r))	☐	☐
S. Regarding any information on rate:		
i. Does the lessor use the term “annual percentage rate,” “annual lease rate,” or any equivalent term in the lease disclosure? (12 CFR 1013.4(s))	☐	☐
ii. If so, does a statement that “this percentage may not measure the overall cost of financing this lease” accompany the rate? (12 CFR 1013.4(s))	☐	☐
13. Are disclosures given to lessees when they “renegotiate” or “extend” their leases? (12 CFR 1013.5)	☐	☐

	YES	NO
14. Does the institution advertise its leasing program? If so:	☐	☐
A. Do the advertisements advertise terms that are usually and customarily available? (12 CFR 1013.7(a))	☐	☐
B. Are the advertisements clear and conspicuous? (12 CFR 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? (12 CFR 1013.7(b)(1))	☐	☐
ii. Are the advertisements of lease rates less prominent than any disclosure required by 12 CFR 1013.4 (except the notice of the limitations on rate)? (12 CFR 1013.7(b)(2))	☐	☐
C. Do catalogs and multiple page advertisements and electronic advertisements comply with the page reference requirements? (12 CFR 1013.7(c))	☐	☐
D. If any triggering terms are used, are all the following disclosures made: (12 CFR 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.	☐	☐
15. Do merchandise tags that use triggering terms refer to a sign or display that contains the additional required disclosures? (12 CFR 1013.7(e))	☐	☐
16. Do television or radio advertisements that do not contain the additional information required by 12 CFR 1013.4(d) direct consumers to a toll-free number or written advertisement for additional information when triggering terms are used? (12 CFR 1013.7)	☐	☐

	YES	NO
A. Is the toll-free number listed along with a reference that the number may be used by the consumer to obtain the information? (12 CFR 1013.7(f)(1)(i))	☐	☐
B. Does the written advertisement that is in general circulation in the community served by the station include the name and date of the publication, and is it published beginning at least three days before and ending at least 10 days after broadcast? (12 CFR 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? (12 CFR 1013.7(f)(2)(i))	☐	☐
D. Does the lessor provide the information required by paragraph (d)(2) over the toll-free number, orally or in writing upon request? (12 CFR 1013.7(f)(2)(ii))	☐	☐
17. Are records and other evidence of compliance retained for a period of no less than two (2) years as required by the CLA? (12 CFR 1013.8)	☐	☐

Comments

[Click&type]

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

[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).

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 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)

[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).

Subpart B - Requirements for Remittance Transfers

Sections Applicable to Both Subpart A and Subpart B

Subpart A

I. 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 (Comments 2(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];

[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.

- A government benefit account, which is an account established by a government agency for 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-

[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.

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, POS transfers; 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, POS terminals, ATMs, 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 ATMs (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).

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[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)).

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, TILA 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 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 (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 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)).

[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).

- **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)).

[12] This requirement does not apply to non-reloadable certificates or cards that expire seven years or more after the date of manufacture.

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 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.

[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.

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;
- 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. Generally, 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 (Comment17 (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 (Comment 17(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)).

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

[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 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).

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).

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)).

[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.

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)). See 12 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)-1 and 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

[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).

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 TILA 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 other laws, including TILA, 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 (Comment 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.

  - o The telephone number and address for reporting that an unauthorized EFT has been or may be made.
  - o 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 less 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.
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]

[20] Includes a PIN if used without a card in a telephone transaction, for example.

[21] Provided the financial institution demonstrates that these transfers would not have occurred had notice been given within the two-business-day period.

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.

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)).

[22] Provided the financial institution demonstrates that these transfers would not have occurred had notice been given within the 60-day period.

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) & (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)).

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)).

[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)).

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 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

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

[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).

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

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. For many aspects of government benefit cards, however, the same rules apply, and 12 CFR 1005.15 refers to the relevant section in 1005.18.

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 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 must use the language provided in the rule or substantially similar language in making this statement. See 12 CFR 1005.18(b)(2)(xiv).

For government benefit accounts, a financial institution (which may include an 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 means 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 means 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 means 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 means 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 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

[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).

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-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)).

[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).

XI. Relation to Other Laws - 12 CFR 1005.12

This section describes the relationship between the EFTA and the TILA for purposes of Subpart A of Regulation E.

Issuance of Access Devices, and Addition of Certain EFT Services

The EFTA and Regulation E govern 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 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 that is also an access device.
- 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.
- With respect to transactions involving a prepaid account and a non-covered separate credit feature as defined in Regulation Z, 12 CFR 1026.61, a consumer's liability for unauthorized use and the investigation of errors involving transactions that access the non-covered separate credit feature, as applicable.

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 performing activities as an agent on behalf of a remittance transfer provider (Comment 30(f)-1).

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."

Preauthorized 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).

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," 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). 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 related commentary for more details. For example, the rule explains that in certain circumstances 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:

a. The amount to be transferred (transfer amount);
b. Front-end fees imposed by the provider and any taxes collected on the remittance transfer by the provider (transfer fees and transfer taxes);
c. Total amount of the transaction (the sum of the transfer amount and front-end fees and taxes);
d. The exchange rate;
e. Any covered third-party fees (disclosed as "other fees");
f. The total amount to be received by the designated recipient (total amount of the transaction minus covered third-party fees); and
g. 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. 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 Bureau 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 Bureau must be provided whether or not the Bureau 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)-7).

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 (Comment 31(b)(3)-2)).

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 Disclosures - 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 the 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 that is 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, 2020.

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 <u>error</u> 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 (Comment 33(a)-2). 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 12 CFR 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:
    i. 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;
    ii. the provider used reasonably 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;
    iii. 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;
    iv. 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
    v. 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 fee. 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. <u>All other instances of failure to make funds available by the disclosed date of availability</u>

As applicable, the remittance transfer provider must either:

i. Refund to the sender, the amount of funds which was not properly transmitted or the amount appropriate to resolve the error; or
ii. Make available to the designated recipient the amount appropriate to resolve the error without additional cost to the sender or to the designated recipient; ***<u>and</u>***
iii. 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 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 TILA 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.

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 provision 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 Bureau 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 Bureau 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))

References

Laws

15 U.S.C. 1693 et seq.	Electronic Fund Transfer Act
15 U.S.C. 7001 et seq.	Electronic Signatures in Global and National Commerce
15 U.S.C. 1601 et seq.	Truth in Lending Act

Regulations

Consumer Financial Protection Bureau Regulations (12 CFR)

Part 1005 Electronic Fund Transfers (Regulation E)

Interagency
Examination Procedures EFTA

Electronic Fund Transfer Act

Exam Date:	[Click&type]
Exam ID No.:	[Click&type]
Prepared By:	[Click&type]
Reviewer:	[Click&type]
Docket #:	[Click&type]
Entity Name:	[Click&type]
Event #:	[Click&type]

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.

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.

Examination Procedures

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.

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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.

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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.

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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.

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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.

[Click&type]

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).

[Click&type]

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)).

[Click&type]

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).

[Click&type]

5. Verify that the financial institution does not require compulsory use of EFTs, except as authorized (12 CFR 1005.10(e)).

[Click&type]

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)).

[Click&type]

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)).

[Click&type]

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)).

[Click&type]

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).

[Click&type]

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,[1] 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

[1] 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 any payment of overdrafts pursuant to: a line of credit subject to Regulation Z; a service that transfers funds from another account held by a consumer; a line of credit or other transaction exempt from Regulation Z pursuant to 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).

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).

[Click&type]

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).

[Click&type]

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))

[Click&type]

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)).

[Click&type]

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 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.

[Click&type]

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)).

[Click&type]

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)).

[Click&type]

17. Determine that the financial institution implements a consumer's revocation of consent as soon as reasonably practicable (12 CFR 1005(17)(f)).

[Click&type]

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)).

[Click&type]

19. Determine that the financial institution's overdraft protection program incorporates the examiner's agency guidance as applicable.

[Click&type]

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)).

[Click&type]

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)).

[Click&type]

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)).

[Click&type]

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)).

[Click&type]

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)).

[Click&type]

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)).

[Click&type]

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)).

[Click&type]

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)).

[Click&type]

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)).

[Click&type]

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)).

[Click&type]

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)).

[Click&type]

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)).

[Click&type]

32. Determine that the following are stated, as applicable, clearly and conspicuously on the gift certificate, store gift card, or general-use prepaid card:

    1. The amount of any dormancy, inactivity, or service fee that may be charged;

    2. How often such fee may be assessed; and

    3. That such fee may be assessed for inactivity.

    (12 CFR 1005.20(d)(2))

[Click&type]

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))

[Click&type]

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))

[Click&type]

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 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;

    - The expiration date for the underlying funds 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. This disclosure 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 on the card, code, or other device.

    (12 CFR 1005.20(a)(4)(iii))

[Click&type]

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)).

[Click&type]

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)).

[Click&type]

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))

[Click&type]

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))

[Click&type]

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.[2]

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[3];

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);

[2] Subpart B provides for a 100-transfer "safe harbor." For an entity to qualify for this "safe harbor," it must have provided 100 or fewer 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. See Comment 30(f)-2.

[3] For transfers that are sent to a recipient's account, an account that is located on a U.S. military installation abroad is considered to be located in a State. See Comment 30(c)-2.ii.

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.

[Click&type]

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;

   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.

[Click&type]

2. If applicable, determine whether the provider complies with the foreign language disclosure requirements as outlined under 12 CFR 1005.31(g).

[Click&type]

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.

[Click&type]

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

   d. 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.

   e. 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.

[Click&type]

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 or Bureau) 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.

[Click&type]

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.

[Click&type]

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.

[Click&type]

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.

[Click&type]

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.

[Click&type]

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.

[Click&type]

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.

[Click&type]

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.

[Click&type]

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.

[Click&type]

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.

[Click&type]

15. Review the provider’s transaction log/records to identify remittance transactions that were sent to countries on the list provided by the BCFP for which estimates may be provided on remittance transfer-related disclosures to determine if the provider properly relied on the list in making estimates.

[Click&type]

16. Determine whether the provider gave estimates for transactions to a country that is not on the list provided by the BCFP. 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.

[Click&type]

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.

[Click&type]

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.

[Click&type]

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).

[Click&type]

Procedures for Resolving Errors – 12 CFR 1005.33

20. Review the provider's policies and procedures on error resolution.

[Click&type]

21. Review relevant error resolution statements/files, consumer complaints, form letters, etc., used in addressing errors or questions concerning remittance transfer transactions.

[Click&type]

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.

[Click&type]

23. Determine the extent of the provider's compliance with its policies and procedures on error resolution.

[Click&type]

24. Determine the provider's compliance with the regulatory requirements regarding investigation of alleged errors, and notification of consumers within the allotted time frames.

[Click&type]

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.

[Click&type]

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.

[Click&type]

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.

[Click&type]

29. Determine the extent of the provider's compliance with its own policies and procedures on cancellation and refund.

[Click&type]

30. Determine the provider's compliance with the regulatory requirements regarding senders' request for cancellation and refund.

[Click&type]

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.

[Click&type]

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.

[Click&type]

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.

[Click&type]

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.

[Click&type]

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.

[Click&type]

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.

[Click&type]

Examiner’s Summary, Recommendations, and Comments

[Click&type]

Interagency Examination Checklist — EFTA

Electronic Fund Transfer Act (Regulation E)

Exam Date:	[Click&type]
Prepared By:	[Click&type]
Reviewer:	[Click&type]
Docket #:	[Click&type]
Entity Name:	[Click&type]

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."

Subpart A

	Yes	No	NA
Issuance of Access Devices – 12 CFR 1005.5			
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)	☐	☐	☐

Yes No NA

Consumer Liability for Unauthorized Electronic Fund Transfers (EFTs) – 12 CFR 1005.6

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 12 CFR 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. I, 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, 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)? ☐ ☐ ☐

		Yes	No	NA
7.	If a consumer notifies the financial institution of an unauthorized EFT within 60 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 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 time frames 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 an 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))	☐	☐	☐

	Yes	No	NA
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))	☐	☐	☐

Initial Disclosures – 12 CFR 1005.7

	Yes	No	NA
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))	☐	☐	☐

	Yes	No	NA
• 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 Electronic Fund Transfer Act? (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 12 CFR 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))	☐	☐	☐

Change-in-Terms Notice; Error Resolution Notice – 12 CFR 1005.8

	Yes	No	NA
19. If the financial institution made any changes in terms or conditions required to be disclosed under 12 CFR 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, did the financial institution provide a written notice to consumers at least 21 days prior to the 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))	☐	☐	☐

	Yes	No	NA

Receipts at Electronic Terminals; Periodic Statements – 12 CFR 1005.9

		Yes	No	NA
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))	☐	☐	☐

	Yes	No	NA
• 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))	☐	☐	☐

Preauthorized Transfers – 12 CFR 1005.10

	Yes	No	NA
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))	☐	☐	☐
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))	☐	☐	☐

		Yes	No	NA
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)) NOTE: This exception for overdraft credit 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.	☐	☐	☐
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))	☐	☐	☐

	Yes	No	NA

Procedures for Resolving Errors – 12 CFR 1005.11

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))

		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)(1))	☐	☐	☐
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 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)?	☐	☐	☐

	Yes	No	NA
• 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 gives 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?	☐	☐	☐
• Does the financial institution report the results to the consumer within three business days after completing its investigation including, if applicable, notice that 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 occurred, 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 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))	☐	☐	☐

Record Retention – 12 CFR 1005.13

	Yes	No	NA
42. Does the financial institution maintain evidence of compliance with the requirements of the Electronic Fund Transfer Act and Regulation E for a period of two years? (12 CFR 1005.13(b))	☐	☐	☐

	Yes	No	NA

Disclosures at Automated Teller Machines (ATM) – 12 CFR 1005.16

		Yes	No	NA
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 12 CFR 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))	☐	☐	☐

Requirements for Overdraft Services – 12 CFR 1005.17

		Yes	No	NA
45.	Does the financial institution's Overdraft Protection Program incorporate any guidance issued by its federal regulator, as applicable?	☐	☐	☐
46.	Does the financial institution's Overdraft Protection Program provide "overdraft services," i.e., charge fees for paying ATM and one-time debit overdrafts? (12 CFR 1005.17(a)) <u>If no, do not complete this section.</u>	☐	☐	☐
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 (12 CFR 1005.17(b)(1)):			
	• 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)) and	☐	☐	☐

		Yes	No	NA
	• 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))	☐	☐	☐
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 protection 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? (Comment 1005.17(b)-9)	☐	☐	☐
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))	☐	☐	☐

		Yes	No	NA
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 for 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?	☐	☐	☐

		Yes	No	NA
	• If the institution offers one alternative plan, but not the other, does the notice state which alternative plan 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 plan, 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 include 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))	☐	☐	☐
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 under (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))	☐	☐	☐

		Yes	No	NA
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))	☐	☐	☐

Requirements for Financial Institutions Offering Prepaid Accounts and Electronic Fund Transfer of Government Benefits– 12 CFR 1005.18 and 1005.15

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.

		Yes	No	NA
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))	☐	☐	☐

	Yes	No	NA
• The ATM withdrawal fees, for withdrawals in the United States both within and outside 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)) 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))	☐	☐	☐

	Yes	No	NA
• 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 account for insurance eligibility and other account protections, using substantially similar language to the clauses in 12 CFR 1005.18(b)(2)(xi);	☐	☐	☐

	Yes	No	NA
• 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))	☐	☐	☐

	Yes	No	NA
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-party fees known to the institutions; (12 CFR 1005.18(b)(4)(ii))	☐	☐	☐
• The statement regarding registration and FDIC or NCUA insurance required by 12 CFR 1005.18(b)(2)(xi), 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; (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);	☐	☐	☐

		Yes	No	NA
	• 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).	☐	☐	☐
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)?	☐	☐	☐

		Yes	No	NA
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:			

	Yes	No	NA
• 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 website, 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**	☐	☐	☐
• 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:

	Yes	No	NA
• 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:

	Yes	No	NA
• 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 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:			

		Yes	No	NA
	• 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.	☐	☐	☐

		Yes	No	NA
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 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))	☐	☐	☐

Internet Posting of Agreements - 12 CFR 1005.19

		Yes	No	NA
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))	☐	☐	☐

	Yes	No	NA
• 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? If yes, do not complete this section for that particular product. (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 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))	☐	☐	☐

		Yes	No	NA
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))	☐	☐	☐

		Yes	No	NA
	• 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))	☐	☐	☐
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?	☐	☐	☐

		Yes	No	NA
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 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))	☐	☐	☐

	Yes	No	NA

Requirements for Gift Cards and Gift Certificates – 12 CFR 1005.20

		Yes	No	NA
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, such as 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))	☐	☐	☐
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 with the card, code, or other device; **and** (12 CFR 1005.20(a)(4)(iii)(C))	☐	☐	☐

	Yes	No	NA
• 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 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)), determine 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	☐	☐	☐
o The amount of any dormancy, inactivity, or service fee that may be charged; (12 CFR 1005.20(d)(2)(i))	☐	☐	☐
o How often such a fee may be assessed; **and** (12 CFR 1005.20(d)(2)(ii))	☐	☐	☐
o 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 is 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))	☐	☐	☐

	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:	☐	☐	☐
o 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))	☐	☐	☐
o The consumer may contact the issuer for a replacement card; **and** (12 CFR 1005.20(e)(3)(iii)(B))	☐	☐	☐
o 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:			
o The type of fee; (12 CFR 1005.20(f)(1)(i))	☐	☐	☐
o The amount of the fee (or an explanation of how the fee will be determined); **and** (12 CFR 1005.20(f)(1)(ii))	☐	☐	☐

	Yes	No	NA
o 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 website, 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

		Yes	No	NA
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 and properly documented?	☐	☐	☐

If the provider offers remittance transfers in the normal course of business and, therefore, is covered by the rule, complete the following checklist.

		Yes	No	NA
2.	Does the provider have written policies and 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?	☐	☐	☐

Disclosures – 12 CFR 1005.31

(Unless otherwise indicated, the disclosure requirements apply to all remittance transfer transactions, including those scheduled before the date of transfer).

		Yes	No	NA
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)) and	☐	☐	☐

		Yes	No	NA
	• 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 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 other items that may be disclosed? (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)?	☐	☐	☐

	Yes	No	NA
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))			

Pre-payment disclosures - 12 CFR 1005.31(b)(1)

	Yes	No	NA
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))	☐	☐	☐

	Yes	No	NA

Receipt – 12 CFR 1005.31(b)(2)

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:

	Yes	No	NA
• 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 CFPB, 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)?	☐	☐	☐

	Yes	No	NA

Combined disclosure – 12 CFR 1005.31(b)(3)

Complete this section only if the provider provides combined disclosures as an alternative to separate pre-payment disclosures and receipts.

		Yes	No	NA
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. NOTE #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.	☐	☐	☐

Long form error resolution and cancellation notice – 12 CFR 1005.31(b)(4)

		Yes	No	NA
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)) 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).	☐	☐	☐

	Yes	No	NA

Estimates – 12 CFR 1005.32

Temporary exception for insured institutions – 12 CFR 1005.32(a)

NOTE: This exception expires on July 21, 2020.

		Yes	No	NA
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)	☐	☐	☐

Permanent exception for transfers to certain countries – 12 CFR 1005.32(b)(1)

		Yes	No	NA
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 that 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 Bureau list if it has information that the laws of a country on the list permit exact disclosures.	☐	☐	☐

	Yes	No	NA

Permanent exception for transfers scheduled before the date of transfer – 12 CFR 1005.32(b)(2)

		Yes	No	NA
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)?	☐	☐	☐

Bases for estimates – 12 CFR 1005.32(c)

		Yes	No	NA
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.	☐	☐	☐
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?	☐	☐	☐

Procedures for resolving errors – 12 CFR 1005.33

		Yes	No	NA
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))	☐	☐	☐

		Yes	No	NA
	• 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; **and** (12 CFR 1005.33(d))	☐	☐	☐
	• 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 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 before the sender designates that the remedy has passed? NOTE: A default remedy is not applicable where the sender provided incorrect or insufficient information.	☐	☐	☐

		Yes	No	NA
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))	☐	☐	☐

		Yes	No	NA
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))	☐	☐	☐
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)	☐	☐	☐

Procedures for Cancellation and Refund of Remittance Transfers – 12 CFR 1005.34

		Yes	No	NA
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))	☐	☐	☐

		Yes	No	NA
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))	☐	☐	☐

Acts of agents – 12 CFR 1005.35

		Yes	No	NA
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.	☐	☐	☐

	Yes	No	NA

Transfers Scheduled Before the Date of Transfer – 12 CFR 1005.36

		Yes	No	NA
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 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))	☐	☐	☐

		Yes	No	NA
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 five 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))	☐	☐	☐
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

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Equal Credit Opportunity Act (ECOA)

The Equal Credit Opportunity Act (ECOA), which is implemented by Regulation B, applies to all creditors. When originally enacted, ECOA gave the Federal Reserve Board responsibility for prescribing the implementing regulation. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) transferred this authority to the Consumer Financial Protection Bureau (CFPB or Bureau). The Dodd-Frank Act granted rule-making authority under ECOA to the CFPB and, with respect to entities within its jurisdiction, granted authority to the CFPB to supervise for and enforce compliance with ECOA and its implementing regulations.[1] In December 2011, the CFPB restated the Federal Reserve's implementing regulation at 12 CFR Part 1002 (76 Fed. Reg. 79442)(December 21, 2011). 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.

The statute provides that its purpose is to require financial institutions and other firms engaged in the extension of credit to "make credit equally available to all creditworthy customers without regard to sex or marital status." Moreover, the statute makes it unlawful for "any creditor to discriminate against any applicant with respect to any aspect of a credit transaction (1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract); (2) because all or part of the applicant's income derives from any public assistance program; or (3) because the applicant has in good faith exercised any right under the Consumer Credit Protection Act." The ECOA has two principal theories of liability: disparate treatment and disparate impact. Disparate treatment occurs when a creditor treats an applicant differently based on a prohibited basis such as race or national origin.[2] Disparate impact occurs when a creditor employs facially neutral policies or practices that have an adverse effect or impact on a member of a protected class unless it meets a legitimate business need that cannot reasonably be achieved by means that are less disparate in their impact.[3]

In keeping with the broad reach of the statute's prohibition, the regulation covers creditor activities before, during, and after the extension of credit. A synopsis of some of the more important points of Regulation B follows, and an examination program is provided for a more thorough review.

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[1] Sec.1071 of the Dodd-Frank Act added a new Sec. 704B to ECOA to require the collection of small business loan data. The amendment will be reflected in this document at a later date once it becomes effective.

[2] 12 CFR Part 1002 Supp. I Sec. 1002.4(a)-1; 12 CFR Part 1002 Supp. I Sec. 1002.4(a)-1. "Disparate treatment" may be "overt" (when the creditor openly discriminates on a prohibited basis) or it may be found through comparing the treatment of applicants who receive different treatment for no discernable reason other than a prohibited basis. In the latter case, it is not necessary that the creditor acts with any specific intent to discriminate.

[3] 12 CFR Part 1002 Supp. I Sec. 1002.6(a)-2.

For fair lending scoping and examination procedures, the CFPB is temporarily adopting the FFIEC Interagency Fair Lending Examination Procedures that are referenced in the examination program. However, in applying those procedures the CFPB takes into account that the Fair Housing Act (FHAct), 42 U.S.C. 3601 *et seq*., unlike ECOA, is not a "Federal consumer financial law" as defined by the Dodd-Frank Act for which the CFPB has supervisory authority.[4]

Applicability – 12 CFR 1002.2(e), 1002.2(f), 1002.2(j), 1002.2(l), 1002.2(m), and 1002.2(q)

Regulation B applies to all persons who, in the ordinary course of business, regularly participate in the credit decision, including setting the terms of the credit. The term "creditor" includes a creditor's assignee, transferee, or subrogee who so participates. For purposes of discrimination or discouragement, 12 CFR 1002.4(a) and (b), 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.

Regulation B's prohibitions apply to every aspect of an applicant's dealings with a creditor regarding an application for credit or an existing extension of credit (including, but not limited to: information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information; revocation, alteration, or termination of credit; and collection procedures). The regulation defines "applicant" as any person who requests or who has received an extension of credit from a creditor and includes any person who is or may become contractually liable regarding an extension of credit. Under Regulation B, an "application" means an oral or written request for an extension of credit made in accordance with procedures used by a creditor for the type of credit requested. "Extension of credit" means "the granting of credit in any form (including, but not limited to, credit granted in addition to any existing credit [,] the refinancing or other renewal of credit...or the continuance of existing credit without any special effort to collect at or after maturity)." Because the ECOA and Regulation B prohibit discrimination in any aspect of a credit transaction, a creditor violates the statute and regulation when discriminating against borrowers on a prohibited basis in approving or denying loan modifications. Moreover, as the definition of credit includes the right granted by a creditor to an applicant to defer payment of a debt, a loan modification is itself an extension of credit and subject to ECOA and Regulation B. Examples of loan modifications that are extensions of credit include, but are not limited to, the right to defer payment of a debt by capitalizing accrued

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[4] In addition to potential ECOA violations, an examiner may identify potential violations of the FHAct through the course of an examination. The FHAct prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18), and handicap (disability). The CFPB cooperates with the U.S. Department of Housing and Urban Development (HUD) to further the purposes of the FHAct. If a potential FHAct violation is identified, the examiner must consult with Headquarters to determine whether a referral to HUD or the U.S. Department of Justice and, if applicable, the creditor's prudential regulator is appropriate.

interest and certain escrow advances, reducing the interest rate, extending the loan term, and/or providing for principal forbearance.[5]

Prohibited Practices – 12 CFR 1002.4

Regulation B contains two basic and comprehensive prohibitions against discriminatory lending practices:

- A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.
- A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage, on a prohibited basis, a reasonable person from making or pursuing an application.

Note that the regulation is concerned not only with the treatment of persons who have initiated the application process, but also with lender behavior before the application is even taken. Lending officers and employees must be careful to take no action that would, on a prohibited basis, discourage a reasonable person from applying for a loan. For example, a creditor may not advertise its credit services and practices in ways that would tend to encourage some types of borrowers and discourage others on a prohibited basis. In addition, a creditor may not use prescreening tactics likely to discourage potential applicants on a prohibited basis. Instructions to loan officers or brokers to use scripts, rate quotes, or other means to discourage applicants from applying for credit on a prohibited basis are also prohibited.

The prohibition against discouraging applicants applies to in-person oral and telephone inquiries as well as to written applications. Lending officers must refrain from requesting prohibited information in conversations with applicants during the pre-interview phase (that is, before the application is taken) as well as when taking the written application.

To prevent discrimination in the credit-granting process, the regulation imposes a delicate balance between the creditor's need to know as much as possible about a prospective borrower with the borrower's right not to disclose information irrelevant to the credit transaction as well as relevant information that is likely to be used in connection with discrimination on a prohibited basis. To this end, the regulation addresses taking, evaluating, and acting on applications as well as furnishing and maintaining credit information.

Electronic Disclosures – 12 CFR 1002.4(d)

Disclosures required to be given in writing may be provided to the applicant in electronic form, generally 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.*).

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[5] *See* Federal Reserve Board Consumer Affairs Letter 09-13 (December 4, 2009) (http://www federalreserve.gov/boarddocs/caletters/2009/0913/caltr0913 htm).

Rules for Taking Applications – 12 CFR 1002.5

Regulation B permits creditors to ask for any information in connection with a credit transaction, so long as they avoid certain clearly defined areas set forth in 12 CFR 1002.5, which include both the specific prohibited bases of discrimination and certain types of information that often relates to discrimination on a prohibited basis.

Applicant Characteristics

Creditors may not request or collect information about an applicant's race, color, religion, national origin, or sex. Exceptions to this rule generally involve situations in which the information is necessary to test for compliance with fair lending rules or is required by a state or federal regulatory agency or other government entity for a particular purpose, such as to determine eligibility for a particular program. For example, a creditor may request prohibited information:

- In connection with a self-test being conducted by the creditor (provided that the self-test meets certain requirements) (12 CFR 1002.15);
- For monitoring purposes in relation to credit secured by real estate (12 CFR 1002.13; the Home Mortgage Disclosure Act, 12 U.S.C. 2801 ("HMDA"); Home Affordable Modification Program ("HAMP")); or
- To determine an applicant's eligibility for special-purpose credit programs (12 CFR 1002.8(b), (c) and (d)).

Information about a Spouse or Former Spouse – 12 CFR 1002.5(c)

A creditor may not request information about an applicant's spouse or former spouse except under the following circumstances:

- The non-applicant spouse will be a permitted user of or joint obligor on the account. (NOTE: The term "permitted user" applies only to open-end accounts.)
- The non-applicant spouse will be contractually liable on the account.
- The applicant is relying on the spouse's income, at least in part, as a source of repayment.
- The applicant resides in a community property state, or the property upon which the applicant is relying as a basis for repayment of the credit requested is located in such a state.
- The applicant is relying on alimony, child support, or separate maintenance income as a basis for obtaining the credit.

Inquiries Concerning Marital Status – 12 CFR 1002.5(d)(1) and 1002.5(d)(3)

Individual Credit

When an applicant applies for individual credit, the creditor may not ask the applicant's marital status. There are two exceptions to this rule:

- If the credit transaction is to be secured, the creditor may ask the applicant's marital status. (This information may be necessary to determine what would be required to gain access to the collateral in the event of default.)
- If the applicant either resides in a community property state or lists assets to support the debt that are located in such a state, the creditor may ask the applicant's marital status. (In community property states, assets owned by a married individual may also be owned by the spouse, thus complicating the availability of assets to satisfy a debt in the event of default.)

Joint Credit

When a request for credit is joint (made by two or more individuals who will be primarily liable), the creditor may ask the applicant's marital status, regardless of whether the credit is to be secured or unsecured, but may use only the terms "married," "unmarried," and "separated." This requirement applies to oral as well as written requests for marital status information. ''Unmarried'' may be defined to include divorced, widowed, or never married, but the application must not be structured in such a way as to encourage the applicant to distinguish among these.

Alimony, Child Support, or Separate Maintenance Income – 12 CFR 1002.5(d)(2)

A creditor may ask if an applicant is receiving alimony, child support, or separate maintenance payments. However, the creditor must first disclose to the applicant that such income need not be revealed unless the applicant wishes to rely on that income in the determination of creditworthiness. An appropriate notice to that effect must be given whenever the creditor makes a general request concerning income and the source of that income. Therefore, a creditor either must ask questions designed to solicit only information about specific income (for example, "salary," "wages," "employment," or other specified categories of income) or must state that disclosure of alimony, child support, or separate maintenance payments is not required.

Residency and Immigration Status – 12 CFR 1002.5(e)

The creditor may inquire about the applicant's permanent residence and immigration status in the United States in determining creditworthiness.

Rules for Evaluating Applications – 12 CFR 1002.6

General Rule

A creditor may consider any information in evaluating applicants, so long as the use of the information does not have the *intent* or the *effect* of discriminating against an applicant on a prohibited basis. Generally, a creditor may not:

- Consider any of the prohibited bases, including age (providing the applicant is old enough, under state law, to enter into a binding contract) and the receipt of public assistance;
- Use child-bearing or child-rearing information, assumptions, or statistics to determine whether an applicant's income may be interrupted or decreased;
- Consider whether there is a telephone listing in the applicant's name (but the creditor may consider whether there is a telephone in the applicant's home); or
- Discount or exclude part-time income from an applicant or the spouse of an applicant.

Systems for Analyzing Credit

Regulation B neither requires nor endorses any particular method of credit analysis. Creditors may use traditional methods, such as judgmental systems that rely on a credit officer's subjective evaluation of an applicant's creditworthiness, or they may use more-objective, statistically developed techniques such as credit scoring.

Credit Scoring Systems

Section 1002.2(p) of Regulation B prescribes the standards that a credit scoring system must meet to qualify as an ‘‘empirically derived, demonstrably and statistically sound, credit system.’’ All forms of credit analysis that do not meet the standards are automatically classified as ‘‘judgmental’’ systems. This distinction is important because creditors that use a ‘‘demonstrably and statistically sound’’ system may take applicant age directly into account as a predictive variable,[6] whereas judgmental systems may do so only to determine a pertinent element of creditworthiness or to favor an elderly applicant.

Judgmental Evaluation Systems

Any system other than one that is empirically derived and demonstrably and statistically sound, is a judgmental system (including any credit scoring system that does not meet the prescribed technical standards). With limited exception, such a system may not take applicant age directly into account in evaluating creditworthiness. The act and the regulation permit a creditor to consider the applicant's age for the purpose of evaluating other applicant information that has a

[6] This applies provided that the age of an elderly applicant is not assigned a negative factor or value.

demonstrable relationship to creditworthiness.[7] Additionally, in any system of evaluating creditworthiness, a creditor may consider the age of an elderly applicant to favor the applicant in extending credit.

Rules for Extensions of Credit – 12 CFR 1002.7

Section 1002.7 of Regulation B provides a set of rules proscribing certain discriminatory practices regarding the creation and continuation of credit accounts.

Signature Requirements

The primary purpose of the signature requirements is to permit creditworthy individuals (particularly women) to obtain credit on their own. Two general rules apply:

- A creditor may not require a signature other than the applicant's or joint applicant's if under the creditor's standards of creditworthiness the applicant qualifies for the amount and terms of the credit requested.
- A creditor has more latitude in seeking signatures on instruments necessary to reach property used as security, or in support of the customer's creditworthiness, than it has in obtaining the signatures of persons other than the applicant on documents that establish the contractual obligation to repay.

When assessing the level of a creditor's compliance with the signature requirements, examiners should consult with the Examiner-in-Charge if any questions arise.

Special-Purpose Credit Programs – 12 CFR 1002.8

The ECOA and Regulation B allow creditors to establish special-purpose credit programs for applicants who meet certain eligibility requirements. Generally, these programs target an economically disadvantaged class of individuals and are authorized by federal or state law. Some are offered by not-for-profit organizations that meet certain IRS guidelines, and some by for-profit organizations that meet specific tests outlined in 12 CFR 1002.8.

Examiners are encouraged, if an issue arises regarding such a program, to consult with Headquarters.

Notifications – 12 CFR 1002.9

A creditor must notify an applicant of action taken on the applicant's request for credit, whether favorable or adverse, within 30 days after receiving a completed application. Notice of approval may be expressly stated or implied (for example, the creditor may give the applicant the credit card, money, property, or services for which the applicant applied).

Notification of adverse action taken on an existing account must also be made within 30 days.

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[7] Judgmental systems may consider the amount and probable continuance of income. A planned reduction in income due to retirement may, for example, be considered.

Under at least two circumstances, the creditor need not comply with the 30-day notification rule:

- The creditor must notify an applicant of adverse action within 90 days after making a counteroffer unless the applicant accepts or uses the credit during that time.
- The creditor may not have to notify an applicant of adverse action if the application was incomplete and the creditor sent the applicant a notice of incompleteness that met certain requirements set forth in 12 CFR 1002.9(c).

Adverse Action Notice – 12 CFR 1002.9(a)(2)

A notification of adverse action must be in writing and must contain certain information, including the name and address of the creditor and the nature of the action that was taken. In addition, the creditor must provide an ECOA notice that includes the identity of the federal agency responsible for enforcing compliance with the act for that creditor. This notice is generally included on the notification of adverse action. The creditor must also either provide the applicant with the specific principal reason for the action taken or disclose that the applicant has the right to request the reason(s) for denial within 60 days of receipt of the creditor's notification, along with the name, address, and telephone number of the person who can provide the specific reason(s) for the adverse action. The reason may be given orally if the creditor also advises the applicant of the right to obtain the reason in writing upon request.

Incomplete Applications – 12 CFR 1002.9(c)

When a creditor receives an incomplete application, it may send one of two alternative notifications to the applicant. One is a notice of adverse action; the other is a notice of incompleteness. The notice of incompleteness must be in writing and must specify the information the creditor needs if it is to consider the application; it must also provide a reasonable period of time for the applicant to furnish the missing information.

Applications Submitted Through a Third Party – 12 CFR 1002.9(g)

When more than one creditor is involved in a transaction and adverse action is taken with respect to the application for credit by all the creditors involved, each creditor that took such action must provide a notice of action taken. The notification may be given by a third party; however, the notice must disclose the identity of each creditor on whose behalf the notice is given. If one of the creditors approves the application, the creditors that took adverse action need not provide notification.

Notification to Business Credit Applicants – 12 CFR 1002.9(a)(3)

The notification requirements for business credit applicants are different from those for consumer credit applicants and are more extensive if the business had gross revenues of

$1,000,000 or less in the preceding fiscal year. Extensions of trade credit, credit incident to a factoring agreement, and similar types of credit are subject to the same rules as those that apply to businesses that had gross revenues of more than $1,000,000.

Generally, a creditor must comply with the same notification requirements for business credit applicants with gross revenues of $1,000,000 or less as it does for consumer credit applicants. However, the creditor has more options when dealing with these business credit applicants. First, the creditor may tell the business credit applicant orally of the action taken. Second, if the creditor chooses to provide a notice informing the business credit applicant of the right to request the reason for action taken, it may, rather than disclose the reason itself, provide the notice at the time of application. If the creditor chooses to inform the applicant of the right to request a reason, however, it must provide a disclosure with an ECOA notice that is in retainable form and that gives the applicant the same information that must be provided to consumer credit applicants when this option is used (see 12 CFR 1002.9(a)(2)(ii)). Finally, if the application was made entirely over the phone, the creditor may provide an oral statement of action taken and of the applicant's right to a statement of reasons for adverse action.

The notification requirements for business credit applicants with gross revenues of more than $1,000,000 are relatively simple. The creditor must notify the applicant of the action taken within a reasonable time period. The notice may be oral or in writing; a written statement of the reasons for adverse action and the ECOA notice need be provided only if the applicant makes a written request within 60 days of the creditor's notification of the action taken.

Designation of Accounts – 12 CFR 1002.10(a)

A creditor that furnishes credit information to a consumer reporting agency must 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; and
- Any existing account to reflect the participation of both spouses within 90 days after receiving a written request to do so from one of the spouses.

If a creditor furnishes credit information to a consumer reporting agency, the creditor must furnish the information in the name of the spouse about whom the information was requested.

Record Retention – 12 CFR 1002.12

Applications

In general, a creditor must preserve all written or recorded information connected with an application for 25 months (12 months for business credit) after the date on which the creditor informed the applicant of action taken on an application or of incompleteness of an application.

Prohibited Information

A creditor may retain information in its files that it may not use in evaluating applications. However, the information must have been obtained inadvertently or in accordance with federal or state law or regulation.

Existing Accounts

A creditor must preserve any written or recorded information concerning adverse action on an existing account as well as any written statement submitted by the applicant alleging a violation of the ECOA or Regulation B. This evidence must be kept for 25 months (12 months for business credit).

Prescreened Solicitations

The 25-month retention rule also applies when a creditor makes an offer of credit to potential customers. In such cases, the creditor must retain for 25 months following the date of the solicitation:

- 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.

Rules on Providing Appraisals and Other Valuations – 12 CFR 1002.14

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[8] 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

[8] 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).

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 provisiosn 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.[9]

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.

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*.).

Incentives for Self-Testing and Self-Correction – 12 CFR 1002.15

[9] Creditors are required to provide copies of appraisals or valuations even if the consumer does not pay the reasonable fee.

A self-test, as discussed in 12 CFR 1002.15 of Regulation B, must meet two criteria. First, it must be a program, practice, or study that a lender designs and uses specifically to determine the extent or effectiveness of its compliance with the regulation. Second, the results of the self-test must create data or factual information that is otherwise not available and cannot be derived from loan or application files or other records related to credit transactions. The findings of a self-test that is conducted voluntarily by a creditor and that meets the conditions set forth in 12 CFR 1002.15 are privileged against discovery or use by (1) a government agency in any examination or investigation related to the ECOA or Regulation B or (2) a government agency or an applicant in any legal proceeding involving an alleged violation of the ECOA or Regulation B. Privileged information includes the report or results of the test; data or other information created by the test; and any analysis, opinions, or conclusions regarding the results of the test.

To qualify for the privilege, appropriate corrective action is required when the results of a self-test show that it is more likely than not that there has been a violation of the ECOA or Regulation B.[10] The privilege does not cover information about whether a test was conducted; the methodology, scope, time period, or dates covered by the test; loan or application files or other business records; and information derived from such files and records, even if aggregated, summarized, or reorganized.

Enforcement, Penalties, and Liabilities – 12 CFR 1002.16

In addition to actual damages, the Act provides for punitive damages of up to $10,000 in individual lawsuits and up to the lesser of $500,000 or 1 percent of the creditor's net worth in class action suits. Successful complainants are also entitled to an award of court costs and attorney's fees.

A creditor is not liable for failure to comply with the notification requirements of 12 CFR 1002.9 or the reporting requirements of 12 CFR 1002.10 if the failure was caused by an inadvertent error and the creditor, after discovering the error (1) corrects the error as soon as possible and (2) begins compliance with the requirements of the regulation. ''Inadvertent errors'' include mechanical, electronic, and clerical errors that the creditor can show (1) were not intentional and (2) occurred despite the fact that the creditor maintains procedures reasonably adapted to avoid such errors. Similarly, failure to comply with 12 CFR 1002.6(b)(6), 1002.12, and 1002.13 is not considered a violation if it results from an inadvertent error and the creditor takes the corrective action noted above. Errors involving 12 CFR 1002.12 and 1002.13 may be corrected prospectively by the creditor.

REFERENCES

Laws

12 U.S.C. 1691 *et seq.*	Equal Credit Opportunity Act

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[10] 12 CFR 1002.15(c)

Regulations

Consumer Financial Protection Bureau Regulation (12 CFR)

Part 1002	Equal Credit Opportunity (Regulation B)

Equal Credit Opportunity Act

Exam Date:	[Click&type]
Exam ID No.:	[Click&type]
Prepared By:	[Click&type]
Reviewer:	[Click&type]
Docket #:	[Click&type]
Entity Name:	[Click&type]

Examination Procedures

- To determine whether the creditor has established policies, procedures, and internal controls to ensure that it is in compliance with the Equal Credit Opportunity Act (ECOA) and its implementing Regulation B.
- To determine whether the creditor discriminated against members of one or more protected classes in any aspect of its credit operations.
- To determine whether the creditor is in compliance with those requirements of ECOA that are set forth in Regulation B.

NOTE: This document refers throughout to the Interagency Fair Lending Examination Procedures ("IFLEP"). When applying those procedures, it is important to keep in mind that the Fair Housing Act, unlike ECOA, is not a "Federal consumer financial law" for which the CFPB has supervisory authority.

Section A: ECOA / REGULATION B COMPLIANCE MANAGEMENT / RISK ASSESSMENT EXAMINATION PROCEDURES

A. Examination Objective & Purpose

- To determine whether the creditor has established policies, procedures and internal controls to ensure that it is in compliance with the ECOA and Regulation B. The intensity and scope of the current ECOA / Regulation B examination will depend in part on the adequacy of the creditor's compliance management program.

B. Examination Procedures

1. Review the creditor's overall compliance management program. Following the *ECOA Baseline Review Module 2: Fair Lending Compliance Management Systems (CMS)* procedures in the *CFPB' Supervision/Examination Manual*; verify that the ECOA and Regulation B compliance is integrated into the creditor's compliance management program. Include the Module 2 summary below or in Part C.

[Click&type]

2. Consult Part II ("*Compliance Management Review*") of the IFLEP and apply the *Compliance Management Analysis Checklist* in the IFLEP Appendix.

[Click&type]

NOTE: When performing 1 and 2 above, pay special close attention to the creditor's compliance management policies and procedures with respect to the following:

- Does any aspect of the creditor's credit operations appear to vary by any of the prohibited bases? Examples: (i) The creditor establishes most of its branches in predominately non-minority neighborhoods and does not have a presence in nearby minority neighborhoods; or (ii) Spanish and English advertisements emphasize different credit products.
- Do the creditor's underwriting or pricing guidelines contain any unusual criteria that could have a possibly negative disparate impact on a protected class? (e.g., underwriting or price models that use ZIP codes.
- Are the creditor's policies, procedures, or guidelines vague or unduly subjective with respect to (i) underwriting; (ii) pricing; (iii) referring applicants to subsidiaries, affiliates, or lending channels within the creditor; (iv) classifying applicants as "prime" or "sub-prime" borrowers; or (v) deciding what kinds of alternative loan products should be offered or recommended to applicants?
- Does the creditor allow exceptions to its underwriting, pricing, or product recommendation policies and procedures to be made subjectively or without clear guidance? Even if the policies and procedures are clear, does the creditor make a large number of such exceptions?
- Does the creditor give its employees significant discretion to decide what products to offer or the price to offer, including both interest rates and fees?
- Does any employee receive incentives depending, directly or indirectly, on the terms or conditions of the credit product sold or the price (including both interest rates and fees) charged?
- Does the creditor rely on third parties, such as brokers, for a significant part of its credit operations?

These factors create conditions under which the risk of fair lending violations may be increased. Whether any particular factor constitutes a fair lending violation requires consideration of the particular facts and circumstances at issue.

C. Examiner's Compliance Management / Risk Assessment Examination Summary, Recommendation and Comments

[Click&type]

Section B: FAIR LENDING EXAMINATION PROCEDURES

A. Examination Objective & Purpose

- To determine whether the creditor discriminated against members of one or more protected classes in any aspect of its credit operations.

B. Pre-Examination Procedures – Data Request[1]

1. For mortgages, determine if the CFPB has received all the data typically used by creditors in pricing and underwriting decisions.2 If not, in consultation with Headquarters, request from the creditor all relevant data in electronic format.

[Click&type]

2. For non-mortgage products, in consultation with Headquarters, request from the creditor all relevant data in electronic format.

[Click&type]

NOTE: It may take a significant amount of time for the creditor to produce data and for Headquarters to review it. Data requests should be sent out as early as practicable to ensure the incorporation of all analyses in the examination.

C. Pre-Examination Procedures – Scoping

No single fair lending examination can reasonably be expected to scrutinize every aspect of an institution's credit operations. The purpose of pre-examination scoping is to help examiners target areas with the highest fair lending risk.

The examiners, together with Headquarters, should use statistical analyses whenever appropriate to scope fair lending examinations in addition to following the procedures in Part I of the IFLEP ("*Examination Scope Guidelines*").

1. Review any preliminary data screens provided by Headquarters to identify possible examination focal points.[3]

[Click&type]

2. Review information from previous compliance examinations that could inform potential focal points of the current examination.

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[1] If it is decided that statistical methods will not be used in the examination, this step can be skipped.

[2] For some creditors, the CFPB routinely requests additional mortgage data fields beyond the HMDA data. For these creditors, the examiners will likely not have to make any pre-examination mortgage data requests.

[3] A focal point is a combination of loan product(s), market(s), decision center(s), time frame and prohibited basis to be analyzed during the fair lending examination.

[Click&type]

3. Follow the steps in the *Examination Scope Guidelines*. Inform Headquarters of the information you gathered about the creditor. Consult Headquarters to determine what additional information would be helpful to improve data analyses and refine scoping.

[Click&type]

4. Together with Headquarters, finalize the scope and intensity of the fair lending examination.

[Click&type]

D. Examination Procedures

The IFLEP's examination procedures (Part III) are focused on conducting comparative file reviews and not statistical analysis. It is important to supplement the IFLEP examination procedures whenever statistical analysis is involved.

1. When statistical analysis is not part of the examination, follow Part III of the IFLEP to examine the creditor. Working with Headquarters, assess possible violations, and follow Part IV of the IFLEP, Steps 1–3, when discussing results with the creditor and reviewing all responses.

[Click&type]

2. When statistical analysis is part of the examination, examiners should work closely with Headquarters to do the following:

   a. Follow Part III of the IFLEP to examine the creditor, including conducting comparative file reviews as appropriate.

   b. Integrate creditor-specific information into statistical models. Follow Part III.A of the IFLEP to verify the accuracy of the data. To the extent HMDA data is used, apply the HMDA / Regulation C examination procedures to verify data integrity. For non-mortgage data, consult with Headquarters on how to verify data integrity. If the most recent Compliance Management review indicates that the creditor does not have adequate policies and procedures in place to ensure data integrity, increase the sample size for the data verification.

   c. Assess possible violations, and follow Part IV of the IFLEP, Step 1, to discuss results with the creditor, including sharing our statistical analyses with the creditor and asking for comments and explanations.

   d. Review the creditor's response. Follow Part IV of the IFLEP, Steps 2–3. If necessary, in consultation with Headquarters, refine our statistical models and re-analyze.

[Click&type]

3. Consult with Headquarters to reach the final conclusions. Follow Part IV of the IFLEP, Steps 4–5.

[Click&type]

E. Examiner's Fair Lending Examination Summary, Recommendation and Comments

[Click&type]

Section C: REGULATION B EXAMINATION CHECKLIST

A. Examination Objective & Purpose

- To determine whether the creditor is in compliance with those requirements of ECOA that are set forth in Regulation B.

B. Examination Procedures

The ECOA and its implementing Regulation B not only prohibit discrimination in credit transactions, but also set forth additional requirements, such as requiring adverse action notices in appropriate circumstances. Thus, not all items on the checklist relate to discrimination. Some items on the checklist, however, do reflect a possible fair lending violation even though they are not stated in those terms.

Accordingly, depending on the general risk profile of the creditor and the Section A Compliance Management/Risk Assessment, not all items on the checklist need be included in every fair lending exam. Examiners should consult with Headquarters to determine which sections of this checklist should be completed in an examination.

The checklist, supporting documentation for any apparent violations, and management response should be included in the work papers. In consultation with Headquarters, the Examiner-in-Charge, and the Regional Manager, request that the management responsible for the transactions provide a response on any apparent violations.

A “No” answer indicates a possible exception or deficiency and should be explained in the work papers.[4] If a line item is not applicable within the area you are reviewing, indicate “NA.”

[4] If the violation of 12 CFR 1002.6(b)(6), 1002.9, 1002.10, 1002.12, or 1002.13 results from an inadvertent error, namely a mechanical, electronic, or clerical error that the creditor demonstrates was not intentional and occurred notwithstanding the maintenance of procedures reasonably adapted to avoid such errors, there is no violation. On discovering an inadvertent error under 12 CFR 1002.9 and 1002.10, the creditor must correct it as soon as possible; inadvertent errors under 12 CFR 1002.12 and 1002.13 must be corrected prospectively. To determine whether an error is inadvertent, you should consult with the Examiner-in-Charge.

All citations are to Regulation B, 12 CFR Part 1002.

	Yes	No	Basis of Conclusion
Prohibited Practices	☐	☐	[Click&type]
Discrimination	☐	☐	[Click&type]
See Section B: Fair Lending Examination Procedures	☐	☐	[Click&type]
Discouragement	☐	☐	[Click&type]
Obtain and review marketing and advertising materials (including signs or other displays), prescreened solicitations, and the criteria used to determine the potential recipients of the particular solicitation, scripts, and interview forms used for pre-application interviews and for taking applications, and rate sheets and product information used in discussing available types of credit with applicants. Conduct loan agent interviews to determine whether they show an understanding of the regulatory requirements.	☐	☐	[Click&type]
1. Does the creditor not make any oral or written statements, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application? (12 CFR 1002.4(b))	☐	☐	[Click&type]
2. Does the creditor not use statements that the applicant should not bother to apply based on a prohibited basis (e.g., you shouldn't bother to apply because you are retired)? (12 CFR Part 1002, Supp. I, Comment 1002.4(b)-1(i))	☐	☐	[Click&type]
3. Does the creditor not use words, symbols, models or other forms of communication in advertising that express, imply, or suggest a discriminatory preference or a policy of exclusion in violation of the ECOA? (Comment 1002.4(b)-1(ii))	☐	☐	[Click&type]
4. Does the creditor not use scripts that discourage applications on a prohibited basis? (Comment 1002.4(b)-1(iii))	☐	☐	[Click&type]
5. Are the criteria used for prescreened solicitations not discriminatory on a prohibited basis? (12 CFR 1002.4(a), (b))	☐	☐	[Click&type]

	Yes No	Basis of Conclusion
6. Does the text of any prescreened solicitations avoid statements that would tend to discourage, on a prohibited basis, a reasonable person from making or pursuing an application? (12 CFR 1002.4(b))	☐ ☐	[Click&type]
Rules for Taking Applications[5]		
Obtain and review application forms (including scripts for telephone applications and screen shots of online applications), disclosures, a sample of loan files,[6] *creditor policies and procedures and audits pertaining to the taking of applications, and training materials. Conduct loan officer interviews to determine whether they show an understanding of the regulatory requirements and that policies and procedures are consistently applied.*		
7. Does the creditor use written applications for credit that is primarily for the purchase or refinancing of dwellings that are occupied or to be occupied by the applicant as a principal residence and where the credit will be secured by the dwellings? (12 CFR 1002.4(c), 1002.13(a))	☐ ☐	[Click&type]
8. If the creditor collects information (in addition to information required for government monitoring purposes, such as 12 CFR 1002.13, HMDA, and HAMP) on the race, color, religion, national origin, or sex of the applicant or any other person in connection with a credit transaction for purposes of a "self-test":		
a. Does the creditor meet the "self-test" requirements of 12 CFR 1002.15 (*see* Checklist Items 70–71)?	☐ ☐	[Click&type]

5 A creditor may obtain information that is otherwise restricted to determine eligibility for a special purpose program, as provided in 12 CFR 1002.8(b), (c), and (d). To the extent there is an appropriately established and administered special purpose program under which any otherwise restricted information was requested, obtaining such information should not constitute a violation, and Headquarters and the Examiner-in-Charge should be consulted.

6 To the extent the institution maintains any information in its files that is prohibited by the ECOA or Regulation B for use in evaluating applications, that information may be retained if it was obtained (a) prior to March 23, 1977; (b) from consumer reporting agencies, an applicant, or others without the specific request of the creditor; or (c) as required to monitor compliance with the ECOA and Regulation B or other federal or state statutes or regulations. (12 CFR 1002.12(a))

	Yes No	Basis of Conclusion
b. Does the creditor disclose to the applicant, orally or in writing, when requesting the information that: (1) the applicant is not required to provide the information; (2) the creditor is requesting the information to monitor its compliance with the federal ECOA; (3) 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; and (4) if applicable, certain information will be collected based on visual observation or surname if not provided by the applicant or other person? (12 CFR 1002.5(b)(1))	☐ ☐	[Click&type]
9. If a designation of title, such as Ms., Miss, Mrs., or Mr. is requested on an application form, does the form disclose that such designation is optional, and does the application form otherwise use only terms that are neutral as to sex? (12 CFR 1002.5(b)(2))	☐ ☐	[Click&type]
10. Does the creditor only request any information concerning the spouse or former spouse of an applicant when:		
a. The spouse will be permitted to use the account;	☐ ☐	[Click&type]
b. The spouse will be contractually liable on the account;	☐ ☐	[Click&type]
c. The applicant is relying on the spouse's income as a basis for repayment of the credit requested;	☐ ☐	[Click&type]
d. 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	☐ ☐	[Click&type]
e. 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? (12 CFR 1002.5(c)(2))	☐ ☐	[Click&type]

		Yes	No	Basis of Conclusion
11.	In the case of applications for individual unsecured credit, does the creditor inquire about the applicant’s marital status only when 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? (12 CFR 1002.5(d)(1))	☐	☐	[Click&type]
12.	In the case of applications for other than individual unsecured credit, are the creditor’s inquiries into marital status limited to the terms “married,” “unmarried,” and “separated” (a creditor may explain that the category “unmarried” includes single, divorced, and widowed persons)? (12 CFR 1002.5(d)(1))	☐	☐	[Click&type]
13.	If the creditor inquires whether income stated in an application is derived from alimony, child support, or separate maintenance payments, does the creditor also disclose to the applicant that such income need not be revealed if the applicant does not want the creditor to consider the information in determining the applicant’s creditworthiness? (12 CFR 1002.5(d)(2))	☐	☐	[Click&type]
14.	Does the creditor 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.) (12 CFR 1002.5(d)(3))	☐	☐	[Click&type]
Rules for Evaluating Applications				
Obtain and review policies and procedures, training materials, a sample of loan files, audits pertaining to evaluating, and pricing applications for credit (including, but not limited to those regarding loan servicing, modifications, collections, and loss mitigation), and information regarding statistical models used in credit evaluations. Conduct loan underwriter interviews to determine whether they show an understanding of the regulatory requirements and that policies and procedures are consistently applied.				

	Yes No	Basis of Conclusion
15. To the extent that a creditor takes into account an applicant's age (assuming that the applicant has the capacity to enter into a binding contract), determine whether the creditor uses age in an empirically derived, demonstrably and statistically sound, credit scoring system or a judgmental system. (12 CFR 1002.2(p))		
a. In an empirically derived, demonstrably and statistically sound, credit scoring system, is age a predictive variable and is the age of an elderly applicant (62 or older) not assigned a negative factor or value? (12 CFR 1002.6(b)(2)(ii))	☐ ☐	[Click&type]
b. In a judgmental system of evaluating creditworthiness, is the applicant's age considered only for the purpose of determining a pertinent element of creditworthiness? (12 CFR 1002.6(b)(2)(iii))	☐ ☐	[Click&type]
c. Except as set forth in Checklist Item 15(b) above (use for pertinent element of creditworthiness), in any system for evaluating creditworthiness, is the age of an applicant 62 or older considered only to favor him or her in extending credit? (12 CFR 1002.6(b)(2)(iv))	☐ ☐	[Click&type]
16. Does the creditor only take into account whether an applicant's income derives from any public assistance program in a judgmental system of evaluating creditworthiness and only for the purpose of determining a pertinent element of creditworthiness? (12 CFR 1002.6(b)(2)(iii))	☐ ☐	[Click&type]
17. When evaluating creditworthiness, does the creditor not make assumptions or use 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? (12 CFR 1002.6(b)(3))	☐ ☐	[Click&type]
18. Does the creditor not take into account whether there is a telephone listing in the name of an applicant for consumer credit? (12 CFR 1002.6(b)(4))	☐ ☐	[Click&type]

		Yes	No	Basis of Conclusion
19.	Does the creditor count, and not discount or exclude from consideration, the income of an applicant or the spouse of an applicant because of a prohibited basis? (12 CFR 1002.6(b)(5)) (A creditor may consider the amount and probable continuance of any income in evaluating an applicant's creditworthiness.)	☐	☐	[Click&type]
20.	Does the creditor consider income derived from part-time employment, alimony, child support, separate maintenance payments, retirement benefits, or public assistance on an individual basis, and not on the basis of aggregate statistics? (Comment 1002.6(b)(5)-1)	☐	☐	[Click&type]
21.	Does the creditor count, and not 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, is an annuity, pension, or other retirement benefit, or comes from multiple income streams? (12 CFR 1002.6(b)(5), Comment 1002.6(b)(5)-4) (A creditor may consider the amount and probable continuance of any income in evaluating an applicant's creditworthiness.)	☐	☐	[Click&type]
22.	When an applicant relies on alimony, child support, or separate maintenance payments in applying for credit, does the creditor consider such payments as income to the extent that they are likely to be consistently made? (12 CFR 1002.6(b)(5))	☐	☐	[Click&type]
23.	To the extent the 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, does the creditor consider:	☐	☐	[Click&type]
	a. 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? (12 CFR 1002.6(b)(6)(i))	☐	☐	[Click&type]

	Yes	No	Basis of Conclusion
b. On the applicant's request, any information that the applicant may present that tends to indicate the credit history being considered by the creditor does not accurately reflect the applicant's creditworthiness? (12 CFR 1002.6(b)(6)(ii))	☐	☐	[Click&type]
c. 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? (12 CFR 1002.6(b)(6)(iii))	☐	☐	[Click&type]
24. Does the creditor not deny credit in whole or in part based on the country an applicant is from? (Comment 1002.2(z)-2))	☐	☐	[Click&type]
25. Are married and unmarried applicants evaluated by the same standards? (12 CFR 1002.6(b)(8))	☐	☐	[Click&type]
26. In evaluating joint applicants, are joint applicants treated in the same manner regardless of the existence, absence, or likelihood of a marital relationship between the parties? (12 CFR 1002.6(b)(8))	☐	☐	[Click&type]
27. Does the creditor not consider race, color, religion, or sex (or an applicant's or other person's decision not to provide the information) in any aspect of a credit transaction? (12 CFR 1002.6(b)(1), (9))	☐	☐	[Click&type]
Rules for Extensions of Credit			
Obtain and review policies and procedures, training materials, a sample of loan files, closing instructions on a sample of loans, and audits pertaining to extensions of credit (including, but not limited to signature requirements and account management). Conduct loan officer and closing agent interviews to determine whether they show an understanding of the regulatory requirements and that policies and procedures are consistently applied.			
28. Does the creditor not refuse to grant an individual account to a creditworthy applicant on a prohibited basis? (12 CFR 1002.7(a))	☐	☐	[Click&type]

		Yes	No	Basis of Conclusion
29.	Does the creditor 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? (12 CFR 1002.7(b))	☐	☐	[Click&type]
30.	With respect to applicants who are contractually liable on an existing open-end account, does the creditor 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, not require reapplication (except as permitted by 12 CFR 1002.7(c)(2), see Checklist Item 31), change the terms of the account, or terminate the account, unless there is evidence of the applicant's inability or unwillingness to repay? (12 CFR 1002.7(c)(1))	☐	☐	[Click&type]
31.	To the extent the creditor requires reapplication for an open-end account on the basis of a change in the marital status of an applicant who is contractually liable:			
	a. Does it do so only when (1) the original credit granted was based in whole or in part on the income of the applicant's spouse; and (2) the creditor has information available to it indicating that the applicant's income may not support the amount of credit currently available; and	☐	☐	[Click&type]
	b. Does it allow the account holder full access to the account under the existing contract terms while the reapplication is pending? (12 CFR 1002.7(c)(2), Comment 1002.7(c)(2)-1)	☐	☐	[Click&type]
32.	For joint applications, is there evidence of an intent to apply for joint credit at the time of application? (The creditor shall not deem the submission of a joint financial statement or other evidence of jointly held assets as an application for joint credit.) (12 CFR 1002.7(d)(1), Comment 1002.7(d)(1)-3)	☐	☐	[Click&type]

		Yes	No	Basis of Conclusion
33.	Does the creditor allow an applicant who is individually creditworthy to obtain credit without a spouse's or other person's signature (other than as a joint applicant)? (12 CFR 1002.7(d)(1), Comment 1002.7(d)(1)-1)	☐	☐	[Click&type]
34.	Does the creditor require a signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument in only the following circumstances and based only on existing forms of ownership and not on the possibility of a subsequent change (Comment 1002.7(d)(2)-1(i)):	☐	☐	[Click&type]
	a. 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 requires 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. (12 CFR 1002.7(d)(2))	☐	☐	[Click&type]
	b. 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, the creditor requires the signature of the spouse only 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 and (1) 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 (2) the applicant does not have sufficient separate property to qualify for the credit requested without regard to community property. (12 CFR 1002.7(d)(3))	☐	☐	[Click&type]

	Yes No	Basis of Conclusion
c. If an applicant requests secured credit, the creditor requires the signature of the applicant’s spouse or other person only on those instruments 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). (12 CFR 1002.7(d)(4))	☐ ☐	[Click&type]
35. Does the creditor refrain from routinely requiring a non-applicant joint owner to sign an instrument (such as a quitclaim deed) that would result in the forfeiture of the joint owner’s interest in the property? (Comment 1002. 7(d)(2)-1(ii)(C))	☐ ☐	[Click&type]
36. In those situations when under the creditor’s standards of creditworthiness, the personal liability of an additional party is necessary to support the credit requested, does the creditor allow the applicant to have either his or her spouse or someone other than his or her spouse to serve as the additional party? (12 CFR 1002.7(d)(5))	☐ ☐	[Click&type]
37. If a borrower’s creditworthiness is reevaluated when a credit obligation is renewed, does the creditor determine whether an additional party is still warranted and, if not warranted, release the additional party? (Comment 1002.7(d)(5)-3)	☐ ☐	[Click&type]
38. Does the creditor not refuse to extend credit and not terminate an account because credit life, health, accident, or disability insurance is not available because of the applicant’s age? (12 CFR 1002.7(e))	☐ ☐	[Click&type]
Special-Purpose Credit Programs		
Inquire as to whether the creditor offers a special-purpose credit program.		

	Yes No	Basis of Conclusion
39. To the extent an issue arose regarding a special-purpose credit program, were the Examiner-in-Charge and Headquarters consulted? In the Basis of Conclusion section, describe the issue, the office (and person) consulted at Headquarters, and the resolution. If not applicable, please note in the Basis of Conclusion.	☐ ☐	[Click&type]
Notifications		
Obtain and review policies and procedures, training materials, a sample of loan files, and audits pertaining to notifications (including, but not limited to those that pertain to prequalification and preapproval processes, incomplete applications, counteroffers, loan modifications, and those that apply when there are third parties or multiple creditors). Conduct loan officer interviews to determine whether they show an understanding of the regulatory requirements and that policies and procedures are consistently applied.		
Consumer Credit		
40. With respect to **consumer credit**, the creditor appropriately notified applicants as follows:		
a. Within 30 days after receiving a completed application, the creditor notified applicants concerning the creditor's approval of, counteroffer to, or adverse action on the application (*unless* the parties contemplated that the applicant would inquire about the status, the application was approved, and the applicant failed to inquire within 30 days after applying, in which case the creditor may treat the application as withdrawn). (12 CFR 1002.9(a)(1)(i) and 1002.9(e))	☐ ☐	[Click&type]

		Yes	No	Basis of Conclusion
	b. Within 30 days after taking adverse action on an incomplete application, the creditor notified applicants of the adverse action in writing (*unless* written notice of incompleteness is provided within 30 days of receipt of the incomplete application, 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), (12 CFR 1002.9(a)(1)(ii) and 1002.9(c))	☐	☐	[Click&type]
	c. Within 30 days after taking adverse action on an existing account, the creditor notified applicants of the adverse action in writing; (12 CFR 1002.9(a)(1)(iii))	☐	☐	[Click&type]
	d. Within 90 days after notifying the applicant of a counteroffer, if the applicant does not expressly accept or use the credit offered, the creditor notified applicants of the adverse action taken in writing (unless the counteroffer was accompanied by the notice of adverse action on the credit terms originally sought) (12 CFR 1002.9(a)(1)(iv), Comment 1002.9(a)(1)-6)	☐	☐	[Click&type]
41.	With respect to **consumer credit**, the creditor's notifications given to an applicant when an adverse action is taken are in writing, capable of being retained, and contain all of the following:	☐	☐	[Click&type]
	a. A statement of the action taken;	☐	☐	[Click&type]
	b. The name and address of the creditor;	☐	☐	[Click&type]
	c. A statement of the provisions of Section 701(a) of the ECOA;[7]	☐	☐	[Click&type]

[7] This statement must be 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 listed in appendix A of this regulation]." (12 CFR 1002.9(b)(1))

	Yes	No	Basis of Conclusion
d. The name and address of the federal agency that administers compliance with respect to the creditor; and	☐	☐	[Click&type]
e. Either: i. A statement of specific reasons for the action taken that is specific and indicates 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); *or* ii. A disclosure (which contains the name, address, and telephone number of the person or office from which the statement of reasons can be obtained) 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 (and 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). (12 CFR 1002.4(d)(1) and 1002.9(a)(2), (b)(1), (b)(2))	☐	☐	[Click&type]

	Yes No	Basis of Conclusion
Small Business Credit		
42. Except for transactions conducted entirely by phone, in connection with **business credit for businesses with gross revenues of $1 million or less** in the preceding fiscal year or to start a new business (Comment 1002.9(a)(3)-1) (other than an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit):		
a. Within 30 days after receiving a completed application, the creditor notified applicants concerning the creditor's approval of, counteroffer to, or adverse action on the application orally or in writing (*unless* the parties contemplated that the applicant would inquire about the status, the application was approved, and the applicant failed to inquire within 30 days after applying, in which case the creditor may treat the application as withdrawn). (12 CFR 1002.9(a)(1)(i), 1002.9(e), and 1002.9(a)(3)(i)(A))	☐ ☐	[Click&type]
b. Within 30 days after taking adverse action on an incomplete application, the creditor notified applicants of the adverse action orally or in writing (unless written notice of incompleteness is provided within 30 days of receipt of the incomplete application, 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), (12 CFR 1002.9(a)(1)(ii), 1002.9(c)), and 1002.9(a)(3)(i)(A))	☐ ☐	[Click&type]
c. Within 30 days after taking adverse action on an existing account, the creditor notified applicants of the adverse action orally or in writing; (12 CFR 1002.9(a)(1)(iii) and 1002.9(a)(3)(i)(A))	☐ ☐	[Click&type]

	Yes No	Basis of Conclusion
d. Within 90 days after notifying the applicant of a counteroffer, if the applicant does not expressly accept or use the credit offered, the creditor notified applicants of the adverse action orally or in writing (unless the counteroffer was accompanied by the notice of adverse action on the credit terms originally sought) (12 CFR 1002.9(a)(1)(iv), Comment 1002.9(a)(1)-6, and 12 CFR 1002.9(a)(3)(i)(A))	☐ ☐	[Click&type]
43. Except for transactions conducted entirely by phone, in connection with business credit for businesses with gross revenues of $1 million or less in the preceding fiscal year or to start a new business (Comment 1002.9(a)(3)-1) (other than an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit), the creditor's adverse action notices contained (orally or in writing):		
a. A statement of the action taken;	☐ ☐	[Click&type]
b. The name and address of the creditor;	☐ ☐	[Click&type]
c. A statement of the provisions of Section 701(a) of the ECOA;[8]	☐ ☐	[Click&type]
d. The name and address of the federal agency that administers compliance with respect to the creditor (namely, CFPB); and	☐ ☐	[Click&type]

[8] *See* supra note 7.

	Yes	No	Basis of Conclusion
e. Either: i. A statement of specific reasons for the action taken (that is specific and indicates the principal reason(s) for the adverse action); *or* ii. Unless provided at the time of application, a written, capable of being retained, disclosure (which contains the name, address, telephone number of the person or office from which the statement of reasons can be obtained, and, if given at the time of application, a statement of the provisions of Section 701(a) of the ECOA[9]) 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 (and 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). (12 CFR 1002.9(a)(2), 1002.9(a)(3)(i)(A), 1002.9(a)(3)(i)(B), and 1002.9(b)(1))	☐	☐	[Click&type]
44. With respect to **applications made entirely by telephone in connection with business credit for businesses with gross revenues of $1 million or less** in the preceding fiscal year or to start a new business (Comment 1002.9(a)(3)-1) (other than an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit), the creditor at least made an oral statement of the action taken and of the applicant's right to a statement of reasons for adverse action. (12 CFR 1002.9(a)(3)(i)(C))	☐	☐	[Click&type]

[9] *See* supra note 7.

	Yes No	Basis of Conclusion
Large Business Credit		
45. For **businesses with gross 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, did the creditor at least: a. Communicate the notification of action taken within a reasonable time orally or in writing, and b. In response to an applicant's written request for the reasons within 60 days of the creditor's notification, provide in writing the reasons for adverse action and a statement of the provisions of Section 701(a) of the ECOA[10]? (12 CFR 1002.9(a)(3)(ii))	☐ ☐	[Click&type]
All Credit Transactions		[Click&type]
46. Within 30 days after receiving an application that is incomplete regarding matters than an applicant can complete, does the creditor (a) notify the applicant of adverse action (in the manner appropriate for the type of credit – business or consumer), or (b) 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? (Although the creditor may inform the applicant orally of the need for additional information, if the application remains incomplete it must provide either notice within the specified time period.) (12 CFR 1002.9(c))	☐ ☐	[Click&type]

[10] *See* supra note 7.

	Yes	No	Basis of Conclusion
47. When declining a request for a modification of a loan, does the creditor always provide an adverse action notice when the consumer is not delinquent or in default? (12 CFR 1002.9(a)(1); see Federal Reserve Board Consumer Affairs Letter 09-13 (December 4, 2009) (http://www.federalreserve.gov/boarddocs/caletters/2009/0913/caltr0913.htm).	☐	☐	[Click&type]
48. When an application involves multiple applicants, does the creditor provide notification of action to the primary applicant, when one is readily apparent? (12 CFR 1002.9(f))	☐	☐	[Click&type]
49. When an application is made on behalf of an applicant by a third party to multiple creditors, including the creditor, and no credit is offered or if the applicant does not expressly accept or use the credit offered, does the creditor provide the appropriate adverse action notice either directly or through the third party (disclosing the identify of each creditor on whose behalf the notice is given)? (12 CFR 1002.9(g))	☐	☐	[Click&type]
Designation of Accounts			
Obtain and review policies and procedures, training materials, and audits pertaining to the designation of accounts on furnishing them to credit reporting agencies, as well as a sample of information reported to the credit reporting agencies.			
50. To the extent the creditor furnishes consumer credit information, does it 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) (12 CFR 1002.10(a), Comment 1002.10-1)	☐	☐	[Click&type]

		Yes	No	Basis of Conclusion
51.	To the extent the creditor furnishes consumer credit information, does it designate any existing 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) within 90 days after receiving a written request to do so from one of the spouses? (12 CFR 1002.10(a), Comment 1002.10-1)	☐	☐	[Click&type]
52.	To the extent the creditor furnishes consumer credit information to a consumer reporting agency concerning accounts designated to reflect the participation of both spouses, does the creditor furnish the information in a manner that enables the consumer reporting agency to provide access to the information in the name of each spouse? (12 CFR 1002.10(b), Comment 1002.10-1)	☐	☐	[Click&type]
53.	To the extent the creditor furnishes consumer credit information in response to inquiries about accounts designated to reflect the participation of both spouses, does the creditor furnish the information in the name of the spouse about whom the information is requested? (12 CFR 1002.10(c), Comment 1002.10-1)	☐	☐	[Click&type]

	Yes No	Basis of Conclusion
Record Retention		
Obtain and review policies and procedures, training materials, audits, a sample of loan files, relevant third-party contracts, and other records required to be retained (e.g., information relating to prescreened offers of credit and self-tests) that pertain to record retention (including but not limited to record retention schedules, retention of documents relating to prescreened offers of credit, and retention of documents relating to any self-tests). Inquire into whether there is any enforcement action or investigation involving the creditor.		
54. Does the creditor retain for 25 months (12 months for business credit regarding 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 that the creditor notifies an applicant of action taken or of incompleteness, an original or copy of the following:	☐ ☐	[Click&type]
a. The application and any other written or recorded information used in evaluating the application that is not returned to the applicant at the applicant's request? (12 CFR 1002.12(b)(1)(i))	☐ ☐	[Click&type]
b. Any information required to be obtained concerning characteristics of the applicant to monitor compliance with the ECOA and Regulation B or other similar law, such as the Home Mortgage Disclosure Act or Home Affordable Modification Program? (12 CFR 1002.12(b)(1)(i))	☐ ☐	[Click&type]
c. A copy of the notification of action taken, if written, or any notation or memorandum by the creditor, if made orally? (12 CFR 1002.12(b)(1)(ii)(A))	☐ ☐	[Click&type]
d. A statement of specific reasons for adverse action, if written, or any notation or memorandum by the creditor, if made orally? (12 CFR 1002.12(b)(1)(ii)(B))	☐ ☐	[Click&type]

	Yes	No	Basis of Conclusion
e. Any written statement submitted by the applicant alleging a violation of the ECOA or Regulation B? (12 CFR 1002.12(b)(1)(iii))	☐	☐	[Click&type]
55. Does the creditor retain for 25 months (12 months for business credit regarding 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 that the creditor notifies an applicant of adverse action regarding an existing account, an original or copy of the following:			
a. Any written or recorded information concerning the adverse action? (12 CFR 1002.12(b)(2)(i))	☐	☐	[Click&type]
b. Any written statement submitted by the applicant alleging a violation of the ECOA or Regulation B? (12 CFR 1002.12(b)(2)(ii))	☐	☐	[Click&type]
56. Does the creditor retain for 25 months (12 months for business credit regarding 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 creditor receives an application for which 1002.9's notification requirements do not apply (*e.g.*, when an application is expressly withdrawn, or an application is submitted to more than one creditor on behalf of the applicant, and the application is approved by one of the other creditors) all written or recorded information in its possession concerning the applicant, including any notation of action taken? (12 CFR 1002.12(b)(3), Comment 1002.12(b)(3)-1)	☐	☐	[Click&type]

	Yes	No	Basis of Conclusion
57. 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 the CFPB or other enforcement agency charged with monitoring the 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, did the creditor retain the foregoing information identified in Checklist Items 54–56 until final disposition of the matter (unless an earlier time is allowed by order of the agency or court). (12 CFR 1002.12(b)(4))	☐	☐	[Click&type]
58. For business credit 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 creditor retain records for at least 60 days after notifying the applicant of the action taken, or for 12 months if the applicant requests in writing during the 60-day time period the reasons for adverse action or that records be retained? (12 CFR 1002.12(b)(5))	☐	☐	[Click&type]
59. If the creditor conducts a self-test pursuant to 12 CFR 1002.15:			
a. Does the creditor retain for 25 months after the self-test is completed, all written or recorded information about the self-test?	☐	☐	[Click&type]
b. If the creditor 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, does the creditor retain the information until final disposition of the matter (unless an earlier time is allowed by the appropriate agency or court order)? (12 CFR 1002.12(b)(6))	☐	☐	[Click&type]

	Yes No	Basis of Conclusion
60. For prescreened solicitations, does the creditor retain for 25 months (12 months for business credit except regarding 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 date on which an offer of credit was made to potential customers: (a) the text of any prescreened solicitation; (b) the list of criteria the creditor used both to determine the potential recipients of the particular solicitation and to determine who will actually be offered credit; and (c) any correspondence related to complaints (formal or informal) about the solicitation? (12 CFR 1002.12(b)(7), Comment 1002.12(b)(7)-2)	☐ ☐	[Click&type]
Information for Monitoring Purposes as to Applications from Natural Persons		
Obtain and review policies and procedures, training materials, a sample of loan files, quality control reports, and audits pertaining to information gathered for monitoring. Conduct loan officer interviews to determine whether they show an understanding of the regulatory requirements and that policies and procedures are consistently applied.		
61. With respect to applications for credit that are primarily for the purchase or refinancing of dwellings (as defined in 12 CFR 1002.13(a)(2)) that are occupied or to be occupied by the applicant as a principal residence where the credit will be secured by the dwelling,[11] does the creditor request (but not require) either on the application form or on a separate form that refers to the application (12 CFR 1002.13(b)) the following information regarding the applicant:		

[11] Examiners should ensure that the institution limits its requests for government monitoring information under this section to only these loans, except as permitted by 12 CFR 1002.5(a)&(b) (see Checklist Item 8) or as required by HMDA (reaching home purchase loans, home improvement loans, refinancings, and (optionally) home equity lines of credit made in whole or in part for the purpose of home improvement or home purchase), or other governmental program or directive such as the Home Affordable Modification Program (HAMP).

		Yes	No	Basis of Conclusion
	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? (12 CFR 1002.13(a)(1)(i), Comment 1002.13(b)-1)	☐	☐	[Click&type]
	b. Sex? (12 CFR 1002.13(a)(1)(ii))	☐	☐	[Click&type]
	c. Marital status, using the categories married, unmarried, and separated? (12 CFR 1002.13(a)(1)(iii)	☐	☐	[Click&type]
	d. Age? (12 CFR 1002.13(a)(1)(iv))	☐	☐	[Click&type]
62.	If an applicant chooses not to provide the requested information or any part of it, does the creditor note that on the monitoring form and 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? (12 CFR 1002.13(b))	☐	☐	[Click&type]
63.	If the creditor receives applications by mail, telephone, or electronic media and it is not evident on the face of an application how it was received, does the creditor indicate on the form or other application record how it was received? (Comment 1002.13(b)-3(iii))	☐	☐	[Click&type]
64.	Does the creditor inform applicant(s) (a) 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; and (b) 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? (12 CFR 1002.13(c))	☐	☐	[Click&type]

	Yes No	Basis of Conclusion
Appraisal Reports		
Obtain and review policies and procedures, training materials, a sample of loan files, and audits pertaining to providing appraisal reports. Conduct loan officer interviews to determine whether they show an understanding of the regulatory requirements and that policies and procedures are consistently applied.		

	Yes No	Basis of Conclusion
65. 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; <u>or</u> 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))	☐ ☐	[Click&type]

	Yes	No	Basis of Conclusion
66. 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 <u>may not</u> charge an applicant for providing a copy of appraisals and other written valuations.) (12 CFR 1002.14(a)(3))	☐	☐	[Click&type]
Disclosures			
Obtain and review policies and procedures, training materials, and a sample of loan files, audits related to disclosures, and disclosures.			
67. 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)) 68. 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))	☐	☐	[Click&type]
69. Are those disclosures that are required to be in writing that are made 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, where applicable? (12 CFR 1002.4(d)(2))	☐	☐	[Click&type]

	Yes No	Basis of Conclusion
70. If an applicant accesses a credit application electronically from a place other than the creditor's office, did the creditor provide the disclosures in a timely manner on or with the application, namely in electronic form (such as with the applications form on its website)? (Comment 1002.4(d)-2	☐ ☐	[Click&type]
Voluntary Self-Tests		
Identify whether the creditor purports to conduct self-tests. If so, request and review information required to be maintained under 12 CFR 1002.12(b)(6), including but not limited to information regarding its design and expected outputs, corrective actions, the methodology used or the scope of the self-test, the time period covered by the self-test, the dates it was conducted, and entities to whom it was disclosed.		
71. To the extent the creditor conducts voluntary self-tests:		
a. Is the program, practice or study (1) designed and used specifically to determine the extent or effectiveness of the creditor's compliance with the ECOA or Regulation B; and (2) resulting in data or factual information that is not available and cannot be derived from loan or application files or other records related to credit transactions; and	☐ ☐	[Click&type]
b. Has the creditor taken or is it taking appropriate and timely corrective action when the self-test shows that it is more likely than not that a violation occurred (even though no violation has been formally adjudicated), namely action that is reasonably likely to remedy the cause and effect of a likely violation by identifying the policies and practices that are the likely cause of the violation and assessing the extent and scope of any violation? (12 CFR 1002.15(a)(2), (b)(1), (c), Comment 1002.15(a)(2)-2)	☐ ☐	[Click&type]

	Yes No	Basis of Conclusion
72. To the extent the creditor is claiming that the self-test privilege applies:		
a. Is the creditor providing information that is not privileged, including (a) information about whether the creditor conducted a self-test, the methodology used or the scope of the self-test, the time period covered by the self-test, or the dates it was conducted; (b) loan and application files or other business records related to credit transactions, and information derived from such files and records, even if the information has been aggregated, summarized, or reorganized to facilitate analysis; and (c) the creditor's property appraisal reports, minutes of loan committee meetings, analysis performed as part of processing or underwriting a credit application, or other documents reflecting the basis for a decision to approve or deny an application, loan policies or procedures, underwriting standards, and broker compensation records? (12 CFR 1002.15(b)(3), Comments 1002.15(b)(1)(ii)-2 and 1002.15(b)(3)(ii)-1)	☐ ☐	[Click&type]
b. Has the creditor not voluntarily disclosed any part of the report or results, or any other privileged information, as a self-test, to an applicant, government agency, or the public? (12 CFR 1002.15(d)(2)(i))	☐ ☐	[Click&type]
c. Has the creditor not disclosed any part of the report or results, or any other information privileged as a self-test, as a defense to charges that the creditor has violated the ECOA or Regulation B? (12 CFR 1002.15(d)(2)(ii))	☐ ☐	[Click&type]
d. Has the creditor produced written or recorded information about the self-test that is required to be retained by 12 CFR 1002.12(b)(6)? (12 CFR 1002.15(d)(2)(iii))	☐ ☐	[Click&type]

	Yes	No	Basis of Conclusion
e. As applicable, has the creditor provided the self-test report, results, and any other information privileged under Regulation B in order to determine a penalty or remedy for a violation of the ECOA or Regulation that has been adjudicated or admitted? (12 CFR 1002.15(d)(3))	☐	☐	[Click&type]

Examiner's Overall Summary, Recommendations, and Comments

[Click&type]

Equal Credit Opportunity Act

Baseline Review Modules

Exam Date:	[Click&type]
Exam ID No.:	[Click&type]
Prepared By:	[Click&type]
Reviewer:	[Click&type]
Docket #:	[Click&type]
Entity Name:	[Click&type]

These ECOA Baseline Review Modules consist of five modules that CFPB examination teams use to conduct ECOA Baseline Reviews to evaluate how institutions' compliance management systems identify and manage fair lending risks under ECOA. In addition, examination teams will use *Module 2: Fair Lending Compliance Management System (CMS)* to review a supervised entity's fair lending CMS as part of an ECOA Targeted Review, supplemented with additional modules from these procedures as necessary. Before using the modules, examiners should complete the appropriate risk assessment and examination scoping memoranda in accordance with general CFPB procedures. Each ECOA Baseline Review module identifies specific matters to review and assess:

Module 1 Fair Lending Supervisory History

Module 2 Fair Lending Compliance Management System (CMS)

Module 3 Fair Lending Risks Related to Origination

Module 4 Fair Lending Risks Related to Servicing

Module 5 Fair Lending Risks Related to Models

All ECOA Baseline Reviews will include *Module 2: Fair Lending Compliance Management System (CMS)*, with additional modules assigned depending on the scope of the examination. On ECOA Targeted Reviews, examiners will complete Module 2 with respect to the specific institution product lines (IPLs) designated in the examination scope.

Examination Objectives

- To understand a supervised entity's compliance management system for identifying and managing its fair lending risks under ECOA.
- To identify and analyze risk of potential ECOA violations to better inform prioritization of the CFPB's fair lending supervision activities.

Background

The Equal Credit Opportunity Act (ECOA) and its implementing regulation, Regulation B, prohibit creditors from discriminating against any applicant with respect to any aspect of a credit transaction:

- On the basis of race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to 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.[1]

Creditors also are prohibited from making any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage, on a prohibited basis, a reasonable person from making or pursuing an application.

The courts have recognized three methods of proof of lending discrimination under ECOA: overt evidence of discrimination, disparate treatment, and disparate impact.

- *Overt Evidence of Discrimination* occurs when a creditor openly discriminates on a prohibited basis or makes statements indicating a discriminatory preference. There is overt evidence of discrimination even when a creditor does not act on the stated discriminatory preference.
- *Disparate Treatment* occurs when a creditor treats an 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 intent to discriminate against a person beyond the difference in treatment itself.[2]
- *Disparate Impact* occurs when a creditor employs a neutral policy or practice equally to all credit applicants, but the policy or practice disproportionately excludes or burdens certain persons on a prohibited basis. 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 ECOA.[3]

Completion of the ECOA Baseline Review Modules

Examiners will work with the CFPB's Office of Fair Lending and Equal Opportunity (OFLEO or Fair Lending) and with CFPB regional management to determine which ECOA Baseline Review Modules will be completed. Once the appropriate modules have been selected, and in advance of the review, examiners will send the entity an information request that corresponds with the selected modules. Examiners will complete the modules either prior to the on-site portion of the

[1] The Consumer Credit Protection Act, 15 U.S.C. 1601 et seq., is the collection of federal statutes that protects consumers when applying for or receiving credit. The Act includes statutes that have certain rights for consumers, such as dispute rights under the Fair Credit Reporting Act. The ECOA prohibits discriminating against an applicant who has exercised a right, such as a dispute right pursuant to one of the statutes outlined in the Act.
[2] 12 CFR Part 1002 Supp. I Sec. 1002.4(a)-1.
[3] 12 CFR Part 1002 Supp. I Sec. 1002.6(a)-2.

review or during the on-site review. The completed modules will be included in the examination work papers and should be considered in conjunction with any fair lending statistical analysis to obtain a full picture of fair lending compliance and fair lending risks at the entity or within a particular IPL. In addition to responses to information requests, examiners should review and consider other sources of information to complete the modules, including publicly available information about the entity and information obtained at interviews or other supervisory meetings with the entity.

Where applicable, the modules include references to relevant Scoping Risk Factors in Part I of the Interagency Fair Lending Examination Procedures (e.g., O1, U1) or the Code of Federal Regulations (e.g., 12 CFR 1002.9). These references are included in parentheses at the end of specific steps.

Module 1: Fair Lending Supervisory History (may be completed during scoping)

Describe the entity's fair lending supervisory history. Include any history of fair lending violations, or any areas identified as fair lending risks in either the last fair lending examination report or supervisory letter by the CFPB or any state or federal regulator, or new fair lending risks that have emerged since the last fair lending examination.	
a. Provide the following information about fair lending compliance reviews for the past two years: i. The date and scope of fair lending examinations or other reviews conducted by the CFPB or any state or federal regulator; ii. A description of any ECOA or Regulation B violations identified; iii. A description of any fair lending risks or violations identified; and iv. Any corrective actions required. (C4)	[Click&type]
b. Describe the entity's efforts to address these conclusions or concerns. (C5)	[Click&type]
c. Describe any fair lending risks or violations self-identified by the entity, as well as efforts taken to address them. (C4)	[Click&type]
d. Identify any recent private litigation or federal or state agency investigation or enforcement action related to fair lending, including any legal complaint or investigation against the entity and any other action that may reflect a heightened fair lending risk at the entity. (C1)	[Click&type]
e. If the entity is subject to the Community Reinvestment Act (CRA), review the most recent CRA Public Evaluation (PE), and summarize any information related to fair lending risk. The CRA PE generally is available on the prudential regulator's website and in the entity's public file. (R5, R9)	[Click&type]
f. Request the entity's CRA public file either from the entity or from the prudential regulator, and note if there are any fair lending related complaints or comments.	[Click&type]

	Also, describe any efforts taken by the entity to address the complaints. (U9, P5, S7, R11, M7)	
g.	If there have been any major, recent changes in the entity's business or structure, such as an acquisition or development of a new product line, describe any steps that have been taken to evaluate and respond to fair lending risks created by the change. (C5)	[Click&type]
h.	If you have information about complaints alleging discrimination from any source (e.g., consumer complaints submitted to the CFPB or directly to the institution, or complaints to the CFPB from advocacy organizations), describe them here to the extent that they indicate heightened fair lending risk at the entity. Also, describe any efforts taken by the entity to address and respond to the complaints. (U9, P5, S7, R11, M7)	[Click&type]
SUMMARY: [Click&type]		

Module 2: Fair Lending Compliance Management System (CMS)

Describe and evaluate the entity's fair lending compliance management system (CMS), including board and management oversight and compliance program (policies and procedures, training, monitoring and/or audit and consumer complaint response). In addition, include a description of the entity's approach to managing the fair lending risks posed by its service providers. In summarizing the entity's fair lending CMS, note whether the entity has established a dedicated fair lending CMS, or if fair lending is integrated into the entity's broader consumer compliance CMS. Both options are valid and acceptable as long as the fair lending coverage is comprehensive and commensurate with the entity's size and risk profile. NOTE: For *ECOA Targeted Reviews*, Fair Lending CMS topics should be addressed respective to the specific IPL indicated in the examination scope (for example, for Mortgage Origination, answers should address the entity's fair lending CMS as it relates specifically to Mortgage Origination, rather than the entity's fair lending CMS generally).	
IPL(s) Reviewed	[Click&type]
Board and Management Oversight	
a. What is the process for the entity's board of directors (or a designated committee of the board, or principals if there is no board) and senior management to review and discuss fair lending issues and receive periodic updates on the entity's fair lending risks? Please describe the forum and frequency for these communications and updates. (C5)	[Click&type]
b. What is the coverage of fair lending compliance matters in the entity's board meeting minutes and supporting materials? Are matters identified and resolved in a timely and complete manner? (C5)	[Click&type]
c. Who is responsible for overseeing the entity's fair lending compliance on a day-to-day basis? (C5)	[Click&type]
d. Is commensurate resource allocation for fair lending compliance part of the entity's budget and planning process? (C5)	[Click&type]
e. How many employees has the entity dedicated to managing fair lending compliance? Do these employees have other responsibilities besides fair lending compliance? (C5)	[Click&type]
f. How does the entity manage fair lending risks in its individual line(s) of business or regions? (C5)	[Click&type]

g. How complete and effective are the entity's processes for identifying and implementing new or revised regulatory requirements related to fair lending? How complete and effective are the entity's processes for fair lending review of new consumer financial products or services and distribution channels or strategies?	[Click&type]
CONCLUSION: Draw preliminary conclusions as to whether board and senior management oversight is strong, satisfactory, deficient, seriously deficient, or critically deficient. [Click&type]	
Compliance Program	
Policies and Procedures **(see also the related policies and procedures questions in *Module 3: Fair Lending Risks Related to Origination* and *Module 4: Fair Lending Risks Related to Servicing*)**	
a. Does the entity have up-to-date fair lending policies and associated procedures? Do they address new or amended Federal fair lending law implemented since the most recent compliance examination? Do they cover the full life-cycle of all consumer products and/or services offered, including products or services introduced since the last compliance examination? Please describe. (C6)	[Click&type]
b. Does the entity review and approve its fair lending policies and procedures on a periodic basis? If so, please describe the nature and frequency of review and approval, and which area of the entity manages the review and approval process. Also, include the most recent review and approval date. Review fair lending policies and procedures for changes management committed to make following monitoring, audit, and examination findings and recommendations. (C6)	[Click&type]
c. Does the entity have individual business line policies and procedures that are related to fair lending risks? Please describe. (C6)	[Click&type]
d. Does the entity review individual business line policies and procedures for fair lending compliance? Are all business lines included in this review? To the extent that they vary, are policies and procedures for all of the regional divisions or legal entities included in this review? Please describe. (C5)	[Click&type]
e. Review policies and procedures for record retention and destruction timeframes to ensure compliance with legal requirements.	[Click&type]

f. Review policies and procedures for products containing features that may pose heightened risk of unlawful discrimination. Such features may include: a. Particular incentives created by employee compensation or performance goal structures; both compensation and non-compensation based; b. Discretion over product selection, underwriting, or pricing; or c. Distinctions related to geography or prohibited bases (such as age or marital status).	[Click&type]
CONCLUSION: Draw preliminary conclusions as to whether policies and procedures are strong, satisfactory, deficient, seriously deficient, or critically deficient. [Click&type]	
Training	
a. Please describe how the entity ensures that employees are trained on fair lending risks. (C7)	[Click&type]
b. Which of the entity's employees are required to receive fair lending training? Is training tailored to the responsibilities of particular positions? How frequently is the training required? Are any service providers required to receive training? Please describe. (C7)	[Click&type]
c. Do the entity's board of directors and senior management receive fair lending training? If so, please describe. (C7)	[Click&type]
d. How does the entity provide fair lending training to its employees (in-person, online, etc.)? (C7)	[Click&type]
e. How does the entity monitor fair lending training completion? Does the entity communicate any training results or issues to the board and/or senior management? If so, please describe the forum and frequency of these communications. (C7)	[Click&type]
f. How often is fair lending training content reviewed and updated? Which area within the entity is in charge of reviewing and updating the fair lending training content? Review training developed as a result of management commitments to address monitoring, audit, or examination findings and recommendations or issues raised in consumer complaints and inquiries. (C6, C7)	[Click&type]
CONCLUSION: Draw preliminary conclusions as to whether the training program is strong, satisfactory, deficient, seriously deficient, or critically deficient. [Click&type]	

Monitoring and/or Audit	
a. Describe the fair lending monitoring program. How does the entity ensure that business transactions, processes, and models are periodically tested for fair lending risks and ensure Regulation B compliance? (C5)	[Click&type]
b. How often does the entity conduct fair lending related monitoring? Please include recent and planned dates for fair lending related monitoring. (C5)	[Click&type]
c. How does the entity determine the frequency and focus of fair lending related monitoring? (C5)	[Click&type]
d. Does the entity's fair lending monitoring program include conducting self-tests or self-evaluations (12 CFR 1002.15(b))? If it includes self-tests, describe the methodology used, scope of the tests, period covered, and dates they were conducted (12 CFR 1002.15(b)(3)(i)). Also, describe any self-evaluations. (C5)	[Click&type]
e. Does the entity have guidelines or procedures for fair lending related monitoring? If so, please describe. If not, how does the entity ensure that fair lending related monitoring is performed appropriately and consistently? (C5)	[Click&type]
f. Does the entity conduct any statistical or other analyses as part of its fair lending monitoring process? Please describe the extent of the analysis, including lines of business, products, or other areas that the entity analyzed. (C5)	[Click&type]
g. If the entity learns of fair lending violations or risks through its monitoring, does it take appropriate corrective action or other steps to mitigate risk? Note results of the latest fair lending related monitoring and any corrective actions taken. Review reports for indications of weaknesses, repeat violations of law and resulting risks or harm to consumers. (C4)	[Click&type]
h. If the entity works with third parties who participate in underwriting or pricing decisions, does it monitor the third party decisions for potential fair lending risks or violations? Does it take appropriate corrective action? Please describe. (C5)	[Click&type]
i. Does the entity provide periodic results of its fair lending monitoring and corrective action results to the board and/or senior management? If so, please describe the forum and frequency for such updates. (C5)	[Click&type]

j. Does the entity's compliance audit program report to an audit committee or other committee of the board? Please describe the compliance audit reporting structure. Is the audit program independent of the business line and compliance management functions? (C5)	[Click&type]
k. How does the entity incorporate fair lending risks into its compliance audit program? Does the entity conduct fair lending audits or contract with third parties to perform the audits on its behalf? Please describe. If audit is performed by a third party, request and review the engagement letters or contracts during the review period. (C5)	[Click&type]
l. How often does the entity conduct fair lending related audits? Which of the entity's individual business lines are included? Please include recent and planned dates for fair lending related audits, as well as the determined scope for the audits.	[Click&type]
m. How does the entity determine the frequency and scope of fair lending related audits? (C5)	[Click&type]
n. Do written audit reports identify the sampling techniques, findings/deficiencies, recommendations for corrective action, and management responses with time frames for corrective action? Do fair lending audit scopes include previous audit and examination findings, new requirements, new products and channels, and self-identified higher risk areas of the supervised entity's operations? Please describe.	[Click&type]
o. How does the entity document any corrective actions taken as the result of fair lending related audits? (C5)	[Click&type]
p. Does the entity provide periodic results of its fair lending related audits, and any resulting corrective actions, to the board, senior management, and/or appropriate business unit head(s)? If so, please describe the forum and frequency for such updates. (C5)	[Click&type]
q. Review the fair lending related audits conducted during the review period, or the latest audit conducted prior to the review period. Please note the results of the audit and whether and how any risks, issues, or corrective actions were resolved. (C4, C5)	[Click&type]
CONCLUSION: Draw preliminary conclusions as to whether monitoring and/or audit is strong, satisfactory, deficient, seriously deficient, or critically deficient. [Click&type]	
Consumer Complaint Response	

a. How does the entity accept and keep track of complaints alleging discrimination? Is there a fair lending complaints process? Are fair lending complaints part of the entity's general complaints process? Please describe. (U9, P5, S7, R11, M7)	[Click&type]
b. How does the entity review and resolve complaints alleging discrimination? Are fair lending complaints handled by a centralized unit? Are complaints handled by the entity's individual business line(s)? How are fair lending complaints involving service providers or other third parties referring business to the institution handled? Please describe.	[Click&type]
c. Does the entity's evaluation of consumer complaints alleging discrimination, including whistleblower complaints, include comprehensive root cause analysis to assess why a particular law violation or error occurred? If so, does the entity use evaluations of root cause analysis in corrective action, such as modifying policies, procedures, training, monitoring, and/or other appropriate business adjustments?	[Click&type]
d. Does the entity provide periodic fair lending complaints updates to its board and/or senior management? If so, please describe the forum and frequency for such updates. (C5)	[Click&type]
CONCLUSION: Draw preliminary conclusions as to whether the supervised entity's response to consumer issues and concerns is strong, satisfactory, deficient, seriously deficient, or critically deficient. [Click&type]	
Service Provider Oversight	
a. Does the entity use service providers to administer certain products or business lines that could pose fair lending risks to the entity's applicants or borrowers? (C5, C6)	[Click&type]
b. Does the entity have a service provider oversight program? If so, how are fair lending risks incorporated? (C5, C6)	[Click&type]
CONCLUSION: Draw preliminary conclusions as to whether the institution's service provider oversight is strong, satisfactory, deficient, seriously deficient, or critically deficient. Consider the impact this conclusion has on conclusions regarding Board and Management Oversight and components within the Compliance Program. [Click&type]	

OPTIONAL FAIR LENDING CMS SUMMARY:
1. Assess whether the entity's fair lending CMS is Strong, Satisfactory, Deficient, Seriously Deficient, or Critically Deficient.
2. Include supporting statements for the assessment covering the different aspects of the entity's fair lending CMS components:
    a. Board and Management Oversight
    b. Compliance Program: Policies and Procedures
    c. Compliance Program: Training
    d. Compliance Program: Monitoring and/or Audit
    e. Compliance Program: Consumer Complaint Response
3. Summarize the entity's use of service providers and whether its service provider oversight program includes fair lending risks.

CONCLUSION: [Click&type]

Module 3: Fair Lending Risks Related to Origination

IPL Examination or Review Summary	
CFPB Docket #	[Click&type]
Name of Supervised Entity	[Click&type]
IPL(s) Reviewed	[Click&type]

Describe the entity's fair lending related risks and controls related to origination. Address the following topics. Separate modules should be completed for each IPL reviewed.	
Marketing and Advertising	
a. How does the entity advertise its products to consumers? Note any use of print or media advertisements, mail, email or social media advertising, or telemarketing. Also, note the primary means of advertising. (M2)	[Click&type]
b. If applicable, note any employee statements that reflect preferences that indicate that certain consumers are either more or less desirable due to prohibited basis characteristics. (M1, M2)	[Click&type]
c. Does the entity advertise its products in languages other than English? If so, please list the languages and describe the advertisements offered in those languages. (M2)	[Click&type]

d. Does the entity target its products to particular populations? Consider the extent to which the marketing of a product or service is targeted to, for example: the elderly; minorities; immigrants, consumers of certain national origins; members of specific religious groups or denominations; consumers with limited English proficiency; consumers receiving any type of public assistance; consumers with limited experience with financial products or services; or consumers of a certain sex or marital status. Consider whether any particular populations are missing or excluded from the entity's advertising. (M2)	[Click&type]
e. Does the entity periodically review its marketing plans and materials for fair lending risks? If so, please describe the forum and frequency for such review. (C5)	[Click&type]
f. Does the entity offer and/or require fair lending training to employees and service providers that market its products to consumers? If so, describe the type and frequency of such training. (C7)	[Click&type]
SUMMARY [Click&type]	
Accepting and Referring Applications/Steering	
a. Does the entity have a defined process and requirements for accepting applications from consumers? If so, please describe. (S1)	[Click&type]
b. Does the entity allow employees discretion to deviate from the processes described above? If so, please describe. (S1)	[Click&type]
c. Are policies and procedures for referring applicants to subsidiaries, affiliates, lending channels, or products based on specific, objective, and defined criteria? Please describe. (S1, S5)	[Click&type]

d. Does the entity allow employees discretion to deviate from the processes described above? If so, please describe. (S1, S5)	[Click&type]
e. Do any policies and procedures for referring applicants to subsidiaries, affiliates, lending channels, or products specify or mention the use of prohibited bases? Please list the identified policies and procedures, as well as the prohibited bases named in those documents. (O1)	[Click&type]
f. Does the entity contract with service providers to accept and/or refer applications on the entity's behalf? If so, please describe the service providers and services provided.	[Click&type]
g. Are the entity's employees and/or service providers compensated based on application volume for certain types of products or prices of products or other terms or conditions? If so, please note any compensation criteria and/or products listed. (S2)	[Click&type]
h. Does the entity offer and/or require fair lending training of employees and/or service providers that accept applications or refer applications on the entity's behalf? If so, describe the type and frequency of such training. (C7)	[Click&type]
i. Does the entity conduct any fair lending related monitoring of its application acceptance and referral rates? If so, please note the frequency of such monitoring, the part(s) of the entity responsible for monitoring, the results of the last monitoring performed, and any corrective action(s) taken. (S4, S5, S6)	[Click&type]

j. Does the entity conduct any fair lending related monitoring of employee or service provider discretion in accepting and referring applications? If so, please note the frequency of such monitoring, the part(s) of the entity responsible for monitoring, the results of the last monitoring performed, and any corrective action(s) taken. (C5, S1, S2, S4, S5)	[Click&type]
SUMMARY [Click&type]	
Evaluating Applications (Underwriting)	
a. How does the entity make underwriting decisions? How does the entity use manual underwriting, automated underwriting, credit models, or a combination of these options? Please describe. (U4)	[Click&type]
b. Does the entity have policies and procedures governing its underwriting processes? If so, please describe these documents and how often they are reviewed and approved. (U4)	[Click&type]
c. Do any of the entity's underwriting policies or procedures vary on one or more prohibited bases? If so, please describe. (O1)	[Click&type]
d. Do any of the entity's underwriting policies or procedures contain factors that could treat applicants differently on a prohibited basis? If so, please describe the factors, the prohibited basis, and the potential impact. (O1)	[Click&type]
e. Does the entity allow its employees discretion, overrides and/or exceptions, to deviate from the underwriting criteria or process? If so, please note the guidelines that are provided for exercising discretion. (U5, U6)	[Click&type]
f. How are underwriting criteria, including guidance for overrides and/or exceptions, communicated to employees? (U5, U6)	[Click&type]

g. How frequently do underwriting overrides and/or exceptions occur? Does the entity have standards for when overrides/ exceptions are appropriate? If so, please describe, including any standards for justifying and documenting the override/exception reasons. (U5, U6, U7)	[Click&type]
h. Does the entity contract with service providers to make underwriting decisions on the entity's behalf? If so, please describe the service providers and services provided.	[Click&type]
i. Are the entity's employees or service providers compensated based on approval/declination rates for certain types of products, or prices of products? If so, please note any compensation criteria and/or products listed. (U8)	[Click&type]
j. Does the entity offer and/or require fair lending training of employees and/or service providers that make underwriting decisions? If so, briefly describe the type and frequency of such training. (C7)	[Click&type]
k. Does the entity conduct any fair lending related monitoring of underwriting decisions? If so, please note the frequency of such monitoring, the area(s) responsible for monitoring, the results of the last monitoring performed, and any corrective action(s) taken. (C5, U1, U2, U3)	[Click&type]
l. Does the entity conduct any fair lending related monitoring of underwriting overrides and/or exceptions by employees and/or service providers? If so, please note the frequency of such monitoring, the part(s) of the entity responsible for monitoring, the results of the last monitoring performed, and any corrective action(s) taken. (C5, U1, U2, U3, U7)	[Click&type]
SUMMARY [Click&type]	
Pricing and Other Terms and Conditions	

a. How does the entity make decisions regarding pricing and other terms and conditions? Does the entity use rate sheets, pricing models, or a combination of these options? Please describe.	[Click&type]
b. Does the entity have policies and procedures governing its product pricing processes? If so, please describe these documents and how often they are reviewed and approved. (P2, P3)	[Click&type]
c. Do any of the entity's pricing policies or procedures vary on one or more prohibited bases? If so, please describe. (O1)	[Click&type]
d. Do any of the entity's pricing policies or procedures contain factors that could treat applicants differently on a prohibited basis? If so, please describe the factors, the prohibited basis, and the potential impact. (O1)	[Click&type]
e. Does the entity allow third parties or service providers to make pricing decisions? If it does, please describe the third parties and service providers. Also describe the entity's controls to prevent discrimination in pricing (e.g., in indirect auto lending, caps on dealer markups) by its third parties and/or service providers. (C5)	[Click&type]
f. Does the entity allow pricing exceptions (including the waiving of any charges)? If so, please describe the guidelines that are provided for making these pricing exceptions, the frequency for such exceptions, and the standards for justifying and documenting the reason(s) for the exceptions. (P2, P3)	[Click&type]
g. How frequently do pricing exceptions occur? Please describe. (P2, P3)	[Click&type]
h. How does the entity communicate its pricing structure, including guidance for pricing exceptions, to employees? Please describe. (P2, P3)	[Click&type]

i. Are the entity's employees or service providers compensated based on any component of product pricing (rate, term, etc.)? If so, please note any compensation criteria and/or any pricing criteria listed. (P1)	[Click&type]
j. Does the entity offer and/or require fair lending training of employees and/or service providers that make pricing decisions? If so, briefly describe the type and frequency of such training. (C7)	[Click&type]
k. Does the entity conduct any fair lending related monitoring of pricing decisions, including separate pricing components? If so, please note the frequency of such monitoring, the part(s) of the entity responsible for monitoring, the results of the last monitoring performed, and any corrective action(s) taken. (C5, P4, P6, P7)	[Click&type]
l. Does the entity conduct any fair lending related monitoring of pricing overrides and/or exceptions by employees, third parties, and/or service providers? If so, please note the frequency of such monitoring, the part(s) of the entity responsible for monitoring, the results of the last monitoring performed, and any corrective action(s) taken. (C5, P4, P6, P7)	[Click&type]
SUMMARY [Click&type]	
Redlining	
a. If applicable, note any employee statements that reflect preferences as to geographic areas in which to do business, including preferences concerning business in areas with relatively high concentrations of minority residents. (O1, R10)	[Click&type]

b. Please describe if documents indicate that the entity's CRA assessment areas or other demarcations used for marketing or other purposes exclude political subdivisions, census tracts, or other geographic areas that have relatively high concentrations of minority residents. Please also describe the entity's response to any concerns raised. (R6, R9, M4)	[Click&type]
c. Does the entity engage in any geography- or neighborhood-based advertising that may indicate that certain geographies/ neighborhoods are either favored or disfavored? If so, please note the type of advertising, the criteria, and any specific products advertised. (M1, M4, R8)	[Click&type]
d. Does the entity use service providers that selectively serve particular neighborhoods or geographic areas? If so, please describe. (M3)	[Click&type]
e. If you have used any application or software to map an entity's branch patterns (if applicable), applications, and/or originations, include a copy of the map(s), and note which areas reviewed indicated any concerns. (R1)	[Click&type]
SUMMARY [Click&type]	

Module 4: Fair Lending Risks Related to Servicing

IPL Examination or Review Summary	
CFPB Docket #	[Click&type]
Name of Supervised Entity	[Click&type]
IPL(s) Reviewed	[Click&type]

Describe the entity's fair lending related risks and controls related to servicing. Address the following topics. Separate modules should be completed for each IPL reviewed.	
Fair Lending Training and Monitoring	
a. Does the entity provide fair lending training to its servicing staff? If so, please describe the type and frequency of such training. (C7)	[Click&type]
b. Does the entity perform any fair lending related monitoring of its servicing? If so, note the frequency of the monitoring, the part(s) of the entity responsible for monitoring, the results of the last monitoring performed, and any corrective action(s) taken. (C5)	[Click&type]
SUMMARY [Click&type]	
Servicing Options for Consumers with Limited English Proficiency (LEP)	
a. Does the entity offer servicing options for borrowers with limited English proficiency (LEP)? Are such options offered through live customer service? Through translated documents? Please note the languages offered and servicing options provided.	[Click&type]
b. Does the entity have policies and procedures governing its LEP servicing options? If so, please describe and note whether these policies and procedures are reviewed on a periodic basis.	[Click&type]
c. Does the entity capture and track borrowers' indicated preferences to receive services in languages other than English? If so, please describe.	[Click&type]

d. If customer service personnel are available to provide assistance in languages other than English, are they dedicated customer service personnel (as opposed to personnel who have other roles but are available to translate on an as-needed basis)?	[Click&type]
e. Do customer service personnel who are available to provide assistance in languages other than English receive the same training, and have the same authority, as other customer service personnel?	[Click&type]
f. Does the entity contract with service providers to provide any LEP services on behalf of the entity? If so, please describe.	[Click&type]
g. How does the entity ensure that its services provided to LEP borrowers are consistent with its policies and procedures?	[Click&type]
SUMMARY [Click&type]	
Offering of Hardship/Loss Mitigation Options	
a. How do borrowers apply for hardship/loss mitigation options? How does the entity communicate these application options to the borrowers?	[Click&type]
b. Does the entity have policies and procedures guiding the selection of hardship/loss mitigation options to offer to borrowers? If so, describe and note if these are reviewed and approved on a periodic basis.	[Click&type]
c. Do any of the entity's hardship/loss mitigation policies or procedures vary on one or more prohibited bases? If so, please describe. (O1)	[Click&type]
d. Do any of the entity's hardship/loss mitigation policies or procedures contain factors that could treat applicants differently on a prohibited basis? If so, please describe the factors, the prohibited basis, and the potential impact. (O1)	[Click&type]

e. Does the entity allow its employees discretion in offering hardship/loss mitigation options to borrowers? If so, please note the guidelines, if any, which are provided for exercising discretion.	[Click&type]
f. Does the entity offer and/or require fair lending training to employees and/or service providers that offer or advise borrowers on hardship/loss mitigation options? If so, briefly describe the type and frequency of such training. (C7)	[Click&type]
g. Does the entity conduct any fair lending related monitoring of the types of hardship/loss mitigation options offered to borrowers? If so, please note the frequency of such monitoring, the part(s) of the entity responsible for monitoring, the results of the last monitoring performed, and any corrective action(s) taken. (C5)	[Click&type]
h. Does the entity conduct any fair lending related monitoring of employees' discretion in offering or enrolling borrowers in hardship/loss mitigation options? If so, please note the frequency of such monitoring, the part(s) of the entity responsible for monitoring, the results of the last monitoring performed, and any corrective action(s) taken. (C5)	[Click&type]
i. Where appropriate, does the entity have policies and procedures to ensure that applicants receive adverse action notices as required by Regulation B (12 CFR 1002.9)?	[Click&type]
SUMMARY: [Click&type]	

Module 5: Fair Lending Risks Related to Models

IPL Examination or Review Summary	
CFPB Docket #	[Click&type]
Name of Supervised Entity	[Click&type]
IPL(s) Reviewed	[Click&type]

Describe the entity's fair lending related risks and controls related to the use of models in the credit decision process. Address the following topics:	
Use of Models	
a. Does the entity use models in the credit process (e.g., in underwriting, pricing, or account management)? If so, please describe.	[Click&type]
b. Does the entity track the expected usage of each model; the type(s) and source(s) of data used by each model; and whether the model was developed internally or by a third-party? If so, please describe how this information is tracked. (C5)	[Click&type]
c. How often are the entity's models validated or re-validated? Please describe the nature of validation or re-validation. (C5)	[Click&type]
d. Does the entity conduct any fair lending-related review or testing of models? If so, please note the frequency and nature of such review or testing; the part(s) of the entity responsible for such review or testing; the results of the last review or testing performed; and any corrective action(s) taken. (C5)	[Click&type]
e. Do any of the entity's models contain factors that could treat applicants differently on a prohibited basis? If so, please describe the factors, the prohibited basis, and the potential impact. (O3)	[Click&type]
f. Does the entity evaluate the validity or performance of its models by prohibited basis group? If so, please describe.	[Click&type]

g. Do any of the entity's models specifically include age as a criterion? If so, how does the entity ensure that the use of age is consistent with requirements in Regulation B (12 CFR 1002.6(b)(2))? (O3)	[Click&type]
h. If the entity employs third party models in the credit process, have the models been reviewed or tested by the entity or third party for fair lending risk? If so, please describe the nature of the review or testing and any corrective action(s) taken. (C5)	[Click&type]
i. Does the entity have policies and procedures governing model use, including when it may be appropriate to make overrides/exceptions to a model decision? If so, please describe. Please also describe any procedures for justifying, documenting, and monitoring override/exception reasons. (C5)	[Click&type]
j. When adverse action is taken on the basis of one or more credit scoring models, what methodology is used to select the reasons why the adverse action was taken?	[Click&type]
CONCLUSION: [Click&type]	

Fair Credit Reporting Act[1]

The Fair Credit Reporting Act (FCRA)[2] became effective on April 25, 1971. The FCRA is a part of a group of acts contained in the Federal Consumer Credit Protection Act[3] such as the Truth in Lending Act and the Fair Debt Collection Practices Act.

Congress substantively amended the FCRA upon the passage of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).[4] 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.

In 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which granted rule-making authority under FCRA (except for Section 615(e) (red flag guidelines and regulation) and Section 628 (disposal of records)) to the Consumer Financial Protection Bureau (CFPB). The Dodd-Frank Act also amended two provisions of the FCRA to require the disclosure of a credit score and related information when a credit score is used in taking an adverse action or in risk-based pricing.[5] [6]

On December 21, 2011, the CFPB restated FCRA regulations under its authority at 12 CFR Part 1022 (76 Fed. Reg. 79308).

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[1] These reflect FFIEC-approved procedures.

[2] 15 U.S.C. Secs. 1681–1681x.

[3] 15 U.S.C. Sec. 1601 et seq.

[4] Pub. L. No. 108-159, 117 Stat. 1952.

[5] Section 1029 of the Dodd-Frank Act generally excludes from this transfer of authority, subject to certain exceptions, any rulemaking authority over a motor vehicle dealer that is predominantly engage in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.

[6] The agency responsible for supervising and enforcing compliance with the provisions of the FCRA and the implementing regulations will depend on the person subject to the FCRA (e.g., for financial institutions, jurisdiction will depend on the size and charter of the institution).

The FCRA contains responsibilities both for entities that are consumer reporting agencies and for persons that operate in any of 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, other third parties, or to affiliates);
3. Marketers of credit or insurance products; and
4. Employers.

Structure and Overview of Examination Modules

The examination procedures are structured as a series of modules, grouping similar requirements together.[7] The modules contain general information about each of the requirements:

Module 1	Obtaining Consumer Reports
Module 2	Obtaining Information and Sharing Among Affiliates
Module 3	Disclosures to Consumers and Miscellaneous Requirements
Module 4	Furnishers of Information
Module 5	Consumer Alerts and Identity Theft Protections

Financial institutions and other persons are subject to a number of different requirements under the FCRA; some are contained directly in the statute, while others are in 12 CFR 1022.

Key Definitions

The FCRA uses a number of definitions. Key definitions include the following:

Adverse Action. With regard to credit transactions, the term "adverse action" has the same meaning as used in Section 701(d)(6) [15 U.S.C. 1691(d)(6)] of the Equal Credit Opportunity Act (ECOA), Regulation B, and the official staff commentary. 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.

[7] The examination procedures do not currently contain a module on the requirements for consumer reporting agencies.

For non-credit transactions, 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 U.S.C. 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.
   b. Adverse to the interests of the consumer.

Consumer. A “consumer” is defined as an individual.

Consumer Report. A “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 that 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 any of the following:

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 U.S.C. 1681b).

The term “consumer report” does not include any of the following:

1. any report containing information solely about transactions or experiences between the consumer and the person 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 institutions that are members of the same holding company, or subsidiary companies of an insured institution);

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 U.S.C. 1681m), Requirements on Users of Consumer Reports; or

6. a communication described in subsection (o) or (y) of Section 603 (15 U.S.C. 1681a (o) or (y)) (which relates to certain investigative reports and certain reports to prospective employers).

Consumer Reporting Agency. The term "consumer reporting agency" means any person who, 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 who uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

Credit Score. The term "credit score" means 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 term does not include any mortgage score or rating of an automated underwriting system that considers one or more factors in addition to credit information, including the loan to value ratio, the amount of down payment, or the financial assets of a consumer; or any other elements of the underwriting process or underwriting decision.

Creditor. Generally in FCRA, the terms "credit" and "creditor" have the same meanings as in section 702 of ECOA (15 U.S.C. 1691a).

Employment Purposes. The term "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.

Investigative Consumer Report. An “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.

Person. A “person” means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

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. The FCRA governs access to this information to ensure that a prospective user of the information obtains it for permissible purposes and does not exploit it 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.

Permissible Purposes of Consumer Reports – Section 604; 15 U.S.C. 1681b Investigative Consumer Reports – Section 606; 15 U.S.C. 1681d

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, that the agency has reason to believe intends to use the report as information for any of the following reasons:
   a. In connection with a credit transaction involving the consumer (includes extending, reviewing, and collecting credit);
   b. For employment purposes;[8]
   c. In connection with the underwriting of insurance involving the consumer;
   d. 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. 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;

[8] Use of consumer reports for employment purposes requires specific advanced authorization, disclosure notices, and, if applicable, adverse action notices. These issues are contained in Module 3 of the examination procedures.

f. Otherwise has a legitimate business need for the information:

   i. In connection with a business transaction that the consumer initiates; or

   ii. To review an account to determine whether the consumer continues to meet the terms of the account.

   iii. 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 person, such as a financial institution, that is not a consumer reporting agency.)

<u>Prescreened Consumer Reports</u>. 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 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.

<u>Investigative Consumer Reports.</u> 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 obtained in whole or in part through personal interviews with neighbors, friends, or associates of the consumer. If a user, such as a financial institution, procures an investigative consumer report, or causes the preparation of one, the user institution must meet the following requirements:

4. The user clearly and accurately discloses to the consumer that it may obtain an investigative consumer report.
5. 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.
6. 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.
7. The user 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.

<u>Procedures</u>. Given the preponderance of electronically available information and the growth of identity theft, a user should manage the risks associated with obtaining and using consumer reports. Users should employ procedures, controls, or other safeguards to ensure that they obtain and use consumer reports only in situations for which there are permissible purposes.

Module 2 – Obtaining Information and Sharing Among Affiliates

Overview

The FCRA contains many substantive compliance requirements for consumer reporting agencies 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, such third parties as banks, credit unions, and other financial institutions 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 parties, such as 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 an entity 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, an entity such as 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.

Consumer Report and Information Sharing – Section 603(d); 15 U.S.C. 1681a(d)

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 exceptions to this definition that enable persons 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 person 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. The Privacy of Consumer Financial Information regulations that implement the Gramm-Leach-Bliley Act (GLBA) may restrict this type of information sharing because it meets the definition of nonpublic personal information under the Privacy regulations. Therefore, sharing it with nonaffiliated third parties may be subject to an opt-out notice 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 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 (for example, other than transaction or experience information) among persons 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 person, such as 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 both of the following circumstances:

   a. The sharing of the "other" information is done with affiliates.

   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 a consumer provides on an application form concerning accounts with other financial institutions. It can also include information a financial institution obtains 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 person's, such as a financial institution's**,** Privacy Notice as required by 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 (for example, 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 person, such as a financial institution, to which the request was made, and such person 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 (FTC) 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. An outside company provides the PMI. 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 nonaffiliated third parties. It is important to note that the GLBA will still apply to the sharing of nonpublic, personal information with nonaffiliated third parties; therefore, a person, such as a financial institution, should be aware the GLBA may still limit or prohibit sharing allowed under the FCRA joint user rule.

Protection of Medical Information – Section 604(g); 15 U.S.C. 1681b(g); 12 CFR 1022, Subpart D

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 federal banking agencies and NCUA 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 ECOA (15 U.S.C. 1691a). On December 21, 2011, the CFPB restated the implementing regulation at 12 CFR Part 1022 (76 Fed. Reg. 79308).

Obtaining and Using Unsolicited Medical Information (12 CFR 1022.30(c)). 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. We discuss these exceptions below.

Financial Information Exception (12 CFR 1022.30(d)). 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.
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, nonmedical 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 it considers 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, continued eligibility for disability income, etc.

<u>Specific Exceptions for Obtaining and Using Medical Information (12 CFR 1022.30(e))</u>. 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 the bullet 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 (12 CFR 1022.31(b)). 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 (12 CFR 1022.32(b)). In general, the exclusions from the definition of "consumer report" in Section 603(d)(2) of the FCRA allow the sharing of non-medical 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 any of 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.

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 (12 CFR 1022.32(c)). A person, such as a bank, thrift, or credit union, may share medical information with its affiliates without becoming a consumer reporting agency under any of 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.
6. As otherwise permitted by order of the CFPB.

Affiliate Marketing Opt-Out Requirement – Section 624; 15 U.S.C. 1681s-3; 12 CFR 1022, Subpart C

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) that gives a consumer the right to restrict the ***sharing*** of certain consumer information among affiliates.[9]

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 requirement 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

[9] *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-out notices, a sharing opt-out notice (Section 603(d)) and a marketing use opt-out notice (Section 624). These two opt-out notices may be consolidated.

Federal Register to implement this section (72 FR 62910). On December 21, 2011, the CFPB restated the implementing regulation at 12 CFR Part 1022 (76 Fed. Reg. 79308). [10]

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[11]

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.[12]

Pre-existing business relationship (12 CFR 1022.20(b)(4))[13] means a relationship between a person, such as a financial institution (or a person's licensed agent), and a consumer based on:

1. A financial contract between the person and the consumer that is in force on the date on which the consumer is sent a solicitation covered by the affiliate marketing regulation;
2. 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
3. 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.

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[10] *See* 12 CFR 1022.20(a) for the scope of entities covered by Subpart C of 12 CFR 1022.

[11] *See* 12 CFR 1022.20 for other definitions.

[12] 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."

[13] *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.

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:

1. Based on eligibility information communicated to that person by its affiliate; and
2. Intended to encourage the consumer to purchase or obtain such product or service.

Examples of a solicitation include a telemarketing call, direct mail, email, 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 person, such as a financial institution, and its subsidiaries 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 person 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 person from using eligibility information to make solicitations for marketing purposes to the consumer);14 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.

[14] *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."

Making Solicitations – 12 CFR 1022.21(b)[15]

A person, such as a financial institution, (or a service provider acting on behalf of the person) makes a solicitation for marketing purposes if:

1. The person receives eligibility information from an affiliate, including when the affiliate places that information into a common database that the person may access;
2. The person 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 person'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 person's, such as a financial institution's, use of the eligibility information, the consumer is provided a solicitation.

A person, such as 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 person, such as 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 person provides criteria for consumers to whom it would like its affiliate to market the person'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 person's products or services (or directs its service provider to use the eligibility information in the same manner and the person does not communicate with the service provider regarding that use).
2. A service provider, applying the person's criteria, uses information from an affiliate, such as that in a shared database, to market the person's products or services to the consumer, so long as it meets certain requirements, including all of the following.
   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.

[15] *See* 12 CFR 1022.21(b)(6) for examples of making solicitations.

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 person'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 person's products or services.

d. The affiliate is identified on or with the marketing materials provided to the consumer.

e. The person does not directly use its affiliate's eligibility information in the manner 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)[16]

The initial notice and opt-out requirements do not apply to a person, such as 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 person has a pre-existing business relationship;

2. To facilitate communications to an individual for whose benefit the person 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 person'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 person'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 person is lawfully doing business.

[16] *See* 12 CFR 1022.21(d) for examples of exceptions to the initial notice and opt-out requirement.

Contents of Opt-Out Notice – 12 CFR 1022.23

A person, such as 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 U.S.C. 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[17]

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 <u>not</u> reasonably be expected to receive actual notice if, for example, the affiliate providing the notice sends the notice via email to a consumer who has not agreed to receive electronic disclosures by email from the affiliate providing the notice.[18]

Scope of Opt-Out – 12 CFR 1022.22(a) and 1022.23(a)(2)[19]

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.

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[17] *See* 12 CFR 1022.26(b) and (c) for examples of "reasonable expectation of actual notice" and "no reasonable expectation of actual notice."

[18] 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 <u>et seq</u>.

[19] *See* 12 CFR 1022.22(a) for examples of the scope of the opt-out notice, including examples of continuing relationships.

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.
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.

Continuing relationship. If the consumer establishes a continuing relationship with a person, such as 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 person 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 person 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, regardless of whether the new opt-out notice 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 person or its affiliate, but the person 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 person, such as 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.[20]

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 following information as applicable:

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.

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 a 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[21] or any time after the expiration of the opt-out period but before solicitations are made to the consumer that would have been prohibited by the expired opt-out.

[20] *See* 12 CFR 1022.21(c) for exceptions.

[21] 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 person 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)).

Model Forms for Opt-Out Notices – 12 CFR Part 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)
- C-5 Model Form for Voluntary "No Marketing" Notice

Use of the model forms is not required and a person 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.

Module 3 – Disclosures to Consumers and Miscellaneous Requirements

Overview

The FCRA requires entities such as financial institutions to provide consumers with various notices and information under a variety of circumstances. This module contains examination responsibilities for these various areas.

Use of Consumer Reports for Employment Purposes – Section 604(b); 15 U.S.C. 1681b(b)

Section 604(b) has specific requirements for persons, such as 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, the person must provide to the consumer in writing a clear and conspicuous disclosure that it may obtain a consumer report for employment purposes 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.
2. A description in writing of the rights of the consumer under this title, as the CFPB prescribes under Section 609(c)(1).

At the time a financial institution takes adverse action in an employment situation, Section 615 requires that it must provide the consumer with an adverse action notice described later in this module.

Prescreened Consumer Reports and Opt-Out Notice – Sections 604(c) and 615(d); 15 U.S.C. 1681b(c) and 15 U.S.C. 1681m(d); and 12 CFR 1022.54

Sections 604(c) allow persons, including financial institutions, to obtain and use consumer reports on any consumer in connection with any credit or insurance transaction that the consumer does not initiate, 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 the person uses solely for the purpose of verifying the identity of the consumer.

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, persons, such as financial institutions, must make a "firm offer of credit or insurance" as defined in Section 603(l) to each person on the list. A person is not required to grant credit or insurance if the consumer is not creditworthy or insurable, or cannot furnish required collateral, provided that the person determines the underwriting criteria in advance, and applies it consistently.

<u>Example 1</u>: 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 second 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 percent or less. The consumer reporting agency can screen some of the criteria but the lender must determine other criteria individually, such as the DTI, when consumers respond to the offer. If a consumer responds to the offer, but already has a DTI of 60 percent, the lender does not have to grant the loan.

In addition, the person 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 person does not have to grant the loan.

<u>Example 2</u>: 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 that shows 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 a person from obtaining prescreened lists without following through with an offer of credit or insurance. The person 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 person made the offer to the consumer.

Technical Notice and Opt-Out Requirements – Section 615(d)

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 person, such as a financial institution, obtains and uses these lists, it 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 implementing regulation, 12 CFR 1022.54, contains the technical requirements of the notice. This regulation is applicable to anyone, including banks, credit unions, and saving associations, that obtains and uses prescreened consumer reports.

Short and Long Notice – 12 CFR 1022.54(c)

Entities must provide a "short" notice and a "long" notice of the prescreened opt-out information with each written solicitation made to consumers using prescreened consumer reports. They must also comply with specific requirements concerning the content and appearance of these notices.

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. It must provide the toll-free number and direct consumers to the existence and location of the long notice. It should also 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 a person, such as a financial institution, provides the notice 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. 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, 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 model prescreened opt-out notices are contained in Appendix D to 12 CFR Part 1022. Appendix D contains complete sample solicitations for context. The model prescreen notice text is contained below:

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 <u>PRESCREEN & OPT-OUT NOTICE</u> on other side (or other location) for more information about prescreened offers.

Sample Long Notice:

<u>PRESCREEN & OPT-OUT NOTICE</u>: 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 <u>not</u> 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).

Truncation of Credit and Debit Card Account Numbers – Section 605(g); 15 U.S.C. 1681c(g)

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 date, 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.

Disclosure of Credit Scores by Certain Mortgage Lenders – Section 609(g); 15 U.S.C. 1681g(g)

Section 609(g) requires creditors, such as 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 either of the following:

1. 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.

2. 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 one- to four-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 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, a creditor, such as a financial institution, 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 all relevant elements or reasons adversely affecting the credit score for the particular individual, listed in the order of their importance, and based on their effect on the credit score. The total number of factors to be disclosed must not exceed four. However, if one of the key factors is the number of inquiries into a consumer's credit information, then the total number of factors must not exceed five. These key factors come from information the consumer reporting agencies supplied 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 the lender takes on the application. The FCRA requires a creditor to disclose all of the credit scores 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 the creditor needs to disclose both. The statute specifically does not require more than one disclosure per loan. Therefore, if the creditor uses multiple scores, it can include all of them in one disclosure containing the Notice to the Home Loan Applicant.

If a creditor uses a credit score that it did not obtain directly from a consumer reporting agency, but may contain some information from a consumer reporting agency, the creditor may satisfy this disclosure requirement by providing a score and associated key factor information that a consumer reporting agency supplied. 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 creditor uses this automated system, it may satisfy the disclosure requirement by providing the applicants with a score and key factors a consumer reporting agency supplied based on the data, including credit score(s) 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 the creditor provide it as soon as is reasonably practicable after using a credit score.

Adverse Action Disclosures – Section 615(a) and (b); 15 U.S.C. 1681m(a) and (b)

Section 615(a)-(b) requires users of consumer reports, such as creditors, to make certain disclosures when they:

1. take adverse actions with respect to consumers, based in whole or in part on information contained in a consumer report;
2. deny credit for personal, family, or household purposes or increase the charge for such credit based in whole or in part on information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living or
3. take certain adverse action based in whole or in part on information from an affiliate.

The disclosure requirements are discussed separately below.

Information Obtained From a Consumer Reporting Agency

Section 615(a), Duties of Users Taking Adverse Actions on the Basis of Information Contained in Consumer Reports, provides that when adverse action is taken with respect to any consumer based in whole or in part on any information contained in a consumer report, the person, such as a financial institution, must:

1. provide oral, written, or electronic notice of the adverse action to the consumer.
2. provide to the consumer written or electronic disclosures of a numerical credit score used by such person in taking any adverse action based in whole or in part on any information in a consumer report and the following information:
   a. the range of possible credit scores under the model used;
   b. all of the key factors that adversely affected the credit score, which shall not exceed four key factors, except that if one of the key factors is the number of enquiries made with respect to the consumer report, the number of key factors shall not exceed five;
   c. the date on which the credit score was created; and
   d. the name of the person or entity that provided the credit score or credit file upon which the credit score was created;
3. 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;

4. provide to 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 Third Parties Other than Consumer Reporting Agencies (Including Affiliates)

Section 615(b), Adverse Action Based on Information Obtained from Third Parties Other than Consumer Reporting Agencies, provides that, in general, whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall:

1. At the time such adverse action is communicated, clearly and accurately disclose to the consumer his right to make a written request for the reasons for such adverse action within 60 days after learning of such adverse action; and
2. Within a reasonable period of time after receipt of such written request from the consumer, disclose the nature of the information to the consumer.

If the adverse action described in 615(b)(2)(B) is (i) taken based in whole or in part on information from a person related by common ownership or affiliated by common corporate control to the person taking the action, and (ii) bears on the credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living of the consumer, and (iii) does not include information solely as to transactions or experiences between the consumer and the person furnishing the information or information in a consumer report, then the person taking the adverse action shall:

1. Notify the consumer of the action, including a statement that the consumer may obtain the information upon written request from the consumer received within 60 days after transmittal of the notice required; and
2. Not later than 30 days after receipt of such written request from the consumer, disclose to the consumer the nature of the information upon which the action is based.

Debt Collector Communications Concerning Identity Theft – Section 615(g); 15 U.S.C. 1681m(g)

Section 615(g) has specific requirements for persons, such as financial institutions, that act as debt collectors, whereby they collect 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 person is collecting its own loans. When a person 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 person 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 person 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 person.

Risk-Based Pricing Notice – Section 615(h); 15 U.S.C. 1681m(h); 12 CFR 1022, Subpart H

Section 615(h) of the Fair Credit Reporting Act (FCRA) generally requires a user of consumer reports, such as a creditor, to provide a risk-based pricing notice to a consumer when the creditor, based on a consumer report, extends credit to the consumer on terms that are "materially less favorable" than the terms the creditor has extended to other consumers. On January 15, 2010, the Federal Reserve and the Federal Trade Commission (FTC) published final rules in the *Federal Register* (75 Fed. Reg. 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. Section 615(h), covers the situation where credit is offered on "materially less favorable terms," rather than being denied.

The Dodd-Frank Act amended Section 615(h) of the FCRA to require a person to disclose a consumer's credit score and certain information relating to the credit score, if a credit score is used in making the credit decision. On July 15, 2011, the Federal Reserve Board and the FTC published final rules (effective August 15, 2011) amending the risk-based pricing regulation to effect the Dodd-Frank Act changes (76 FR 41602). On December 21, 2011, the CFPB restated the FCRA regulations at 12 CFR Part 1022. (76 Fed. Reg. 79308)

Key Definitions – 12 CFR 1022.71

The following definitions pertain to the rules governing the risk-based pricing regulation:

Material terms means in general:

a. for open-end credit (except as provided in (b) and (d) below), 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.

Materially less favorable means, generally, that the terms granted, extended, or otherwise provided to a consumer differ from the terms granted, extended, or otherwise provided to another consumer such that the cost of credit to a consumer would be significantly greater than the cost of credit granted, extended, or otherwise provided to the other consumer. 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 between the material terms granted, extended, or otherwise provided to the two consumers.

General requirements – 12 CFR 1022.72-73

A person must provide to a consumer a notice ("risk-based pricing notice") in the form and manner prescribed by the regulation if:

1. The person 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; <u>and</u>

2. Based in whole or in part on the consumer report, the person 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 person.

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 2730)(January 15, 2010).

Determination of which consumers must receive notice (12 CFR 1022.72(b)). A person 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 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 person uses credit scores to set the material terms of credit, the person 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 person 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 person 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 person 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 person 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 as 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)(January 15, 2010).

Recalculation. A person must recalculate the score no less than every two years.

Specific type of product (sampling approach). A person 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 (secondary approach in limited circumstances). For new entrants into the credit business or for new products subject to risk-based pricing, a person may determine the cutoff score based on information from market research or other third-party sources for a specific type of credit product. For a newly acquired credit portfolio, a person may determine the cutoff score from information obtained from the party from which it acquired the portfolio. The person 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, third-party data, 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 until it obtains sufficient data on which to base the calculation. 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 person that generally uses two or more credit scores to set material credit terms, the person 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 person does not consistently use the same method for evaluating multiple scores, the person must use a reasonable means. For example, the person may use any one of the methods that the person 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 person 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 person 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 person may provide a risk-based pricing notice to each consumer who is not assigned to the top pricing tier or tiers.

   If the person 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 person 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, equals no less than the top 30 percent and no more than the top 40 percent of the total number of tiers.

<table>
<tr><td colspan="3">Tiered Pricing Example</td></tr>
<tr><td colspan="3">Four or fewer tiers</td></tr>
<tr><td>Top tier = best rate</td><td>APR</td><td>Notice requirements.</td></tr>
<tr><td>Tier 1 (top)</td><td>8%</td><td>No risk-based pricing notice required.</td></tr>
<tr><td>Tier 2</td><td>10%</td><td rowspan="3">Risk-based pricing notice required for Tiers 2, 3, and 4.</td></tr>
<tr><td>Tier 3</td><td>12%</td></tr>
<tr><td>Tier 4</td><td>14%</td></tr>
</table>

<table>
<tr><td colspan="3">Five or more tiers (5 tiers)</td></tr>
<tr><td>Top tier = best rate</td><td colspan="2">APR</td></tr>
<tr><td>Tier 1 (top)</td><td>8%</td><td rowspan="2">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.</td></tr>
<tr><td>Tier 2</td><td>10%</td></tr>
<tr><td>Tier 3</td><td>12%</td><td rowspan="3">Risk-based notices required for Tiers 3-5.</td></tr>
<tr><td>Tier 4</td><td>14%</td></tr>
<tr><td>Tier 5</td><td>16%</td></tr>
</table>

<table>
<tr><td colspan="3">Five or more tiers (9 tiers)</td></tr>
<tr><td>Top tier = best rate</td><td colspan="2">APR</td></tr>
<tr><td>Tier 1 (top)</td><td>8%</td><td rowspan="3">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.</td></tr>
<tr><td>Tier 2</td><td>10%</td></tr>
<tr><td>Tier 3</td><td>12%</td></tr>
<tr><td>Tier 4</td><td>14%</td><td rowspan="6">Risk-based notices required for Tiers 4-9.</td></tr>
<tr><td>Tier 5</td><td>16%</td></tr>
<tr><td>Tier 6</td><td>18%</td></tr>
<tr><td>Tier 7</td><td>20%</td></tr>
<tr><td>Tier 8</td><td>22%</td></tr>
<tr><td>Tier 9</td><td>24%</td></tr>
</table>

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:

1. 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
2. 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 website of the CFPB to obtain more information about consumer reports;
7. if a credit score of the consumer to whom a person grants, extends, or otherwise provides credit is used in setting the material terms of credit:
    a. a statement that a credit score is a number that takes into account information in a consumer report, that the consumer's credit score was used to set the terms of credit offered, and that a credit score can change over time to reflect changes in the consumer's credit history;

   b. the credit score used by the person in making the credit decision;
   c. the range of possible credit scores under the model used to generate the credit score;
   d. all of the key factors that adversely affected the credit score, which shall not exceed four key factors, except that if one of the key factors is the number of enquiries made with respect to the consumer report, the number of key factors shall not exceed five;
   e. the date on which the credit score was created; and
   f. the name of the consumer reporting agency or other person that provided the credit score.

8. A statement that the terms offered, such as the APR, have been set based on information from a consumer report; and
9. A statement that the terms offered may be less favorable than the terms offered to consumers with better credit histories.

See Appendix H-1 and H-6 of the regulation for model forms for the risk-based pricing notice.

Account Review (12 CFR 1022.72(d)). Generally, a person must provide an account review risk-based pricing notice to the consumer if the person, 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 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 website of the CFPB to obtain more information about consumer reports;

7. if a credit score of the consumer whose extension of credit is under review is used in increasing the APR:

   a. a statement that a credit score is a number that takes into account information in a consumer report, that the consumer‘s credit score was used to set the terms of credit offered, and that a credit score can change over time to reflect changes in the consumer‘s credit history;

   b. the credit score used by the person in making the credit decision;

   c. the range of possible credit scores under the model used to generate the credit score;

   d. all of the key factors that adversely affected the credit score, which shall not exceed four key factors, except that if one of the key factors is the number of enquires made with respect to the consumer report, the number of key factors shall not exceed five;

   e. the date on which the credit score was created; and

   f. the name of the consumer reporting agency or other person that provided the credit score.

8. a statement that the person has conducted a review of the account using information from a consumer report; and

9. 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 7 for the account review risk-based pricing notice are substantially the same as items 1 through 7 for the risk-based pricing notice. Only the last two items in each list are different.

See Appendix H-2 and H-7 of the regulation for model forms 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. Persons, such as 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.

1. 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.

2. 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.

3. 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.

4. For automobile lending transactions made through an auto dealer or other party that is unaffiliated with the creditor, the creditor may provide a risk-based pricing notice in the time periods described above for closed-end credit. Alternatively, the creditor may arrange to have the auto dealer or other party 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. If the creditor arranges to have the auto dealer or other party provide a credit score disclosure exception notice, the creditor complies if the consumer receives a notice containing a credit score obtained by the dealer or other party, even if a different credit score is obtained and used by the creditor. (12 CFR 1022.73(c)(2))

5. For credit that is granted under an open-end credit plan to a consumer in person or by telephone for contemporaneous purchase of goods or services, the risk-based pricing 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.

Multiple credit scores (12 CFR 1022.73(d)). When a person obtains or creates two or more credit scores and uses one of those credit scores in setting the material terms of credit (e.g., by using the low, middle, high, or most recent score), the risk-based pricing notice and the account review notice must include that credit score and the information about the credit score described in the notice content requirements above.

When a person obtains or creates two or more credit scores and uses multiple credit scores in setting the material terms of credit (e.g., by computing the average of all the credit scores obtained or created, the risk-based pricing notice and the account review notice must include one of those credit scores and the information about the credit score described previously in the notice content requirements. The notice may, at the person‘s option, include more than one credit score and the related information for each credit score disclosed.

Examples.

1. A person that uses consumer reports to set the material terms of credit cards granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies and uses the low score when determining the material terms it will offer to the consumer. That person must disclose the low score in the risk-based pricing notice and the account review notice.

2. A person that uses consumer reports to set the material terms of automobile loans granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies, each of which it uses in an underwriting program in order to determine the material terms it will offer to the consumer. That person may choose one of these scores to include in the risk-based pricing notice and the account review notice.

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 material terms of credit (e.g., a specific APR), 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 person such as a creditor provides a notice of adverse action (12 CFR 1022.74(b));

3. when a person makes a firm offer of credit in a prescreened solicitation even if the person makes other firm offers of credit to other consumers on more favorable material terms (12 CFR 1022.74(c));

4. when a person 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 a person 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 a person who 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 specific disclosure requirements for exceptions in 12 CFR 1022.74(d)-(f) are described below.

Section 1022.74(d) exception - credit score disclosure for loans secured by residential real property. An person is not required to provide a risk-based pricing notice to a consumer under 12 CFR 1022.72(a) or (c) if:

1. The consumer requests from an person an extension of credit that is or will be secured by one to four units of residential real property; and
2. The person 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 website of the CFPB 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. The 12 CFR 1022.74(d) notice must be:

1. clear and conspicuous;
2. provided on or with the notice required by Section 609(g) of the FCRA;
3. segregated from other information provided to the consumer, except for the notice required by Section 609(g) of the FCRA; and
4. provided to the consumer in writing and in a form that the consumer may keep.

Timing. The 12 CFR 1022.74(d) 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 12 CFR 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 a person obtains two or more credit scores from consumer reporting agencies in setting material terms of credit, the content of the 12 CFR 1022.74(d) notice varies depending upon whether the person only relies upon *one* of the credit scores or relies upon *multiple* credit scores.

1. If a person 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 12 CFR 1022.74(d).

2. If a person 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 12 CFR 1022.74(d).

At the person's option, the notice may include more than one credit score, along with the additional information required by 12 CFR 1022.74(d) for each credit score disclosed.

Examples.

1. A person 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 person must disclose the low score in the 12 CFR 1022.74(d) notice.

2. A person 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 person 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 person may choose one of these scores to include in the 12 CFR 1022.74(d) notice.

Model form. Appendix H-3 of the regulation contains a model form of the 12 CFR 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 12 CFR 1022.74(d).

Section 1022.74(e) exception - credit score disclosure for loans not secured by residential real property. A person is not required to provide a risk-based pricing notice to a consumer under 12 CFR 1022.72(a) or (c) if:

1. the consumer requests from a person an extension of credit that is not or will not be secured by one to four units of residential real property; and

2. the person 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 website of the CFPB 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:

    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.

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

    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 12 CFR 1022.74(e) notice are the same as items a, b, c, d, e, f, g, and i for the 12 CFR 1022.74(d) notice.

Form of the notice. The 12 CFR 1022.74(e) 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. The 12 CFR 1022.74(e) 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:

a. For automobile lending transactions made through an auto dealer or other party that is unaffiliated with the person, such as a creditor, the person may provide a 12 CFR 1022.74(e) notice in the time periods described above. Alternatively, the creditor may arrange to have the auto dealer or other party provide a 12 CFR 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 creditor arranges to have the auto dealer or other party provide a credit score disclosure exception notice, the creditor complies if the consumer receives a notice containing a credit score obtained by the dealer or other party, even if a different credit score is obtained and used by the creditor. 12 CFR 1022.73(c)(2))

b. For credit that is granted under an open-end credit plan to a consumer in person or by telephone for contemporaneous purchase of goods or services, the 12 CFR 1022.74(e) notice may be provided at the earlier of:

   i. 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

   ii. within 30 days after the decision to approve the credit

   (12 CFR 1022.73(c)(3)).

Multiple credit scores. When a person obtains two or more credit scores from consumer reporting agencies in setting material terms of credit, the content of the 12 CFR 1022.74(e) notice varies depending if the person relies upon only *one* of the credit scores or relies upon *multiple* credit scores. These disclosures requirements are the same as those for the 12 CFR 1022.74(d) notices, as described previously.

Model form. Appendix H-4 of the regulation contains a model form of the 12 CFR 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 12 CFR 1022.74(e).

Section 1022.74(f) exception - credit score not available. A person is not required to provide a risk-based pricing notice to a consumer under 12 CFR 1022.72(a) or (c) if the person:

1. regularly obtains credit scores from a consumer reporting agency and provides credit score disclosures to consumers in accordance with 12 CFR 1022.74(d) or (e), but a credit score is not available from the consumer reporting agency from which the person regularly obtains credit scores for a consumer to whom the person 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 website of the CFPB to obtain more information about consumer reports.

NOTE: Items b, f, g, h, and i for the 12 CFR 1022.74(f) notice are the same as items b, f, g, h, and i for the 12 CFR 1022.74(d) and (e) notices.

Example. A person, such as a creditor, 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 12 CFR 1022.74(e), the creditor provides those credit scores and additional information to consumers. The consumer reporting agency provides to the creditor a consumer report on a particular consumer that contains one trade line, but does *not* provide the creditor with a credit score on that consumer. If the creditor 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 creditor may provide the 12 CFR 1022.74(f) notice. If, however, the creditor obtains a credit score from another consumer reporting agency, the creditor may not rely upon the 12 CFR 1022.74(f) exception, but must satisfy the requirements of 12 CFR 1022.74(e).

Form of the notice. The 12 CFR 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. The 12 CFR 1022.74(f) notice generally must be provided to the consumer as soon as reasonably practicable after the person 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 or other party that is unaffiliated with the person, such as a creditor, the creditor may provide a 12 CFR 1022.74(f) notice in the time periods described above. Alternatively, the creditor may arrange to have the auto dealer or other party provide a 12 CFR 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.
2. For credit that is granted under an open-end credit plan to a consumer in person or by telephone for contemporaneous purchase of goods or services, 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 12 CFR 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 12 CFR 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 disclosure 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 who are granted, extended, or otherwise provided credit, a person must provide a risk-based pricing notice to each consumer. If the consumers have the same address, and the notice does not include a credit score(s), a person may satisfy the requirements by providing a single notice addressed to both consumers. However, if a notice includes a credit score(s), the person must provide a separate notice to each consumer whether the consumers have the same address or not. Each separate notice that includes a credit score(s) 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. Similarly, for credit score disclosure exception notices, whether the consumers have the same address or not, the person must provide a separate notice to each consumer and each separate notice that includes a credit score(s) must contain only the credit score(s) of the consumer to whom the notice is provided.

A purchaser or assignee of a credit contract with a consumer is not subject to the risk-based pricing notice requirements.

Appendix H

Appendix H contains seven optional model forms that may be used to comply with the regulatory requirements. The seven 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

6. H-6 Model form for risk-based pricing notice with credit score information

7. H-7 Model form for account review risk-based pricing notice with credit score information

Use of the model forms is not required. A person 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. Persons 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.

Module 4 – Duties of Users of Consumer Reports and Furnishers of Consumer Report Information

Overview

The FCRA contains many responsibilities for persons, such as 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 persons that do not furnish any information to consumer reporting agencies.

Duties of Users of Credit Reports Regarding Address Discrepancies – Section 605(h); 15 U.S.C. 1681c(h); 12 CFR 1022.82

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 and the FTC published final rules in the Federal Register implementing this section (72 FR 63718). On December 21, 2011, the CFPB restated the FCRA regulations at 12 CFR Part 1022. (76 Fed. Reg. 79308).

Key Definitions

Nationwide consumer reporting agency (NCRA). 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.
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 1020.220);
    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 does the following:

1. forms 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, and in the ordinary course of business, 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.

Furnishers of Information: General – Section 623(e); 15 U.S.C. 1681s-2; 12 CFR 1022, Subpart E

Section 623(e) required the Agencies and the Federal Trade Commission (FTC) to:

1. issue guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to consumer reporting agencies;
2. prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines; and
3. 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.

The Agencies and the FTC published final rules in the Federal Register (74 FR 31484) implementing this section of FCRA. These rules took effect July 1, 2010. On December 21, 2011, the CFPB restated the FCRA regulations at 12 CFR Part 1022. (76 Fed Reg 79308).

Key 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.

Identifying information means any name or number that may be used alone or in conjunction with any other information to identify a specific person.

Identity theft means a fraud committed or attempted using the identifying information of another person without authority.

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 the information in the furnisher's possession about the account or other relationship that:
    a. 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. is specified in the Interagency Guidelines Concerning the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies (FCRA rule, Appendix E). Currently, the Guidelines specify the credit limit, if applicable and in the furnisher's possession.

Duties of Furnishers to Provide Accurate Information – Section 623(a); 15 U.S.C. 1681s-2(a)

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 person specifies such an address, then it may not furnish information relating to a consumer to any consumer reporting agency, if (a) the consumer notified the person, at the specified address, that the information is inaccurate, and (b) the information is inaccurate. If the person does not specify an address, then it may not furnish any information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate.

When a person 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 person must promptly notify the consumer reporting agency of that determination. The person must provide corrections to that information or any additional information necessary to make the information complete and accurate to the consumer reporting agency. Further, the person thereafter must not furnish any information that remains incomplete or inaccurate to the consumer reporting agency.

If a consumer disputes the completeness or accuracy of any information a person furnishes to a consumer reporting agency, that person may not furnish the information to any consumer reporting agency without notice that the consumer disputes the information.

Reasonable policies and procedures concerning the accuracy and integrity of furnished information (12 CFR 1022.42) and Interagency Guidelines (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. The guideline's recommendations include the following:

1. using standard data reporting formats and standard procedures for compiling and furnishing data, where feasible, such as electronic transmission of information about consumers to consumer reporting agencies;

2. maintaining records for a reasonable period of time, not less than any applicable recordkeeping requirement, in order to substantiate the accuracy of any information furnished about consumers to consumer reporting agencies that is subject to a direct disputer; and

3. training staff that participates in activities related to the furnishing of information about consumers to consumer reporting agencies.

Voluntary closures of accounts – Section 623(a)(4); 15 U.S.C. 1681s-2(a)(4)

This section requires a person, including a financial institution, who regularly and in the ordinary course of business furnishes information to a consumer reporting agency regarding one of its consumer credit accountholders, to notify the consumer reporting agency of the consumer's voluntary account closure. This notice is to be furnished to the consumer reporting agency as part of the regularly furnished information for the period in which the account is closed.

Notice involving delinquent accounts – Section 623(a)(5); 15 U.S.C. 1681s-2(a)(5)

This section requires that a person, including a financial institution, that furnishes information to a consumer reporting agency about a delinquent account 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); 15 U.S.C. 1681s-2(b)

This section requires that whenever a person, such as a financial institution, receives a notice of dispute from a consumer reporting agency regarding the accuracy or completeness of any information the person provided to a consumer reporting agency pursuant to Section 611 (Procedure in Case of Disputed Accuracy), that person must, pursuant to Section 623(b):

1. conduct an investigation regarding the disputed information;
2. review all relevant information the consumer reporting agency provided along with the notice;
3. report the results of the investigation to the consumer reporting agency;
4. if the investigation finds the information is incomplete or inaccurate, report those results to all nationwide consumer reporting agencies to which the financial institution previously provided the information; and
5. if the disputed information is incomplete, inaccurate, or not verifiable by the person, it must promptly, for purposes of reporting to the consumer reporting agency do one of the following:

    a. modify the item of information.

    b. delete the item of information.

    c. permanently block the reporting of that item of information.

The person must complete the required investigations, reviews, and reports within 30 days. The person may extend the time period for 15 days if a consumer reporting agency receives additional relevant information from the consumer.

Duties upon notice of dispute from a consumer (direct disputes) – Section 623(a)(8); 15 U.S.C. 1681s-2(a)(8); 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 identity 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 <u>not</u> 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

4. 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 to the furnisher; 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.

Prevention of Re-Pollution of Consumer Reports – Section 623(a)(6); 15 U.S.C. 1681s-2(a)(6)

Section 623(a) has specific requirements for furnishers of information, including financial institutions, to a consumer reporting agency that received notice from a consumer reporting agency that furnished information may be fraudulent as a result of identity theft. Section 605B, Block of Information Resulting From Identity Theft, 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 furnishers to establish and follow reasonable procedures to ensure that it does not re-report this information to the consumer reporting agency, thus "re-polluting" the victim's consumer report.

Section 615(f), Prohibition on Sale or Transfer of Debt Caused by Identity Theft, also prohibits a furnisher from selling or transferring debt caused by an alleged identity theft.

Negative Information Notice – Section 623(a)(7); 15 U.S.C. 1681s-2(a)(7); 12 CFR 1022.1(b)(2)(ii)

Section 623(a)(7) requires a financial institution to provide consumers with a notice either before it provides negative information to a nationwide consumer reporting agency, or within 30 days after reporting the negative information.

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, financial institutions may not include this notice in the initial disclosures provided under Section 127(a) of the Truth in Lending Act.

Key Definitions

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) of the FCRA defines a "nationwide consumer reporting agency" as a:

> consumer reporting agency that compiles and maintains files on consumers on a nationwide basis.

It defines this type of consumer reporting agency as one that regularly assembles or evaluates, and maintains, each of the following regarding consumers residing nationwide for the purpose of furnishing consumer reports to third parties bearing on a consumer's creditworthiness, 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.

Model text

Institutions may use the following model text to comply with these requirements. The first model contains text an institution can use when it provides a notice before furnishing negative information. The second model form contains text to use when an institution provides notice within 30 days after reporting negative information:

- *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."

- *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 a financial institution with a safe harbor from liability. A financial institution 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. A financial institution making extensive revisions will lose the safe harbor from liability that the model notices provide. Acceptable changes include:

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 it may furnish information, such as "credit card account."
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."

Module 5 – Consumer Alerts and Identity Theft Protections

Overview

The 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 persons that are not consumer reporting agencies, but are users of consumer reports.

Two primary requirements exist for users of consumer reports: 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 person must disclose certain information when consumers allege that they are the victims of identity theft.

Fraud and Active Duty Alerts – Section 605A(h); 15 U.S.C. 1681c-1(h)

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), Limitations on Use of Information for Credit Extensions, 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 user of the consumer report uses reasonable policies and procedures to form a reasonable belief that it knows the identity of the person making the request, the user 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), Limitation on Users, requires a user that obtains a consumer report that contains an extended alert to contact the consumer in person or by the method the consumer lists in the alert prior to performing any of the three actions listed above.

Information Available to Victims – Section 609(e); 15 U.S.C. 1681g(e)

Section 609(e) requires a person, such as a financial institution, 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 person whether maintained by the person itself or another person on behalf of the institution (such as a service provider).

The person should provide this information to any of the following:

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 victim must make the request for the records in writing and send it to the person at the address specified by the person for this purpose. The person 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 person has a high degree of confidence that it knows the identity of the victim making the request for information, the person must take prudent steps to positively identify the person before disclosing any information. Proof of identity can include any of the following:

1. a government-issued identification card;
2. personally identifying information of the same type that was provided to the person by the unauthorized person; or
3. personally identifying information that the person typically requests from new applicants or for new transactions.

At the election of the person, the victim must also provide the person 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 copy of a properly completed affidavit. The CFPB's Identity Theft Affidavit is available on the CFPB's website (consumerfinance.gov/learnmore). The version of this form developed by the FTC and available on the FTC's Website (ftc.gov/idtheft) remains valid and sufficient for this purpose (12 CFR 1022.3(i)(3)(ii)).

When these conditions are met, the person must provide the information at no charge to the victim. However, the person is not required to provide any information if, acting in good faith, the person determines any of the following:

1. section 609(e) does not require disclosure of the information;
2. the person 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 website or online service.

Duties Regarding the Detection, Prevention, and Mitigation of Identity Theft – Section 615(e); 15 U.S.C. 1681m(e)

Section 615(e) requires the federal banking agencies and the NCUA (the Agencies) as well as the FTC to prescribe regulations and guidelines for entities under their enforcement authority regarding the detection, prevention, and mitigation of identity theft. On November 9, 2007, the Agencies published final rules and guidelines in the Federal Register implementing this section (72 FR 63718). The Agencies also have issued examination procedures for the implementing regulations. CFPB examiners are not expected to examine for compliance with Section 615(e)). If CFPB examiners become aware of potential issues in this area, the appropriate federal regulator should be notified.

Duties of Card Issuers Regarding Changes of Address – Section 615(e); 15 U.S.C. 1681m(e)

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. On November 9, 2007, the Agencies and the FTC published final rules in the Federal Register implementing this section (72 FR 63718). 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. The Agencies also have issued examination procedures for the implementing regulations. CFPB examiners are not expected to examine for compliance with Section 615(e)). If CFPB examiners become aware of potential issues in this area, the appropriate federal regulator should be notified.

Disposal of Consumer Information – Section 628; 15 U.S.C. 1681w

Section 628 requires the federal banking agencies to prescribe regulations for entities under their enforcement authority regarding the proper disposal of consumer information. On December 28, 2004, the federal banking agencies published final rules and guidelines in the Federal Register implementing this section (69 FR 77610). The agencies also have issued examination procedures for the implementing regulations. CFPB examiners are not expected to examine for compliance with Section 628. If CFPB examiners become aware of potential issues in this area, the appropriate federal regulator should be notified.

REFERENCES

Laws

15 U.S.C. 1681 et seq.	Fair Credit Reporting Act

Regulations

Consumer Financial Protection Bureau Regulation (12 CFR)

Part 1022	Fair Credit Reporting (Regulation V)

Fair Credit Reporting Act

Examination Objectives[1] [2]

- To determine the covered entity's compliance with the Fair Credit Reporting Act (FCRA) and implementing regulations.
- To assess the quality of the covered entity's compliance risk management system to ensure compliance with the FCRA, as amended.
- To determine the reliance that can be placed on the covered entity's internal controls and procedures for monitoring the entity's compliance with the FCRA.
- To direct corrective action when violations of law are identified, or when the covered entity's policies or internal controls are deficient.

Initial Examination Procedures

The initial examination procedures are designed to acquaint examiners with the operations and processes of the entity being examined. They focus on the entity's systems, controls, policies, and procedures, including audits and previous examination findings.

The applicability of the various sections of the FCRA and the implementing regulations depends on an entity's unique operations. The functional examination requirements are presented topically in modules 1 through 5.

Initially, examiners should:

1. Through discussions with management and review of available information, determine if the entity's internal controls are adequate to ensure compliance in the FCRA area under review. Consider the following:

    a. organization charts;

    b. process flowcharts;

    c. policies and procedures;

    d. loan documentation;

    e. checklists;

[1] These reflect FFIEC-approved procedures.

[2] These procedures do not currently contain a module on the requirements for consumer reporting agencies.

   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 workpapers 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 entity'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 entity's operations.

4. Through discussions with management, determine which portions of the examination modules will apply.

5. Complete appropriate examination modules; document and form conclusions regarding the quality of the entity's compliance management systems and compliance with FCRA.

Module 1 – Obtaining Consumer Reports

Permissible Purposes of Consumer Reports – Section 604; 15 U.S.C. 1681b
Investigative Consumer Reports – Section 606; 15 U.S.C. 1681d

1. Determine whether the entity obtains consumer reports.

2. Determine whether the entity obtains prescreened consumer reports and/or reports for employment purposes. If so, complete the appropriate sections of Module 3.

3. Determine whether the entity procures or causes an investigative consumer report to be prepared. If so, ensure that the appropriate disclosure is given to the consumer within the required time period. In addition, ensure that the entity certified compliance with the disclosure requirements to the consumer reporting agency.

4. Ensure that the entity obtains consumer reports only for permissible purposes. Confirm that the entity certifies to the consumer reporting agency the purposes for which it will obtain reports. (The certification is usually contained in an entity'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, review a sample of consumer reports obtained from a consumer reporting agency and determine whether the entity 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 entity from the consumer reporting agency for a period of time; and

   - compare this list, or a sample from this list to the entity'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 entity may also obtain a report in connection with the review of an existing account.

Module 2 – Obtaining Information and Sharing Among Affiliates

Consumer Report and Information Sharing – Section 603(d); 15 U.S.C. 1681a(d)

1. Review the entity's policies, procedures, and practices concerning the sharing of consumer information with third parties, including both affiliated and nonaffiliated 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 entity's compliance with the Privacy of Consumer Financial Information Regulations that implement the Gramm-Leach-Bliley Act (GLBA).

2. Determine whether the entity's information sharing practices fall within the exceptions to the definition of a consumer report. If they do not, the entity could be considered a consumer reporting agency and subject to the FCRA requirements for consumer reporting agencies.

3. If the entity shares information other than transaction and experience information with affiliates subject to opt-out provisions, determine whether the entity's GLBA privacy notice contains tinformation regarding how to opt out, as required by the Privacy of Consumer Financial Information regulations.

4. If procedural weaknesses or other risks requiring further investigation are noted, obtain a sample of opt-out rights exercised by consumers and determine if the entity honored the opt-out requests by not sharing "other information" about the consumers with the entity's affiliates subsequent to receiving a consumer's opt-out direction.

Protection of Medical Information – Section 604(g); 15 U.S.C. 1681b(g); 12 CFR 1022, Subpart D

1. Review the entity's policies, procedures, and practices concerning the collection and use of consumer medical information in connection with any determination of the consumer's eligibility, or continued eligibility for credit.

2. If the entity's policies, procedures, and practices allow for obtaining and using consumer medical information in the context of a credit transaction, determine 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 or other risks requiring further investigation are noted, obtain samples of credit transactions to determine whether 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 entity has adequate policies and procedures in place to limit the redisclosure of consumer medical information that was received from a consumer reporting agency or an affiliate.

5. Determine whether the entity shares medical information about a consumer with affiliates. If it does, determine whether the sharing occurred in accordance with an exception in the rules that enables the entity to share the information without becoming a consumer reporting agency.

Affiliate Marketing Opt Out – Section 624; 15 U.S.C. 1681s-3; 12 CFR 1022 Subpart C

1. Determine whether the entity 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 entity 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 entity'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 entity's using eligibility information to make solicitations for marketing purposes to the consumer, and that the entity 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 entity 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 .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, an entity 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

Use of Consumer Reports for Employment Purposes – Section 604(b); 15 U.S.C. 1681b(b)

1. Determine if the entity obtains consumer reports on current or prospective employees.
2. Assess the entity's policies and procedures to determine if appropriate disclosures are provided to current and prospective employees when an entity obtains consumer reports for employment purposes, including situations where the entity takes adverse actions based on consumer report information.
3. If procedural weaknesses 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.

Prescreened Consumer Reports and Opt-Out Notice – Sections 604(c) and 615(d); 15 U.S.C. 1681b(c) and 15 U.S.C. 1681m(d) 12 CFR 1022.54

1. Determine whether the entity obtained and used prescreened consumer reports in connection with offers of credit and/or insurance.
2. Evaluate the entity's policies and procedures to determine if a list of the criteria used for prescreened offers, including all post-application criteria, is maintained in the entity's files and the criteria are applied consistently when consumers respond to the offers.
3. Determine if 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 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.

Truncation of Credit and Debit Card Account Numbers – Sections 605(g); 15 U.S.C. 1681c(g)

1. Determine whether the entity's policies and procedures ensure that electronically generated receipts from automated teller machines and point-of-sale 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. If procedural weaknesses or other risks requiring further investigation are noted, review samples of actual receipts to ensure compliance.

Disclosure of Credit Scores by Certain Mortgage Lenders – Sections 609(g); 15 U.S.C. 1681g(g)

1. Determine if the entity uses credit scores in connection with applications for closed-end or open-end loans secured by one- to four-family residential real property.
2. Evaluate the entity'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 or other risks requiring further investigation are noted, review a sample of disclosures given to home loan applicants to determine technical compliance with the requirements.

Adverse Action Disclosures – Sections 615(a) and (b); 15 U.S.C. 1681m(a) and (b)

1. Determine whether the policies and procedures adequately ensure that the creditor or other person provides the appropriate disclosures, including the consumer's credit score as appropriate, when it takes adverse action against consumers based in whole or in part on information contained in a consumer report or specified information received from third parties, including affiliates.
2. Review the policies and procedures of the creditor or other person for responding to requests for information in response to these adverse action notices.
3. If procedural weaknesses 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.

Debt Collector Communications Concerning Identity Theft – Sections 615(g); 15 U.S.C. 1681m(g)

1. Determine whether the entity collects debts for third parties.
2. Determine whether the entity has policies and procedures to ensure that the third parties are notified if the entity obtains any information that may indicate that the debt in question is the result of fraud or identity theft.
3. Determine if the entity has effective policies and procedures for providing information to consumers to whom the fraudulent debts relate.
4. If procedural weaknesses 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 determine if all of the appropriate information was provided to the consumer.

Risk-Based Pricing Notice – Section 615(h); 15 U.S.C. 1681m(h); 12 CFR 1022, Subpart H

1. Determine whether the creditor (or other person) uses consumer report information in consumer credit decisions.

   If yes, determine whether the creditor 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 creditor is subject to the risk-based pricing regulations.

2. Determine the method the creditor 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 creditors that use the direct comparison method (12 CFR 1022.72(b)), determine whether the creditor directly compares the material terms offered to each consumer and the material terms offer to other consumers for a specific type of credit product.

   b. For creditors that use the credit score proxy method (12 CFR 1022.72(b)(1)):

      i. determine whether the creditor 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 creditor 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 creditor recalculates the cutoff scores within time periods specified in the regulation;

      iv. for creditors using more than one credit score to set material terms, determine whether the creditor 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 creditor provides the consumer a risk-based pricing notice.

   c. For creditors that use the tiered pricing method (12 CFR 1022.72(b)(2)):

      i. when four or fewer pricing tiers are used, determine if the creditor 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 creditor 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 direct comparison method, 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 creditor does not use the direct comparison method, 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) 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 1026.60, and more than a single possible purchase annual percentage rate (APR) may apply under the program or solicitation; and

      b) 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.

3. Determine whether the creditor provides a risk-based pricing notice to a consumer (12 CFR 1022.72(a)). For creditors that provide the notice, proceed to step #4. If the creditor does not provide a risk-based pricing notice, proceed to step #5 to determine whether an exception applies (12 CFR 1022.74).

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. 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;

h. a statement directing consumers to the website of the Consumer Financial Protection Bureau (CFPB) to obtain more information about consumer reports; and

i. if a credit score of the consumer to whom a person grants, extends, or otherwise provides credit is used in setting the material terms of credit:

   i. a statement that a credit score is a number that takes into account information in a consumer report, that the consumer's credit score was used to set the terms of credit offered, and that a credit score can change over time to reflect changes in the consumer's credit history;

   ii. the credit score used by the person in making the credit decision;

   iii. the range of possible credit scores under the model used to generate the credit score;

   iv. all of the key factors that adversely affected the credit score, which shall not exceed four key factors, except that if one of the key factors is the number of enquiries made with respect to the consumer report, the number of key factors shall not exceed five;

   v. the date on which the credit score was created; and

   vi. the name of the consumer reporting agency or other person that provided the credit score.

Proceed to step #10.

5. If the creditor 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. 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. a creditor provides a notice of adverse action;

c. a creditor makes a firm offer of credit in a prescreened solicitation (even if the person makes other firm offers of credit to other consumers on more favorable material terms);

d. a creditor generally provides a credit score disclosure to each consumer that requests a loan that is or will be secured by residential real property (if so, proceed to step #6);

e. a creditor 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 (if so, proceed to step #7); or

f. a creditor, which otherwise provides credit score disclosures to consumers that request loans, provides a disclosure for when no credit score is available (if so, proceed to step #8).

6. For creditors 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 12 CFR 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 website of the CFPB 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:

      a) 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;

      b) by other clear and readily understandable graphical means; or

      c) 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 creditors 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 12 CFR 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 website of CFPB 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:

   i. use the same scale as that of the credit score provided to the consumer; and

   ii. be presented:

      a) 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;

      b) by other clear and readily understandable graphical means; or

      c) 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 creditors that otherwise provide credit score disclosures to consumers that request loans, determine whether the 12 CFR 1022.74(f) notice is provided to the applicable consumers in situations where no credit score is available for the consumer, as required by 12 CFR 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 website of the CFPB to obtain more information about consumer reports.

9. For creditors 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 a creditor 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 12 CFR 1022.74(d).

   b. if a creditor 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 12 CFR 1022.74(d).

10. *Regardless of whether the creditor provides risk-based pricing notices or credit score disclosure exception notices*, if the creditor increases the consumer's APR as the result of a review of a consumer's account, determine whether the creditor 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 website of the CFPB to obtain more information about consumer reports;

g. a statement that the creditor has conducted a review of the account using information from a consumer report;

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; and

i. if a credit score of the consumer whose extension of credit is under review is used in increasing the APR:

    i. a statement that a credit score is a number that takes into account information in a consumer report, that the consumer's credit score was used to set the terms of credit offered, and that a credit score can change over time to reflect changes in the consumer's credit history;

    ii. the credit score used by the person in making the credit decision;

    iii. the range of possible credit scores under the model used to generate the credit score;

    iv. all of the key factors that adversely affected the credit score, which shall not exceed four key factors, except that if one of the key factors is the number of enquiries made with respect to the consumer report, the number of key factors shall not exceed five;

    v. the date on which the credit score was created; and

    vi. the name of the consumer reporting agency or other person that provided the credit score.

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 time frames (12 CFR 1022.73(c), .74(d)(3), .74(e)(3), and .74(f)(4)), as set out as follows:

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.

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 Section 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.

Credit score disclosures for loans <u>not</u> 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.

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 creditor 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.

Application to certain automobile lending transactions

- For automobile lending transactions made through an auto dealer that is unaffiliated with the creditor, the creditor may provide a notice in the time periods described above. Alternatively, the creditor 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 creditor arranges to have the auto dealer provide a credit score disclosure for loans not secured by residential real property, the creditor complies if the consumer receives a notice containing a credit score obtained by the auto dealer with these time periods, even if a different credit score is obtained and used by the creditor.

- For credit that is granted under an open-end credit plan to a consumer in person or by telephone for contemporaneous purchase of goods or services, 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 creditor 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 creditor must provide a risk-based notice to each consumer. If the consumers have the same address, and the notice does not include a credit score(s), a person may satisfy the requirements by providing a single notice addressed to both consumers. However, if a notice includes a credit score(s), the person must provide a separate notice to each consumer whether the consumers have the same address or not. Each separate notice that includes a credit score(s) 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. Similarly, for credit score disclosure exception notices, whether the consumers have the same address or not, the creditor must provide a separate notice to each consumer and each separate notice that includes a credit score(s) must contain only the credit score(s) of the consumer to whom the notices is provided.

15. For all notices, determine whether the creditor 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 – Duties of Users of Consumer Reports and Furnishers of Consumer Report Information

Duties of Users of Credit Reports Regarding Address Discrepancies – Section 605(h); 15 U.S.C. 1681c(h); 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)[3] 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 does the following:

   a. forms a reasonable belief that the report relates to the consumer;

   b. establishes a continuing relationship with the consumer; and

   c. regularly, and in the ordinary course of business, 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:

[3] A NCRA compiles and maintains files on consumers on a nationwide basis.

i. whether the user furnished a consumer's address that it reasonably confirmed to the NCRA from which it received the notice of address discrepancy; and

ii. whether it furnished the address in the reporting period during which it established the relationship.

6. 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.

Furnishers of Information to Consumer Reporting Agencies: General – Section 623(e); 15 U.S.C. 1681s-2; 12 CFR 1022, Subpart E

- **Notices of Disputes from a Consumer Reporting Agency – Section 623(b); 15 U.S.C. 1681s-2(b)**
- **Direct Disputes from Consumers – Section 623(a)(8); 15 U.S.C. 1681s-2(a)(8); 12 CFR 1022.43**

1. Determine whether the entity furnishes consumer information to a consumer reporting agency about an account or other relationship with a consumer. If so, the entity is subject to 12 CFR 1022.40-1022.43.

2. Determine whether the entity 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 entity 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 entity 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 entity, select a sample of reported items and the corresponding loan or collection file to determine that the entity:

   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) [15 U.S.C. 1681s-2(a)(1)(B)];

c. provided the consumer reporting agency with corrections or additional information to make information complete and accurate, and thereafter did not send the consumer reporting agency any information that remained incomplete or inaccurate. 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 entity furnished, and the entity 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 weakness within the entity's procedures for investigating errors are revealed, review a sample of notices of discputes received from a consumer reporting agency and determine whether the entity did the following:

   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 entity 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 entity completes the investigation and reports the results to the consumer within the required time frame (12 CFR 1022.43(e)(3)).

b. Determine whether the entity notifies and provides corrected information to the consumer reporting agencies when the results of its investigation finds that inaccurate information was furnished to the consumer reporting agencies (12 CFR 1022.43(e)(4)).

c. When the entity finds that a dispute is frivolous or irrelevant, determine whether the entity:

   i. notifies the consumer within five days after finding the dispute frivolous or irrelevant (12 CFR 1022.43(f)(2)); and

   ii. 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)).

Prevention of Re-Pollution of Consumer Reports – Section 623(a)(6); 15 U.S.C. 1681s-2(a)(6)

1. If the entity provides information to a consumer reporting agency, review the entity's policies and procedures for ensuring that items of information blocked because of an alleged identity theft are not re-reported to the consumer reporting agency.

2. If weaknesses are noted within the entity'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 entity, to determine whether the entity does not re-report the item to a consumer reporting agency.

3. If procedural weaknesses or other risks requiring further investigation are noted, verify that the entity has not sold or transferred a debt that resulted from an alleged identity theft.

Negative Information Notice – Section 623(a)(7); 15 U.S.C. 1681s-2(a)(7); 12 CFR 1022.1(b)(1)(ii)

1. If the entity provides negative information to a nationwide consumer reporting agency, verify that the entity's policies and procedures ensure tht the approriate notices are provided to consumers.

2. If procedural weaknesses 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

Fraud and Active Duty Alerts – Section 605A(h); 15 U.S.C. 1681c-1(h)

1. Determine whether the entity has effective policies and procedures in place to verify the identity of consumers in situations in which consumer reports include fraud and/or active duty military alerts.

2. Determine if the entity has effective policies and procedures in place to contact consumers in situations where consumer reports include extended alerts.

3. If procedural weaknesses 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 entity complied with the identity verification and/or consumer contact requirements.

Information Available to Victims – Section 609(e); 15 U.S.C. 1681g(e)

1. Review the entity's policies, procedures, and/or practices to determine whether identities and claims of fruadulent transactions are verified and whether information is properly disclosed to victims of identity theft and/or appropriately authorized law enforcement agents.

2. If procedural weaknesses or other risks requiring further investigation are noted, review a sample of these types of requests to endetermine whether the entity properly verified the requestor's identity prior to disclosing the information.

Fair Debt Collection Practices Act[1]

The Fair Debt Collection Practices Act (FDCPA)(15 U.S.C. 1692 et seq.), which became effective March 20, 1978, was designed to eliminate abusive, deceptive, and unfair debt collection practices. In addition, the federal law (15 U.S.C. 1692 et seq.) protects reputable debt collectors from unfair competition and encourages consistent state action to protect consumers from abuses in debt collection. The Dodd-Frank Act granted rulemaking authority under the FDCPA to the Consumer Financial Protection Bureau (CFPB)[2] and, with respect to entities under its jurisdiction, granted authority to the CFPB to supervise for and enforce compliance with the FDCPA.[3]

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 it originated 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).

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[1] These reflect FFIEC-approved procedures.

[2] In December 2011, the CFPB restated the Federal Trade Commission's implementing regulation at 12 CFR Part 1006 (76 Fed. Reg. 78121)(December 16, 2011). The regulation only addresses the procedures for state application for exemption from the provisions of the Act.

[3] Dodd-Frank Act Secs. 1002(12)(H), 1024(b)-(c), and 1025(b)-(c); 12 U.S.C. Secs. 5481(12)(H), 5514(c), and 5515(c).

- 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 – 15 U.S.C. 1692b and c

For communications with a consumer or third party 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 – 15 U.S.C. 1692g

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 – 15 U.S.C. 1692d

A debt collector in collecting a debt, may not harass, oppress, or abuse any person. For example, 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 that 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 Section 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 – 15 U.S.C. 1692e

A debt collector, in collecting a debt, may not use any false, deceptive, or misleading representation. For example, 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 – 15 U.S.C. 1692f

A debt collector may not use unfair or unconscionable means to collect or attempt to collect a debt. For example, 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 post-dated 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 post-dated check or other post-dated payment instrument to use as a threat or to institute criminal prosecution.
- Deposit or threaten to deposit a post-dated check or other post-dated 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.
- Use any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer; a debt collector may use its business name if such name does not indicate it is in the debt collection business.

Multiple Debts – 15 U.S.C. 1692h

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 – 15 U.S.C. 1692i

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 – 15 U.S.C. 1692j

No one may design, compile and/or furnish any form that 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 CFPB or on prior advisory opinions 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.

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 CFPB may exempt certain classes of debt collection practices from the requirements of the FDCPA if it has determined that state laws impose substantially similar requirements and that there is adequate provision for enforcement.

REFERENCES

Laws

15 U.S.C. 1692 et seq.	Fair Debt Collection Practices Act

Fair Debt Collection Practices Act[1]

Exam Date:	[Click&type]
Prepared By:	[Click&type]
Reviewer:	[Click&type]
Docket #:	[Click&type]
Entity Name:	[Click&type]

Examination Objectives

- To determine the adequacy of the institution's internal procedures and controls to assure consistent compliance with FDCPA.
- To determine if the institution complies with the requirements of the FDCPA in collecting or attempting to collect third-party consumer debts.

Examination Procedures

The following procedures are to be completed through interviews with personnel knowledgeable about and directly engaged in the institution's collection activities and through reviews of any written collection procedures, reciprocal collection agreements, collection letters, dunning notices, envelopes, scripts used by collection personnel, validation notices, individual collection files, complaint files, and other relevant records.

1. Determine if the institution is a debt collector under FDCPA.

   [Click&type]

2. Determine if the institution has established internal procedures and controls to ensure compliance with the FDCPA.

   [Click&type]

[1] These reflect FFIEC-approved procedures.

3. If the institution has acted or is acting as a debt collector under the FDCPA, determine if the institution has:
   a. Communicated with the consumer or third parties in any prohibited manner (15 U.S.C. 1692b and c);
   b. Furnished the written validation notice within the required time period and otherwise complied with applicable validation requirements (15 U.S.C. 1692g);
   c. Used any harassing, abusive, unfair, or deceptive collection practice prohibited by FDCPA (15 U.S.C. 1692d, 1692e, 1692f, and 1692j);
   d. Collected any amount not expressly authorized by the debt instrument creating the debt or by state law (15 U.S.C. 1692f(1));
   e. Applied all payments received as instructed and, where no instruction was given, applied payments only to undisputed debts (15 U.S.C. 1692h);
   f. Filed suit in an authorized forum if the institution sued to collect the debt (15 U.S.C. 1692i).

   [Click&type]

Examiner's Summary, Recommendations, and Comments

[Click&type]

Home Mortgage Disclosure Act (HMDA)[1]

Background

The Home Mortgage Disclosure Act (HMDA) requires certain financial institutions to collect, report, and disclose information about their mortgage lending activity. HMDA was originally enacted by 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.

[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.

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) 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. For example, some Federal supervisory agencies use HMDA data as part of their fair lending examination process,[8] 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

[2] In December 2011, the Bureau restated the Board of Governors of the Federal Reserve System's (FRB) 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 ffiec.cfpb.gov/.
[6] Pub. L. 115-174, 132 Stat. 1296 (2018), Section 104(a) (codified at 12 USC 2803).
[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.

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.

   - Effective January 1, 2018, and through December 31, 2019, 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 calendar years meets or exceeds the loan-volume threshold.

   - Effective January 1, 2020, 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 100 open-end lines of credit in each of the two preceding 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.

   - Effective January 1, 2018 through December 31, 2019, 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.

   - Effective January 1, 2020, an institution that originated at least 25 closed-end mortgage loans in each of the two preceding calendar years, or originated at least 100 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. Transactional 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 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;

[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).

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 Section 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 Section 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 Section 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

[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 Section 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).

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 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. Effective January 1, 2018 until December 31, 2019, the applicable threshold is 500 open-end lines of credit. During this time period, 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. Effective January 1, 2020, the applicable threshold will be 100 open-end lines of credit. Effective January 1, 2020, a financial institution is not required to collect, record, and report open-end lines of credit if it originated fewer than 100 of them in either of the two preceding calendar years. Comment 3(c)(12)-1. However, the financial institution will still be required to collect and report information regarding closed-end mortgage loans

[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).

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 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,

[13] October 2017 Regulation B Amendments.

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 2019 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 eligible 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

[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).

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 calendar 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 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, during 2018 and 2019, 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, during 2018 and 2019, 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 in the table 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))

[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 Office of the Comptroller of the Currency (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.

- 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.

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 in the following table.

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, during 2018 and 2019, 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 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 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:

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

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[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 HMDA Filing Instructions Guide (FIG), available at ffiec.cfpb.gov/ contains the file specifications, edit specifications, and additional resources for filing HMDA data collected in or after 2018.

[19] The quarterly reporting requirement, 12 CFR 1003.5(a)(1)(ii), becomes effective January 1, 2020.

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 ffiec.cfpb.gov/ and 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 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, 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 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 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 www.consumerfinance.gov/hmda. A financial institution's HMDA LAR is also available at 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 www.consumerfinance.gov/hmda. Comment 5(e)-1.

[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 www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-announces-policy-guidance-disclosure-home-mortgage-data/.

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.

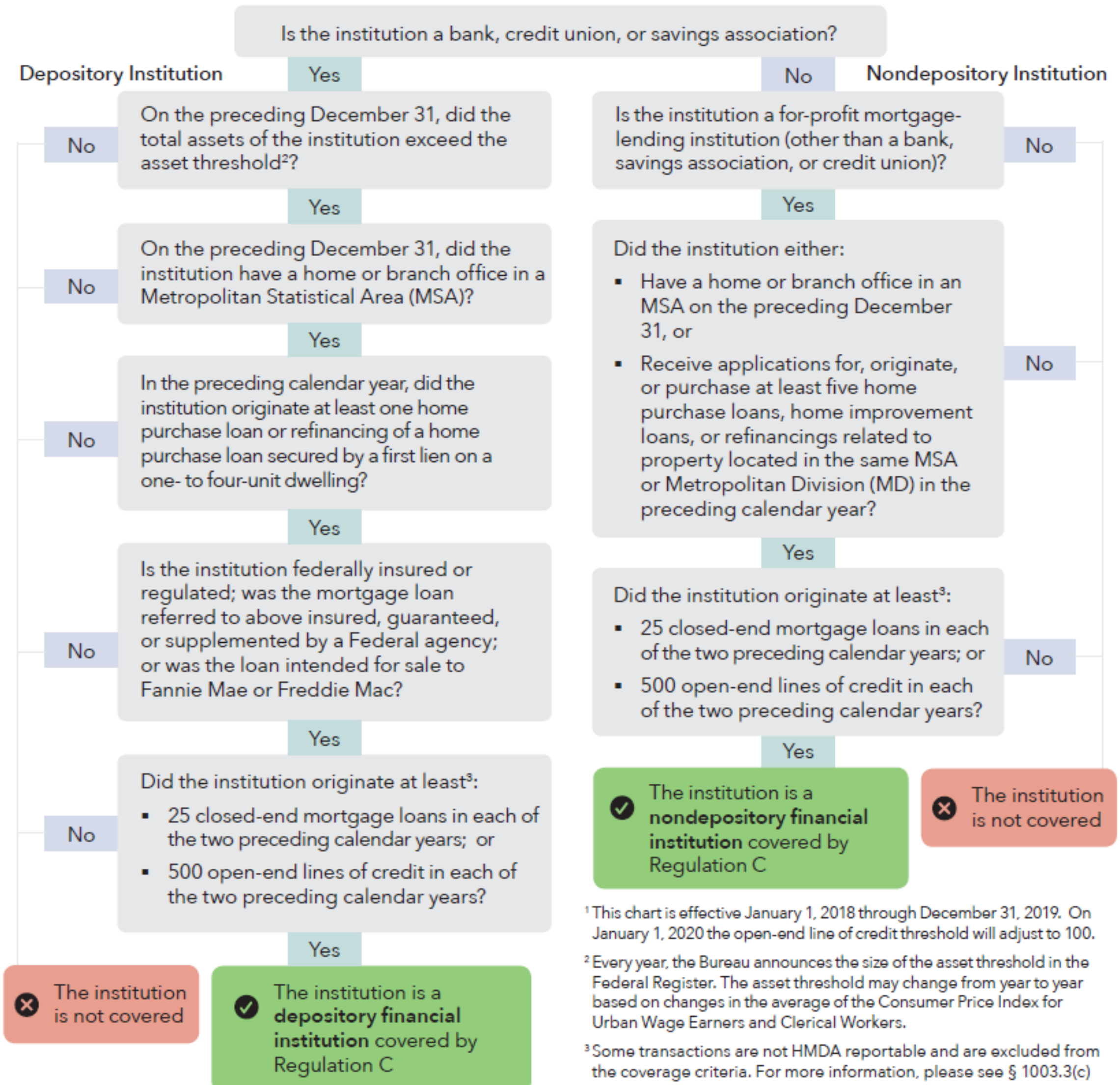
An error in compiling or recording data for a covered loan or application is not a violation of HMDA or Regulation C if the error was unintentional and occurred despite maintenance of procedures reasonably adapted to avoid such errors. 12 CFR 1003.6(b)(1). However, a financial institution that obtains 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.

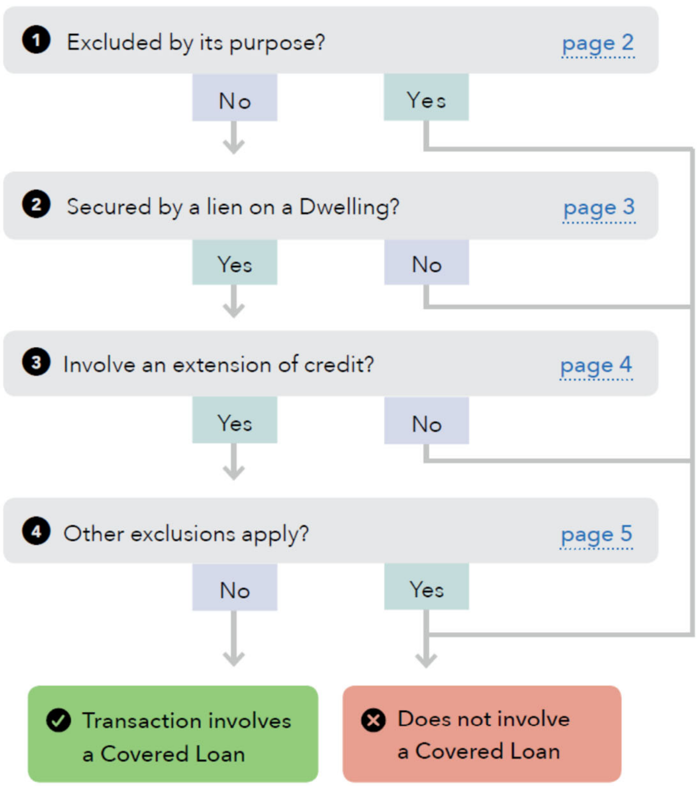
This chart summarizes requirements under HMDA and Regulation C, and does not itself establish any binding obligations. It is intended only to act as a quick reference and not as a substitute for the regulation or its commentary. Always consult the regulation text and official commentary for a complete understanding of the law. Version 2.0, 9/28/2017

HMDA TRANSACTIONAL COVERAGE

Effective January 1, 2018

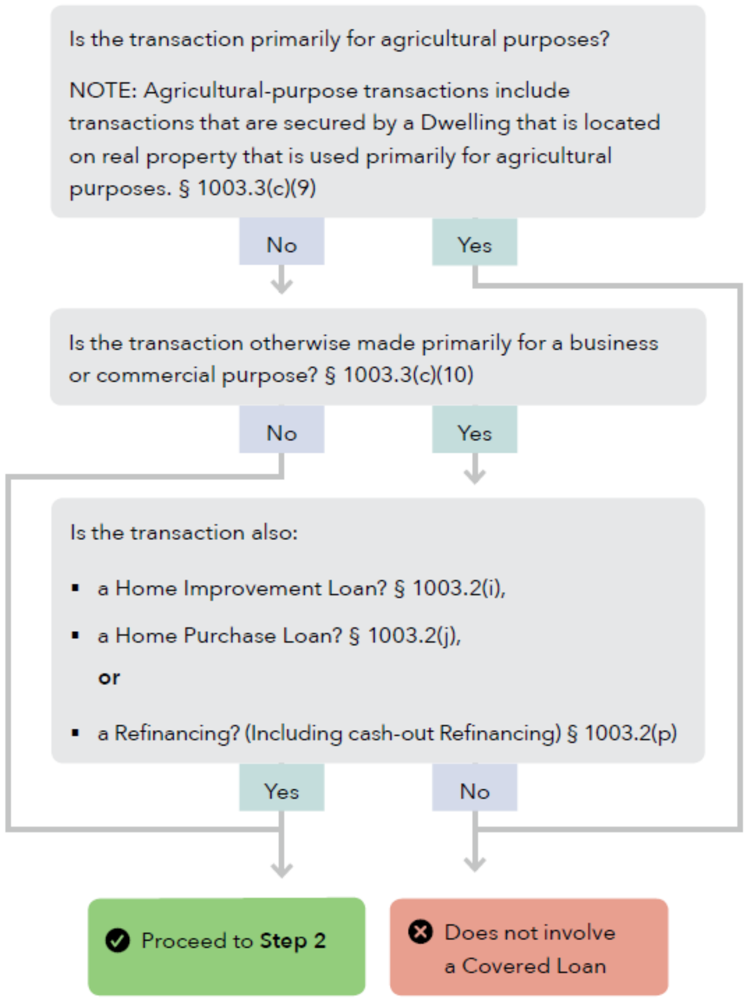
Under HMDA and Regulation C, a transaction is reportable only if it is an Application for, an origination of, or a purchase of a Covered Loan. These materials illustrate one approach to help determine whether a transaction involves a Covered Loan. If the transaction involves a Covered Loan, it is reported 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?

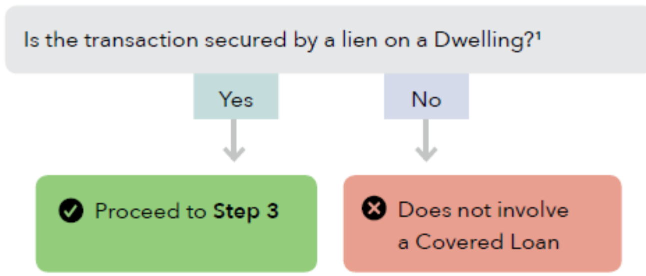


These materials summarize requirements under HMDA and Regulation C and do not themselves establish any binding obligations. They are intended only to act as a reference and not as a substitute for the regulation or its official commentary. Always consult the regulation text and official commentary for 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]

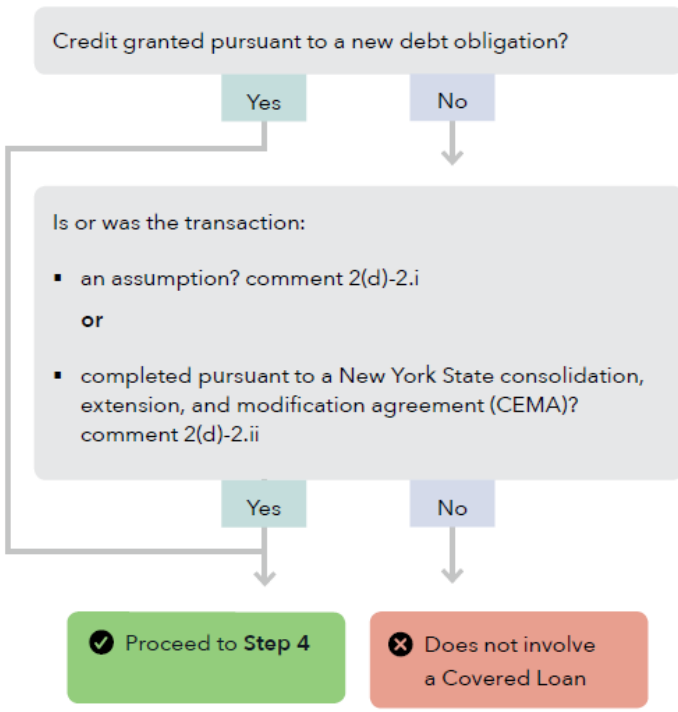


Use the table below to help determine whether the transaction is secured by a lien on a Dwelling.

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?

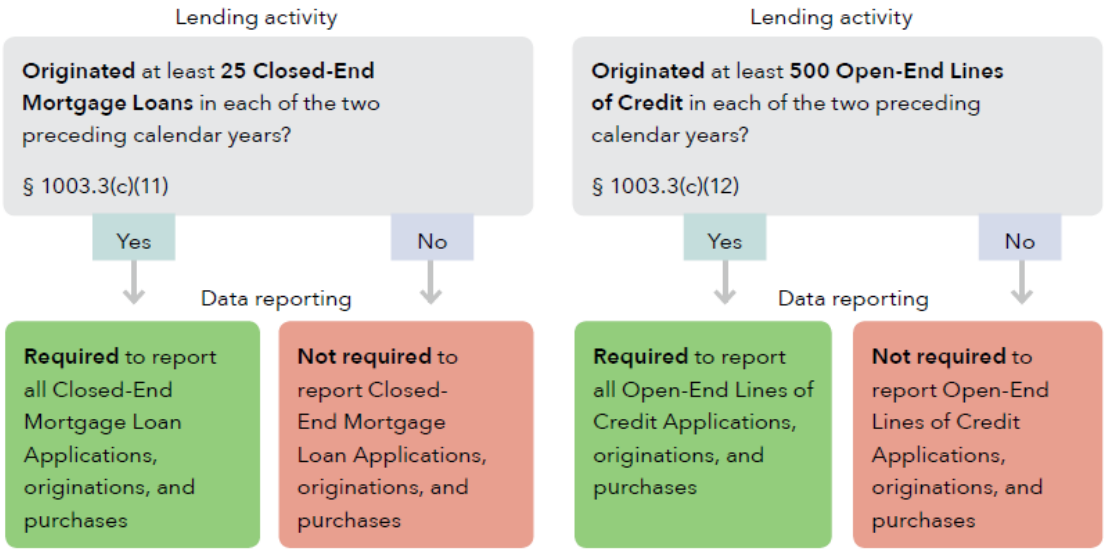
If **NO** to **all** of the questions → Transaction involves a Covered Loan

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) | Open-End Line of Credit § 1003.2(o)



- 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.

References

12 CFR Part 1003

Official Interpretations, Supplement I to 12 CFR Part 1003

Attachment A

Consumer Financial Protection Bureau

Reportable HMDA Data: A Regulatory and Reporting Overview Reference Chart for HMDA data Collected in 2018[a]

This chart is intended to be used as a reference tool for data points required to be collected, recorded, and reported under Regulation C, as amended by the HMDA Rules issued on October 15, 2015, and on August 24, 2017, and section 104(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act as implemented and clarified by the interpretive and procedural rule issued on August 31, 2018 (2018 HMDA Rule).[b] Relevant regulation and commentary sections are provided for ease of reference. The chart also incorporates the information found in Section 4.2.2 of the 2018 Filing Instructions Guide and provides when to report not applicable or exempt, including the codes used for reporting not applicable or exempt from section 4 of the 2018 Filing Instructions Guide for ease of reference. This chart does not provide data fields or enumerations used in preparing the HMDA loan/application register (LAR). For more information on preparing the HMDA LAR, please see http://www.consumerfinance.gov/hmda.

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
(1) Legal Entity Identifier (LEI)	§ 1003.4(a)(1)(i)(A)	Identifier issued to the financial institution (FI) by a utility endorsed by the Global LEI Foundation or LEI Regulatory Oversight Committee	Enter your financial institution's LEI. *Example:* If your institution's LEI is 10Bx939c5543TqA1144M, enter 10Bx939c5543TqA1144M.	

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
(2) Universal Loan Identifier (ULI) or Non-Universal Loan Identifier (NULI)	§ 1003.4(a)(1)(i), Comments 4(a)(1)(i)-1 through -5, and appendix C	**ULI:** Identifier assigned to identify and retrieve a loan or application that contains the FI's LEI, an internally generated sequence of characters, and a check digit **NULI**: Identifier assigned to identify a loan or application	**ULI.** Assign and report a **ULI** that: 1. Begins with the financial institution's Legal Entity Identifier as defined in § 1003.4(a)(1)(i)(A). 2. Follows the Legal Entity Identifier with up to 23 additional characters to identify the covered loan or application, which: ▪ May be letters, numerals, or a combination of letters and numerals; ▪ Must be unique within the financial institution; and ▪ Must not include any information that could be used to directly identify the applicant or borrower. 3. Ends with a two-character check digit that is calculated using the ISO/IEC 7064, MOD 97-10 as it appears on the International Standard ISO/IEC 7064:2003, which is published by the International Organization for Standardization (ISO). A check digit can be generated by: ▪ Using the check digit tool. Information regarding the check digit tool will be located at http://www.consumerfinance.gov/hmda/for-filers; or ▪ Applying the procedures provided in appendix C to Regulation C. *ULI Example:* $\underbrace{\text{10Bx939c5543TqA1144M}}_{\text{LEI}}\underbrace{\text{999143X}}_{\text{Loan or Application Identifier}}\underbrace{\text{99}}_{\text{Check Digit}}$	

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
			NULI. Assign and report a **NULI** that: 1. Is composed of up to 22 characters, which may include letters, numerals, or a combination of letters and numerals. 2. Is unique within the insured depository institution or insured credit union. 3. Does not include any information that could be used to directly identify the applicant or borrower. *NULI Example:* 999143X	
(3) Application Date	§ 1003.4(a)(1)(ii), Comments 4(a)(1)(ii)-1 through -3	Date the application was received or the date on the application form	Enter, in numeral form, the date the application was received or the date shown on the application form by year, month, and day, using YYYYMMDD format. *Example:* If the application was received on July 21, 2018, enter 20180721.	Enter "**NA**" for purchased covered loans, § 1003.4(a)(1)(ii)
(4) Loan Type	§ 1003.4(a)(2), Comment 4(a)(2)-1	Whether the loan or application is insured by the Federal Housing Administration, guaranteed by the Department of Veterans Affairs, Rural	Indicate the type of covered loan or application by entering: ▪ Code 1—Conventional (not insured or guaranteed by FHA, VA, RHS, or FSA) ▪ Code 2—Federal Housing Administration insured (FHA) ▪ Code 3—Veterans Affairs guaranteed (VA) ▪ Code 4—USDA Rural Housing Service or Farm Service Agency guaranteed (RHS or FSA)	

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
		Housing Service, or Farm Service Agency		
(5) Loan Purpose	§ 1003.4(a)(3), Comments 4(a)(3)-1 through -6	Whether the transaction is for home purchase, home improvement, refinancing, cash-out refinancing, or another purpose	Indicate the purpose of the covered loan or application by entering: ▪ Code 1—Home purchase ▪ Code 2—Home improvement ▪ Code 31—Refinancing ▪ Code 32—Cash-out refinancing ▪ Code 4—Other purpose ▪ Code 5—Not applicable	To report not applicable, enter "**Code 5**" for purchased covered loans where origination took place prior to January 1, 2018, Comment 4(a)(3)-6.
(6) Preapproval	§ 1003.4(a)(4), Comments 4(a)(4)-1 and -2	Whether the transaction involved a preapproval request for a home purchase loan under a preapproval program	Indicate preapproval for a covered loan or application by entering: ▪ Code 1—Preapproval requested ▪ Code 2—Preapproval not requested	
(7) Construction Method	§ 1003.4(a)(5), Comments 4(a)(5)-1 through -3	Whether the dwelling is site-built or a manufactured home	Indicate the construction method for the dwelling by entering: ▪ Code 1—Site-built ▪ Code 2—Manufactured home	
(8) Occupancy Type	§ 1003.4(a)(6), Comments 4(a)(6)-1 through -5	Whether the property will be used as a principal residence, second residence, or investment property	Indicate the occupancy type by entering: ▪ Code 1—Principal residence ▪ Code 2—Second residence ▪ Code 3—Investment property	

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
(9) Loan Amount	§ 1003.4(a)(7), Comments 4(a)(7)-1 through -9	Amount of the loan or the amount applied for	Enter, in dollars, the amount of the covered loan, or the amount applied for, as applicable. *Example:* If the loan amount is $110,500, enter 110500 or 110500.00. If the loan amount is $110,500.24, enter 110500.24.	
(10) Action Taken and (11) Action Taken Date	§ 1003.4(a)(8), Comments 4(a)(8)(i)-1 through -14 and 4(a)(8)(ii)-1 through -6	Type and date of action the FI took on the loan, application, or preapproval request	**ACTION TAKEN.** Indicate the action taken on the covered loan or application by entering: ▪ Code 1—Loan originated ▪ Code 2—Application approved but not accepted ▪ Code 3—Application denied ▪ Code 4—Application withdrawn by applicant ▪ Code 5—File closed for incompleteness ▪ Code 6—Purchased loan ▪ Code 7—Preapproval request denied ▪ Code 8—Preapproval request approved but not accepted **ACTION TAKEN DATE.** Enter, in numeral form, the date of action taken by year, month, and day, using YYYYMMDD format. *Example:* If the action taken date is July 21, 2018, enter 20180721.	
(12) Property Address	§ 1003.4(a)(9)(i), Comments 4(a)(9)-1 through -5 and 4(a)(9)(i)-1 through -3	Address of the property securing the loan (or proposed to secure a loan)	**STREET ADDRESS**. Enter the street address of the property as one (1) data field. U.S. Postal Service Publication 28, Subsections 231–239, can be used as a guide for formatting the street address to help improve geocoding accuracy. Address components include, as applicable, the following individual items: ▪ Primary Address Number ▪ Predirectional ▪ Street Name ▪ Prefix	Enter "**NA**" in each of the property address fields for: ▪ Covered loans or applications if the property address of the property securing the covered loan is not known (e.g., the property did not have a property address at closing, or the property address was not provided to the institution before the application was denied, withdrawn, or closed for incompleteness), Comment 4(a)(9)(i)-3;

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
			▪ Suffix ▪ Postdirectional ▪ Secondary Address Identifier, such as apartment ▪ Secondary Address, such as apartment number **CITY**. Enter the city of the property as one (1) data field. **STATE**. Enter the two letter state code of the property as one (1) data field. **ZIP CODE**. Enter the ZIP code of the property as one (1) data field. **NON-STANDARD ADDRESSING**. U.S. Postal Service Publication 28, Subsection 24, 25, and 29, respectively, can be used as guides for formatting non-standard style addressing including rural route, Highway Contract Route, and Puerto Rico addresses to increase the accuracy for geocoding. The following address formats are generally not preferred: ▪ General Delivery addresses, such as General Delivery, Anytown, CA 90049-9998. ▪ Post Office Box addresses, such as P.O. Box 100 Anytown, CA 90049-9998. ▪ Spelled-out numbers, such as Four Hundred Fifty Six W Somewhere Ave Apt Two Hundred One.	▪ Covered loans or applications if a site of a manufactured home has not been identified, Comment 4(a)(9)-5 **STATE ONLY:** For transactions for which State reporting is not required under § 1003.4(a)(9)(i), a financial institution may not report not applicable for the PropertyAddress State unless the institution is permitted to report not applicable for State for Property Location. See below for when you may report not applicable for Property Location. Enter "**Exempt**" in the Street Address, City, and Zip Code fields if, pursuant to the 2018 HMDA Final Rule, your institution is not reporting Property Address.
(13), (14), and (15) Property Location	§ 1003.4(a)(9)(ii), Comments 4(a)(9)-1 through -5, 4(a)(9)(ii)-1, 4(a)(9)(ii)(A)-1,	Location of the property securing the loan (or proposed to secure a loan) by state,	**COUNTY**. Enter the five-digit Federal Information Processing Standards (FIPS) numerical code for the county. Do not use commas. *Example:* Enter 06037 for the FIPS code for Los Angeles County, CA.	Enter "**NA**" for: ▪ Applications only if the state, county, or census tract in which the property is located is not known before the application is denied, withdrawn, or closed for incompleteness, Comments

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
	4(a)(9)(ii)(B)-1 and -2, and 4(a)(9)(ii)(C)-1 and -2	county, and census tract	**CENSUS TRACT**. Enter the 11-digit census tract number as defined by the U.S. Census Bureau. Do not use decimals. *Example:* Enter 06037264000 for a census tract within Los Angeles County, CA. **STATE**. Enter the two letter state code of the property as one (1) data field.	4(a)(9)(ii)(A)-1, 4(a)(9)(ii)(B)-2, and 4(a)(9)(ii)(C)-2. ▪ Covered loans or applications if a site of a manufactured home has not been identified, Comment 4(a)(9)-5; ▪ Covered loans or applications if the property is not located in an Metropolitan Statistical Area (MSA) or Metropolitan Division (MD) in which the institution has a home or branch office **and** the institution is not required to report data on small business, small farm, and community development lending under regulations that implement the Community Reinvestment Act of 1977, § 1003.4(a)(9)(ii) and § 1003.4(e) ▪ **CENSUS TRACT ONLY**: Covered loans or applications if the property is located in a county with a population of 30,000 or less according to the most recent decennial census conducted by the U.S. Census Bureau, § 1003.4(a)(9)(ii)(C) **NOTE:** For transactions for which State, county, or census tract reporting is not required under § 1003.4(a)(9)(ii) or § 1003.4(e), financial institutions may report that the requirement is not applicable, or they may voluntarily report the State, county, or census tract information, Comment 4(a)(9)(ii)-1

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
				STATE ONLY: For transactions for which State reporting is not required under § 1003.4(a)(9)(ii), a financial institution may not report not applicable for the Property Location State unless the institution is permitted to report not applicable for Property Address. See above for when you may report not applicable for Property Address.

(16) Ethnicity,	§ 1003.4(a)(10)(i), Comments 4(a)(10)(i)-1 and -2 and appendix B	Applicant's or borrower's ethnicity, race, and sex, and if information was collected by visual observation or surname	**ETHNICITY OF APPLICANT OR BORROWER.** Indicate the ethnicity of the applicant or borrower, or of the first co-applicant or co-borrower, as applicable, by entering up to five (5):
			▪ Code 1—Hispanic or Latino
			  ○ Code 11—Mexican
			  ○ Code 12—Puerto Rican
			  ○ Code 13—Cuban
			  ○ Code 14—Other Hispanic or Latino
			NOTE: If the applicant or borrower, or any co-applicant or co-borrower, did not select Code 14, but provided an other Hispanic or Latino ethnicity(ies) in the **Ethnicity Free Form Text Field for Other Hispanic or Latino**, your institution is *permitted, but not required*, to report Code 14 in one of the Ethnicity of Applicant or Borrower data fields. This will be counted as one of the five (5) reported ethnicities, whether or not you also choose to report Code 14 as one of the Ethnicity of Applicant or Borrower, or Ethnicity of Co-Applicant or Co-Borrower, data fields. See below for information about the **Ethnicity Free Form Text Field for Other Hispanic or Latino.**
			▪ Code 2—Not Hispanic or Latino
				To report not applicable, enter "**Code 4**" for **Ethnicity of Applicant or Borrower** and "**Code 3**" for **Ethnicity Collected on the Basis of Visual Observation or Surname** for:
				▪ Purchased covered loans for which the financial institution chooses not to report the applicant's or co-applicant's ethnicity, race, and sex, appendix B;
				▪ Covered loans or applications when applicant or co-applicant is not a natural person, appendix B
				
				NOTE: Use **Code 3** for **Ethnicity Collected on the Basis of Visual Observation or Surname** if the financial institution received the application *prior to* January 1, 2018, and the financial institution chooses not to report whether the ethnicity of the applicant or borrower, or of the first co-applicant or co-borrower, as applicable, was collected on the basis of visual observation or surname, Comment 4(a)(10)(i)-2

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
			▪ Code 3—Information not provided by applicant in mail, internet, or telephone application **NOTE:** Use Code 3 if the applicant or borrower, or co-applicant or co-borrower does not provide the information in an application taken by mail, internet, or telephone. *Leave the remaining Ethnicity of Applicant or Borrower data fields blank*. ▪ Code 4—Not applicable **NOTE:** Use Code 4 if the requirement to report the applicant's or borrower's ethnicity does not apply to the covered loan or application that your institution is reporting. *Leave the remaining Ethnicity of Applicant or Borrower data fields blank*. ▪ Code 5—No co-applicant **NOTE:** Use Code 5 in the co-applicant field if there are no co-applicants or co-borrowers. *Leave the remaining Ethnicity of Applicant or Borrower data fields blank*. If there is more than one co-applicant or co-borrower, provide the required information only for the first co-applicant or co-borrower listed on the collection form. Do not enter the same code more than once for the applicant or borrower, or any co-applicant or co-borrower, as applicable, for any covered loan or application. If fewer than five (5) ethnicities are provided by the applicant or borrower, or by any co-applicant or co-borrower, leave the remaining Ethnicity of Applicant or Borrower data fields blank.	

Data point	Regulation C references	Description	Filing instructions[c]	Reporting “Not Applicable”[d] or “Exempt”[e]
			ETHNICITY FREE FORM TEXT FIELD. Enter the specific other Hispanic or Latino ethnicity(ies) not listed above, if provided by the applicant or borrower, or by any co-applicant or co-borrower, as applicable. For example, enter Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, or Spaniard, and so on, if provided by the applicant or borrower, or by any co-applicant or co-borrower, as applicable. Enter more than one other Hispanic or Latino ethnicity, if provided by the applicant or borrower, or by any co-applicant or co-borrower, as applicable. The maximum number of characters for this field is 100 characters, including spaces. If the applicant or borrower, or any co-applicant or co-borrower, did not provide an other Hispanic or Latino ethnicity(ies), leave this field blank. **ETHNICITY COLLECTED ON THE BASIS OF VISUAL OBSERVATION OR SURNAME.** Indicate whether the ethnicity of the applicant or borrower, or of the first co-applicant or co-borrower, as applicable, was collected on the basis of visual observation or surname by entering: ▪ Code 1—Collected on the basis of visual observation or surname ▪ Code 2—Not collected on the basis of visual observation or surname ▪ Code 3—Not applicable **NOTE:** Use Code 3 if the requirement to report the applicant’s or borrower’s ethnicity does not apply to the covered loan or application that your institution is reporting. ▪ Code 4—No co-applicant **NOTE:** Use Code 4 in the co-applicant field if there are no co-applicants or co-borrowers	

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
			If there is more than one co-applicant or co-borrower, provide the required information only for the first co-applicant or co-borrower listed on the collection form.	
(17) Race	§ 1003.4(a)(10)(i), Comments 4(a)(10)(i)-1 and -2 and appendix B	Applicant's or borrower's ethnicity, race, and sex, and if information was collected by visual observation or surname	**RACE OF APPLICANT OR BORROWER.** Indicate the race of the applicant or borrower, or of the first co-applicant or co-borrower, as applicable, by entering up to five (5): ▪ Code 1—American Indian or Alaska Native **NOTE**: If the applicant or borrower, or any co-applicant or co-borrower, did not select Code 1, but provided the name of the applicant's or borrower's American Indian or Alaska Native Enrolled or Principal Tribe(s) in the **Race Free Form Text Field for American Indian or Alaska Native Enrolled or Principal Tribe**, your institution is *permitted, but not required*, to report Code 1 in one of the Race of Applicant or Borrower data fields. Each reported race will be counted as one of the five (5) reported races, whether or not you also choose to report Code 1 as one of the Race of Applicant or Borrower, or Race of Co-Applicant or Co-Borrower, data fields. See below for information about the **Race Free Form Text Field for American Indian or Alaska Native Enrolled or Principal Tribe.** ▪ Code 2—Asian ○ Code 21—Asian Indian ○ Code 22—Chinese ○ Code 23—Filipino ○ Code 24—Japanese ○ Code 25—Korean ○ Code 26—Vietnamese ○ Code 27—Other Asian	To report not applicable, enter "**Code 7**" for **Race of Applicant or Borrower** and "**Code 3**" for **Race Collected On The Basis Of Visual Observation Or Surname** for: ▪ Purchased covered loans for which the financial institution chooses not to report the applicant's or co-applicant's ethnicity, race, and sex, appendix B; ▪ Covered loans or applications when applicant or co-applicant is not a natural person, appendix B **NOTE:** Use **Code 3** if the financial institution received the application *prior to* January 1, 2018, and the financial institution chooses not to report whether the race of the applicant or borrower, or of the first co-applicant or co-borrower, as applicable, was collected on the basis of visual observation or surname.

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
			NOTE: If the applicant or borrower, or any co-applicant or co-borrower, did not select Code 27, but provided the name of the applicant's or borrower's other Asian race(s) in the **Race Free Form Text Field for Other Asian**, your institution is *permitted, but not required*, to report Code 27 in one of the Race of Applicant or Borrower data fields. Each reported race will be counted as one of the five (5) reported races, whether or not you also choose to report Code 27 as one of the Race of Applicant or Borrower, or Race of Co-Applicant or Co-Borrower, data fields. See below for information about the **Race Free Form Text Field for Other Asian.** ▪ Code 3—Black or African American ▪ Code 4—Native Hawaiian or Other Pacific Islander ○ Code 41—Native Hawaiian ○ Code 42—Guamanian or Chamorro ○ Code 43—Samoan ○ Code 44—Other Pacific Islander **NOTE:** If the applicant or borrower, or any co-applicant or co-borrower, did not select Code 44, but provided the name of the applicant's or borrower's other Pacific Islander race(s) in the **Race Free Form Text Field for Other Pacific Islander**, your institution is *permitted, but not required*, to report Code 44 in one of the Race of Applicant or Borrower data fields. Each reported race will be counted as one of the five (5) reported races, whether or not you also choose to report Code 44 as one of the Race of Applicant or Borrower, or Race of Co-Applicant or Co-	

Data point	Regulation C references	Description	Filing instructions[c]	Reporting “Not Applicable”[d] or “Exempt”[e]
			Borrower, data fields. See below for information about the **Race Free Form Text Field for Other Pacific Islander**. ▪ Code 5—White ▪ Code 6—Information not provided by applicant in mail, internet, or telephone application **NOTE:** Use Code 6 if the applicant or borrower, or co-applicant or co-borrower does not provide the information in an application taken by mail, internet, or telephone. *Leave the remaining Race of Applicant or Borrower data fields blank*. ▪ Code 7—Not applicable **NOTE:** Use Code 7 if the requirement to report the applicant’s or borrower’s race does not apply to the covered loan or application that your institution is reporting. *Leave the remaining Race of Applicant or Borrower data fields blank.* ▪ Code 8—No co-applicant **NOTE:** Use Code 8 in the co-applicant field if there are no co-applicants or co-borrowers. *Leave the remaining Race of Applicant or Borrower data fields blank*. Do not enter the same code more than once for the applicant or borrower, or any co-applicant or co-borrower, as applicable, for any covered loan or application. If fewer than five (5) races are provided by the applicant or borrower, or by any co-applicant or co-borrower, *leave the remaining Race of Applicant or Borrower data fields blank*. **RACE FREE FORM TEXT FIELDS.**	

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
			▪ **RACE FREE FORM TEXT FIELD FOR AMERICAN INDIAN OR ALASKAN NATIVE ENROLLED OR PRINCIPAL TRIBE.** Enter the name of the applicant's or borrower's American Indian or Alaska Native enrolled or Principal Tribe(s), if provided by the applicant or borrower, or by any co-applicant or co-borrower, as applicable in the **Race Free Form Text Field for American Indian or Alaskan Native Enrolled or Principal Tribe**. For example, enter Navajo if provided by the applicant or borrower, or by any co-applicant or co-borrower, as applicable. Enter more than one American Indian or Alaska Native Enrolled or Principal Tribe, if provided by the applicant or borrower, or by any co-applicant or co-borrower, as applicable. The maximum number of characters for this field is 100 characters, including spaces. If the applicant or borrower, or any co-applicant or co-borrower did not provide an American Indian or Alaska Native Enrolled or Principal Tribe(s), leave the **Race Free Form Text Field for American Indian or Alaska Native Enrolled or Principal Tribe** field blank. ▪ **RACE FREE FORM TEXT FIELD FOR OTHER ASIAN.** Enter the specific other Asian race(s) not listed above, if provided by the applicant or borrower, or by any co-applicant or co-borrower, as applicable in the **Race Free Form Text Field for Other Asian**. For example, enter Hmong, Laotian, Thai, Pakistani, or Cambodian, and so on, if provided by the applicant or borrower, or by any co-applicant or co-borrower, as applicable. Enter more than one other Asian race, if provided by the applicant or borrower, or by any co-applicant or co-borrower, as applicable. The maximum number of characters for this field is 100 characters, including spaces. If the applicant or borrower, or any co-applicant	

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
			or co-borrower, did not provide another Asian race(s), leave the **Race Free Form Text Field for Other Asian** field blank. ▪ **RACE FREE FORM TEXT FIELD FOR OTHER PACIFIC ISLANDER.** Enter the specific Other Pacific Islander race(s) not listed above, if provided by the applicant or borrower, or by any co-applicant or co-borrower, as applicable in the **Race Free Form Text Field for Other Pacific Islander**. For example, enter Fijian, or Tongan, and so on, if provided by the applicant or borrower, or by any co-applicant or co-borrower, as applicable. Enter more than one Other Pacific Islander race, if provided by the applicant or borrower, or by any co-applicant or co-borrower, as applicable. The maximum number of characters for this field is 100 characters, including spaces. If the applicant or borrower, or any co-applicant or co-borrower, did not provide an Other Pacific Islander race(s), leave the **Race Free Form Text Field for Other Pacific Islander** field blank. **RACE COLLECTED ON THE BASIS OF VISUAL OBSERVATION OR SURNAME.** Indicate whether the race of the applicant or borrower, or of the first co-applicant or co-borrower, as applicable, was collected on the basis of visual observation or surname by entering: ▪ Code 1—Collected on the basis of visual observation or surname ▪ Code 2—Not collected on the basis of visual observation or surname ▪ Code 3—Not applicable **NOTE:** Use Code 3 if the requirement to report the applicant's or borrower's race does not apply to the covered loan or application that your institution is reporting. ▪ Code 4—No co-applicant	

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
			NOTE: Use Code 4 in the co-applicant field if there are no co-applicants or co-borrowers. If there is more than one co-applicant or co-borrower, provide the required information only for the first co-applicant or co-borrower listed on the collection form.	
(18) Sex	§ 1003.4(a)(10)(i), Comments 4(a)(10)(i)-1 and -2 and appendix B	Applicant's or borrower's ethnicity, race, and sex, and if information was collected by visual observation or surname	**SEX OF APPLICANT OR BORROWER**. Indicate the sex of the applicant or borrower, or of the first co-applicant or co-borrower, as applicable, by entering: ▪ Code 1—Male ▪ Code 2—Female ▪ Code 3—Information not provided by applicant in mail, internet, or telephone application **NOTE:** Use Code 3 if the applicant or co-applicant does not provide the information in an application taken by mail, internet, or telephone. ▪ Code 4—Not applicable **NOTE:** Use Code 4 if the requirement to report the applicant's or borrower's sex does not apply to the covered loan or application that your institution is reporting. ▪ Code 5—No co-applicant **NOTE:** Use Code 5 in the co-applicant field if there are no co-applicants or co-borrowers. ▪ Code 6—Applicant selected both male and female **NOTE:** Use Code 6 if the applicant or co-applicant selected both male and female.	To report not applicable, enter "**Code 4**" for **Sex of Applicant or Borrower** and "**Code 3**" for **Sex Collected on the Basis of Visual Observation or Surname** for: ▪ Purchased covered loans for which the financial institution chooses not to report the applicant's or co-applicant's ethnicity, race, and sex, appendix B; ▪ Covered loans or applications when applicant or co-applicant is not a natural person, appendix B **NOTE:** Use **Code 3** if the financial institution received the application *prior to* January 1, 2018, and the financial institution chooses not to report whether the sex of the applicant or borrower, or of the first co-applicant or co-borrower, as applicable, was collected on the basis of visual observation or surname.

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
			If there is more than one co-applicant or co-borrower, provide the required information only for the first co-applicant or co-borrower listed on the collection form. **SEX COLLECTED ON THE BASIS OF VISUAL OBSERVATION OR SURNAME**. Indicate whether the sex of the applicant or borrower, or of the first co-applicant or co-borrower, as applicable, was collected on the basis of visual observation or surname by entering: ▪ Code 1—Collected on the basis of visual observation or surname ▪ Code 2—Not collected on the basis of visual observation or surname ▪ Code 3—Not applicable **NOTE:** Use Code 3 if the requirement to report the applicant's or borrower's sex does not apply to the covered loan or application that your institution is reporting. ▪ Code 4—No co-applicant **NOTE**: Use Code 4 in the co-applicant field if there are no co-applicants or co-borrowers. If there is more than one co-applicant or co-borrower, provide the required information only for the first co-applicant or co-borrower listed on the collection form.	
(19) Age	§ 1003.4(a)(10)(ii), Comments 4(a)(10)(ii)-1 through -5	Applicant's or borrower's age	Enter, in numeral form, the age, in years, of the applicant or borrower, or of the first co-applicant or co-borrower, as applicable. Age is calculated, as of the application date, as the number of whole years derived from the date of birth shown on the application form. *Example:* If the applicant or borrower is 24 years old, enter 24.	To report not applicable, enter "**Code 8888**" for: ▪ Purchased covered loans for which the financial institution chooses not to report the applicant's or co-applicant's age, Comment 4(a)(10)(ii)-3;

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
			Or, enter: ▪ Code 8888—Not applicable ▪ Code 9999—No co-applicant **NOTE:** Use Code 9999 in the co-applicant field if there are no co-applicants or co-borrowers. If there is more than one co-applicant or co-borrower, provide the required information only for the first co-applicant or co-borrower listed on the collection form.	▪ Covered loans or applications when applicant or co-applicant is not a natural person, Comment 4(a)(10)(ii)-4
(20) Income	§ 1003.4(a)(10)(iii), Comments 4(a)(10)(iii)-1 through -10	If credit decision is made, 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	Enter, in dollars, 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. Round all dollar amounts to the nearest thousand (round $500 up to the next $1,000). *Example:* If the income amount is $35,500, enter 36.	Enter "**NA**" for: ▪ Covered loans or applications for which the credit decision did not consider, or would not have considered income, § 1003.4(a)(10)(iii); Comment 4(a)(10)(iii)-6; ▪ Covered loans or applications when applicant or co-applicant is not a natural person, Comment 4(a)(10)(iii)-7; ▪ Covered loan is secured by, or application is proposed to be secured by, a multifamily dwelling, Comment 4(a)(10)(iii)-8; ▪ Purchased covered loans for which the financial institution chooses not to report the income, Comment 4(a)(10)(iii)-9; ▪ Covered loan to, or an application from, the institution's employees to protect their privacy, even if the institution relied on their income in

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
				making the credit decision, Comment 4(a)(10)(iii)-3
(21) Type of Purchaser	§ 1003.4(a)(11), Comments 4(a)(11)-1 through -10	Type of entity that purchased the loan	Indicate the type of entity purchasing a covered loan from your institution within the same calendar year that your institution originated or purchased the loan by entering: ▪ Code 0—Not applicable ▪ Code 1—Fannie Mae ▪ Code 2—Ginnie Mae ▪ Code 3—Freddie Mac ▪ Code 4—Farmer Mac ▪ Code 5—Private securitizer ▪ Code 6—Commercial bank, savings bank, or savings association ▪ Code 71—Credit union, mortgage company, or finance company ▪ Code 72—Life insurance company ▪ Code 8—Affiliate institution ▪ Code 9—Other type of purchaser	To report not applicable, enter "**Code 0**" for: ▪ Applications that were denied, withdrawn, closed for incompleteness, or approved but not accepted by the applicant, Comment 4(a)(11)-10; ▪ Preapproval requests that were denied or approved but not accepted by the applicant, Comment 4(a)(11)-10; ▪ Originated or purchased covered loans that the financial institution did not sell during that same calendar year, Comment 4(a)(11)-10
(22) Rate Spread	§ 1003.4(a)(12), Comments 4(a)(12)-1 through -9	Difference between the annual percentage rate and average prime offer rate for a comparable transaction	Enter, as a percentage, to at least three (3) decimal places, the difference between the covered loan's annual percentage rate (APR) and the average prime offer rate (APOR) for a comparable transaction as of the date the interest rate is set. Numbers calculated to beyond three (3) decimal places may either be reported beyond three (3) decimal places or rounded or truncated to three (3) decimal places. Decimal place trailing zeros may either be included or omitted. ▪ If the APR **exceeds** the APOR, enter a **positive** number.	Enter "**NA**" for: ▪ Covered loans that are assumptions, reverse mortgages, purchased loans, or are not subject to Regulation Z, § 1003.4(a)(12)(i); Comment 4(a)(12)-7; ▪ Applications that did not result in an origination other than approved but not accepted, Comment 4(a)(12)-7 ▪ Applications approved but not accepted, if no disclosures under Regulation Z are required, Comment 4(a)(12)-8

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
			Example: If the APR is 3.678% and the APOR is 3.25%, enter 0.428. If the APR is 4.560% and the APOR is 4.25%, enter either 0.31 or 0.310. ▪ If the APR is **less** than the APOR, enter a **negative** number. *Example:* If the APR 3.1235% and the APOR is 3.25%, enter -0.1265. Alternatively, the rate spread may be truncated to -0.126 or rounded to -0.127.	Enter "**Exempt**" if, pursuant to the 2018 HMDA Final Rule, your institution is not reporting Rate Spread.
(23) HOEPA Status	§ 1003.4(a)(13), Comment 4(a)(13)-1	Whether the loan is a high-cost mortgage under the Home Ownership and Equity Protection Act (HOEPA)	Indicate whether the covered loan is a high-cost mortgage under Regulation Z, § 1026.32(a) by entering: ▪ Code 1—High-cost mortgage ▪ Code 2—Not a high-cost mortgage ▪ Code 3—Not applicable	To report not applicable, enter "**Code 3**" for: ▪ Covered loans not subject to the Home Ownership and Equity Protection Act (HOEPA) of 1994, as implemented in Regulation Z, § 1026.32(a), § 1003.4(a)(13); Comment 4(a)(13)-1 ▪ Applications that did not result in originations, Comment 4(a)(13)-1
(24) Lien Status	§ 1003.4(a)(14), Comments 4(a)(14)-1 and -2	Whether the property is a first or subordinate lien	Indicate the lien status of the property securing the covered loan, or in the case of an application, proposed to secure the covered loan, by entering: ▪ Code 1—Secured by a first lien ▪ Code 2—Secured by a subordinate lien	
(25) Credit Score	§ 1003.4(a)(15), Comments 4(a)(15)-1 through -7	Credit score(s) relied on and the name and version of the credit scoring model	**CREDIT SCORE OF APPLICANT OR BORROWER.** Enter, in numeral form, the credit score, or scores relied on in making the credit decision for the applicant or borrower, or of the first co-applicant or co-borrower, as applicable. If Regulation C requires your institution to report a single score that corresponds to multiple applicants or borrowers, report the score in either the applicant field or the co-applicant field.	To report not applicable, enter "**Code 8888**" for **Credit Score of Applicant or Borrower** or "**Code 9**" for **Name and Version of Credit Scoring Model** for: ▪ Purchased covered loans, § 1003.4(a)(15)(i); Comment 4(a)(15)-6;

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
			Or, enter ▪ Code 1111—Exempt ▪ Code 7777—Credit score is not a number ▪ Code 8888—Not applicable ▪ Code 9999—No co-applicant **NOTE:** Use Code 9999 in the co-applicant field if there are no co-applicants or co-borrowers. **NOTE:** If Regulation C requires your institution to report a single score that corresponds to multiple applicants or borrowers, either report the credit score in the applicant field, and use Code 8888 in the co-applicant field; or report the credit score in the co-applicant field and use Code 8888 in the applicant field. **NAME AND VERSION OF CREDIT SCORING MODEL.** Indicate the name and version of the credit scoring model used to generate the credit score, or scores, relied on in making the credit decision by entering: ▪ Code 1111—Exempt ▪ Code 1—Equifax Beacon 5.0 ▪ Code 2—Experian Fair Isaac ▪ Code 3—FICO Risk Score Classic 04 ▪ Code 4—FICO Risk Score Classic 98 ▪ Code 5—VantageScore 2.0 ▪ Code 6—VantageScore 3.0 ▪ Code 7—More than one credit scoring model ▪ Code 8—Other credit scoring model	▪ Transactions for which no credit decision was made (e.g., files closed for incompleteness, or if an application was withdrawn before a credit decision was made), Comment 4(a)(15)-4; ▪ Transactions for which the credit decision was made without relying on a credit score, Comment 4(a)(15)-5; ▪ Covered loans or applications when applicant and co-applicant are not natural persons, Comment 4(a)(15)-7 Enter "**Code 1111**" for Credit Score and Name and Version of Creidt Scoring Model if, pursuant to the 2018 HMDA Rule, your institution is not reporting **Credit Score**.

Data point	Regulation C references	Description	Filing instructions[c]	Reporting “Not Applicable”[d] or “Exempt”[e]
			NOTE: If Code 8 is selected in the Name and Version of Credit Scoring Model Field, enter the specific other credit scoring model that is not listed above in the **Name and Version of Credit Scoring Model Conditional Free Form Text Field** for **Code 8.** If Code 8 is not entered, leave this field blank. ▪ Code 9—Not applicable ▪ Code 10—No co-applicant **NOTE:** Use Code 10 in the co-applicant field if there are no co-applicants or co-borrowers. **NOTE:** If Regulation C requires your institution to report a single score for a covered loan or application involving multiple applicants or borrowers, report either (A) the name and version of the credit scoring model, or that multiple credit scoring models were used, in the applicant field, and use Code 9 in the co-applicant field; or (B) the name and version of the credit scoring model, or that multiple credit scoring models were used, in the co-applicant field, and use Code 9 in the applicant field.	
(26) Reason for Denial	§ 1003.4(a)(16), Comments 4(a)(16)-1 through -4	Reason(s) the application was denied	Indicate the principal reason, or reasons, for denial by entering up to four (4): ▪ Code 1111—Exempt ▪ Code 1—Debt-to-income ratio ▪ Code 2—Employment history ▪ Code 3—Credit history ▪ Code 4—Collateral ▪ Code 5—Insufficient cash (downpayment, closing costs) ▪ Code 6—Unverifiable information ▪ Code 7—Credit application incomplete	To report not applicable, enter “**Code 10**” for applications that were not denied (*e.g.*, loan is originated or purchased by the financial institution), Comment 4(a)(16)-4 Enter “**Code 1111**” if, pursuant to the 2018 HMDA Rule, your institution is not reporting the **Reasons for Denial**. Leave the remaining Reason for Denial data fields blank.

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
			▪ Code 8—Mortgage insurance denied ▪ Code 9—Other **NOTE:** If Code 9 is selected in any Reason for Denial field, enter the specific other reason(s) for denial not listed above in the **Reason for Denial Conditional Free Form Text Field for Code 9.** See below for more information on the **Reason for Denial Conditional Free Form Text Field for Code 9**. ▪ Code 10—Not applicable **NOTE:** Use Code 10 if the requirement to report reasons for denial does not apply to the covered loan or application that your institution is reporting. *Leave the remaining Reason for Denial data fields blank.* Do not enter the same code more than once for any covered loan or application. If there are fewer than four principal (4) reasons for denial, leave the remaining Reason for Denial data fields blank. **MODEL FORM.** If your institution uses the model form contained in appendix C to Regulation B, 12 CFR part 1002 (Form C–1, Sample Notice of Action Taken and Statement of Reasons), use the following: ▪ Code 1—Income insufficient for amount of credit requested, and Excessive obligations in relation to income ▪ Code 2—Temporary or irregular employment, and Length of employment ▪ Code 3—Insufficient number of credit references provided; Unacceptable type of credit references provided; No credit file;	

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
			Limited credit experience; Poor credit performance with us; Delinquent past or present credit obligations with others; Number of recent inquiries on credit bureau report; Garnishment, attachment, foreclosure, repossession, collection action, or judgment; and Bankruptcy ▪ Code 4—Value or type of collateral not sufficient ▪ Code 6—Unable to verify credit references; Unable to verify employment; Unable to verify income; and Unable to verify residence ▪ Code 7—Credit application incomplete ▪ Code 9—Length of residence; Temporary residence; and Other reasons specified on the adverse action notice. **REASON FOR DENIAL CONDITIONAL FREE FORM TEXT FIELD FOR CODE 9**. The maximum number of characters for this field is 255 characters, including spaces. If Code 9 is not entered, leave this field blank.	
(27) Total Loan Costs or Total Points and Fees	§ 1003.4(a)(17), Comments 4(a)(17)(i)-1 through -3 and 4(a)(17)(ii)-1 through -2	Either total loan costs, or total points and fees charged	Enter either Total Loan Costs or Total Points and Fees: ▪ **TOTAL LOAN COSTS**. Enter, in dollars, the amount of total loan costs. If the amount is zero, enter 0. ▪ **TOTAL POINTS AND FEES**. Enter, in dollars, the total points and fees charged in connection with the covered loan. If the amount is zero, enter 0. *Example:* If the total loan costs or the total points and fees are $2,399.04, enter 2399.04.	Enter "**NA**" for: **TOTAL LOAN COSTS.** ▪ Applications, Comment 4(a)(17)(i)-1; ▪ Covered loans that are not subject to Regulation Z, § 1026.43(c), § 1003.4(a)(17); ▪ Covered loans subject to Regulation Z, § 1026.43(c) for which a disclosure *is not* provided pursuant to § 1026.19(f), § 1003.4(a)(17) ▪ Purchased covered loans for which applications were received by the selling entity prior to the

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
				effective date of Regulation Z, § 1026.19(f), Comment 4(a)(17)(i)-2 **TOTAL POINTS AND FEES.** ▪ Applications, Comment 4(a)(17)(ii)-1; ▪ Covered loans that are not subject to Regulation Z, § 1026.43(c), Comment 4(a)(17)(ii)-1; ▪ Covered loans subject to Regulation Z, § 1026.43(c) for which a disclosure *is* provided pursuant to Regulation Z, § 1026.19(f), § 1003.4(a)(17)(ii); ▪ Purchased covered loans, Comment 4(a)(17)(ii)-1 Enter "**Exempt**" if, pursuant to the 2018 HMDA Rule, your institution is not reporting Total Loan Costs or Total Points and Fees.
(28) Origination Charges	§ 1003.4(a)(18), Comments 4(a)(18)-1 through -3	Total borrower-paid origination charges	Enter, in dollars, the total of all itemized amounts that are designated borrower-paid at or before closing. If the total is zero, enter 0. *Example:* If the origination charges are $2,399.04, enter 2399.04.	Enter "**NA**" for: ▪ Applications, Comment 4(a)(18)-1; ▪ Covered loans not subject to Regulation Z, § 1026.19(f), § 1003.4(a)(18); Comment 4(a)(18)-1; ▪ Purchased covered loans with applications that were received by the selling entity prior to the effective date of Regulation Z, § 1026.19(f), Comment 4(a)(18)-2

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
				Enter "**Exempt**" if, pursuant to the 2018 HMDA Rule, your institution is not reporting Origination Charges.
(29) Discount Points	§ 1003.4(a)(19), Comments 4(a)(19)-1 through -3	Points paid to the creditor to reduce the interest rate	Enter, in dollars, the points paid to the creditor to reduce the interest rate. If no points were paid, leave this field blank. *Example:* If the amount paid for discount points is $2,399.04, enter 2399.04.	Enter "**NA**" for: ▪ Applications, Comment 4(a)(19)-1; ▪ Covered loans not subject to Regulation Z, § 1026.19(f), § 1003.4(a)(19); Comment 4(a)(19)-1; ▪ Purchased covered loans with applications that were received by the selling entity prior to the effective date ofRegulation Z, § 1026.19(f), Comment 4(a)(19)-2 Enter "**Exempt**" if, pursuant to the 2018 HMDA Rule, your institution is not reporting Discount Points.
(30) Lender Credits	§ 1003.4(a)(20), Comments 4(a)(20)-1 through -3	Amount of lender credits	Enter, in dollars, the amount of lender credits. If no lender credits were provided, leave this field blank. *Example:* If the amount is $1500.24, enter 1500.24.	Enter "**NA**" for: ▪ Applications, Comment 4(a)(20)-1; ▪ Covered loans not subject to Regulation Z, § 1026.19(f), § 1003.4(a)(20); Comment 4(a)(20)-1; ▪ Purchased covered loans with applications that were received by the selling entity prior to the effective date of Regulation Z, § 1026.19(f), Comment 4(a)(20)-2

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
				Enter "**Exempt**" if, pursuant to the 2018 HMDA Rule, your institution is not reporting Lender Credits.
(31) Interest Rate	§ 1003.4(a)(21), Comments 4(a)(21)-1 through -3	Interest rate on the approved application or loan	Enter, as a percentage, to at least three (3) decimal places, the interest rate. Numbers calculated to beyond three (3) decimal places may either be reported beyond three (3) decimal places or rounded or truncated to three (3) decimal places. Decimal place trailing zeros may be either included or omitted. *Example:* If the interest rate is 4.125%, enter 4.125. If the interest rate is exactly 4.500%, enter 4.5, 4.50, or 4.500.	Enter "**NA**" for applications that have been denied, withdrawn, or closed for incompleteness, Comment 4(a)(21)-2 Enter "**Exempt**" if, pursuant to the 2018 HMDA Rule, your institution is not reporting Interest Rate.
(32) Prepayment Penalty Term	§ 1003.4(a)(22), Comments 4(a)(22)-1 through -2	Term in months of any prepayment penalty	Enter, in numeral form, the term, in months, of any prepayment penalty. *Example:* If a prepayment penalty may be imposed within the first 24 months after closing or account opening, enter 24.	Enter "**NA**" for: ▪ Covered loans or applications that are not subject to Regulation Z, § 1026, § 1003.4(a)(22); Comment 4(a)(22)-1; ▪ Covered loans or applications that have no prepayment penalty, Comment 4(a)(22)-2 Enter "**Exempt**" if, pursuant to the 2018 HMDA Rule, your institution is not reporting Prepayment Penalty Term.
(33) Debt-to-Income Ratio	§ 1003.4(a)(23), Comments 4(a)(23)-1 through -7	Ratio of the applicant's or borrower's total monthly debt to total	Enter, as a percentage, the ratio of the applicant's or borrower's total monthly debt to the total monthly income relied on in making the credit decision. Use decimal places only if the ratio relied upon uses decimal places.	Enter "**NA**" for: ▪ Purchased covered loans, § 1003.4(a)(23); Comment 4(a)(23)-7;

Data point	Regulation C references	Description	Filing instructions[c]	Reporting “Not Applicable”[d] or “Exempt”[e]
		monthly income relied on	*Example:* If the relied upon debt-to-income ratio is 42.95, enter 42.95, not 43. If, however, your institution rounded the ratio up to 43% and relied on the rounded-up number, enter 43.	▪ Transactions for which no credit decision was made (e.g., files closed for incompleteness, or if an application was withdrawn before a credit decision was made), Comment 4(a)(23)-3; ▪ Transactions for which the credit decision was made without relying on debt-to-income ratio, Comment 4(a)(23)-4; ▪ Covered loans or applications when applicant and co-applicant are not natural persons, Comment 4(a)(23)-5; ▪ Covered loan secured by, or an application proposed to be secured by, a multifamily dwelling, Comment 4(a)(23)-6 Enter “**Exempt**” if, pursuant to the 2018 HMDA Rule, your institution is not reporting Debt-to-Income-Ratio.
(34) Combined Loan-to-Value Ratio	§ 1003.4(a)(24), Comments 4(a)(24)-1 through -6	Ratio of the total amount of debt that is secured by the property to the value of the property that was relied on	Enter, as a percentage, the ratio of the total amount of debt secured by the property to the value of the property relied on in making the credit decision. Use decimal places only if the ratio relied upon uses decimal places. *Example*: If the relied upon combined loan-to-value ratio is 80.05, enter 80.05, not 80. If, however, your institution rounded the ratio down to 80 and relied on the rounded-down number, enter 80.	Enter “**NA**” for: ▪ Purchased covered loans, § 1003.4(a)(24); Comment 4(a)(24)-5; ▪ Transactions for which no credit decision was made (e.g., files closed for incompleteness, or if an application was withdrawn before a credit decision was made), Comment 4(a)(24)-3; ▪ Transactions for which the credit decision was made without relying on combined loan-to-value ratio, Comment 4(a)(24)-4

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
				Enter "**Exempt**" if, pursuant to the 2018 HMDA Rule, your institution is not reporting Combined Loan-to-Value Ratio.
(35) Loan Term	§ 1003.4(a)(25), Comments 4(a)(25)-1 through -5	Number of months after which the legal obligation will mature or terminate	Enter, in numeral form, the number of months after which the legal obligation will mature or terminate, or would have matured or terminated. *Example:* If the loan term is 360 months, enter 360.	Enter "**NA**" for covered loan or application without a definite term, such as a reverse mortgage, Comment 4(a)(25)-5 Enter "**Exempt**" if, pursuant to the 2018 HMDA Rule, your institution is not reporting Loan Term.
(36) Introductory Rate Period	§ 1003.4(a)(26), Comments 4(a)(26)-1 through -5	Number of months until the first date the interest rate may change	Enter, in numeral form, the number of months, or proposed number of months in the case of an application, until the first date the interest rate may change after closing or account opening. *Example:* If the introductory rate period is 24 months, enter 24.	Enter "**NA**" for: ▪ Covered loan or application with a fixed rate, Comment 4(a)(26)-3; ▪ Purchased covered loan with a fixed rate, Comment 4(a)(26)-4 Enter "**Exempt**" if, pursuant to the 2018 HMDA Rule, your institution is not reporting Introductory Rate Period.
(37) Non-Amortizing Features	§ 1003.4(a)(27), Comment 4(a)(27)-1	Whether the transaction involves a balloon payment, interest-only payments, negative amortization, or any other type of non-amortizing feature	**BALLOON PAYMENT.** Indicate whether the contractual terms include, or would have included, a balloon payment by entering: ▪ Code 1111—Exempt ▪ Code 1—Balloon payment ▪ Code 2—No balloon payment **INTEREST-ONLY PAYMENTS.** Indicate whether the contractual terms include, or would have included, interest-only payments by entering: ▪ Code 1111—Exempt	Enter "**Code 1111**" for **Balloon Payment, Interest-Only Payments, Negative Amortization,** and **Other Non-Amortizing Features** if, pursuant to the 2018 HMDA Rule, your institution is not reporting Non-Amortizing Features.

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
			▪ Code 1—Interest-only payments ▪ Code 2—No interest-only payments **NEGATIVE AMORTIZATION.** Indicate whether the contractual terms include, or would have included, a term that would cause the covered loan to be a negative amortization loan by entering: ▪ Code 1111—Exempt ▪ Code 1—Negative amortization ▪ Code 2—No negative amortization **OTHER NON-AMORTIZING FEATURES.** Indicate whether the contractual terms include, or would have included, any term, other than those described in § 1003.4(a)(27)(i), (ii), and (iii) that would allow for payments other than fully amortizing payments during the loan term by entering: ▪ Code 1111—Exempt ▪ Code 1—Other non-fully amortizing features ▪ Code 2—No other non-fully amortizing features	
(38) Property Value	§ 1003.4(a)(28), Comments 4(a)(28)-1 through -4	Value of the property relied on that secures the loan	Enter, in dollars, the value of the property securing the covered loan or, in the case of an application, proposed to secure the covered loan, relied on in making the credit decision. *Example:* If the property value is $350,500, enter 350500.	Enter "**NA**" for: ▪ Transactions for which no credit decision was made (e.g., files closed for incompleteness, or if an application was withdrawn before a credit decision was made), Comment 4(a)(28)-3; ▪ Transactions for which the credit decision was made without relying on property value, Comment 4(a)(28)-4 Enter "**Exempt**" if, pursuant to the 2018 HMDA Rule, your institution is not reporting Property Value.

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
(39) Manufactured Home Secured Property Type	§ 1003.4(a)(29), Comments 4(a)(29)-1 through -4	Whether the covered loan is secured by a manufactured home and land or a manufactured home and not land	Indicate whether the covered loan or application is, or would have been, secured by a manufactured home and land, or by a manufactured home and not land, by entering: ▪ Code 1111—Exempt ▪ Code 1—Manufactured home and land ▪ Code 2—Manufactured home and not land ▪ Code 3—Not applicable	To report not applicable, enter "**Code 3**" for: ▪ The dwelling related to the property identified is not a manufactured home, § 1003.4(a)(29); Comment 4(a)(29)-4 ▪ The dwelling related to the property identified is a manufactured home community that is a multifamily dwelling, Comment 4(a)(29)-2; Comment 4(a)(29)-4 Enter "**Code 1111**" if, pursuant to the 2018 HMDA Rule, your institution is not reporting Manufactured Home Secured Property Type.
(40) Manufactured Home Land Property Interest	§ 1003.4(a)(30), Comments 4(a)(30)-1 through -6	Information about the applicant's or borrower's ownership or leasehold interest in the land where the manufactured home is located	Indicate the applicant's or borrower's land property interest in the land on which a manufactured home is, or will be, located by entering: ▪ Code 1111—Exempt ▪ Code 1—Direct ownership ▪ Code 2—Indirect ownership ▪ Code 3—Paid leasehold ▪ Code 4—Unpaid leasehold ▪ Code 5—Not applicable	To report not applicable, enter "**Code 5**" for: ▪ The dwelling related to the property identified is not a manufactured home, § 1003.4(a)(30); Comment 4(a)(30)-6 ▪ The dwelling related to the property identified is a manufactured home community that is a multifamily dwelling, Comment 4(a)(30)-4; Comment 4(a)(30)-6 ▪ A location for the manufactured home related to a covered loan or application has not been identified, § 1003.4(a)(30); Comment 4(a)(9)-5 Enter"**Code 1111**" if, pursuant to the 2018 HMDA Rule, your institution is not reporting Manufactured Home Land Property Interest.

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
(41) Total Units	§ 1003.4(a)(31), Comments 4(a)(31)-1 through -4	Number of individual dwelling units related to the property	Enter, in numeral form, the number of individual dwelling units related to the property securing the covered loan or, in the case of an application, proposed to secure the covered loan. *Example:* If there are five (5) individual dwelling units, enter 5.	
(42) Multifamily Affordable Units	§ 1003.4(a)(32), Comments 4(a)(32)-1 through -6	Number of individual dwelling units related to the property that are income-restricted under federal, state, or local affordable housing programs	Enter, in numeral form, the number of individual dwelling units related to any multifamily dwelling property securing the covered loan or, in the case of an application, proposed to secure the covered loan, that are income-restricted pursuant to Federal, State, or local affordable housing programs. *Example:* If there are five (5) multifamily affordable units, enter 5. **NOTE**: Enter "0" for a covered loan or application related to a multifamily dwelling that does not contain any such income-restricted individual dwelling units.	Enter "**NA**" for covered loans or applications where the property securing the covered loan or, in the case of an application, proposed to secure the covered loan is not a multifamily dwelling, § 1003.4(a)(32); Comment 4(a)(32)-6 Enter "**Exempt**" if, pursuant to the 2018 HMDA Rule, your institution is not reporting Multifamily Affordable Units.
(43) Application Channel (Submission of Application and Initially Payable to Your Institution)	§ 1003.4(a)(33), Comments 4(a)(33)-1, 4(a)(33)(i)-1, and 4(a)(33)(ii)-1 through -2	Indicators of whether the application was submitted directly to the FI, and whether the obligation was initially payable to the FI	**SUBMISSION OF APPLICATION.** Indicate whether the applicant or borrower submitted the application directly to your institution by entering: ▪ Code 1111—Exempt ▪ Code 1—Submitted directly to your institution ▪ Code 2—Not submitted directly to your institution ▪ Code 3—Not applicable **INITIALLY PAYABLE TO YOUR INSTITUTION**. Indicate whether the obligation arising from the covered loan was, or, in the case of an application, would have been, initially payable to your institution by entering:	To report not applicable for **Submission of Application**, enter "**Code 3**" ▪ Purchased covered loans, § 1003.4(a)(33); To report not applicable for **Initially Payable to Your Institution**, enter "**Code 3**" ▪ Purchased covered loans, § 1003.4(a)(33); ▪ Applications that were withdrawn, denied, or closed for incompleteness, if the institution had not determined whether the covered loans would have been initially payable to the institution reporting the applications, Comment 4(a)(33)(ii)-2

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
			▪ Code 1111—Exempt ▪ Code 1—Initially payable to your institution ▪ Code 2—Not initially payable to your institution ▪ Code 3—Not applicable	Enter "**Code 1111**" if, pursuant to the 2018 HMDA Rule, your institution is not reporting **Submission of Application** and **Initially Payable to Your Institution**.
(44) Mortgage Loan Originator NMLSR Identifier	§ 1003.4(a)(34), Comments 4(a)(34)-1 through -4	National Mortgage Licensing System & Registry (NMLSR) identifier for the mortgage loan originator	Enter the Nationwide Mortgage Licensing System and Registry mortgage loan originator unique identifier (NMLSR ID) for the mortgage loan originator. *Example:* If the NMLSR ID for the mortgage loan originator is 123450, enter 123450.	Enter "**NA**" for: ▪ Covered loans or applications in which the mortgage loan originator is not required to obtain and has not been assigned an NMLSR identifier, Comment 4(a)(34)-2. Enter "**NA**" or voluntarily report the NMLSR ID for: ▪ Purchased covered loans that satisfy the coverage criteria of Regulation Z, § 1026.36(g) and were originated prior to January 10, 2014, Comment 4(a)(34)-4; ▪ Purchased covered loans that do not satisfy the coverage criteria of Regulation Z, § 1026.36(g) and were originated prior to January 1, 2018, Comment 4(a)(34)-4. Enter "**Exempt**" if, pursuant to the 2018 HMDA Rule, your institution is not reporting Mortgage Loan Originator NMLSR Identifier.
(45) Automated Underwriting System	§ 1003.4(a)(35),	Name of the automated underwriting system	**AUTOMATED UNDERWRITING SYSTEM.** Indicate the automated underwriting system(s) (AUS) used by your institution to evaluate the application by entering up to five (5) of the following:	To report not applicable, enter "**Code 6**" for **Automated Underwriting System** and "**Code 17**" for **Automated Underwriting System Result** for:

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
	Comments 4(a)(35)-1 through -7	used by the FI to evaluate the application and the result generated by that system	▪ Code 1111—Exempt ▪ Code 1—Desktop Underwriter (DU) ▪ Code 2—Loan Prospector (LP) or Loan Product Advisor ▪ Code 3—Technology Open to Approved Lenders (TOTAL) Scorecard ▪ Code 4—Guaranteed Underwriting System (GUS) ▪ Code 5—Other **NOTE**: If Code 5 is selected in any Automated Underwriting System field, enter the name of the specific other AUS(s) not listed above in the **AUS Conditional Free Form Text Field for Code 5.** See below for more information on the **AUS Conditional Free Form Text Field for Code 5**. ▪ Code 6—Not applicable **NOTE:** If fewer than five (5) automated underwriting systems were used by your institution to evaluate the application or if Code 6 is selected, leave the remaining Automated Underwriting System data fields blank. **AUS CONDITIONAL FREE FORM TEXT FIELD FOR CODE 5**. Enter more than one other Automated Underwriting System, as applicable. The maximum number of characters for this field is 255 characters, including spaces. If Code 5 is not entered, leave this field blank. **AUTOMATED UNDERWRITING SYSTEM RESULT.** Indicate the result(s) generated by the automated underwriting system (AUS) previously indicated by entering: ▪ Code 1111 —Exempt	▪ Purchased covered loans, § 1003.4(a)(35); Comment 4(a)(35)-5; ▪ Transactions for which an AUS, as defined in § 1003.4(a)(35)(ii), was not used to evaluate the application, Comment 4(a)(35)-2 and -4; ▪ Covered loans or applications when applicant and co-applicant are not natural persons, Comment 4(a)(35)-6 Enter "**Code 1111**" for **Automated Underwriting System** and **Automated Underwriting System Result** if if, pursuant to the 2018 HMDA Rule, your institution is not reporting Automated Underwriting System.

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
			▪ Code 1—Approve/Eligible ▪ Code 2—Approve/Ineligible ▪ Code 3—Refer/Eligible ▪ Code 4—Refer/Ineligible ▪ Code 5—Refer with Caution ▪ Code 6—Out of Scope ▪ Code 7—Error ▪ Code 8—Accept ▪ Code 9—Caution ▪ Code 10—Ineligible ▪ Code 11—Incomplete ▪ Code 12—Invalid ▪ Code 13—Refer ▪ Code 14—Eligible ▪ Code 15—Unable to Determine ▪ Code 16—Other **NOTE:** If Code 16 is selected in an Automated Underwriting System Result field, enter the specific other AUS result(s) not listed above in the **AUS Result Conditional Free Form Text Field for Code 16**. See below for more information on the **AUS Result Conditional Free Form Text Field for Code 16**. ▪ Code 17—Not applicable **NOTE:** Use Code 17 if the requirement to report an AUS result does not apply to the covered loan or application that your institution is reporting. Leave the remaining Automated Underwriting System Result data fields blank.	

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
			For the following AUS results returned, use the following Codes for these AUS: ▪ Federal National Mortgage Association (Fannie Mae)-Use Code 1, 2, 3, 4, 5, 6, 7, or 15 ▪ Federal Home Loan Mortgage Corporation (Freddie Mac)-Use Code 8, 9, 10, 11, or 12 ▪ FHA TOTAL Scorecard- Use Code 8 or 13 ▪ GUS-Use Code 5, 8, 10, 13, 14, 15, or 16 **NOTE:** If fewer than five (5) results were generated by the automated underwriting system(s) previously indicated or Code 17 is used, leave the remaining Automated Underwriting System Result data fields blank. **AUS RESULT CONDITIONAL FREE FORM TEXT FIELD FOR CODE 16**. Enter more than one other Automated Underwriting System Result, as applicable. The maximum number of characters for this field is 255 characters, including spaces. If Code 16 is not entered, leave this field blank.	
(46) Reverse Mortgage	§ 1003.4(a)(36)	Indicator of whether the transaction is for a reverse mortgage	Indicate whether the covered loan is, or the application is for, a reverse mortgage by entering: ▪ Code 1111 —Exempt ▪ Code 1—Reverse mortgage ▪ Code 2—Not a reverse mortgage	Enter "**Code 1111**" if, pursuant to the 2018 HMDA Rule, your institution is not reporting Reverse Mortgage.
(47) Open-End Line of Credit	§ 1003.4(a)(37), Comment 4(a)(37)-1	Indicator of whether the transaction is for an open-end line of credit	Indicate whether the covered loan is, or the application is for, an open-end line of credit by entering: ▪ Code 1111 —Exempt ▪ Code 1—Open-end line of credit	Enter "**Code 1111**" if, pursuant to the 2018 HMDA Rule, your institution is not reporting Open-End Line of Credit.

Data point	Regulation C references	Description	Filing instructions[c]	Reporting "Not Applicable"[d] or "Exempt"[e]
			▪ Code 2—Not an open-end line of credit	
(48) Business or Commercial Purpose	§ 1003.4(a)(38), Comment 4(a)(38)-1	Indicator of whether the transaction is primarily for a business or commercial purpose	Indicate whether the covered loan is, or the application is for a covered loan that will be made, primarily for a business or commercial purpose by entering: ▪ Code 1111 —Exempt ▪ Code 1—Primarily for a business or commercial purpose ▪ Code 2—Not primarily for a business or commercial purpose	Enter "**Code 1111**" if, pursuant to the 2018 HMDA Rule, your institution is not reporting Business or Commercial Purpose.

[a] This chart combines information from the previous Summary of Reportable Data Chart and Reporting "Not Applicable" Chart and the 2018 Filing Instructions Guide. This chart does not contain information about the submission process or procedures. This chart summarizes requirements under HMDA and Regulation C and does not itself establish any binding obligations. It is intended only 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.
[b] Beginning with data collected in 2018, HMDA filers should report the data points described in the 2015 HMDA Rule and the 2017 HMDA Rule, as modified by the Economic Growth, Regulatory Relief, and Consumer Protection Act as implemented and clarified in the 2018 HMDA Rule for insured depository institutions and insured credit unions reporting transactions covered by a partial exemption.
[c] This column provides the information from Section 4.2 of the 2018 Filing Instructions Guide. Further information can be found in the 2018 Filing Instructions Guide. Some information may not be presented exactly as in the 2018 Filing Instructions Guide. This chart is not a substitute for the 2018 Filing Instructions Guide, which should be consulted.
[d] The "not applicable" portion of this column details the information provided in Regulation C about when a data point is considered not applicable and the appropriate code found in the 2018 Filing Instructions Guide to signify it. If more information is needed, please review the rule and commentary specified and the 2018 Filing Instructions Guide.
e The "exempt" portion of this column details when a data point is exempt for insured depository institutions and insured credit unions reporting transactions covered by a partial exemption under the Economic Growth, Regulatory Relief, and Consumer Protection Act.

Home Mortgage Disclosure Act

Exam Date:	[Click&type]
Prepared By:	[Click&type]
Reviewer:	[Click&type]
Docket #:	[Click&type]
Entity Name:	[Click&type]

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

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).

[Click&type]

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).

[Click&type]

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).

[Click&type]

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)).

[Click&type]

5. **Loan-Volume Threshold Test**. Effective January 1, 2018, and through December 31, 2019, 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. Effective January 1, 2020, determine whether the institution originated at least 25 closed-end mortgage loans in each of the two preceding calendar years, or originated at least 100 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.

[Click&type]

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).

[Click&type]

2. **Loan-Volume Threshold Test**. Effective January 1, 2018 and through December 31, 2019, 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. Effective January 1, 2020, determine whether the institution originated at least 25 closed-end mortgage loans in each of the two preceding calendar years, or originated at least 100 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.

[Click&type]

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 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.

[Click&type]

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).

[Click&type]

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).

[Click&type]

2. 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 Section 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 Section 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 Section 1003.2(n). Comment 2(n)-3.

[Click&type]

3. **<u>Excluded Transactions</u>**. 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. Effective January 1, 2018, and through December 31, 2019, an institution that originated fewer than 500 open-end lines of credit in either of the two preceding calendar years, and effective January 1, 2020, an institution that originated fewer than 100 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)).

[Click&type]

Disclosure and Reporting – 12 CFR 1003.5

1. 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 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 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).

[Click&type]

Transaction Testing

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 10 of the procedures.

[Click&type]

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.

[Click&type]

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.

[Click&type]

4. All data fields within the sample may be reviewed, or the supervisory agency may prioritize designated fields for review.

[Click&type]

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.

[Click&type]

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).

[Click&type]

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.

[Click&type]

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.

[Click&type]

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.

[Click&type]

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).[21]

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

[21] 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.

Borrower FIG fields and resubmit its HMDA LAR with those FIG fields corrected. See example 4 on page 12 of the procedures.[22]

[Click&type]

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.

[Click&type]

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

[22] Example 4 describes analogous error rates and corrective actions for the race field.

Resubmission Threshold percentage will be higher for financial institutions with fewer than 30 HMDA LAR lines.

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**

Module 1: Compliance Management System review

The Bureau's compliance management review examination procedures are available at: https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201708_cfpb_compliance-management-review_supervision-and-examination-manual.pdf.

Please note that HMDA is a data collection, reporting, and disclosure statute. Accordingly, HMDA compliance examinations are focused on the validation of an institution's HMDA data through transaction testing and ordinarily do not evaluate consumer harm or review consumer complaints.

Examination Checklist

Applicability of the Regulation

Is the institution covered by HMDA and Regulation C?	Yes	No	N/A
Did the institution complete transactions covered by HMDA and Regulation C?	Yes	No	N/A

If the answers to both questions are *Yes*, proceed. If the answer to either question is *No*, consult with the appropriate Bureau personnel for guidance.

Evaluate Compliance Management System

Does the institution have adequate Board and Management oversight for compliance with HMDA?	Yes	No	N/A
Does the institution implement adequate corrective actions when it identifies potential violations of or risks of non-compliance with HMDA?	Yes	No	N/A
Does the institution have adequate policies and procedures for ensuring and monitoring compliance with HMDA?	Yes	No	N/A
Does the institution provide adequate training for individuals whose responsibilities relate to compliance with HMDA?	Yes	No	N/A
Does the institution conduct adequate monitoring and/or audit of compliance with HMDA?	Yes	No	N/A
Does the institution conduct adequate service provider oversight for compliance with HMDA?	Yes	No	N/A

Evaluate Transaction Testing Results

Did the examiner's transaction testing of the sample of the institution's HMDA LAR identify errors above the applicable error-rate thresholds?	Yes	No	N/A

Evaluate Errors Outside of Transaction Testing Sample

Did the examiner's CMS review or other aspects of the examination identify HMDA errors outside of the transaction testing sample?	Yes	No	N/A

Homeowners Protection Act (PMI Cancellation Act)[1]

The Homeowners Protection Act of 1998 (HPA or PMI Cancellation Act, or Act) was signed into law on July 29, 1998, became effective on July 29, 1999, and was later amended on December 27, 2000, to provide technical corrections and clarification. The "PMI Cancellation Act" addresses homeowners' difficulties in canceling private mortgage insurance (PMI)[2] coverage. It establishes provisions for canceling and terminating PMI, sets disclosure and notification requirements, and requires the return of unearned premiums.

The Dodd-Frank Act granted authority to the Consumer Financial Protection Bureau to supervise for and enforce compliance with the Homeowners Protection Act with respect to entities within its jurisdiction.[3]

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.

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

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[1] These reflect FFIEC-approved procedures.

[2] The HPA 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 by the Federal Housing Administration and guarantees on mortgage loans made by the Veterans Administration.

[3] Dodd-Frank Act, Secs. 1002(12)(G), 1024(b)-(c), and 1025(b)-(c); 12 U.S.C. Secs. 5481(12)(G), 5514(c), and 5515(c).

construction or refinancing[4] of a single-family dwelling that serves as a borrower's principal residence.[5] 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 U.S.C. 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 nonconforming loans, or Fannie Mae and Freddie Mac in the case of conforming loans);
- Financed under a fixed rate or an adjustable rate; or
- Covered by borrower-paid private mortgage insurance (BPMI) or lender-paid private mortgage insurance (LPMI).[6]

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,"[7] irrespective of the outstanding balance, based upon the initial amortization schedule (in the case of a fixed rate loan) or amortization schedule then in effect (in the case of an adjustable rate loan),[8] or any date thereafter that:

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[4] For purposes of 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 U.SC. 1601 et. seq. and 12 CFR 1026.20.

[5] 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 primary residence are covered.

[6] All sections of these procedures and manual apply to BPMI. For LPMI, relevant sections begin under the heading that follows thereafter.

[7] "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.

[8] The HPA includes as an adjustable rate mortgage, a balloon loan that "contains a conditional right to refinance or modify the unamortized principal at the maturity date." Therefore, if a balloon loan contains a conditional right to refinance, the initial disclosure for an adjustable rate mortgage would be used even if the interest rate is fixed.

- The borrower submits a written cancellation request;
- The borrower has a good payment history;[9]
- The borrower is current;[10] 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 U.S.C. 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 U.S.C. 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 U.S.C. 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 U.S.C. 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 U.S.C. 4902(b)).

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[9] 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 two years prior to the later of the cancellation date, or the date that the borrower request 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.

[10] The HPA does not define "current."

Final Termination

If PMI coverage on a residential mortgage transaction was not canceled at the borrower's request or by the automatic termination provision, the servicer must terminate PMI coverage by the first day of the month immediately following the date that is the midpoint of the loan's amortization period if, on that date, the borrower is current on the payments required by the terms of the mortgage. (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 U.S.C. 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 U.S.C. 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 U.S.C. 4905(b)).

Return of Unearned Premiums

The servicer must return all unearned PMI premiums to the borrower within 45 days after cancellation or termination of PMI coverage. Within 30 days after notification by the servicer of cancellation or termination of PMI coverage, a mortgage insurer must return to the servicer any amount of unearned premiums it is holding to permit the servicer to return such premiums to the borrower (12 U.S.C. 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 U.S.C. 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 nonconforming (lender-defined high-risk loans) (12 U.S.C. 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.[11] 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.[12] 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. (If the borrower is not current on that date, PMI should be terminated when the borrower does become current.)

Nonconforming Loans (Lender-Defined High Risk Loans)

Nonconforming 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. The Act does not require a more specific notice as to the 77 percent LTV termination standards for lender defined high-risk loans.

[11] The limit was $322,700 in 2003.

[12] Fannie Mae and Freddie Mac have not defined high-risk loans as of the date of this publication.

Basic Disclosure and Notice Requirements Applicable to Residential Mortgage Transactions and Residential Mortgages

The Act requires the lender in a residential mortgage transaction to provide to the borrower, at the time of consummation, certain disclosures that describe the borrower's rights for PMI cancellation and termination. A borrower may not be charged for any disclosure required by the Act. Initial disclosures vary, based upon whether the transaction is a fixed rate mortgage, adjustable rate mortgage or high-risk loan. The Act also requires that the borrower be provided with certain annual and other notices concerning PMI cancellation and termination. Residential mortgages are subject to certain annual disclosure requirements.

Initial Disclosures for Fixed Rate Residential Mortgage Transactions

When PMI is required for non-high risk fixed rate mortgages, the lender must provide to the borrower at the time the transaction is consummated: (i) a written initial amortization schedule, and (ii) a written notice that discloses:

- The borrower's right to request cancellation of PMI, and, based on the initial amortization schedule, the date the loan balance is scheduled to reach 80 percent of the original value of the property;
- The borrower's right to request cancellation on an earlier date, if actual payments bring the loan balance to 80 percent of the original value of the property sooner than the date based on the initial amortization schedule;
- That PMI will automatically terminate when the LTV ratio reaches 78 percent of the original value of the property and the specific date that is projected to occur (based on the initial amortization schedule); and
- The Act provides for exemptions to the cancellation and automatic termination provisions for high-risk mortgages and whether these exemptions apply to the borrower's loan (12 U.S.C. 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 U.S.C. 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 U.S.C. 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 U.S.C. 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 U.S.C. 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 cancelled or terminated, notify the borrower in writing that:[13]

- 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 U.S.C. 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 U.S.C. 4904(b)).

Disclosure Requirements for Lender-Paid Mortgage Insurance

Definitions

Borrower paid mortgage insurance (BPMI) means PMI that 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.

[13] 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 U.S.C. 4903(a)(1)(B)). Servicers should take care that the appropriate notices are made to borrowers when those dates are reached.

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 U.S.C. 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 cancelled 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 10-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 U.S.C. 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 U.S.C. 4905(c)(2)).

Fees for Disclosures

As stated previously, no fee or other cost may be imposed on a borrower for the disclosures or notifications required to be given to a borrower by lenders or servicers under the Act (12 U.S.C. 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:

  (i) Actual damages (including interest accruing on such damages);

  (ii) Statutory damages not to exceed $2,000;

  (iii) Costs of the action; and

  (iv) 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):

  (i) 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;

  (ii) Costs of the action; and

  (iii) 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):

  (i) Actual damages (including interest accruing on such damages);

  (ii) Statutory damages up to $1,000 per class member but not to exceed the lesser of (i) $500,000 or (ii) 1 percent of the liable party's gross revenues;

  (iii) Costs of the action; and

  (iv) Reasonable attorney fees (12 U.S.C. 4907(a))

Statute of Limitation

A borrower must bring an action under the Act within two years after the borrower discovers the violation (12 U.S.C. 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 U.S.C. 4907(c)).

Enforcement

The Dodd-Frank Act directs the CFPB to enforce Federal consumer financial laws and specifically enumerates HPA as one of those laws.[14]

HPA also directs the federal banking agencies to enforce the Act under 12 U.S.C. 1818 or any other authority conferred upon the agencies by law. Under HOPA 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 U.S.C. 4909).

REFERENCES

Laws

12 U.S.C. 4901 et seq.	Homeowners Protection Act

[14] CFPA, Secs. 1002(12)(G), 1024(c), and 1025(c); 12 U.S.C. Secs. 5481(12)(G), 5514(c), and 5515(c).

Homeowners Protection Act

Exam Date:	[Click&type]
Prepared By:	[Click&type]
Reviewer:	[Click&type]
Docket #:	[Click&type]
Entity Name:	[Click&type]

Examination Objectives[1]

- To determine the financial institution's compliance with the Homeowners Protection Act of 1998 (HPA), as amended.
- To assess the quality of the financial institution's policies and procedures for implementing the HPA.
- 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 HPA.
- To initiate corrective action when violations of HPA are identified, or when policies or internal controls are deficient.

Examination Procedures

1. Through discussions with management and review of available information, determine if the institution's internal controls are adequate to ensure compliance with the HPA. 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.

   [Click&type]

[1] These reflect FFIEC-approved procedures.

2. Review any compliance audit material, including work papers and reports, to determine whether:
   a. The institution's procedures address all applicable provisions of HPA;
   b. Steps are taken to followup 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.

   [Click&type]

3. Review sample transactions, disclosure and notification forms, and the financial institution's policies and procedures to ensure the institution provides:
   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; and
   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.

   (Refer to Appendix A for required content of the disclosure and notices.)

   [Click&type]

4. Using the above sample and bank policies and procedures, determine that borrowers are not charged for any required disclosures or notifications
   (12 U.S.C. 4906).

   [Click&type]

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 cancelled 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 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 U.S.C. 4902(a)of HPA (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 U.S.C. 4902(a)).

   [Click&type]

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 not current. Verify that PMI was <u>terminated</u>, 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 U.S.C. 4902(b)).

   [Click&type]

7. Obtain a sample of PMI-covered residential mortgage transactions (including high-risk loans, if any) that are at or beyond the midpoint of their amortization period. Determine whether PMI was terminated by the first day of the following month if the loan was current. If the loan was not current at the midpoint, determine that PMI was terminated by the first day of the month following the day the loan became current. If, at the time of the examination, a loan at the midpoint is not current, determine whether the financial institution is monitoring the loan and has systems in place to ensure that PMI is terminated when the borrower becomes current (12 U.S.C. 4902(c) and 12 U.S.C. 4902(g)(2)).

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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 cancelled, 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 U.S.C. 4902(g)(1)(B)).

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9. Obtain a sample of loans that have had PMI cancelled or terminated (the samples obtained above can be used). For PMI loans cancelled 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 U.S.C. 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 U.S.C. 4902(e)(2) and 12 U.S.C. 4902(e)(3)).

[Click&type]

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 U.S.C. 4902(f)(1)).

[Click&type]

Conclusions

1. Summarize all violations and internal deficiencies.

   [Click&type]

2. If the violation(s) and 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.

   [Click&type]

3. Identify action needed to correct violations and weaknesses in the institution's compliance system, as appropriate.

   [Click&type]

4. Discuss findings with the institution's management and obtain a commitment for corrective action.

   [Click&type]

5. 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.

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Examiner's Summary, Recommendations, and Comments

[Click&type]

Appendix A

Homeowners Protection Act

This appendix provides guidance about the timing and required content of disclosures and notices to be made in connection with the Act.

1. Initial disclosures at consummation for fixed rate residential mortgage transactions must include:

    a. A written amortization schedule (12 U.S.C. 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 80percent of the original value of the mortgaged property, irrespective of the outstanding balance of the mortgage, or such earlier date that, based on actual payments, the principal balance actually reaches 80percent of the original value of the mortgaged property and the borrower has a good payment history and has satisfied the lender's requirements that the value of the mortgaged property has not declined and is unencumbered by subordinate liens (12 U.S.C. 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 80percent of the original value of the mortgaged property (12 U.S.C. 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 78percent of the original value of the mortgaged property if the loan is current (12 U.S.C. 4903(a)(1)(A)(ii)(III)).

    e. The specific date the loan balance is scheduled to reach 78percent LTV (12 U.S.C. 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 U.S.C. 4903(a)(1)(A)(ii)(IV)).

2. Initial disclosures at consummation for **adjustable rate** residential mortgage transactions must 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(s) and irrespective of the outstanding balance of the mortgage, the principal balance is first scheduled to reach 80percent of the original value of the mortgaged property or such earlier date that, based on actual payments, the principal balance actually reaches 80percent of the original value of the mortgaged property and the borrower has a good payment history and has satisfied the lender requirements that the value of the mortgaged property has not declined and is unencumbered by subordinate liens (12 U.S.C. 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 80percent of the original value of the mortgaged property (12 U.S.C. 4903(a)(1)(B)(i)).

   c. PMI will automatically terminate when the loan balance is first scheduled to reach 78percent of the original value of the mortgaged property irrespective of the outstanding balance of the mortgage and the loan is current (12 U.S.C. 4903(a)(1)(B)(ii)).

   d. On the termination date, the borrower will be notified of the termination or the fact that PMI will be terminated when the loan is brought current (12 U.S.C. 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 U.S.C. 4903(a)(1)(B)(iii)).

3. Lender has 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 they are provided when a request for cancellation occurs (12 U.S.C. 4902(a)(3)(A)).

4. Lender provides 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 U.S.C. 4903(a)(2)).

5. When the financial institution acts as servicer for residential mortgage transactions, it provides 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 U.S.C. 4903(a)(3)).

   NOTE: This disclosure may be included on RESPA’s annual escrow account disclosure or IRS interest payment disclosures.

6. When the financial institution acts as servicer, it provides 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 U.S.C. 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 U.S.C. 4903(b)(2)).

NOTE: This disclosure may be included on RESPA's annual escrow account disclosure or IRS interest payment disclosure.

7. When the financial institution acts as servicer for residential mortgage transactions, it provides borrowers 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 U.S.C. 4904(a)).

8. When the financial institution services residential mortgage transactions, it returns all unearned PMI premiums to the borrower within 45 days of either termination upon the borrower's request or automatic termination under the HPA (12 U.S.C. 4902(e)).

9. When the financial institution acts as servicer for residential mortgage transactions, it provides borrowers 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 U.S.C. 4904(b)(1) and 12 U.S.C. 4904(b)(2)(A)).

10. When the financial institution acts as servicer for residential mortgage transactions, it provides borrowers 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 U.S.C. 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(s) (in the case of an adjustable rate loan), the principal balance of the loan is first scheduled to reach 78percent of the original value of mortgaged property, assuming the borrower is current on that date or the earliest date thereafter on which the borrower becomes current.

11. When the financial institution acts as a servicer for adjustable rate residential mortgage transactions, the financial institution notifies borrowers that the cancellation date has been reached (12 U.S.C. 4903(a)(1)(B)(i)).

12. When the financial institution acts as a servicer for adjustable rate residential mortgage transactions, the financial institution notifies the borrowers on the termination date that PMI has been cancelled or will be cancelled as soon as the borrower is current on loan payments (12 U.S.C. 4903(a)(1)(B)(ii)).

13. When the financial institution requires "Lender Paid Mortgage Insurance" (LPMI) for residential mortgage transactions, it provides 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 HPA (12 U.S.C. 4905(c)(1)(A)).

    b. A statement that LPMI usually results in a mortgage with a higher interest rate than BPMI (12 U.S.C. 4905(c)(1)(B)(i)).

    c. A statement that LPMI only terminates when the transaction is refinanced, paid off, or otherwise terminated (12 U.S.C. 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 U.S.C. 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 U.S.C. 4905(c)(1)(D)).

14. When the lender requires LPMI for residential mortgage transactions and the financial institution acts as servicer, it notifies 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 U.S.C. 4905(c)(2)).

15. The financial institution prohibits borrower-paid fees for the disclosures and notifications required under the HPA (12 U.S.C. 4906).

Gramm-Leach-Bliley Act (GLBA)

Privacy of Consumer Financial Information[1]

Title V, Subtitle A of the Gramm-Leach-Bliley Act (GLBA)[2] 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.[3]

Title X of the Dodd-Frank Act Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)[4] 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.[5] 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.[6]

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[1] These reflect FFIEC-approved procedures.
[2] 15 USC Sections 6801-6809.
[3] 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).
[4] Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, Title X, 124 Stat. 1983 (2010).
[5] Dodd-Frank Act Sections 1002(12)(J), 1024(b)-(c), and 1025(b)-(c); 12 USC Sections 5481(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.
[6] 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 USC Section 5519 (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).

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.

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.[7] 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.[8] 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[9] (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

[7] 74 FR 62890.
[8] 79 FR 64057.
[9] Fixing America's Surface Transportation Act of 2015, Pub. L. No. 114-94 (2015), 129 Stat. 1312 (2015).

include banks, securities brokers and dealers, insurance underwriters and agents, finance companies, mortgage bankers, and travel agents.[10]

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.

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

[10] 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.

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:

<u>Section 13</u>:

- 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 of the regulation. 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 of the regulation 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 of the regulation 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 <u>and</u> 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 its 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 (12 CFR 1016.13)) or 502(e) (corresponding to Regulation P (12 CFR 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 of the regulation).

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

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

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 (FCRA)

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.

REFERENCES

Laws

15 U.S.C. 6801 et seq.	Title V of the Gramm-Leach-Bliley Act

Regulations

Consumer Financial Protection Bureau Regulation (12 CFR)

Part 1016	Privacy of Consumer Financial Information (Regulation P)

Gramm-Leach-Bliley Act (GLBA) and Its Implementing Regulation 12 CFR Part 1016

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Prepared By:	[Click&type]
Reviewer:	[Click&type]
Docket #:	[Click&type]
Entity Name:	[Click&type]

Privacy of Consumer Financial Information

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.

- 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.

- 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.

- To initiate effective corrective actions when violations of law are identified, or when policies, procedures, or internal controls are deficient.

Examination Procedures

1. Through discussions with management and review of available information, identify the institution's information sharing practices (and changes to those practices) with

[1] These reflect FFIEC-approved procedures.

affiliates and nonaffiliated third parties; how it treats nonpublic personal information; and how it administers opt-outs. Consider the following as appropriate:

- Notices (initial, annual, revised, opt-out, short-form, and simplified);
- 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 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;
- 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;
- 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 of the regulation are met and whether the institution is disclosing account number information in violation of Section 12);
- 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);
- Categories of nonpublic personal information shared with, or received from, each nonaffiliated third party;
- Consumer complaints regarding the treatment of nonpublic personal information, including those received electronically;
- Records that reflect the bank’s categorization of its information sharing practices under Sections 13, 14, 15, and outside of these exceptions; and
- Results of a 501(b) inspection (used to determine the accuracy of the institution’s privacy disclosures regarding information security).

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2. Use the information gathered from step 1 to work through the Privacy Notice and Opt-Out Decision Tree (Attachment A). Identify which module(s) of procedures is (are) applicable.

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3. Use the information gathered from step 1 to work through the Redisclosure and Reuse of Nonpublic Personal Information Received from Nonaffiliated Financial Institutions Decision Tree (Attachment B) and Account Number Sharing Decision Tree (Attachment C) as necessary. Identify which module is applicable.

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4. Determine the adequacy of the financial institution's policies, procedures, and internal controls to ensure compliance with the regulation as applicable. Consider the following:

- Sufficiency of internal policies, procedures, and internal controls, including review of new products and services and controls over servicing arrangements and marketing arrangements;
- Effectiveness of management information systems, including the use of technology for monitoring, exception reports, and standardization of forms and procedures;
- Frequency and effectiveness of monitoring procedures;
- Adequacy and regularity of the institution's training program;
- 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
- Knowledge level of management and personnel.

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5. 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.

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6. Based on the results of the foregoing initial procedures and discussions with management, determine which procedures, if any, should be completed in the applicable module, focusing on areas of particular risk. The selection of procedures to be employed depends upon the adequacy of the institution’s compliance management system and level of risk identified. Each module contains a series of general instruction to verify compliance, cross-referenced to cites within the regulation. Additionally, there are cross-references to a more comprehensive checklist, which the examiner may use if needed to evaluate compliance in more detail.

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7. 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.

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8. Formulate conclusions.

   a. Summarize all findings.

   b. For violation(s) noted, determine the cause by identifying weaknesses in internal controls, compliance review, training, management oversight, or other areas.

   c. Identify action needed to correct violations and to address weaknesses in the institution’s compliance system, as appropriate.

   d. Discuss findings with management and obtain a commitment for corrective action.

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Examiner's Summary, Recommendations, and Comments

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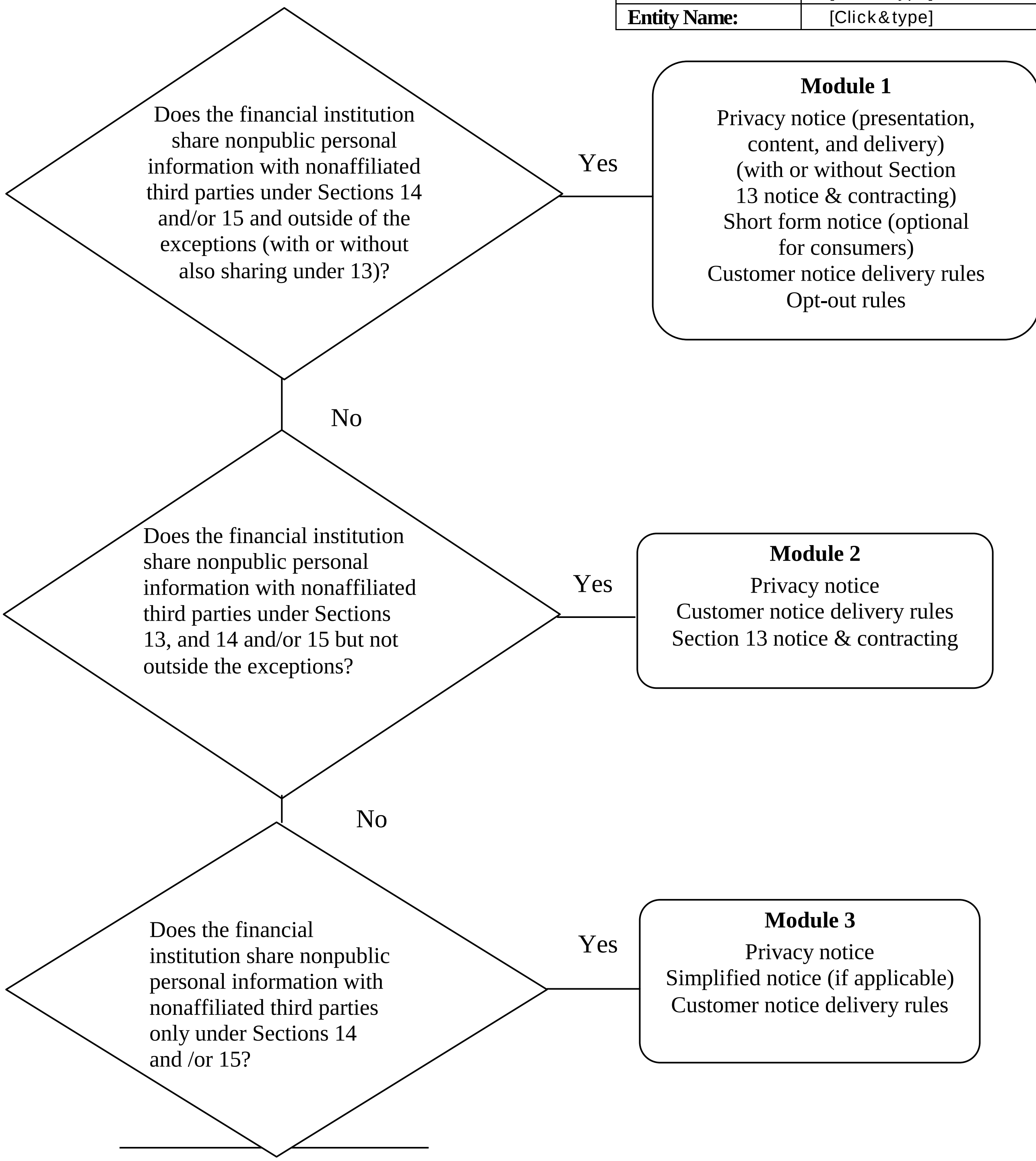
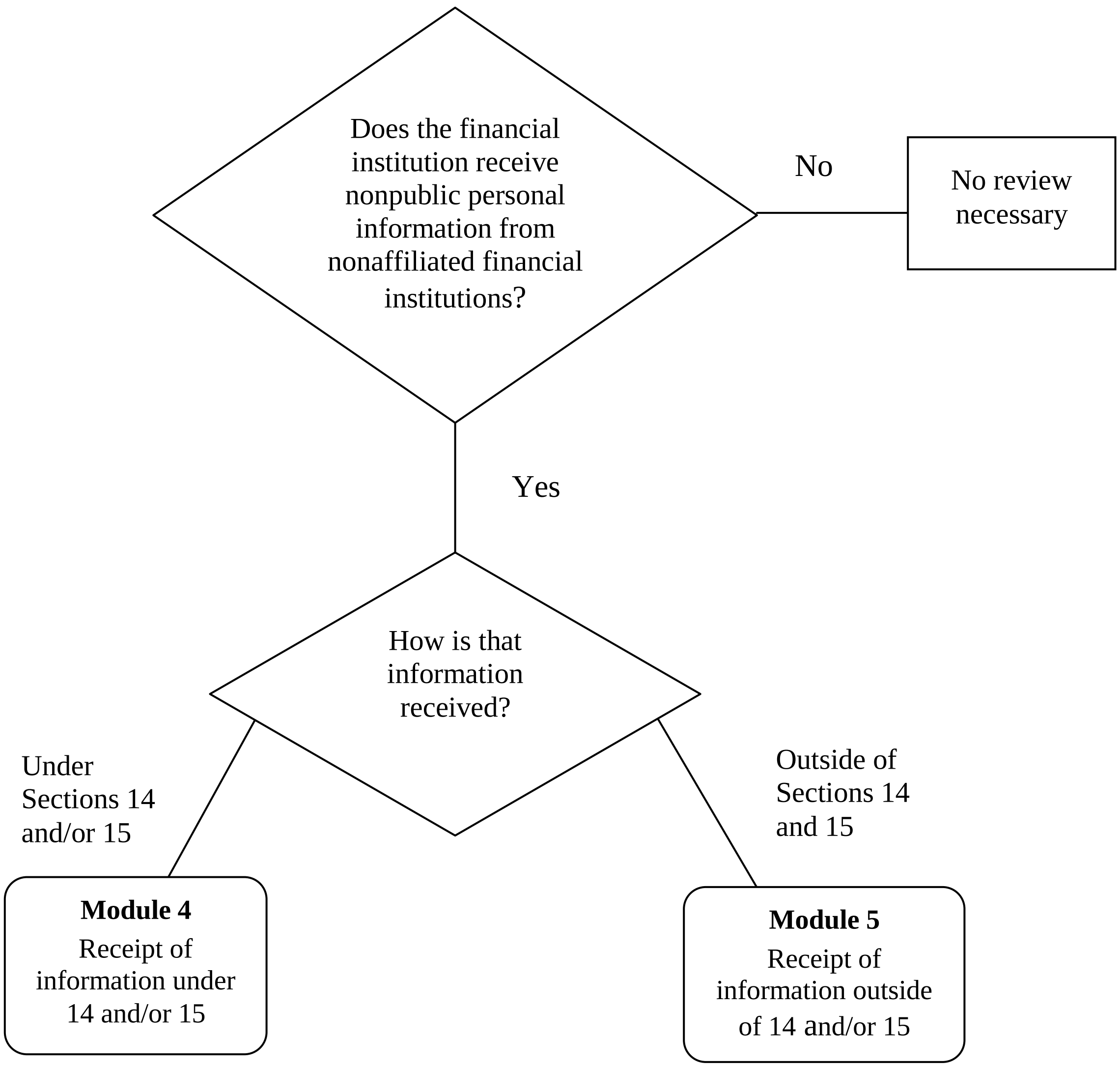
Decision Tree - Privacy Notice and Opt-Out[1]

Exam Date:	[Click&type]
Exam ID No.	[Click&type]
Prepared By:	[Click&type]
Reviewer:	[Click&type]
Docket #:	[Click&type]
Entity Name:	[Click&type]

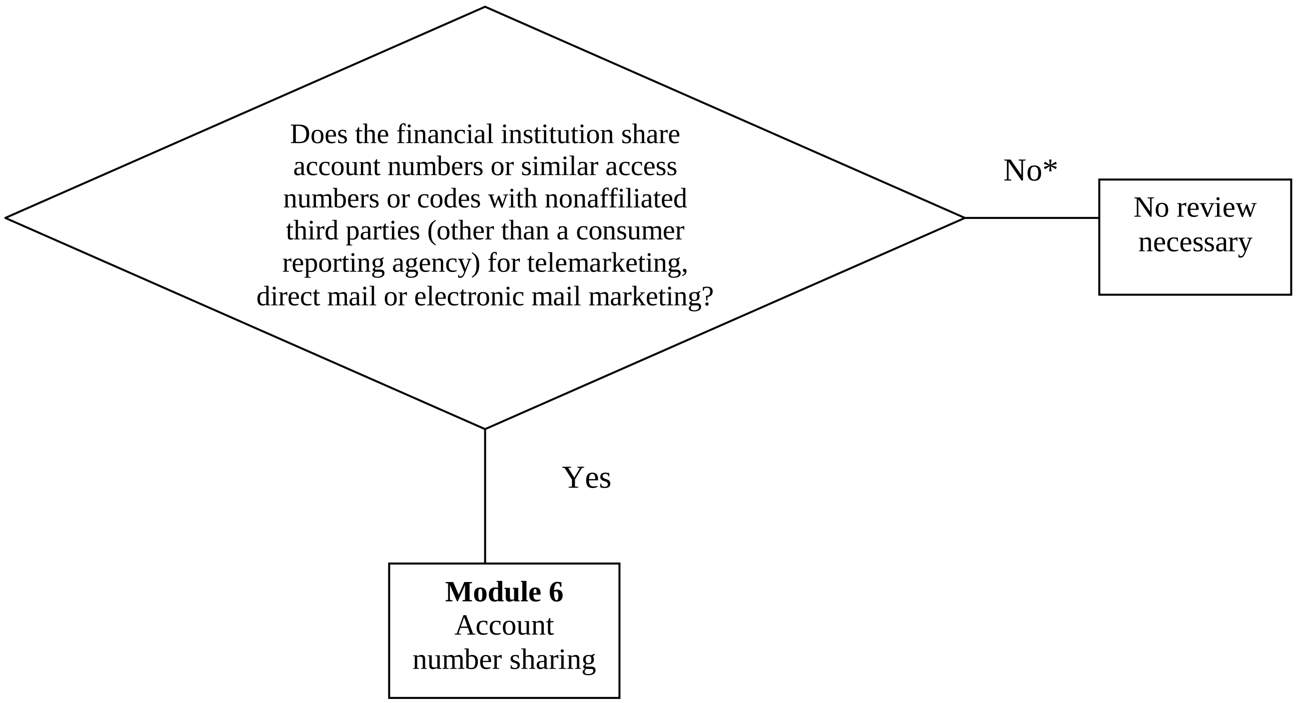


[1] These reflect FFIEC-approved procedures.

Decision Tree - Redisclosure and Reuse of Nonpublic Personal Information Received from Nonaffiliated Financial Institutions (Sections 11(A) and 11(B))



Decision Tree - Account Number Sharing (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 (12 CFR 1016.13)) or 502(e) (corresponding to Regulation P (12 CFR 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 (12 CFR 1016.6, 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 (12 CFR 1016.10).

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 (12 CFR 1016.13(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 (12 CFR 1016.3(b), 4(a), 5(a)(1), 8(a)(1));

   b. Accurately reflect the institution’s policies and practices (12 CFR 1016.4(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 (12 CFR 1016.6). 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 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:

   a. Timeliness of delivery (12 CFR 1016.4(a), 7(c), 8(a)); and

   b. Reasonableness of the method of delivery (e.g., by hand; by mail; electronically, if the consumer agrees; or as a necessary step of a transaction) (12 CFR 1016.9).

   c. For customers only, review the timeliness of delivery (12 CFR 1016.4(d), 4(e), 5(a)), means of delivery of annual notice (12 CFR 1016.9(c)), and accessibility of or ability to retain the notice (12 CFR 1016.9(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 (12 CFR 1016.3(b) and 7(a)(1));

    b. Accurately explain the right to opt out (12 CFR 1016.7(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) (12 CFR 1016.7(a)(1)); and

    d. Describe how the institution treats joint relationships, as applicable (12 CFR 1016.7(d)).

2. Through discussions with management, review of the institution’s policies, procedures, and internal controls and a sample of electronic or written records where available, determine if the institution has adequate policies, procedures, and internal controls in place to provide the opt-out notice and comply with opt-out directions of consumers (customers and those who are not customers), as appropriate. Assess the following:

    a. Timeliness of delivery (12 CFR 1016.10(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) (12 CFR 1016.9);

    c. Reasonableness of the opportunity to opt out (the time allowed to and the means by which the consumer may opt out) (12 CFR 1016.10(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 (12 CFR 1016.7(e), (f), (g)).

D. Checklist Cross References – Module 1

Regulation Section (12 CFR Part 1016)	**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	49-51

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 (12 CFR 1016.13)) or 502(e) (corresponding to Regulation P (12 CFR 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 (12 CFR 1016.13, 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 (12 CFR 1016.6, 10).

   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 (12 CFR 1016.13(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 (12 CFR 1016.3(b), 4(a), 5(a)(1));

    b. Accurately reflect the institution's policies and practices (12 CFR 1016.4(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 (12 CFR 1016.6, 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 (12 CFR 1016.4(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) (12 CFR 1016.9).

    c. For customers only, review the timeliness of delivery (12 CFR 1016.4(d), 4(e), and 5(a)), means of delivery of annual notice (12 CFR 1016.9(c)), and accessibility of or ability to retain the notice (12 CFR 1016.9(e)).

C. Checklist Cross References – Module 2

Regulation Section (12 CFR Part 1016)	**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 (12 CFR 1016.13)) or 502(e) (corresponding to Regulation P (12 CFR 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 (12 CFR 1016.3(b), 4(a), 5(a)(1));

   b. Accurately reflect the institution’s policies and practices (12 CFR 1016.4(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 (12 CFR 1016.6).

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 (12 CFR 1016.4(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) (12 CFR 1016.9) and accessibility of or ability to retain the notice (12 CFR 1016.9(e)).

C. Checklist Cross References – Module 3

Regulation Section (12 CFR Part 1016)	**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 (12 CFR 1016.11(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 (12 CFR 1016.11(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 (12 CFR 1016.11(a)(1)(iii)).

C. Checklist Cross References – Module 4

Regulation Section (12 CFR Part 1016)	**Subject**	**Checklist Question**
11(a)	Redisclosure and reuse	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 (12 CFR 1016.11(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 (12 CFR 1016.11(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 (12 CFR 1016.11(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 (12 CFR 1016.10, 11(b)(1)(iii)).

C. Checklist Cross References – Module 5

Regulation Section (12 CFR Part 1016)	**Subject**	**Checklist Question**
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 (12 CFR 1016.12(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 (12 CFR 1016.12(b)(1)).

C. Obtain a sample of materials and information provided to the consumer upon entering a private label or affinity credit card program. Determine if the participants in each program are identified to the customer when the customer enters into the program (12 CFR 1016.12(b)(2)).

D. Checklist Cross References – Module 6

Regulation Section (12 CFR Part 1016)	**Subject**	**Checklist Question**
12	Account number sharing	47

Gramm-Leach-Bliley Act (GLBA) and Its Implementing Regulation 12 CFR Part 1016

Exam Date:	[Click&type]
Exam ID No.	[Click&type]
Prepared By:	[Click&type]
Reviewer:	[Click&type]
Docket #:	[Click&type]
Entity Name:	[Click&type]

Privacy of Consumer Financial Information[1]

SUBPART A

Initial Privacy Notice

YES	NO		
		1.	Does the institution provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to <u>all customers</u> not later than when the customer relationship is established, other than as allowed in 12 CFR 1016.4(e) of the regulation? [12 CFR 1016.4(a)(1))] (*<u>Note</u>: A financial institution establishes a customer relationship when it enters into a continuing relationship with a consumer. [12 CFR 1016.4(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. [12 CFR 1016.4(c)(2)]*)
YES	NO		
		2.	Does the institution provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to <u>all consumers</u>, 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 Section 14 or Section 15 of the regulation? [12 CFR 1016.4(a)(2)] (*<u>Note</u>: 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. [12 CFR 1016.4(b)]*)
YES	NO		
		3.	Does the institution provide to <u>existing customers</u>, who obtain a new financial product or service, a revised 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? [12 CFR 1016.4(d)(1)]

[1] These reflect FFIEC-approved procedures.

YES	NO		
		4.	Does the institution provide initial notice <u>after establishing a customer relationship</u> only if: a. the customer relationship is not established at the customer's election; [12 CFR 1016.4(e)(1)(i)] or b. to do otherwise would substantially delay the customer's transaction (e.g. in the case of a telephone application), and the customer agrees to the subsequent delivery? [12 CFR 1016.4(e)(1)(ii)]
YES	NO		
		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? [12 CFR 1016.4(e)]

Annual Privacy Notice

YES	NO		
		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 customers, throughout the customer relationship unless an exception to the annual privacy notice requirement applies? [12 CFR 1016.5(a)(1) and (2)] *(<u>Note</u>: annual notices are not required for former customers. [12 CFR 1016.5(b)(1) and (2)])*
YES	NO	7.	
			Does the institution provide an annual privacy notice to each customer whose loan the institution owns the right to service unless an exception to the annual privacy notice requirement applies? [12 CFR 1016.12, .5(c), 4(c)(2)]

Content of Privacy Notices

YES	NO		
		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; [12 CFR 1016.6(a)(1)] b. the categories of nonpublic personal information that the institution discloses; [12 CFR 1016.6(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; [12 CFR 1016.6(a)(3)] 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; [12 CFR 1016.6(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; [12 CFR 1016.6(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; [12 CFR 1016.6(a)(6)] g. any disclosures that the institution makes under the Fair Credit Reporting Act (FCRA) Section 603(d)(2)(A)(iii); [12 CFR 1016.6(a)(7)] h. the institution's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; [12 CFR 1016.6(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 purposes that are applicable) to process transactions, maintain accounts, respond to court orders and legal investigations, or report to credit bureaus, or as permitted by law? [12 CFR 1016.6(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.*)*
YES	**NO**	9.	Does the institution list the following categories of nonpublic personal information that it collects, as applicable: a. information from the consumer; [12 CFR 1016.6(c)(1)(i)] b. information about the consumer's transactions with the institution or its affiliates; [12 CFR 1016.6(c)(1)(ii)] c. information about the consumer's transactions with nonaffiliated third parties; [12 CFR 1016.6(c)(1)(iii)] and d. information from a consumer reporting agency? [12 CFR 1016.6(c)(1)(iv)]
YES	**NO**	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? [12 CFR 1016.6(c)(2)] *(<u>Note</u>: examples are recommended under 12 CFR 1016.6(c)(2)(i) although not under 12 CFR 1016.6(c)(1).)*
YES	**NO**	11.	Does the institution list the following categories of affiliates and nonaffiliated third parties to whom it discloses information, as applicable, and a few examples to illustrate the types of the third parties in each category: a. financial service providers; [12 CFR 1016.6(c)(3)(i)] b. non-financial companies; [12 CFR 1016.6(c)(3)(ii)] and c. others? [12 CFR 1016.6(c)(3)(iii)]
YES	**NO**	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 12 CFR 1016.6(a)(2) and (c)(2) (see questions 8b and 10); [12 CFR 1016.6(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; [12 CFR 1016.6(c)(4)(ii)(A)] or c. that the third party is a financial institution with which the institution has a joint marketing agreement? [12 CFR 1016.6(c)(4)(ii)(B)]
YES	**NO**	13.	If the institution does not disclose nonpublic personal information, and does not reserve the right to do so, other than under exceptions in Sections 14 and 15, does the institution provide a simplified privacy notice that contains at a minimum: a. a statement to this effect; b. the categories of nonpublic personal information it collects (same as 12 CFR 1016.6(a)(1); c. the policies and practices the institution uses to protect the confidentiality and security of nonpublic personal information (same as 12 CFR 1016.6(a)(8); and d. a general statement that the institution makes disclosures to other nonaffiliated third parties as permitted by law (same as 12 CFR 1016.6(a)(9) and 12 CFR 1016.6(b)? [12 CFR 1016.6(c)(5)] *(<u>Note</u>: use of this type of simplified notice is optional; an institution may always use a full notice.)*

YES	NO		
		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; [12 CFR 1016.6(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? [12 CFR 1016.6(c)(6)(ii)] (<u>*Note*</u>*: the institution is not required to describe technical information about the safeguards used in this respect*.)
YES	NO		
		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? [12 CFR 1016.6(d)(1)]
YES	NO		
		16.	If the institution provides a short-form initial privacy notice according to 12 CFR 1016.6(d)(1), does the short-form initial notice: a. conform to the definition of "clear and conspicuous"; [12 CFR 1016.6(d)(2)(i)] b. state that the institution's full privacy notice is available upon request; [12 CFR 1016.6(d)(2)(ii)] and c. explain a reasonable means by which the consumer may obtain the notice? [12 CFR 1016.6(d)(2)(iii)] (<u>*Note*</u>*: the institution is not required to deliver the full privacy notice with the short-form initial notice. [12 CFR 1016.6(d)(3)])*
YES	NO		
		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; [12 CFR 1016.6(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? [12 CFR 1016.6(d)(4)(ii)]
YES	NO		
		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; [12 CFR 1016.6(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? [12 CFR 1016.6(e)(2)]

Opt-Out Notice

YES **NO**

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? [12 CFR 1016.7(a)(1)]

YES **NO**

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; [12 CFR 1016.7(a)(1)(i)]
    b. that the consumer has the right to opt out of that disclosure; [12 CFR 1016.7(a)(1)(ii)] and
    c. a reasonable means by which the consumer may opt out? [12 CFR 1016.7(a)(1)(iii)]

YES **NO**

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; [12 CFR 1016.7(a)(2)(i)(A)]
    b. all the categories of nonaffiliated third parties to whom the information is disclosed; [12 CFR 1016.7(a)(2)(i)(A)]
    c. that the consumer has the right to opt out of the disclosure of that information; [12 CFR 1016.7(a)(2)(i)(A)] and
    d. the financial products or services that the consumer obtains to which the opt out direction would apply? [12 CFR 1016.7(a)(2)(i)(B)]

YES **NO**

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; [12 CFR 1016.7(a)(2)(ii)(A)]
    b. a reply form included with the opt-out notice; [12 CFR 1016.7(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; [12 CFR 1016.7(a)(2)(ii)(C)] or
    d. a toll-free telephone number? [12 CFR 1016.7(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. [12 CFR 1016.7(a)(2)(iv)]*)

YES	NO		
		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? [12 CFR 1016.7(c)]
YES	NO		
		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? [12 CFR 1016.7(d)(1)]
YES	NO		
		25.	Does the institution permit each of the joint consumers in a joint relationship to opt out? [12 CFR 1016.7(d)(2)]
YES	NO		
		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; [12 CFR 1016.7(d)(2)(i)] or b. each joint consumer is permitted to opt out separately? [12 CFR 1016.7(d)(2)(ii)]
YES	NO		
		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; [12 CFR 1016.7(d)(3)] b. the joint consumers to notify the institution in a single response; [12 CFR 1016.7(d)(5)(i)] and c. each joint consumer to opt out either for himself or herself, and/or for another joint consumer? [12 CFR 1016.7(d)(5)(ii)]
YES	NO		
		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? [12 CFR 1016.7(d)(4)]
YES	NO		
		29.	Does the institution comply with a consumer's direction to opt out as soon as is reasonably practicable after receiving it? [12 CFR 1016.7(g)]
YES	NO		
		30.	Does the institution allow the consumer to opt out at any time? [12 CFR 1016.7(h)]
YES	NO		
		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? [12 CFR 1016.7(i)(1)]
YES	NO		
		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)? [12 CFR 1016.7(i)(2)]

Revised Notices

YES **NO**

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:
   a. the institution has provided the consumer with a clear and conspicuous revised notice that accurately describes the institution's privacy policies and practices; [12 CFR 1016.8(a)(1)]
   b. the institution has provided the consumer with a new opt-out notice; [12 CFR 1016.8(a)(2)]
   c. the institution has given the consumer a reasonable opportunity to opt out of the disclosure, before disclosing any information; [12 CFR 1016.8(a)(3)] and
   d. the consumer has not opted out? [12 CFR 1016.8(a)(4)]

YES **NO**

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; [12 CFR 1016.8(b)(1)(i)]
   b. discloses nonpublic personal information to a new category of nonaffiliated third party; [12 CFR 1016.8(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? [12 CFR 1016.8(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. [12 CFR 1016.8(b)(2)]*)

Delivery Methods

YES **NO**

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? [12 CFR 1016.9(a)]

YES **NO**

36. Does the institution use a reasonable means for delivering the notices, such as:
   a. hand-delivery of a printed copy; [12 CFR 1016.9(b)(1)(i)]
   b. mailing a printed copy to the last known address of the consumer; [12

			CFR 1016.9(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; [12 CFR 1016.9(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? [12 CFR 1016.9(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. [12 CFR 1016.9 (b)(2)(i) and (ii), and (d)])*
YES	**NO**	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; [12 CFR 1016.9(c)(1)(i)] or b. for the customer who has requested the institution refrain from sending any information about the customer relationship, making copies of the current privacy notice available upon customer request? [12 CFR 1016.9(c)(1)(ii)]
YES	**NO**	38.	As of October 28, 2014, 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; [12 CFR 1016.9(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); [12 CFR 1016.9(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; [12 CFR 1016.9(c)(2)(i)(C)] d. the information that the institution is required to convey on its privacy notice pursuant to 12 CFR 1016.6(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; [12 CFR 1016.9(c)(2)(i)(D)] e. the institution uses the model privacy form for its privacy notice; [12 CFR 1016.9(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; [12 CFR 1016.9(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; [12 CFR 1016.9(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? [12 CFR 1016.9(c)(2)(ii)(C)]
YES	**NO**	39.	As of December 4, 2015, for annual privacy notices only, if the institution does not provide an annual privacy notice (or provides one, but not using a compliant delivery method), does the institution meet both of the following criteria: a. the institution solely shares nonpublic personal information in accordance with the provisions of GLBA Sections 502(b)(2) (corresponding to Regulation P (12 CFR 1016.13)) or 502(e) (corresponding to Regulation P (12 CFR 1016.14 and .15)) or regulations prescribed under GLBA Section 504(b); and b. the institution has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with GLBA Section 503?
YES	**NO**	40.	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? [12 CFR 1016.9(e)(1)]
YES	**NO**	41.	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; [12 CFR 1016.9(e)(2)(i)] b. mailing a printed copy to the last known address of the customer; [12

YES	NO		
			CFR 1016.9(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? [12 CFR 1016.9(e)(2)(iii)]
YES	NO	42.	Does the institution provide at least one initial, annual, and revised notice, as applicable, to joint consumers? [12 CFR 1016.9(g)]

SUBPART B

Limits on Disclosure to Nonaffiliated Third Parties

YES	NO		
		43.	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; [12 CFR 1016.10(a)(1)(i)] b. it has provided the consumer with an opt-out notice; [12 CFR 1016.10(a)(1)(ii)] c. it has given the consumer a reasonable opportunity to opt out before the disclosure; [12 CFR 1016.10(a)(1)(iii)] and d. the consumer has not opted out? [12 CFR 1016.10(a)(1)(iv)] *(Note: this disclosure limitation applies to consumers as well as to customers [12 CFR 1016.10(b)(1)], and to all nonpublic personal information regardless of whether the information was collected before or after receiving an opt-out direction. [12 CFR 1016.10(b)(2)])*
YES	NO	44.	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; [12 CFR 1016.10(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; [12 CFR 1016.10(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? [12 CFR 1016.10(a)(3)(iii)]

YES	NO		
		45.	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? [12 CFR 1016.10(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 Information

YES	NO		
		46.	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; [12 CFR 1016.11(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; [12 CFR 1016.11(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? [12 CFR 1016.11(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. [12 CFR 1016.11(a)(2)])*
YES	NO		
		47.	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; [12 CFR 1016.11(b)(1)(i)] b. to its own affiliates, which are in turn limited by the same disclosure restrictions as the recipient institution; [12 CFR 1016.11(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? [12 CFR 1016.11(b)(1)(iii)]

Limits on Sharing Account Number Information for Marketing Purposes

YES	NO		
		48.	Does the institution refrain from disclosing, directly or through affiliates, account numbers or similar forms of access numbers or access codes for a consumer's credit card account, deposit account, or transaction account to

any nonaffiliated third party (other than to a consumer reporting agency) for telemarketing, direct mail or electronic mail marketing to the consumer, except:

a. to the institution's agents or service providers solely to market the institution's own products or services, as long as the agent or service provider is not authorized to directly initiate charges to the account; [12 CFR 1016.12(b)(1)] or
b. to a participant in a private label credit card program or an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program? [12 CFR 1016.12(b)(2)]

(Note: an "account number or similar form of access number or access code" does not include numbers in encrypted form, so long as the institution does not provide the recipient with a means of decryption. [12 CFR 1016.12(c)(1)] A transaction account does not include an account to which third parties cannot initiate charges. [12 CFR 1016.12(c)(2)])

SUBPART C

Exception to Opt-Out Requirements for Service Providers and Joint Marketing

YES	NO		
		49.	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 Sections 7 and 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 12 CFR 1016.13(b)); [12 CFR 1016.13(a)(1)] b. the institution has provided consumers with the initial notice; [12 CFR 1016.13(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? [12 CFR 1016.13(a)(1)(ii)]

Exceptions to Notice and Opt-Out Requirements for Processing and Servicing Transactions

YES	NO		
		50.	If the institution discloses nonpublic personal information to nonaffiliated third parties, do the requirements for initial notice in 12 CFR

YES	NO		
			1016.4(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; [12 CFR 1016.14(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 [12 CFR 1016.14(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? [12 CFR 1016.14(a)(3)]
		51.	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; [12 CFR 1016.14(b)(1)] or b. required, or is a usual, appropriate, or acceptable method, to:[12 CFR 1016.14(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; [12 CFR 1016.14(b)(2)(i)] ii. administer or service benefits or claims; [12 CFR 1016.14(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; [12 CFR 1016.14(b)(2)(iii)] iv. accrue or recognize incentives or bonuses; [12 CFR 1016.14(b)(2)(iv)] v. underwrite insurance or for reinsurance or for certain other purposes related to a consumer's insurance; [12 CFR 1016.14(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; [12 CFR 1016.14(b)(2)(vi)(A)]

			(2) the transfer of receivables, accounts or interests therein; [12 CFR 1016.14(b)(2)(vi)(B)] or (3) the audit of debit, credit, or other payment information? [12 CFR 1016.14(b)(2)(vi)(C)]

Other Exceptions to Notice and Opt-Out Requirements

YES	NO		
		52.	If the institution discloses nonpublic personal information to nonaffiliated third parties, do the requirements for initial notice in 12 CFR 1016.4(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; [12 CFR 1016.15(a)(1)] b. to protect the confidentiality or security of records, [12 CFR 1016.15(a)(2)(i)]; to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability, [12 CFR 1016.15(a)(2)(ii)]; for required institutional risk control or for resolving consumer disputes or inquiries, [12 CFR 1016.15(a)(2)(iii)]; to persons holding a legal or beneficial interest relating to the consumer, [12 CFR 1016.15(a)(2)(iv)]; or to persons acting in a fiduciary or representative capacity on behalf of the consumer; [12 CFR 1016.15(a)(2)(v)] c. to insurance rate advisory organizations, guaranty funds or agencies, agencies rating the institution, persons assessing compliance, and the institution's attorneys, accountants, and auditors; [12 CFR 1016.15(a)(3)] 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; [12 CFR 1016.15(a)(4)] e. to a consumer reporting agency in accordance with the FCRA or from a consumer report reported by a consumer reporting agency; [12 CFR 1016.15(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; [12 CFR 1016.15(a)(6)] g. to comply with Federal, state, or local laws, rules, or legal requirements; [12 CFR 1016.15(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; [12 CFR 1016.15(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? [12 CFR 1016.15(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.")*

Regulation X

Real Estate Settlement Procedures Act

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 of 2010, 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

[1] Pub. L. 104-208, Div. A., Title II § 2103 (c), September 30, 1996.
[2] 15 U.S.C. 7001 *et seq*.

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.

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.

[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).

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:

[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.

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;
    - Loans made and intended to be sold by the originating lender or creditor to the 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)).

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[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.

[8] FNMA – Federal National Mortgage Association; GNMA - Government National Mortgage Association; FHLMC – Federal Home Loan Mortgage Corporation.

- 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

[9] 12 CFR 1024.5(b)(6).

- 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 that 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, 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[10] (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.

[10] Open-end reverse mortgages receive open-end disclosures, rather than GFEs or HUD-1s.

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.)

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.

[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.

- 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 than 10 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 two 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.

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

[13] 73 Fed. Reg. 68204, 68232 (November 17, 2008).

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 preceding 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
- The estimated charge or range of charges generally made by such provider.

[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).

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 1024.39-1024.41 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.

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[15] *See also* the 2016 FDCPA Interpretive Rule (81 Fed. Reg. 71977, 71979).

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]

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.

[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 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*.

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 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 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);

[19] CFPB Bulletin 2013-12.

- 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.

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]

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[20] CFPB Bulletin 2013-12.

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 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;
- 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;

[21] CFPB Bulletin 2013-12.

- 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.

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*.[22]

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.

1. *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.

    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.

[22] 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.

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*).

2. *Properly evaluating loss mitigation applications*. The servicer's policies and procedures must be reasonably designed to ensure that the servicer can:

- Provide accurate information regarding loss mitigation options available to the borrower from the owner or assignee of the borrower's loan.
- 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.

- 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.
- 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).
- 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.
- 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).

3. *Facilitating oversight of, and compliance by, service providers*. The servicer's policies and procedures must be reasonably designed to ensure that the servicer can:

- Provide appropriate personnel with access to accurate and current documents and information concerning service providers' actions.
- Facilitate periodic reviews of service providers.
- 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).

4. *Facilitating transfer of information during servicing transfers*.

- *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.

- *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.

5. *Informing borrowers of the written error resolution and information request procedures*.

- 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.

- 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.

- 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.[23]

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.[24] 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.[25] 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.[26]

[23] *See* Interim Final Rule, 82 Fed. Reg. 47953, 47957-58 (October 16, 2017).
[24] Comment 39(d)-2. *See also* 2016 FDCPA Interpretive Rule (81 Fed. Reg. 71977, 71979-80).
[25] Comment 39(d)-2. *See also* 2016 FDCPA Interpretive Rule (81 Fed. Reg. 71977, 71980-81).
[26] *See* 15 U.S.C. §§ 1692c through 1692f.

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 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*.

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 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.[27] 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 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

[27] *See* 2016 FDCPA Interpretive Rule (81 Fed. Reg. 71977, 71980-81). *See also* Comment 39(d)-2.

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[28] 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.

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

[28] *See* Comment 41(b)(1)-4 for examples of what constitutes reasonable diligence.

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.

1. *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.

2. *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).

3. *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.

REFERENCES

Laws

12 U.S.C. 2601 *et seq*. Real Estate Settlement Procedures Act (RESPA)

Regulations

Consumer Financial Protection Bureau Regulation 12 CFR Part 1024, Real Estate Settlement Procedures Act (Regulation X)

Real Estate Settlement Procedures Act

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

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 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 TILA (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.[1] In addition to the information provided in this 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

[1] 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 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)).

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

- o 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:
  - o 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
  - o 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);[2] (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:

    - 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;

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[2] 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).

- 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),[3] (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

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[3] 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).

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.

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),[4] (ii) reverse mortgage transactions, as that term is defined

[4] 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

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

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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).

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),[5] (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)). 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

[5] 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).

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:

- o 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).
- o 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)).
- o 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 five 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)).
  - o 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)).
  - o 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:
    - o Which loss mitigation options (if any) the institution would offer the borrower,
    - o The amount of time the borrower has to accept or reject an offered loss mitigation option pursuant to 12 CFR 1024.41(e), and
    - o 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:

- o 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;
- o The application was not complete or facially complete more than 37 days before a foreclosure sale; or
- o 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).

Secure and Fair Enforcement for Mortgage Licensing Act[1]

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008[2] (SAFE Act) was enacted on July 30, 2008, and mandates a nationwide licensing and registration system for residential mortgage loan originators (MLOs).[3]

The SAFE Act prohibits individuals from engaging in the business of a residential mortgage loan originator without first obtaining and maintaining annually:

- For individuals who are employees of covered financial institution, registration as a registered mortgage loan originator and a unique identifier (federal registration), or

- For all other individuals, a state license and registration as a state-licensed mortgage loan originator, and a unique identifier (state licensing/registration).

The SAFE Act requires that federal registration and state licensing and 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]

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[1] These reflect FFIEC-approved procedures.

[2] See 12 U.S.C. Sec. 5101–5116, Title V of the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289, 122 Stat. 2654, 12 U.S.C. 5101 et seq.) 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).

[3] 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), Office of Thrift Supervision (OTS), 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.

[4] SAFE Act Sec. 1502.

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 the institutions they supervise and the institutions' MLO employees (SAFE Act regulation).[5]

On July 21, 2011, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) transferred rule-making authority for the SAFE Act from the Agencies to the Consumer Financial Protection Bureau (CFPB).[6] On December 19, 2011, the CFPB restated the implementing SAFE Act regulations to 12 CFR 1007 (76 Federal Register 78483), establishing a new Regulation G, SAFE Mortgage Licensing Act–Federal Registration of Residential Mortgage Loan Originators.[7]

These examination procedures lay out the background and requirements of the SAFE Act and the SAFE Act regulation concerning federal registration.

Definitions – 12 CFR 1007.102

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 or agency of a foreign bank, member bank, insured state non-member 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

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[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). CFPB's SAFE Act regulations for federally regulated institutions subject to its supervisory responsibilities are at 12 CFR Part 1007, followed by its rule for State compliance and Bureau registration at 12 CFR Part 1008. 76 Fed. Reg. 78483 (Dec. 19, 2011).

[6] On July 21, 2011, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), the CFPB assumed: (1) responsibility for developing and maintaining the federal registration system (including rule-making authority), (2) supervisory and enforcement authority for SAFE Act compliance for entities under the CFPB's jurisdiction, and (3) authority to oversee state compliance with SAFE Act requirements that had previously been under HUD's authority. Refer to Dodd-Frank Act Secs. 1025, 1061, and 1100. In addition, the Dodd-Frank Act merged functions of the OTS into the OCC, FDIC, and Board.

[7] The SAFE Act also 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, and HUD issued rules setting minimum standards for state licensing and registration. 76 Fed. Reg. 38464 (June 30, 2011). The Dodd-Frank Act transferred that authority from HUD to the CFPB. The CFPB thereafter published Regulation H, SAFE Mortgage Licensing Act – State Compliance and Bureau Registration System, 12 CFR Part 1008, based on HUD's regulation. 76 Fed. Reg. 78483, Dec. 19, 2011. These examination procedures do not cover the state registration requirements.

Credit System institution; or federally insured credit union, including certain non-federally insured credit unions.[8]

Employee is not defined in the SAFE Act or SAFE Act regulation. However, the 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. 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 U.S.C. 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 time-share plans, as that term is defined in 11 U.S.C. 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 MLOs for federal registration purposes.

Registry means the Nationwide Mortgage Licensing System and Registry, or NMLS system, 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.[10]

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[8] 12 CFR Secs. 1007.101(c), 1007.102.

[9] See 75 Fed. Reg. at 44664 for a discussion of the meaning of "employee" as used in the SAFE Act regulation. Covered financial institutions that are credit unions sometimes rely upon volunteers to originate mortgage loans. The right-to-control test under the common law agency doctrine likewise applies to these credit unions. Credit union management establishes the policies, procedures, and practices that volunteers use in performing their functions. Therefore, these volunteers qualify as employees of the covered financial institution for purposes of the SAFE Act regulation.

[10] See the Nationwide Mortgage and Licensing System and Registry website 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.

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 U.S.C. 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 – 12 CFR 1007.101(c)(2)

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 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 – 12 CFR 1007.103

Each MLO employee of a covered financial institution must register with the Registry,[11] obtain a "unique identifier," maintain the registration by updating certain information within 30 days of specified changes, and annually renew the registration during the annual renewal period.

[11] 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.

Initial Registration – 12 CFR 1007.103(a)

Each employee of a federally regulated institution who is an MLO must submit to the Registry the following:

- 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 – 12 CFR 1007.103(b)

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.

Financial Institution Requirements for MLO Registration, Renewal, and Changes to Information – 12 CFR 1007.103(e)

Required Financial Institution Information – 12 CFR 1007.103(e)(1)(i)

In connection with the registration of one or more MLOs, financial institutions and certain of their subsidiaries must submit certain required information to the Registry:

- 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 – 12 CFR 1007.103(e)(1)(ii)

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.[12]

[12] An 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.

Registration – 12 CFR 1007.104(b)

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.

Renewal and Updates – 12 CFR 1007.103(e)(1)(iii) and (iv)

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.

An institution must update the required institution information provided to the Registry within 30 days of any change in such information.

Policies and Procedures – 12 CFR 1007.104

Covered financial institutions that have one or more MLO employees must adopt and follow written policies and procedures to carry out their SAFE Act responsibilities.[13] 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;

[13] The Registry and the Agencies do not screen or approve registrations received from employees of Agency-related institutions.

- 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[14] and implementing regulations with respect to the reports, and maintaining records of the reports and actions taken with respect to applicable employees;[15] 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.[16]

Unique Identifier – 12 CFR 1007.105

When an MLO registers with the Registry, he or she receives a unique identifier — a series of numeric characters assigned for life. 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

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[14] Including Sec. 19 of the Federal Deposit Insurance Act (FDI Act); (12 U.S.C. 1829); Sec. 5.65(d) of the Farm Credit Act of 1971 (12 U.S.C. 2277a-14(d)); or Sec. 206 of the Federal Credit Union Act (12 U.S.C. 1786(i)).

[15] Sec. 19 of the FDI Act (12 U.S.C. 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 May 10, 2011), available at: http://www.fdic.gov/regulations/laws/rules/5000-1300.html.

[16] See FFIEC *Statement on Risk Management of Outsourced Technology Service* (November 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).

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 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 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 website;
- 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 depository institutions to establish and maintain procedures reasonably designed to assure and monitor compliance with the SAFE Act's federal registration requirements.[17]

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.[18] The GSEs announced that for federally regulated institutions, the unique identifier information is required for all applications on or after July 29, 2011.[19]

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.[20] The mortgagee letter also requires all FHA-approved mortgagees

[17] 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).

[18] See the FHFA news release at http://www.fhfa.gov/webfiles/400/LoanOrigIDS11509.pdf.

[19] 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.

[20] See Mortgagee Letter 2011-4 at http://portal.hud.gov/hudportal/documents/huddoc?id=11-04ml.pdf.

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.

REFERENCES

Laws

12 U.S.C. 5101 *et seq*.	Secure and Fair Enforcement for Mortgage Licensing Act of 2008, amended by the Dodd-Frank Act, Section 1100

Regulations

Consumer Financial Protection Bureau Regulations (12 CFR)

Part 1007	Secure and Fair Enforcement for Mortgage Licensing Act: Federal Registration of Residential Mortgage Loan Originators (Regulation G)
Part 1008	State Compliance and Bureau Registration System (Regulation H)

Secure and Fair Enforcement for Mortgage Licensing Act[1]

Examination Objectives

- To determine whether the 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

1. Determine whether the financial institution, or any of its subsidiaries, has one or more MLO employees. For those institutions without any MLO employees, these examination procedures do not need to be completed. (12 CFR 1007.103(a)(2))

   [Click&Type]

2. Determine for those 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)

   [Click&Type]

3. Review the 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 financial institution are required to be registered MLOs; (12 CFR 1007.104(a))

      [Click&Type]

   b. Require that all employees of the 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))

      [Click&Type]

[1] These reflect FFIEC-approved procedures.

c. Establish procedures to comply with the unique identifier requirements in Section 105 of the SAFE Act regulation; (12 CFR 1007.104(c))

[Click&Type]

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))

[Click&Type]

e. Establish procedures and tracking systems for monitoring compliance with registration and renewal requirements and procedures; (12 CFR 1007.104(e))

[Click&Type]

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))

[Click&Type]

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 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))

[Click&Type]

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 U.S.C. Section 1829) and implementing regulations with respect to these reports, and maintaining records of these reports and actions taken with respect to applicable employees; and (12 CFR 1007.104(h))

[Click&Type]

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))

[Click&Type]

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.

[Click&Type]

Table of Contents

Truth in Lending Act[1]

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). TILA, implemented by Regulation Z (12 CFR 1026), became effective July 1, 1969.

TILA was first amended in 1970 to prohibit unsolicited credit cards. Additional major amendments to 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 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 Board of Governors of the Federal Reserve System (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 TILA. Specifically, the revisions limit lenders' liability for disclosure errors in real estate secured loans consummated after September 30, 1995. The Economic Growth and Regulatory Paperwork Reduction Act of 1996 further amended TILA. The amendments were made to simplify and improve disclosures related to credit transactions.

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

[1] These procedures reflect changes to TILA and Regulation Z through May 2018, including applicable provisions of the Economic Growth, Regulatory Relief, and Consumer Protection Act, P.L 115-174 (May 24, 2018) that do not require rulemaking to be effective.

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 (OTS) and the National Credit Union Administration (NCUA)), which 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 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 of the Credit CARD Act, the Board, the NCUA, and the 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 reevaluation 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 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 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 TILA to the Consumer Financial Protection Bureau (CFPB or Bureau). Title XIV of the Dodd-Frank Act included a number of amendments to 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 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 temporary cure mechanism for the points and fees limit that applies to qualified mortgages, with a sunset date of January 10, 2021. The final rule was effective on November 3, 2014, except for one provision that became 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 Bureau by the Helping Expand Lending Practices

[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).

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 Bureau 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 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 (the TILA-RESPA Integrated Disclosure (TRID) Rule). 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.

In 2017, the Bureau amended and clarified several provisions of Regulation Z[6], including creating tolerances for the total of payments disclosure, amending and clarifying the application of the good faith standard under 12 CFR 1026.19(e)(3) and related tolerances, and clarifying disclosure provisions related to construction loans. Mandatory compliance with most provisions of the amended rule began on October 1, 2018. In 2018, the Bureau further amended the rule to

[4] 81 FR 16074 (March 25, 2016).

[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.

[6] 82 Fed. Reg. 37656 (August 11, 2017)

address when Closing Disclosures may be used to reset tolerances[7]. These provisions became effective June 1, 2018. On August 4, 2016, the CFPB issued a final rule to further clarify, revise, and amend provisions of Regulation Z and Regulation X[8]. 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 in 12 CFR 1026.2(a)(27), and provides that a confirmed successor in interest is a "consumer" for purposes of the mortgage servicing provisions in Regulation Z (12 CFR 1026.2(a)(11)).[9] 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 took effect on October 19, 2017, except the provisions related to successors in interest and periodic statements for consumers in bankruptcy, which took 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 FDCPA and specified mortgage servicing rules in Regulations X and Z.[10] This 2016 FDCPA Interpretive Rule constitutes an advisory opinion for purposes of FDCPA and provides safe harbors from liability for servicers acting in compliance with it.

In 2018, the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA)[11] amended several provisions of TILA, including: (1) the addition of a new qualified mortgage category for portfolio mortgages of certain insured depository institutions and insured credit

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[7] 83 Fed. Reg. 19159 (May 2, 2018).

[8] 81 Fed. Reg. 72160 (October 19, 2016).

[9] The 2016 Servicing Rule included 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 changed several sections of the Official Interpretations of Regulation X, published in commentary.

[10] *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). The interpretations 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.

[11] These procedures do not contain references to other EGRRCPA amendments that require rulemakings to be effective. Those provisions relate to exemptions for certain creditors from certain mortgage escrow requirements and to Property Assessed Clean Energy (PACE) financing.

unions with under $10 billion in assets; (2) modification of the waiting period requirements for high-cost mortgage loan consummation under certain conditions; (3) clarification of "customary and reasonable" as they pertain to fee appraisers who voluntarily donate appraisal services to certain charitable organizations; and (4) student loan protections in the event of bankruptcy or death of the student or non-student obligor. The EGRRCPA also amended TILA to modify an exemption for manufactured or modular home retailers and their employees from loan originator compensation requirements when specific conditions are met, and amended the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) regarding employment transition of certain loan originators. These provisions were generally effective on May 24, 2018, except for the student loan protections, which became effective on November 24, 2018, and the SAFE Act changes, which became effective on November 24, 2019. On November 16, 2019, the Bureau issued an interpretive rule on the SAFE Act changes, with an effective date of November 24, 2019.[12]

In 2020 and 2021, the Bureau issued four final rules amending the qualified mortgage (also referred to as QM) provisions of Regulation Z. The first final rule extended the January 10, 2021 sunset date of a temporary qualified mortgage definition for certain loans eligible for purchase or guarantee by the Government Sponsored Enterprises (GSEs) until the mandatory compliance date of final amendments to the general qualified mortgage definition.[13] The second final rule (the General QM Final Rule) amended the general qualified mortgage definition, primarily by replacing its 43 percent debt-to-income ratio limit with a limit based on the loan's pricing.[14] The third final rule (the Seasoned QM Final Rule) created a new category of qualified mortgages—known as "seasoned qualified mortgages"—for first-lien, fixed-rate covered transactions that have met certain performance requirements over a seasoning period of at least 36 months, are held in portfolio by the originating creditor or first purchaser until the end of the seasoning period, comply with general restrictions on product features and points and fees, and meet certain underwriting requirements.[15] The fourth final rule extended the mandatory compliance date of the General QM Final Rule until October 1, 2022.[16] As a result of the fourth final rule, the temporary qualified mortgage definition, commonly known as the GSE Patch, will expire on October 1, 2022 or the date the applicable GSE exits conservatorship, whichever comes first.[17]

12 Truth in Lending (Regulation Z); Screening and Training Requirements for Mortgage Loan Originators with Temporary Authority, 84 Fed. Reg. 63791 (November 19, 2019).

13 85 Fed. Reg. 67938 (October 26, 2020).

14 85 Fed. Reg. 86308 (December 29, 2020).

15 85 Fed. Reg. 86402 (December 29, 2020).

16 86 Fed. Reg. 22844 (April 30, 2021).

17 The practical availability of the GSE Patch may be affected by policies or agreements created by parties other than the Bureau, such as the Preferred Stock Purchase Agreements (PSPAs), which include restrictions on GSE purchases that rely on the GSE Patch definition after July 1, 2021.

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 CFR 1026.24).

Subpart D (12 CFR 1026.25 through 1026.30) contains 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) 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 certain closed-end transactions secured by real property, or a cooperative unit, as required by 12 CFR 1026.19(e) and (f), 12 CFR 1026.37-38, disclosures for mortgage transfers (12 CFR 1026.39), and disclosure requirements for periodic statements for residential mortgage loans (12 CFR 1026.41). In addition, it contains minimum standards for transactions secured by a dwelling, including 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 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 TILA.

Truth in Lending Act Narrative

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

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, TILA:

- 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 and certain closed-end home mortgages;
- Provides minimum standards for most dwelling-secured loans; and
- Delineates and prohibits unfair or deceptive mortgage lending practices.

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 is subject to Truth in Lending disclosures or 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, a legal separation agreement, or 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)

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)).

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.

Further, a servicer that is debt collector under FDCPA with respect to a mortgage loan does not violate the prohibition in FDCPA Section 805(b) 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).[18]

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);

  NOTE: Credit extended to trusts established for tax or estate planning purposes or to land trusts is considered to be extended to a natural person for purposes of the definition of "consumer" (12 CFR 1026.2(a)(11), Comment 2(a)(11)-3).

[18] *See also* the 2016 FDCPA Interpretive Rule (81 Fed. Reg. 71977, 71979).

- 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;[19]
- Public utility credit;
- Credit extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission, 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

[19] 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).

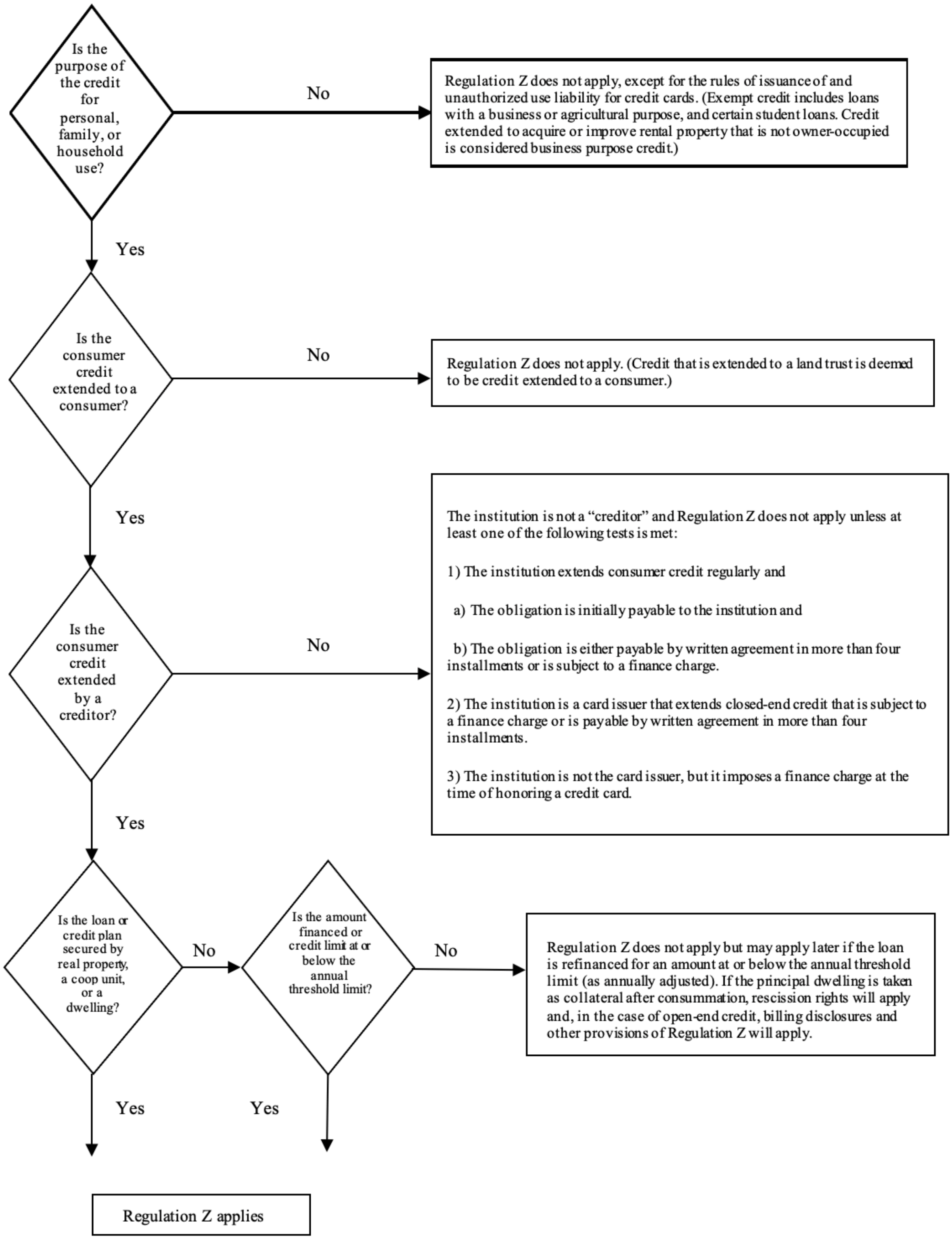
does not work for that company would indicate a personal investment and a consumer purpose.

- 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 million 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.

Creditors must consider all five factors before determining that disclosures are not necessary. Normally, no one factor by itself is sufficient reason to determine the applicability of Regulation Z. In any event, the financial institution may routinely furnish disclosures to the consumer. Disclosure under such circumstances does not control whether the transaction is covered but can assure protection to the financial institution and compliance with the law.

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 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) and (h)

Regulation Z provides finance charge tolerances for legal accuracy that should not be confused with those provided in TILA for reimbursement under regulatory agency orders. As with disclosed APRs, if a disclosed finance charge were legally accurate, it would not be subject to reimbursement.

Under TILA and Regulation Z, finance charge disclosures for open-end credit must be accurate since there is no tolerance for finance charge errors. However, both TILA and Regulation Z permit various finance charge accuracy tolerances for closed-end credit.

Tolerances for the finance charge in a closed-end transaction, 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 (12 CFR 1026.18(d)(2)). For transactions that are subject to 12 CFR 1026.19(e) and (f) (i.e., transactions subject to the TILA-RESPA Integrated Disclosure Rule), the tolerances applicable to finance charges are also applicable to the total of payments disclosure. 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) (12 CFR 1026.18(d)(1)):
  - 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) (12 CFR 1026.23(g)):
  - Tolerances for accuracy, General Rule – One-half of 1 percent tolerance:
    - The disclosed finance charge is considered accurate if it is not understated by more than one-half of 1 percent of the face amount of the note or $100, whichever is greater.
    - The total of payments for transactions subject to 12 CFR 1026.19(e) and (f) is considered accurate for purposes of this section if it is understated by no more than one-half of 1 percent of the face amount of the note or $100, whichever is greater.
    - The disclosed finance charge and the total payments are considered accurate if the amount disclosed was greater than the amount required to be disclosed (i.e., the amount disclosed overstated the actual finance charge or total of payments).
  - Tolerances for accuracy, Refinancings – One percent tolerance, for the initial and subsequent refinancings of residential mortgage transactions when the new loan is made at a different financial institution. (Excludes high-cost mortgage loans subject to 12 CFR 1026.32, transactions in which there are new advances, and new consolidations.):
    - The disclosed finance charge is considered accurate if it is not understated by more than 1 percent of the face amount of the note or $100, whichever is greater,
    - The total of payments for transactions subject to 12 CFR 1026.19(e) and (f) is considered accurate for purposes of this section if it is understated by no more than 1 percent of the face amount of the note or $100, whichever is greater.
    - The disclosed finance charge and the total of payments (for transactions subject to 12 CFR 1026.19(e) and (f)) are considered accurate if the amount disclosed was greater than the amount required to be disclosed (i.e., the amount disclosed overstated the actual finance charge or total of payments).
- Rescission rights in foreclosure (12 CFR 1026.23(h)):

- o Right to rescind. After the initiation of foreclosure on the consumer's principal dwelling that secures the obligation, the consumer can rescind if:
    - A mortgage broker fee that should have been included in the finance charge was not included; or
    - The creditor did not provide the properly completed appropriate model form in Appendix H, or a substantially similar notice of rescission.
- o Tolerance for disclosures. After the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation:
    - The disclosed finance charge is considered accurate if it is understated by no more than $35.
    - The total of payments for transactions subject to 12 CFR 1026.19(e) and (f) is considered accurate for purposes of this section if it is understated by no more than $35.
    - The disclosed finance charge and the total of payments (for transactions subject to 12 CFR 1026.19(e) and (f)) are considered accurate if the amount disclosed was greater than the amount required to be disclosed (i.e., the amount disclosed overstated the actual finance charge or total of payments)

NOTES:

- 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.
- Tolerances for the total of payments disclosure as discussed in 12 CFR 1026.38(o)(1) are similar to the tolerances applicable to the finance charge. Special tolerances apply to the disclosure of the total of payments for purposes of the right of rescission, for transactions subject to 12 CFR 1026.19(e) and (f). (12 CFR 1026.23(g)(1)(ii), (g)(2)(ii)).
- *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" charts within this document briefly summarize the rules that must be considered under (12 CFR 1026.4).

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.

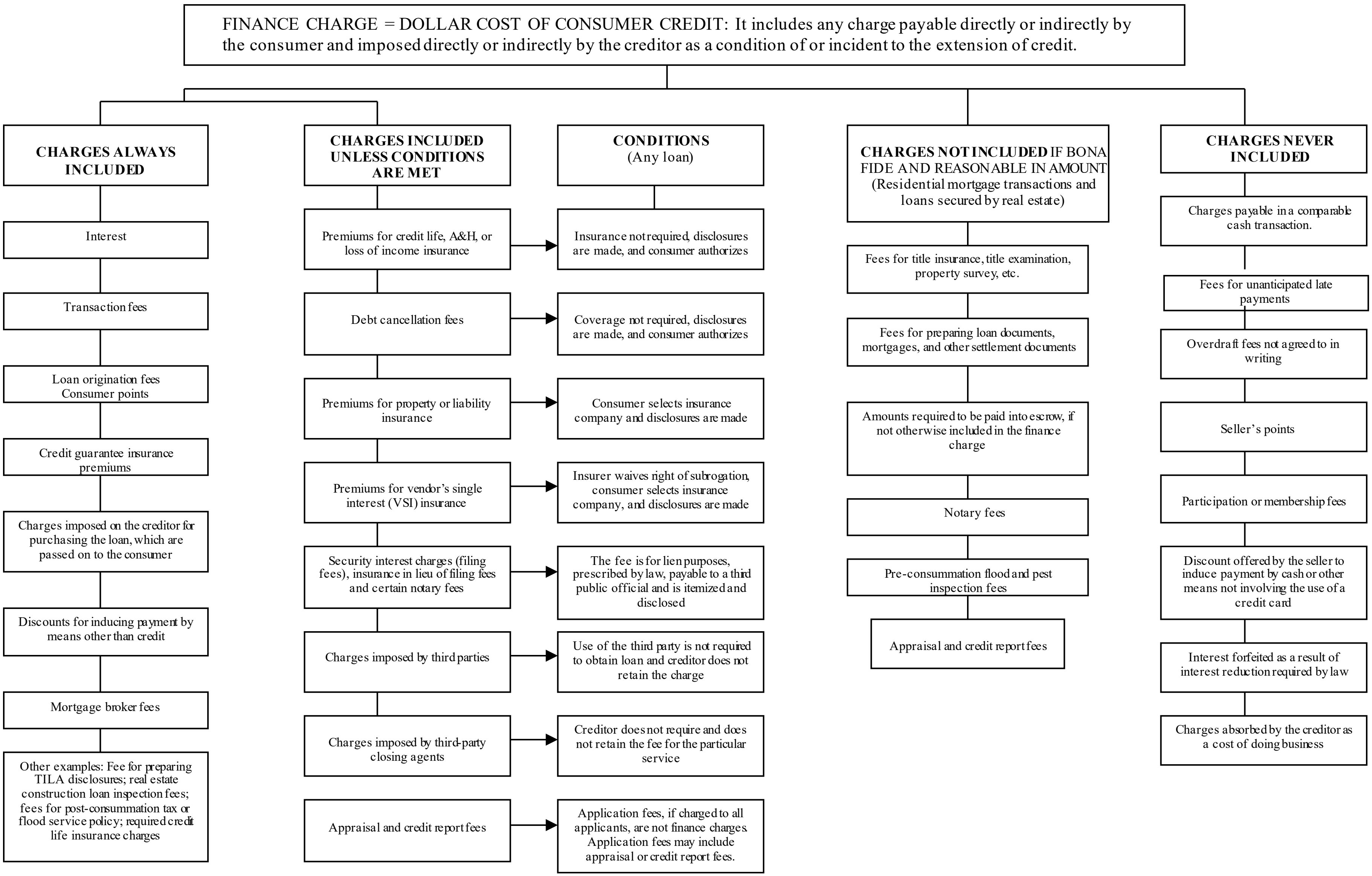
Prepaid finance charges effectively reduce the amount of funds available for the consumer's use, usually before or at the time the transaction is consummated.

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.

Finance Charge Chart



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).

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 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 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 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 (12 CFR 1026.22).

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 (15 U.S.C. 1640(c)). 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) & 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

There are three common methods to determine the balance to which the periodic rate is applied: 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 (12 CFR 1026.6(a)(1)). 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).[20] 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)).

[20] 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).

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

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[21]) x 12 = APR[22]

   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[23]) x 12 = APR[24]

   D. APR when the finance charge imposed during the billing cycle includes a minimum or fixed charge that does not exceed 50 cents for a monthly or longer billing cycle (or pro rata part of 50 cents for a billing cycle shorter than monthly) (12 CFR 1026.14(c)(4)).

      1. Monthly rate x 12 = APR

[21] For the following formulas, the APR cannot be determined if the applicable balance is zero. (12 CFR 1026.14(c)(2))

[22] 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.

[23] 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.

[24] 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.

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

- 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 or a cooperative unit, other than a reverse mortgage subject to 12 CFR 1026.33. 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.

I. Disclosures, Generally

A. 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 or a cooperative unit, other than a reverse mortgage subject to 12 CFR 1026.33 (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 TIL 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).

B. Basis for Disclosures

1. 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.

II. Finance Charge, Amount Financed and APRs

A. Finance Charge – 12 CFR 1026.18(d), 1026.38(o)(2)

The total amount of the finance charge must be disclosed for all loans.

In a transaction secured by real property or a dwelling, the disclosed finance charge and other disclosures affected by the disclosed finance charge (including the amount financed and the annual percentage rate) must be treated as accurate if the amount disclosed as the finance charge (1) is understated by no more than $100 or (2) is greater than the amount required to be disclosed.

B. Amount Financed – 12 CFR 1026.18(b), 1026.18(c), 1026.38(o)(3)

1. 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. 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).

2. **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.

C. 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.

D. Annual Percentage Rate (Closed-End Credit) – 12 CFR 1026.22

1. 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 19th-century U.S. 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.

2. 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 one 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 one 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 one percentage point for regular transactions or one-quarter of one percentage point for irregular transactions **or if**:

  i. 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)).

ii. 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 one-fourth of one 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.

3. Construction-Only and Construction-Permanent Loans – 12 CFR 1026.17(c) ((6), 12 CFR 1026.37 & .38, and Appendix D

Due to the structure of construction-permanent and certain other multiple-advance loans, Regulation Z includes certain optional provisions to help a creditor estimate the components of the APR and finance charge computations for these loans. 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 based on the best information reasonably available at the time of disclosure (12 CFR 1026.17(c)(2)(i)). Further, a creditor has optionality as to whether it discloses the advances separate or together as one transaction in certain circumstances. First, a series of advances under an agreement to extend credit up to a certain amount may be considered as one transaction or disclosed as separate transactions (12 CFR 1026.17(c)(6)(i)). Second, when a multiple-advance loan to finance the construction of a dwelling may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction (12 CFR 1026.17(c)(6)(ii)). Because construction loans or construction-permanent loans may be disclosed as one transaction, or as multiple transactions, computations can be impacted by this decision.

If the actual schedule of advances is not known, the methods set forth in Appendix D may be used to estimate the interest portion of the finance charge and the annual percentage rate and to make disclosures (12 CFR Part 1026 App. D).

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 (and its associated commentary) to make calculations and disclosures. The finance charge and payment schedule obtained through Appendix D may be used with volume one of the Bureau'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.

Interest Reserves

In a multiple-advance construction loan, a creditor may establish an "interest reserve" to ensure that interest is paid as it accrues by designating a portion of the loan amount for that interest payment purpose. If the creditor requires interest reserves for construction loans, Appendix D provides further guidance. Among other things, the amount of interest reserves included in the commitment amount is not treated as a prepaid finance charge, whether the interest reserve is the same as or different from the estimated interest figure calculated under Appendix D (Comment App. D-5).

If a creditor permits a consumer to make interest payments as they become due, the interest reserve should be disregarded in the disclosures and calculations under Appendix D (Comment App. D-5.i).

If a creditor requires the establishment of an interest reserve and automatically deducts interest payments from the reserve amount rather than allow the consumer to make interest payments as they become due, the fact that interest will accrue on those interest payments as well as the other loan proceeds must be reflected in the calculations and disclosures. To reflect the effects of such compounding, the creditor should use the formula in Appendix D (Comment App. D-5.ii).

Fees and Charges

In the case of a construction-permanent loan that a creditor chooses to disclose as multiple transactions, the creditor must allocate to the construction transaction finance charges and points and fees that would not be imposed but for the construction financing. Those amounts must be in disclosures for the construction phase and may not be included in the disclosures for the permanent phase. If a creditor charges separate amounts for the finance charges and points and fees for the construction phase and the permanent phase, such amounts must be allocated to the phase for which they are charged. If a creditor charges an origination fee for construction financing only but charges a greater origination fee for construction-permanent financing, the difference between the two fees must be allocated to the permanent phase. All other finance charges and points and fees must be allocated to permanent financing. Fees and charges that are not used to compute the finance charge or points and fees may be allocated between the transactions in any manner the creditor chooses (Comment 17(c)(6)-5).

4. 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 (0.033333 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 one 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 17(c)(3)-1.ii).

E. 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.

III. Transactions with TILA-RESPA Integrated Disclosures – Generally

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 received 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 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 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 provisions mentioned in the first sentence of this paragraph do not apply to the following federally related mortgage loans:

- Loans subject to the TILA-RESPA Integrated Disclosure requirements for certain closed-end consumer credit transactions secured by real property or a cooperative unit 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:

<table>
<tr><td>Use TILA-RESPA Integrated Disclosures (see Regulation Z):

• Most closed-end mortgage loans, including:
  o Construction-only loans
  o Loans secured by vacant land or by 25 or more acres</td><td>Continue to use TIL[25] and RESPA disclosures (as applicable):

• HELOCs (subject to disclosure requirements under 12 CFR 1026.40)
• Reverse mortgages[26] (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)</td></tr>
<tr><td colspan="2">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.</td></tr>
</table>

Creditors making closed-end consumer credit transactions secured by real property or a cooperative unit, other than a reverse mortgage subject to 12 CFR 1026.33, 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, under 12 CFR 1026.19(g), and, as applicable for ARM transactions, the CHARM booklet. The special information booklet is described in further detail below.

A. 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 (*see* 12 CFR 1026.37 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

[25] See Appendix H-2.

[26] An open-end reverse mortgage receives open-end disclosures, not a GFE or HUD-1.

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[27] the six pieces of information discussed above to the creditor for purposes of obtaining an extension of credit, the creditor has an application for

[27] 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.

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 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 *less* 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 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 (Comments 19(e)(3)(ii)-1.ii and -4);
- Charges for required third-party services if:
  - 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 (12 CFR 1026.19(e)(3)(ii)(C); 12 CFR 1026.19(e)(1)(vi); Comment 19(e)(1)(vi)-1 through -7).

  NOTE: If a creditor has failed to issue the written list of providers or failed to disclose a specific settlement service on the written list, the creditor may still be determined, based on all the relevant facts and circumstances, to have permitted a consumer to shop for purposes of determining good faith (Comment 19(e)(3)(iii)-2).

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. These charges may be paid to the creditor or the creditor's affiliates as long as the charges are bona fide (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 (12 CFR 1026.19(e)(3)(iii)(A)-(C)).
- Charges paid to 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); Comment 19(e)(3)(iii)-2).
- Property taxes and other charges paid to third-party service providers for services not required by 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 settlement 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)(1)(vi)(C)).[28]

  NOTE: The use of Model Form H-27 in Appendix H is not required. However, creditors who use that form properly are deemed to be in compliance with 12 CFR 1026.19(e)(1)(vi)(C) (Comment 19(e)(1)(vi)-3).

  Regardless of whether a creditor provides a revised written list of providers, determining whether the charges for required services were disclosed in good faith will depend on whether the creditor permitted the consumer to shop for those services,

[28] The Preamble to the 2017 Amendments explained that creditors may issue a revised written list of providers when a settlement service is added as a result of a reason provided for under 12 CFR 1026.19(e)(3)((iv). (*See* Preamble, 82 FR 37,677 (Aug. 11, 2017))

and is based on all relevant facts and circumstances (Comments 19(e)(1)(vi)-1 and 19(e)(3)(ii)-6).

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 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 are generally 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. Creditors may provide a revised Loan Estimate for informational purposes. Regardless of whether a creditor provides a revised Loan Estimate to reset tolerances or for informational purposes only, any disclosures on the revised Loan Estimate disclosure must be based on the best information reasonably available to the creditor at the time the revised disclosures are provided (Comment 19(e)(3)(iv)-1-2, 4-5).

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 specific circumstances set out in 12 CFR 1026.19(e)(3)(iv)(A) through (F). The specific circumstances "(A)" and "(B)" relate to "changed circumstances", as described below:

(A): 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

- o 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.

(B): 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)).

For both (A) Changed circumstances – increased settlement charges, and (B) Changed circumstances – consumer 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) and 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.

NOTE on Changed Circumstances: 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)).

(C): 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).

(D): 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). If the interest rate is locked on or after the date on which the creditor provides the Closing Disclosure and the Closing Disclosure is inaccurate as a result, then the creditor must provide the consumer a corrected Closing Disclosure, at or before consummation, reflecting any changed terms (Comment 19(e)(3)(iv)(D)-2).

(E): Expiration of Loan Estimate. If the consumer indicates an intent to proceed with the transaction more than 10 business days (or any additional number of days as extended by the creditor orally or in writing) after the Loan Estimate was delivered or placed in the mail to the consumer, a creditor may use a revised Loan Estimate. No justification is required for the change to the original estimate of a charge other than the lapse of 10 business days or the additional number of days as extended by the creditor (12 CFR 1026.19(e)(3)(iv)(E); Comment 19(e)(3)(iv)(E)-1 and -2).

(F): Construction loans. 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 if the original Loan Estimate clearly and conspicuously stated that at any time prior to 60 days before consummation, the creditor may issue revised disclosures (12 CFR 1026.19(e)(3)(iv)(F)).

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). Instead, the creditor may use the initial or a corrected Closing Disclosure to reset tolerances for purposes of determining good faith *provided* one of the specific circumstances under the rule is present. Any such revised Loan Estimate or Closing Disclosure must be provided to the consumer within three business days of receiving information sufficient to establish a reason for a revised estimate (12 CFR 1026.19(e)(4)(i)).

Predisclosure activity. 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).

B. 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 or a cooperative unit) 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 Bureau'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, the creditor may rely on that evidence and consider the Closing Disclosure 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 of 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 (12 CFR 1026.19(f)(2)(i)); and
- 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)). Generally, if the APR and finance charges are overstated because the interest rate has decreased, the APR is considered accurate and no new waiting period is required (12 CFR 1026.22).

- 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, the 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 corrected Closing Disclosure at or before consummation (12 CFR 1026.19(f)(2)(i); Comments 19(f)(2)(i)-1 and -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).

NOTE: A creditor is not required to provide a corrected Closing Disclosure under this provision if the only changes that would be required to be disclosed in the corrected Closing Disclosure are changes to per-diem interest and any disclosures affected by the change in per-diem interest, even if the amount of per-diem interest actually paid by the consumer differs from the amount disclosed under 12 CFR 1026.38(g)(2) and (o). Nonetheless, if a creditor is providing a corrected Closing Disclosure under 12 CFR 1026.19(f)(2)(iii) for reasons other than changes in per-diem interest and the per-diem interest has changed as well, the creditor must disclose in the corrected Closing Disclosure under 12 CFR 1026.19(f)(2)(iii) the correct amount of the per-diem interest and provide the corrected Closing Disclosure for any disclosures that are affected by the change in per-diem interest (12 CFR 1026.19(f)(2)(iii); Comment 19(f)(2)(iii)-2).

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 corrected 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 corrected 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)).

C. 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 or a cooperative unit. For loans using the Loan Estimate and Closing Disclosure forms, creditors provide the "Your Home Loan Toolkit," 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 or a cooperative unit, 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. The booklet 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 titled "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 Bureau 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).

IV. Construction Loan Disclosures

Creditors are required to comply with the TILA/RESPA Integrated Disclosure requirements for disclosure of construction loans and construction-permanent loans that are closed-end consumer credit transactions secured by real property or a cooperative unit (12 CFR 1026.19(e)(1) and .19(f)(1)). These transactions have two distinct phases. First, the construction phase usually involves several disbursements of funds at times and in amounts that are unknown at the beginning of that period, with the consumer generally paying only accrued interest until construction is completed. Unless the obligation is paid when construction is completed (i.e., a construction-only loan), it is a construction-permanent loan and the construction period converts to the second phase, the permanent financing in which the loan amount is amortized just as in a standard mortgage transaction. The longstanding provisions of 12 CFR 1026.17(c)(6)(ii) apply to construction and construction-permanent loans, as well as the option to use Appendix D. Appendix D provides an optional method of calculating the annual percentage rate and other disclosures for construction loans in disclosing construction financing (Comment 17(c)(6)-2). While the 2017 TRID amendments provide additional guidance on how a creditor may use Appendix D to disclose construction loans and construction-permanent loans, the 2017 TRID amendments *do not* require the use of Appendix D or its corresponding official commentary when disclosing the terms of construction loans or construction-permanent loans. Specific regulatory provisions and official commentary applicable to construction loan disclosures are discussed below.

A. Disclosure Methods for Construction Loans – 12 CFR 1026.17(c)(6)

Regulation Z provides a flexible rule for disclosure of construction loans and construction-permanent loans (12 CFR 1026.17(c)(6)). First, it provides that a series of advances under an agreement to extend credit up to a certain amount may be considered as one transaction (12 CFR 1026.17(c)(6)(i)).

This means that for construction-only loans, a creditor may treat all of the advances as a single transaction or disclose each advance as a separate transaction. If these advances are treated as one transaction and the timing and amounts of advances are unknown, creditors must make disclosures based on estimates, based on the best information reasonably available at the time the disclosure is provided to the consumer, as provided in 12 CFR 1026.17(c)(2).

Second, when a multiple-advance loan to finance the construction of a dwelling may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one or more than one transaction (12 CFR 1026.17(c)(6)(ii)).

In addition to disclosure options described above for multiple advance loans, for construction-permanent loans where the permanent phase may be financed by the same creditor, the creditor also has the option to provide either one combined disclosure for both the construction financing and the permanent financing, or separate disclosures for the two phases (12 CFR 1026.17(c)(6)(ii); Comment 17(c)(6)-2).

Thus, in a transaction that finances the construction of a dwelling that may be permanently financed by the same creditor, the construction financing phase and the 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 (Comment 17(c)(6)-3).

B. Delivery of Disclosures – 12 CFR 1026.19(e)(1)(iii)

Regulation Z clarifies the timing requirements for providing the Loan Estimate for construction and construction-permanent loans based on when the creditor receives an application (12 CFR 1026.19(e)(1)(iii)). Comment 19(e)(1)(iii)-5 provides examples of different scenarios, illustrating how the timing requirements would apply. For example, where a creditor receives an application for both the construction and permanent phases of a transaction, the creditor must deliver or place in the mail either a single Loan Estimate (if the phases are treated as one transaction) or two or more Loan Estimates (if the phases are treated separately) within three business days of receiving the application and not later than seven business days before consummation.

C. Completion of Loan Estimate and Closing Disclosure

Generally, a financial institution will make disclosures for construction loans in the same manner as it discloses terms for non-construction loans, following the guidance of applicable regulations (*See* 12 CFR 1026.37 and 1026.38). The financial institution may, at its option, use Appendix D to Regulation Z to estimate and disclose the terms of multiple-advance construction and construction-permanent loans (12 CFR Part 1026, App. D). This appendix reflects the approach taken in 12 CFR 1026.17(c)(6)(ii), which permits creditors to provide separate or combined disclosures for the construction period and for the permanent financing, as discussed above.

The financial institution may, at its option, use Appendix D to the regulation to assist in estimating and disclosing the terms of multiple-advance construction loans when the amounts or timing of advances is unknown at consummation of the transaction. Appendix D may also be used in multiple-advance transactions other than construction loans, when the amounts or timing of advances are unknown at consummation (Comment App. D-1).

Appendix D and its associated commentary provide additional guidance and clarification on how to complete various portions of the Loan Estimate and Closing Disclosure. Additional guidance and examples are intended to inform the accurate disclosure of information related to Loan Term (Comment App. D. 7.i), Loan Product (Comment App. D 7.ii), Interest Rate (Comment App. D. 7.iii), Increases in Periodic Payment (Comment App. D. 7.iv), Projected Payments Table (Comment App. D. 7.v), Disclosure of Construction Costs (Comment App. D. 7.vi), and Inspection and Handling Fees (Comment App. D. 7.vii).

V. 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.

VI. Variable and Adjustable Rate Transactions – 12 CFR 1026.18(f), 1026.20(c) and (d)

A. 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.

B. Adjustable Rate Mortgage Disclosures

1. Disclosure of Post-Consummation Events – Initial Rate Change for Adjustable Rate Mortgages – 12 CFR 1026.20(d)

Creditors, assignees, or servicers[29] (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.[30] 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

[29] 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.

[30] 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.

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.
- 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.

2. *Disclosure of Post-Consummation Events – Rate Adjustments Resulting in Payment Changes – 12 CFR 1026.20(c)*

Creditors, assignees, or servicers[31] (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,[32] 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.

[31] 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.

[32] 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.

- 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;

- 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

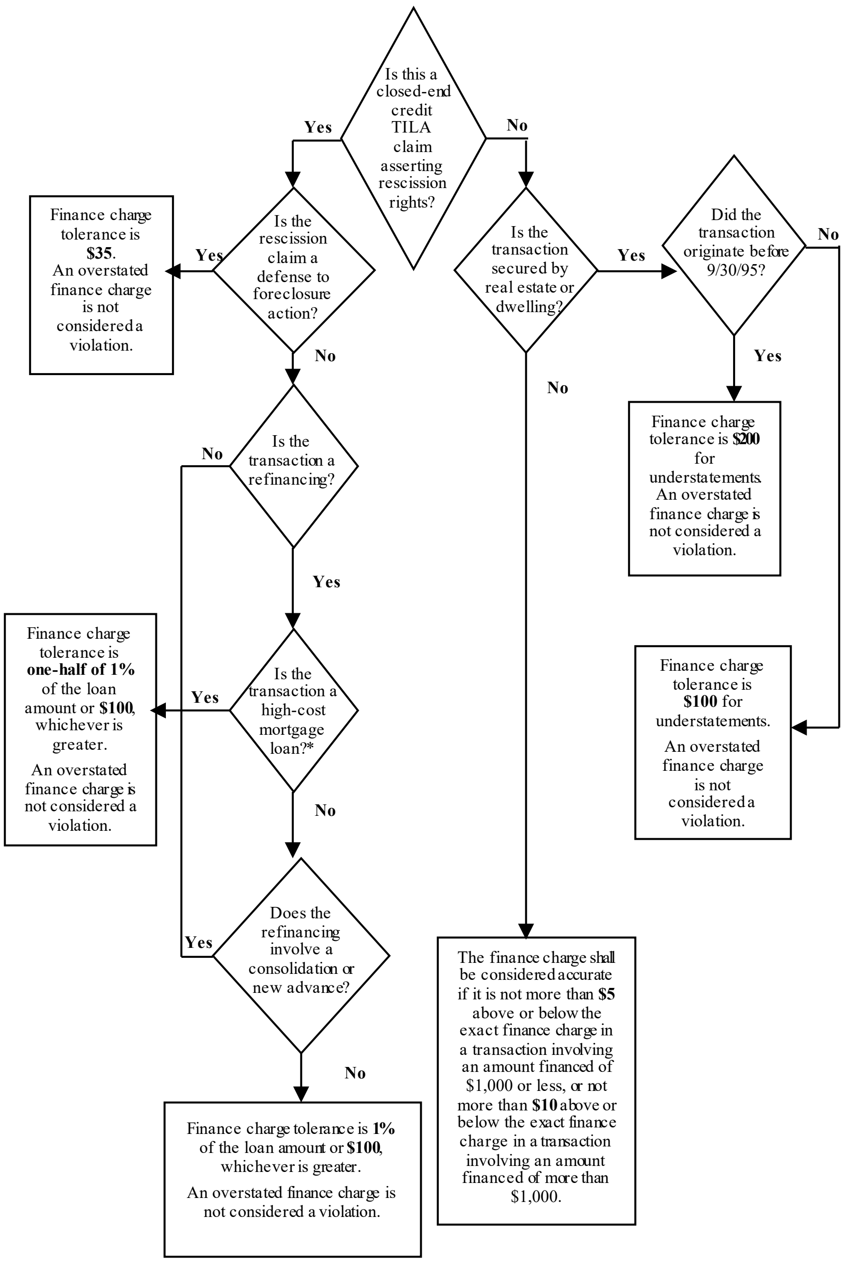
- A statement indicating the circumstances under which any prepayment penalty may be imposed, the time period during which it may be imposed, and a statement that the consumer may contact the servicer for additional information, including the maximum amount of the penalty that may be charged to the consumer.

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.

3. Exemptions to the Adjustable Rate Mortgage Disclosure Requirements – 12 CFR 1026.20(c)(1)(ii) and (d)(1)(ii)

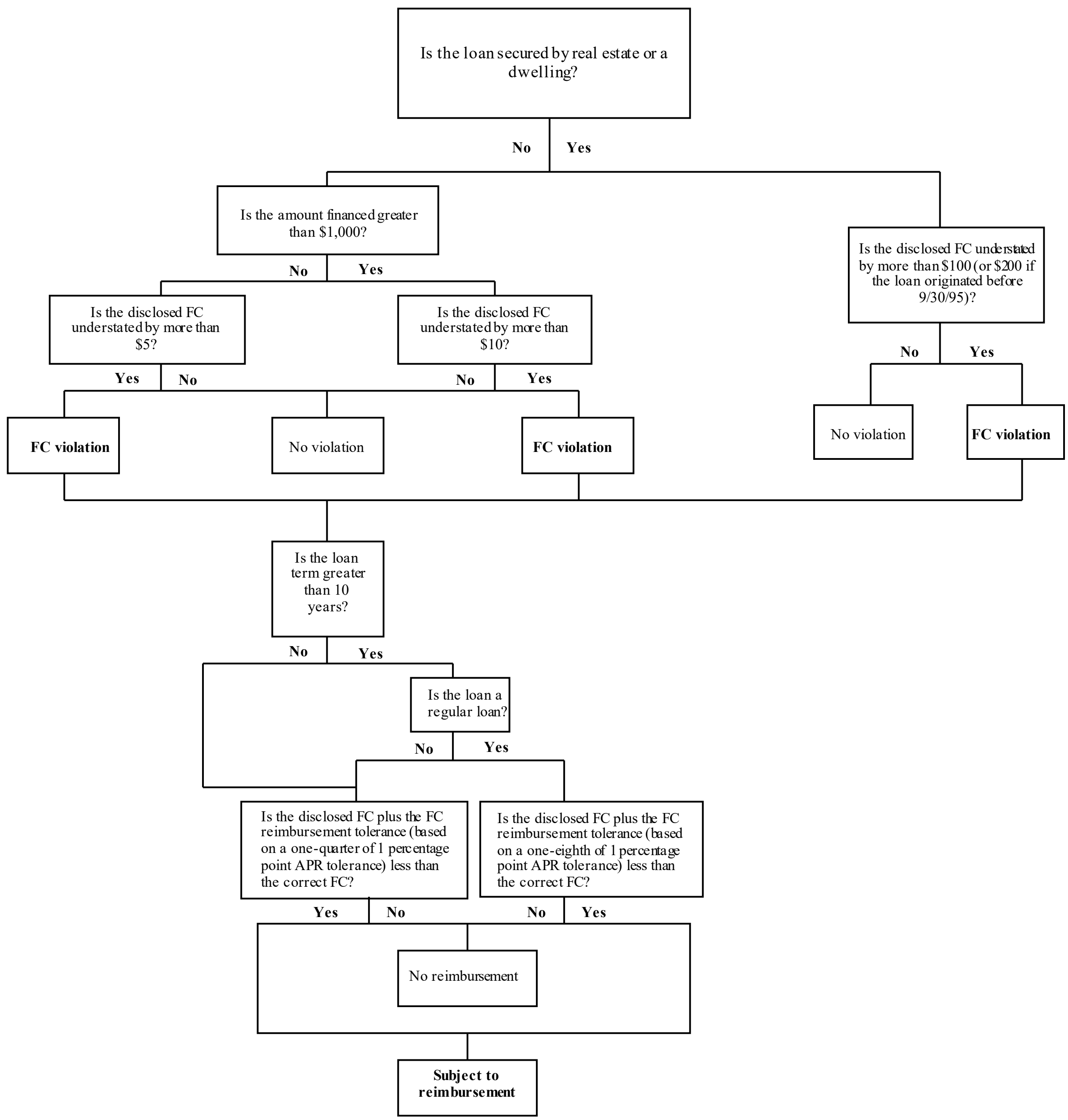
Disclosures under 12 CFR 1026.20(c) and (d) are not required for ARMs with a term of one year or less. Likewise, disclosures under 12 CFR 1026.20(c) are not required if the first interest rate and payment adjustment occurs within the first 210 days and the new rate disclosed at consummation pursuant 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 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

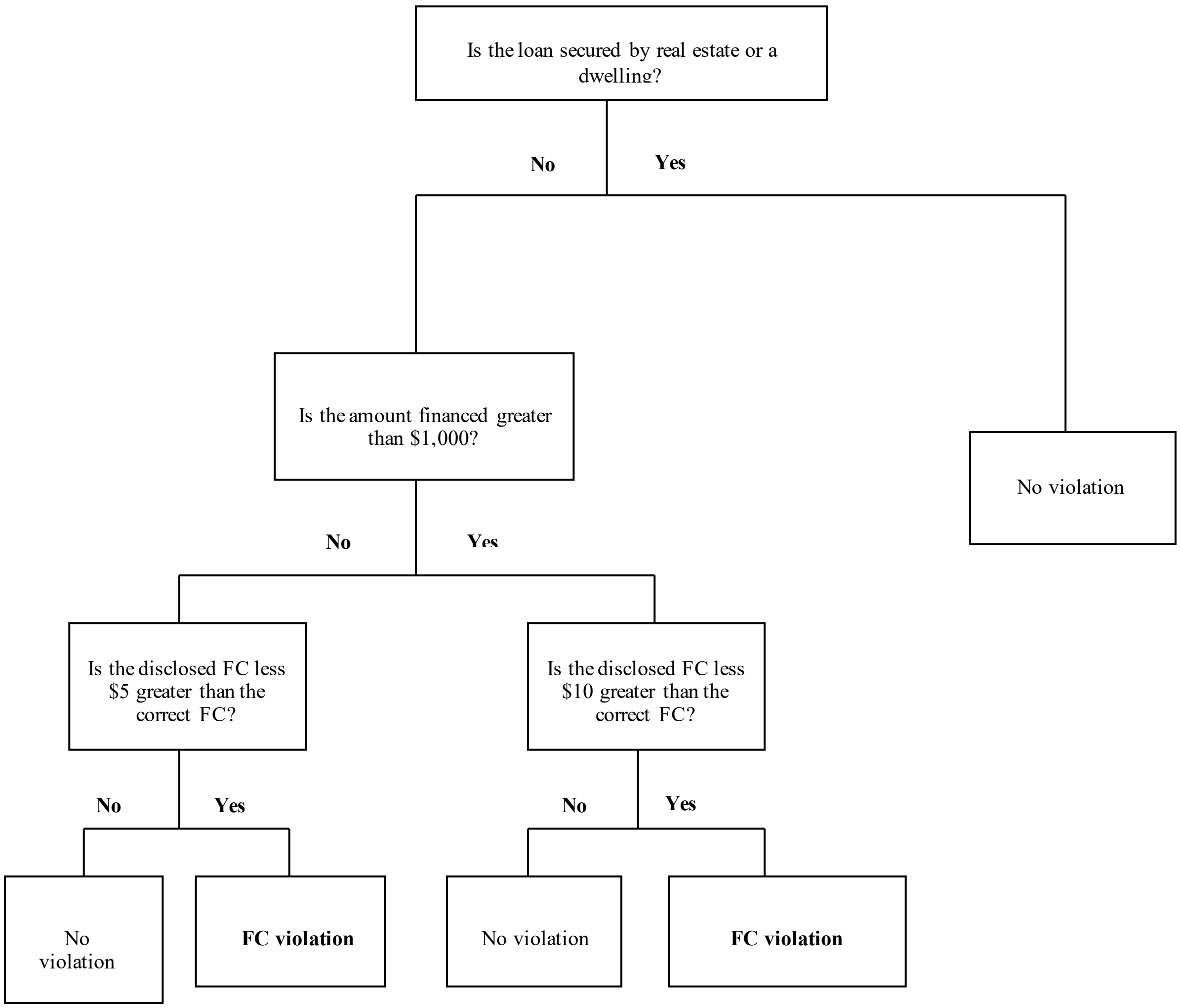


* See 15 U.S.C. 1602(bb)

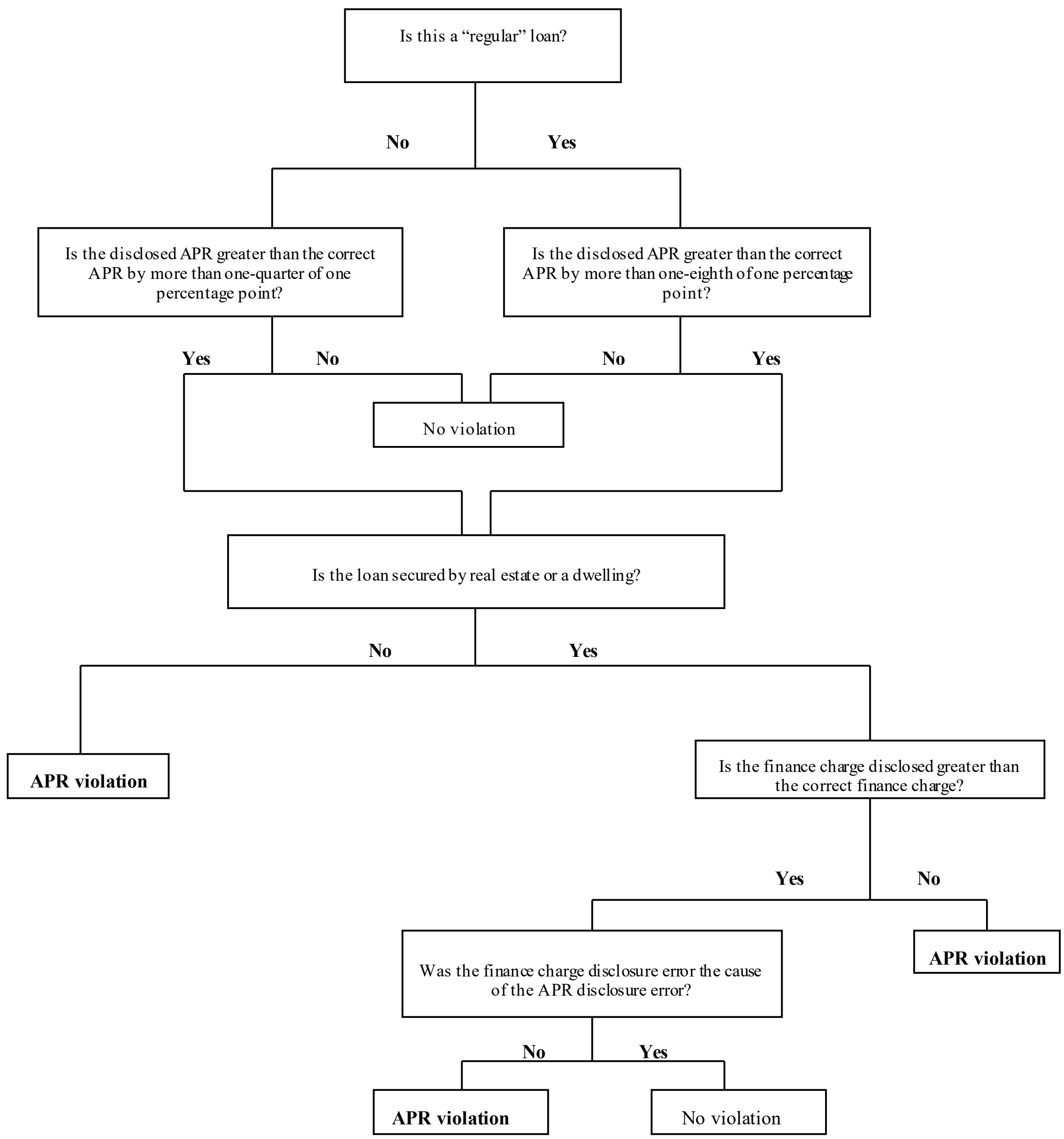
Closed-End Credit: Accuracy and Reimbursement Tolerances for UNDERSTATED FINANCE CHARGES



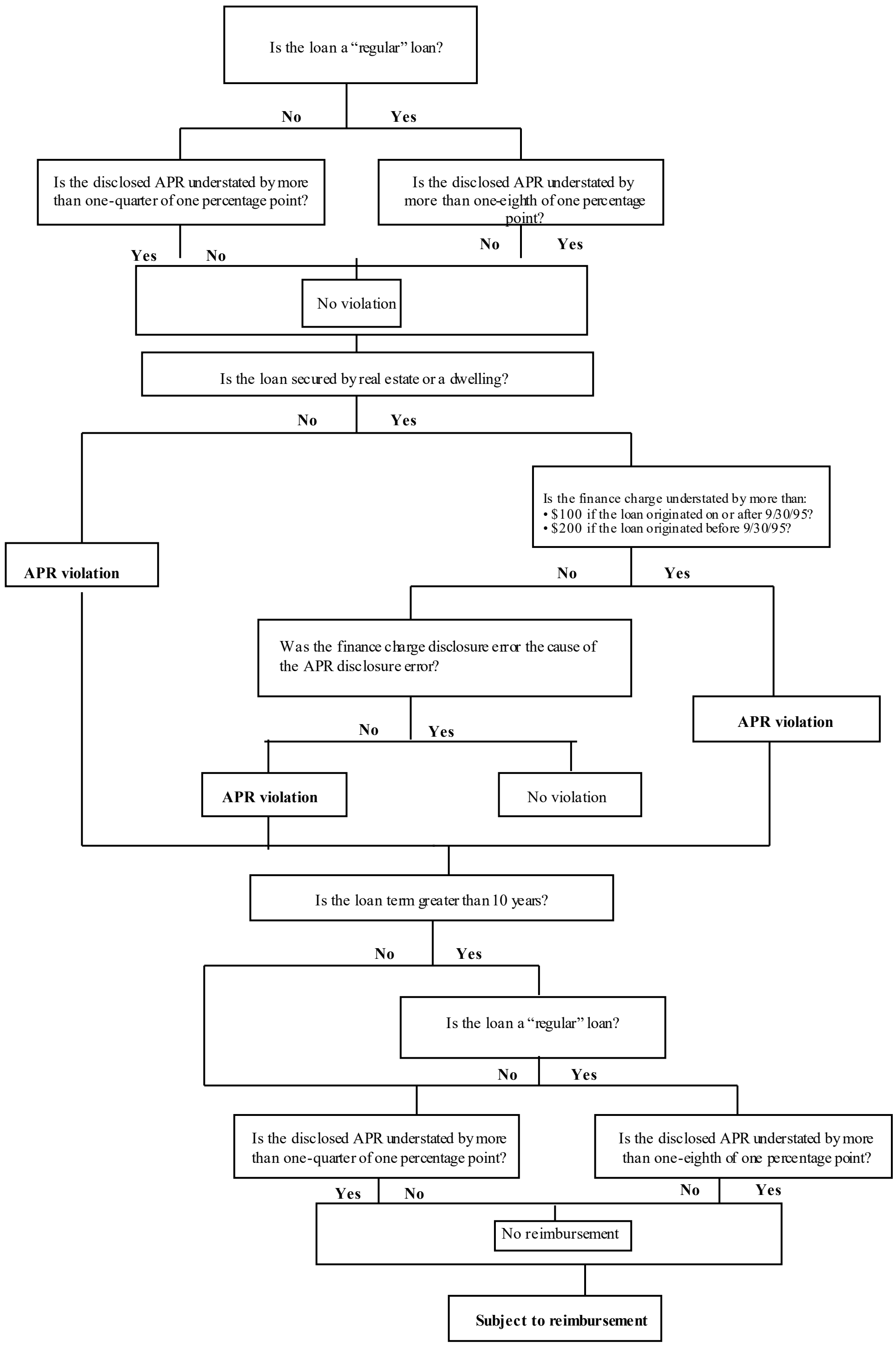
**Closed-End Credit: Accuracy Tolerances for
OVERSTATED FINANCE CHARGES**



Closed-End Credit: Accuracy Tolerances for OVERSTATED APRs



Closed-End Credit: Accuracy and Reimbursement Tolerances for UNDERSTATED APRs



VII. 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.

VIII. 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 canceled 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), 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 that 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":

- o 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;
- o A telephone number that the consumer can use to request additional information about the cancellation of the escrow account;
- o 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
- o Whether there is a cutoff 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).

IX. Successors in Interest – 12 CFR 1026.20(f)

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.

X. 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 six 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.

XI. 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 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 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, 1026.29

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 TILA and Regulation Z requirements.

State law provisions are preempted to the extent that they contradict the requirements in the following chapters of 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 financial institution 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 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 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 financial institution, state, or other interested party may ask the CFPB to determine whether state law contradicts Chapters 1 through 3 of TILA or Regulation Z. The party also may ask if the state law is different from, or would result in violations of, Chapter 4 of TILA and the implementing provisions of Regulation Z. If the Bureau 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 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 1026.38 set forth disclosure requirements for certain closed-end transactions secured by real property or cooperative unit, 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 1 by the annual percentage change in the Consumer Price Index reported on the preceding June 1; 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 1 by the annual percentage change in the Consumer Price Index reported on the preceding June 1.

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 2 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 2 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 U.S. Department of Agriculture's (USDA) 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 from 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 1 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,

- o The creditor receives no direct or indirect compensation in connection with the charge, and
- o 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.
- 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:
  - o Interest or the time-price differential;
  - o 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);
  - o 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., 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:
https://www.hud.gov/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 1 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 1026.36(b)(2)(i)); or

  - 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.

NOTES:

- 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. For purposes of 12 CFR 1026.36, "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 (12 CFR 1026.36(a)(6)).
- A retailer of manufactured or modular homes, or an employee of such a retailer, who does not receive compensation or gain for engaging in loan originator activities *in excess* of any compensation or gain received in a comparable cash transaction, and who does not directly negotiate with the consumer or lender on loan terms, is not a mortgage originator, provided the retailer or employee (as applicable) discloses to the consumer in writing any corporate affiliation with any creditor. Where the retailer has a corporate affiliation with any creditor, at least one unaffiliated creditor must also be disclosed (15 U.S.C. 1602(dd)(2)(C)(ii)).

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:

- o The charge is reasonable,
- o The creditor receives no direct or indirect compensation in connection with the charge, and
- o 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.
- 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 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

  - o 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 4 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));[33]

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[34] covered transactions (secured by first liens), must have had less than $2 billion in total assets[35] as of the preceding December 31 (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 the creditor 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.

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 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.

[33] 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 (March 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 Home Mortgage Disclosure Act 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 CFPB'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.

[34] *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).

[35] 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.

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)[36]

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 XI 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, VA, or USDA, 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;[37]
- 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;

[36] The higher-priced mortgage loans appraisal requirement was adopted pursuant to an interagency rulemaking conducted by the Board of Governors of the Federal Reserve System (Board), the CFPB, the Federal Deposit Insurance Corporation (FDIC), the FHFA, the NCUA, and the Office of Comptroller of the Currency (OCC). The Board codified the rule at 12 CFR 226.43, and the OCC codified the rule at 12 CFR Part 34. There is no substantive difference among these three sets of rules.

[37] 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; 84 Fed. Reg. 58013 (October 30, 2019).

- 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 who 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:[38]
  - 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:
    - 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.

[38] 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.

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 XI 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 days 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 the 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 nonprofit 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. [39]

[39] 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.

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;

- A retailer of manufactured or modular homes, or an employee of such a retailer, who does not receive compensation or gain for engaging in loan originator activities *in excess* of any compensation or gain received in a comparable cash transaction, and who does not directly negotiate with the consumer or lender on loan terms (including rates, fees, and other costs), if such retailer or employee (as applicable) discloses to the consumer in writing any corporate affiliation with any creditor. Where the retailer has a corporate affiliation with any creditor, at least one unaffiliated creditor must also be disclosed (15 U.S.C. 1602(dd)(2)(C)(ii));

- A person who 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 (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 that 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)).[40]

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 that 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;

[40] 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 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).

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).[41] 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 that the individual is required to be licensed or registered under the SAFE Act or excluded from those requirements because the individual is authorized to act with temporary authority pursuant to 12 U.S.C. 5117 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 nonprofits). 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));

[41] 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 12 CFR 1026.36(f), a loan originator includes all creditors that engage in loan origination activities, not just those who table fund.

- A credit report from a consumer reporting agency (as defined in section 603(p) of the Fair Credit Reporting Act (FCRA)) 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.

The SAFE Act provides certain loan originators with temporary authority to act as loan originators while applying for a state-loan originator license (12 U.S.C. 5117). If an individual loan originator may act as a loan originator with temporary authority under 12 U.S.C. 5117, the loan originator organization is not required to comply with the screening and training requirements described in (12 CFR 1026.36(f)(3)).[42]

[42] Truth in Lending (Regulation Z); Screening and Training Requirements for Mortgage Loan Originators with Temporary Authority, 84 Fed. Reg. 63791 (November 19, 2019).

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 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), 12 CFR 1026.36(e) (prohibition on steering), 12 CFR 1026.36(f) (loan originator qualifications), and 12 CFR 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 12 CFR 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 .36(c)(1)(i)-4). If a loan contract has been permanently modified, a periodic payment under 12 CFR 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 .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 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 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. 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. The Closing Disclosure form 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. Refer to 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 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)(A)).

The loan amount (the total amount the consumer will borrow, as reflected by the face amount of the note) must not be rounded, and if the amount is a whole number, must be truncated at the decimal point (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 must be rounded where noted in the regulation to three decimal places, but trailing zeros to the right of the decimal place must be dropped (e.g., 2.49999 percent APR is disclosed as 2.5 percent, and 7.005 percent APR is disclosed as 7.005 percent). The items rounded include the interest rate, adjustments after consummation (to the loan amount, interest rate, or periodic payment), points itemized under origination charges, prepaid interest rate, adjustable interest rate, annual percentage rate, and total interest percentage, or TIP (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 or cooperative unit 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 that 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 number (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. The form 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 total amount the consumer will borrow, as reflected by the face amount of the note), 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. The loan amount is disclosed in accordance with the face amount of the note. 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)(1); 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 are 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. (12 CFR 1026.37(b)(6)(iii)). 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 itemizes the maximum amount payable for mortgage insurance premiums corresponding to the principal and interest payment and the amount payable into escrow (with a statement that the amount disclosed can 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. The table also 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 or cooperative unit 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 12 CFR 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 or for simultaneous subordinate financing. 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 or for simultaneous subordinate financing (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 that 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, or if the transaction is a seasonal payment product (as described in 12 CFR 1026.37(a)(10)(ii)(E)), 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 that 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), 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).

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's insurance premiums, mortgage insurance premiums, prepaid interest, and property taxes, plus up to three 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 five additional line items); and

- Other amounts the consumer is likely to pay (such as real estate agent commissions, up to five 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.** The amount disclosed under 12 CFR 1026.37(g)(6), labeled "Total Closing Costs" (12 CFR 1026.37(h)(1)(i));

- **Closing costs to be financed.** The amount of any closing costs to be paid out of loan proceeds, disclosed as a negative number, labeled "Closing Costs Financed (Paid from your Loan Amount)" (12 CFR 1026.37(h)(1)(ii));

  NOTE: The formula for calculating the amount of closing costs financed can be found in (Comment 37(h)(1)(ii)-1).

- **Down payment and other funds from the borrower**, labeled "Down Payment/Funds from Borrower". The formula for determining this disclosure depends on the type of purchase transaction. (*See* 12 CFR 1026.37(h)(1)(iii)(A).. For a non-purchase transaction, use the Funds from Borrower formula in 12 CFR 1026.37(h)(1)(v) as provided for in 12 CFR 1026.37(h)(1)(iii)(B).

- **Deposit**, labeled "Deposit." In a purchase transaction as defined in 12 CFR 1026.37(a)(9)(i), 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; in all other transactions, the amount of zero dollars (12 CFR 1026.37(h)(1)(iv));

- **Funds for the borrower**, labeled "Funds for Borrower". The formula for calculating this disclosure is set forth in (12 CFR 1026.37(h)(1)(v));

- **Seller credits**, labeled "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)).

- **Adjustments and other credits**, labeled "Adjustments and Other Credits". Determined in accordance with (12 CFR 1026.37(h)(1)(vii)); and

- **Estimated Cash to Close**, labeled "Cash to Close". The sum of the amounts disclosed under 12 CFR 1026.37(h)(1)(i) to (vii) (12 CFR 1026.37(h)(1)(viii)).

For transactions without a seller or for simultaneous subordinate financing transactions, 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.** The amount disclosed under 12 CFR 1026.37(b)(1), labeled "Loan Amount" (12 CFR 1026.37(h)(2)(i));

- **Total closing costs.** The amount disclosed under 12 CFR 1026.37(g)(6), disclosed as a negative number if the amount is a positive number and disclosed as a positive number if the amount is a negative number, and labeled "Total Closing Costs" (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), labeled "Total Payoffs and Payments" (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)), 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 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 predetermined (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 or formula used for later interest rate adjustments, the disclosures should reflect a composite annual percentage rate based on the initial rate for as long as it is charged 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 12 CFR 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).

NOTE: Prepaid interest that is paid by someone other than the consumer is not included in the calculation. Further, if prepaid interest was disclosed as a negative number on the Loan Estimate or the Closing Disclosure, the negative value is used in the TIP calculation (Comment 37(l)(3)-1).

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. The section also provides for an optional, clear and conspicuous statement, if applicable, that the creditor may issue a revised Loan Estimate any time prior to 60 days before consummation pursuant to 12 CFR 1026.19(e)(3)(iv)(F) for transactions involving new construction where the creditor reasonably expects that settlement will occur more than 60 days after the provision of the Loan Estimate (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 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 that 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); (12 CFR 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 or simultaneous subordinate financing transactions, 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) through (f)(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. If no interest is collected prior to the interest collected with the first monthly payment, zero dollars should be disclosed (12 CFR 1026.38(g)(2); Comment 38(g)(2)-3).

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 most recent Loan Estimate provided to the consumer, (2) the final amount for the item, and (3) an answer to the question "Did this change?" (12 CFR 1026.38(i)). The amounts disclosed in the Loan Estimate column will be the amounts disclosed on the most recent Loan Estimate (or revised Loan Estimate) provided to the consumer (12 CFR 1026.38(i)(1)(i), (3)(i), (4)(i), (5)(i), (6)(i), (7)(i), (8)(i), (9)(i).

When amounts have changed, the disclosure must indicate where the consumer can find the amounts that have changed since being provided 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 to 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 or a principal reduction must also be included if either is provided as a refund for the excess amount (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 zero dollars (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 or for simultaneous subordinate financing 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 most recent Loan Estimate provided to the consumer, (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), Comment 38(e)-6). 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 most recent Loan Estimate provided to the consumer. 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.

In some transactions, there are contractual or legal limits on what refunds may be provided to the consumer, and, instead, principal is reduced. Principal reductions may also be utilized in circumstances where refunds do not need to be provided. In transactions with a principal reduction that occurs immediately or very soon after closing, the principal reduction must be disclosed in the Summaries of Transactions table on the standard Closing Disclosure pursuant to (12 CFR 1026.38(j)(1)(v)).

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 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 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)). Amounts not otherwise disclosed under 12 CFR 1026.38(j) that are owed to the seller but payable to the consumer after the real estate closing must be disclosed under the heading "Adjustments," including rent that the consumer will collect after closing for a period of time prior to the real estate closing, and a tenant's security deposit (Comment 38(j)(1)(v)-1). Other consumer charges owed by the consumer at the real estate closing and not otherwise disclosed under 12 CFR 1026.38(f), (g), and (j) will not have a corresponding credit in the summary of the seller's transaction under 12 CFR 1026.38(k)(1)(iv) (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 not attributable to a specific closing cost, subordinate financing proceeds, satisfaction of existing subordinate liens by consumer, transferred escrow balances, gift funds provided at closing, and any additional amounts not already disclosed under 12 CFR 1026.38(f), (g), and (j)(2) that are owed to the consumer but payable to the seller before the real estate closing ("Adjustments"), including rent paid to the seller from a tenant before the real estate closing for a period extending beyond the closing (Comments 38(j)(2)(vi)-1 through -6).

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, 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 includes a Loan Calculations table, as well as specified other disclosures, contact information for the CFPB for questions, 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 by the consumer 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 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 NMLS 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[43] to a third party, the "covered person"[44] 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.

[43] 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.
[44] A "covered person" means any person, as defined in 12 CFR 1026.2(a)(22), who 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).

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:

- 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.

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. Any modifications must be appropriate and not affect the substance, clarity, or meaningful sequence of the disclosure (Comment 39(d)(5)-1).

Periodic Statements for Residential Mortgage Loans – 12 CFR 1026.41

Creditors, assignees, or servicers[45] 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:

[45] 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.

- 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, delinquency information (if applicable), and information that consumers can use to obtain more information about their account;
- 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 U.S. 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)).

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 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 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 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 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 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 41(d)(8)-1).

These items must be grouped together in close proximity to one another. 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 (Comment 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 (Comment 41(c)-5). 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 41(c)-5)

Certain Consumers in Bankruptcy – 12 CFR 1026.41(e)(5) and 12 CFR 1026.41(f)

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 U.S. 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 U.S. 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 the 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 U.S. 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 includes a Sample Form of Periodic Statement for Consumer in Chapter 7 or Chapter 11 Bankruptcy (*See* H-30(E)) and a Sample Form of Periodic Statement for Consumer in Chapter 12 or Chapter 13 Bankruptcy (*See* H-30(F)) 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.[46] 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 who prepares a valuation from materially misrepresenting the value of the consumer's principal dwelling, and prohibits a covered person other than the person who 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 customary and reasonable compensation to appraisers who are not employees of the creditors or of the appraisal management companies hired by the creditors.

NOTE: Voluntary donation of appraisal services by a fee appraiser[47] to an organization eligible to receive tax-deductible charitable contributions meets the customary-and-reasonable requirements (15 U.S.C.1639e(i)(2)(B)).

[46] 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).

[47] A fee appraiser is a state-licensed or certified appraiser, or a company using their services who receives a fee for performing appraisals.

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;[48]
- 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 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 Internal Revenue Service (IRS) has determined are 501(c)(3) nonprofits. For a full list and criteria, (*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[49] 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 2 percent for the first two years and 1 percent for the third year. The

[48] 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.

[49] 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 nonprofit 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)).

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”.

A “non-standard mortgage” is a covered transaction[50] 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:

[50] 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 nonprofit lenders, as specified in 12 CFR 1026.43(a)(3)(v); or in connection with certain federal emergency economic stabilization programs.

- The standard mortgage must have a monthly payment that is "materially lower"[51] 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 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 for a comparable

[51] 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 (12 CFR 1026.43(d)(5)).

transaction by 1.5 percentage points or more for first-lien loans other than those that fall within the small-creditor portfolio, temporary small-creditor balloon-payment, or balloon-payment qualified mortgage definitions, and 3.5 percentage points for first-lien loans that fall within those qualified mortgage definitions or for second-lien loans. Special APR calculation rules apply to certain adjustable-rate and step-rate loans made under the general qualified mortgage definition that took effect on March 1, 2021, for purposes of determining if the loan is a higher-priced qualified mortgage.

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 qualified mortgage definition must provide for regular periodic payments that are substantially equal (except for the effect that any interest rate change after consummation has on the payment in the case of an adjustable-rate or step-rate mortgage) and 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 (indexed for inflation) may not have points and fees paid by the consumer that exceed 3 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.[52] The rule also requires that the creditor underwrite the loan (taking into account monthly payments for mortgage-related obligations) using the maximum interest rate that will apply in the first five years after the date on which the first periodic payment is due.

The general definition of a qualified mortgage also considers a loan's pricing. Under the amended rule issued by the Bureau, effective March 1, 2021, a loan greater than or equal to $110,260 (indexed for inflation) meets the general qualified mortgage definition if the APR exceeds the APOR for a comparable transaction by less than 2.25 percentage points as of the

[52] 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). See Comment 43(e)(3)(ii)-1.

date the interest rate is set. The amended rule provides pricing thresholds higher than 2.25 percentage points above APOR for loans with smaller loan amounts, subordinate-lien transactions, and smaller manufactured housing loans. The amended rule also includes a special rule for calculating the APR for ARMs for purposes of these pricing thresholds. For a loan to be a qualified mortgage under the general definition, the creditor must also (1) consider the consumer's monthly debt-to-income ratio or residual income; 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; and debt obligations, alimony, and child support, and (2) verify 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 and the consumer's current debt obligations, alimony, and child support.

For transactions for which a creditor received the consumer's application prior to the amended rule's mandatory compliance date, October 1, 2022, creditors seeking to originate general qualified mortgages will have the option of complying with either the current general qualified mortgage definition (described above) or the definition in place prior to March 1, 2021. The older definition did not include the price-based limit described in the previous paragraph and instead required that the consumer's total monthly debt to total monthly income not exceed 43 percent. Unlike the current definition, the older definition further required that creditors calculate debt and income for purposes of determining the consumer's debt-to-income ratio using the standards contained in former Appendix Q of Regulation Z.[53]

Qualified Mortgages – Other Agencies – 12 CFR 1026.43(e)(4)

Regulation Z provides a temporary category of qualified mortgages that are eligible to be purchased or guaranteed by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the government-sponsored enterprises or GSEs) while under the conservatorship of the Federal Housing Finance Agency (FHFA). This temporary category is commonly known as the GSE Patch. The GSE Patch is available for transactions that are both (1) consummated on or before the date the applicable GSE ceases to operate under conservatorship and (2) transactions for which the creditor receives the consumer's application before October 1, 2022. However, the practical availability of the GSE Patch may be affected by policies or agreements created by parties other than the Bureau, such as the Preferred Stock Purchase Agreements (PSPAs), which include restrictions on GSE purchases that rely on the GSE Patch definition after July 1, 2021.

Further, HUD, VA, and USDA have issued definitions for qualified mortgages for loans they insure, guarantee, or provide under applicable law. These definitions may be found under 24

[53] The General QM Final Rule, effective March 1, 2021, removed Appendix Q from Regulation Z. However, for consumer applications received prior to October 1, 2022, creditors that rely on the older General QM definition must continue to calculate debt and income for purposes of determining the consumer's debt-to-income ratio in accordance with Appendix Q of Regulation Z as was in effect on February 28, 2021. For consumer applications received on or after October 1, 2022, creditors must rely on the current General QM definition, which does not include Appendix Q.

CFR 201.7 and 24 CFR 203.19 (HUD), 38 CFR 36.4300 and 38 CFR 36.4500 (VA), and 7 CFR 3555.109 (USDA).

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. The creditor must consider the consumer's monthly debt-to-income ratio or residual income; 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; and debt obligations, alimony, and child support, and verify 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 and the consumer's current debt obligations, alimony, and child support.

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 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 and a fixed interest rate and meet certain basic underwriting standards. The creditor must consider the consumer's monthly debt-to-income ratio or residual income; 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; and debt obligations, alimony, and child support, and verify 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 and the consumer's current debt obligations, alimony, and child support. 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)).

Qualified Mortgage – Seasoned Loans – 12 CFR 1026.43(e)(7)

The Seasoned QM Final Rule, effective March 1, 2021, created a new category of qualified mortgage known as seasoned qualified mortgages. To be eligible to be a seasoned qualified mortgage, a covered transaction must be a first-lien, fixed-rate loan that has met certain performance requirements over a seasoning period of at least 36 months, be held in portfolio by the originating creditor or first purchaser until the end of the seasoning period (subject to certain enumerated exceptions), comply with general restrictions on product features and points and fees, and meet certain underwriting requirements.

A loan made by any creditor, regardless of size, is eligible to become a seasoned qualified mortgage if at the end of the seasoning period it meets the requirements in the Seasoned QM Final Rule. Loans that satisfy another QM definition at consummation also can be seasoned qualified mortgages if the requirements for seasoned qualified mortgages are met.

Qualified Mortgage – Insured depository institution or insured credit union that, together with its affiliates, has less than $10 billion in total consolidated assets (covered institution): Portfolio loans – 15 U.S.C. 1639c(b)(2)(F)[54]

Under EGRRCPA, residential mortgages that are originated and held in portfolio by covered institutions (insured depository institutions or insured credit unions with less than $10 billion in total consolidated assets, together with their affiliates) are qualified mortgages if they meet

54 This statutory provision is effective without any requirement to adopt regulations, and Regulation Z has not been amended to incorporate this provision as of the date of these procedures.

certain statutory requirements. Such loans are subject to prepayment penalty limitations and must not have negative amortization or interest-only features, have points and fees within applicable limits, and the creditor must consider and document debt, income and assets. The creditor must consider and document (as described in the statute) debt, income, and financial resources of the consumer in underwriting the loan. The loan loses its qualified mortgage status upon sale, assignment, or transfer, except in the case of a transfer (1) due to bankruptcy or failure; (2) to another covered institution that also retains the loan in portfolio; (3) pursuant to a merger or acquisition by or to another person who retains the loan in portfolio; or (4) to a wholly owned subsidiary, provided that the loan is considered an asset by the covered institution for regulatory accounting purposes.

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 Education 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.

Private Education Loan Protections in the Event of Death or Bankruptcy – 15 U.S.C. 1650

TILA defines a cosigner with respect to a private education loan as any individual who is liable for the obligation of another without compensation regardless of how designated in the contract or instrument, and includes any person whose signature is requested as a condition to grant credit or to forbear on collection of the private education loan. This definition does not extend to obligations intended to consolidate a consumer's pre-existing private education loan. A cosigner does not include a spouse whose signature is required to perfect a security interest in the loan.

EGRRCPA amended TILA to enhance consumer protections for student borrowers and cosigners of private education loans. Specifically, a private education loan creditor may not declare a default or accelerate a debt against a student obligor on the sole basis of bankruptcy or death of a cosigner. Additionally, the holder of a private education loan must release, within a reasonable time frame, any cosigner of their obligations related to the loan, when the holder is notified of the death of a student obligor. The holder or servicer of the private education loan, as applicable, must notify, within a reasonable time frame, a cosigner who is released of their obligations. A private education loan creditor also must provide a student obligor the option to designate an individual to have the legal authority to act on behalf of the student obligor in the event of death of the obligor. These protections apply only to private education loan agreements entered into on or after November 24, 2018.

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). The subpart 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 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 that 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:
    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 $28 for paying late or otherwise violating the account's terms for the first violation, $39 for an additional violation of the same type during the same billing cycle or one of the next six billing cycles, or 3 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.[55] With regard to a covered separate credit feature and an asset feature on a

[55] The dollar amounts in this paragraph may be adjusted annually by the CFPB to reflect changes in the Consumer Price Index that warrant an increase or decrease of a whole dollar. The amounts were increased to $28 and $39, respectively, effective January 1, 2019. Further adjustments may be made in subsequent years. (*See* 12 CFR 1026.52(b)(1)(ii)(D); Comment 52(b)(1)(ii) – 2.)

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 $39 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). The regulation 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 (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 nonphysical 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 Bureau. There are three exceptions for when issuers are not required to provide statements to the Bureau:

- 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;[56]
- 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;[57] 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 TILA, other than with the advertising provisions of Chapter 3, it may be held liable to the consumer for:

- Actual damage, and

[56] 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.

[57] This provision does not prohibit fees or charges for the actual costs of collecting the credit extended, if otherwise permitted by law.

- 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 TILA Section 129, 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 TILA 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 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 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, TILA also provides consumers with the right to assert a violation of 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 TILA will be fined not more than $5,000 or imprisoned not more than one year, or both.

Administrative Actions – TILA Section 108

TILA authorizes federal regulatory agencies,[58] when carrying out enforcement activities, 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, 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; or
- Willful noncompliance intended to mislead the person to whom the credit was extended.

Any administrative enforcement 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:

[58] For FFIEC guidance on how agencies implement this provision, *see* FFIEC, Administrative Enforcement of the Truth in Lending Act, 63 Fed. Reg. 47495 (Sept. 8, 1998).

- 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; and
- 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; or
- 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 TILA do not apply to violations of the Fair Credit Billing Act (Chapter 4 of 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 with 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 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 setoff" (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[59] are not subject to the general one-year statute of limitations. Actions brought by a state attorney general to enforce a violation of Sections 129, 129B, 129C, 129D, 129E, 129F, 129G, or 129H may be brought not later than three 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 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.

[59] However, reimbursement required by regulatory action may be limited to the last examination conducted at the institution.

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 them 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
- Receipt[60] 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 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

[60] 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.

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.

REFERENCES

Laws

12 U.S.C. 5101 *et seq*. Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act)

15 U.S.C. 1601 *et seq*. Truth in Lending Act (TILA)

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 1026, Truth in Lending (Regulation Z)

Guides

CFPB compliance guides

TILA-RESPA Integrated Disclosure Guide to Loan Estimate and Closing Disclosure Forms

Truth in Lending Act Examination Procedures[61]

Examination Objectives

1. To determine the financial institution's compliance with the Truth in Lending Act (TILA) and Regulation Z.

2. To initiate corrective action when policies or internal controls are deficient, or when violations of law or regulation are identified.

General Procedures

3. 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).

4. Through discussions with management and review of the following documents, determine whether the financial institution's internal controls are adequate to ensure compliance in the area under review. Identify procedures used daily to detect errors/violations promptly. Also, review the procedures used to ensure compliance when changes occur (e.g., changes in interest rates, service charges, computation methods, and software programs).

   - Organizational charts
   - Process flowcharts
   - Policies and procedures
   - Loan documentation and disclosures
   - Checklists/worksheets and review documents
   - Computer programs

5. Review compliance review and audit workpapers and determine whether:

   a. The procedures used address all regulatory provisions (*See* Transactional Testing section).

   b. Steps are taken to follow up on previously identified deficiencies.

[61] These procedures reflect changes to TILA and Regulation Z through May 2018, including applicable provisions of the Economic Growth, Regulatory Relief, and Consumer Protection Act P.L 115-174 (May 24, 2018) that do not require rulemaking to be effective.

c. The procedures used include samples that cover all product types and decision centers.

d. The work performed is accurate (through a review of some transactions).

e. Significant deficiencies, and the root cause of the deficiencies, are included in reports to management/board.

f. Corrective actions are timely and appropriate.

g. The area is reviewed at an appropriate interval, based upon appropriate risks.

6. 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 or a cooperative unit 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

1. 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 12 CFR 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), 1026.23(b)(1)) and 1026.47(c)(4))
- Loan Estimate (12 CFR 1026.19(e) and 1026.37)
- Closing Disclosure (12 CFR 1026.19(f) and 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 1026.18)
- ARM disclosures (12 CFR 1026.19(b) and 12 CFR 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 or a cooperative unit, 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. 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 transaction meets all of the following criteria: (i) The transaction is secured by a subordinate lien; (ii) the transaction is for the purpose of home buyer assistance, such as down payments or closing costs, rehabilitation loans, energy efficiency assistance, or foreclosure prevention; (iii) the credit contract does not require the payment of interest; (iv) the credit contract provides for 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) the total costs payable by the consumer in connection with the transaction at consummation are limited to (A) recording fees, (B) transfer taxes, (C) a bona fide and reasonable application fee, and (D) a bona fide and reasonable fee for housing counseling services; and the total of costs payable by the consumer for the application fee and housing counseling services is less than 1 percent of the amount of credit extended. For those transactions meeting the criteria for a partial exemption, creditors may provide either a compliant disclosure of the cost of credit under 12 CFR 1026.18 or a compliant Loan Estimate and Closing Disclosure, and do not need to provide the special information booklet, Good Faith Estimate, or HUD-1 settlement statement (12 CFR 1024.5(d)).

NOTE: The GFE, HUD-1, and Truth in Lending forms continue to be used for transactions covered by the other 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: 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 received an application prior to October 1, 2018. During this period, early compliance with the 2017 rule was allowed but not required.

1. 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 1026.19(f)).

    a. 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), 1026.37(o)).

    b. 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 in Appendix H (12 CFR 1026.19(f), 1026.38(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)

1. *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:

    a. The statement: “Save this Loan Estimate to compare with your Closing Disclosure” (12 CFR 1026.37(a)(2));

    b. *Name and address of creditor* (12 CFR 1026.37(a)(3));

c. *Date Issued* (12 CFR 1026.37(a)(4));

d. *Applicants* (12 CFR 1026.37(a)(5));

e. *Property.* The property address, including ZIP code (12 CFR 1026.37(a)(6));

f. *Sale Price* (12 CFR 1026.37(a)(7):

- For transactions with a seller, the contract sale price of the property identified in 12 CFR 1026.37(a)(6), labeled “Sale Price”.
- For transactions that do not have a seller, the estimated value of the property identified in 12 CFR 1026.37(a)(6), labeled “Prop. Value”.

g. *Loan Term.* Stated in years, months, or both, as applicable (12 CFR 1026.37(a)(8));

h. *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));

i. *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));

j. *Loan Type.* Categorized as “Conventional”, “FHA”, “VA”, or “Other” (12 CFR 1026.37(a)(11));

k. *Loan ID #* (12 CFR 1026.37(a)(12)); and

l. *Rate Lock.* A statement of whether the disclosed interest 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)

2. *Loan Terms.* Determine whether, under the heading “Loan Terms”, all disclosures are completed and accurate (12 CFR 1026.37(b)):

a. *Loan Amount* (12 CFR 1026.37(b)(1));

b. *Interest Rate* (12 CFR 1026.37(b)(2));

c. *Principal and Interest.* The applicable unit period (i.e., biweekly, monthly, yearly) must precede the initial periodic payment amount that will be due under the terms of the legal obligation, labeled “Principal & Interest” (12 CFR 1026.37(b)(3));

d. *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), 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));

e. *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), 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

f. 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 1026.37(b)(8)(i)-(ii).

Projected Payments – 12 CFR 1026.37(c) (Page 1 of the Loan Estimate)

3. *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));

   NOTE: If accurate, a creditor can indicate that a portion of taxes, insurance, and assessments will be paid with escrow account funds, such as by using the word “some” (Comment 37(c)(4)(iv)-2);

   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 labeled “Principal & 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 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, labeled "Mortgage Insurance" (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)(4)(ii), as applicable, labeled "Escrow," together with a statement that the amount disclosed can increase over time (12 CFR 1026.37(c)(2)(iii); and

iv. *Total Monthly Payment.* The total periodic payment, calculated as the sums disclosed as the "Principal &Interest", "Mortgage Insurance," and "Escrow," labeled "Total Monthly Payment" (12 CFR 1026.37(c)(2)(iv)).

NOTE: The labels required pursuant to 12 CFR 1026.37(c)(2) must be listed under the subheading "Payment Calculation" (12 CFR 1026.37(c)(3)(i)).

c. 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));

d. 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));

NOTE: If multiple changes to periodic principal and interest payments would result in more than one separate periodic payment or range of payments in a single year, the creditor must combine the changes and disclose them as a single range of payments (Comment 37(c)(1)(iii)(B)-1); and

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)).

e. 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), 1026.37(c)(3)(iii));

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)); and

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.

f. *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, labeled "Taxes, Insurance & Assessments" (12 CFR 1026.37(c)(4)(i-ii));

NOTE: The term "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 & Assessments" 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 or cooperative unit 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 the 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));

NOTE: If only a portion of such amounts are to be paid with escrow account funds, a creditor may so indicate, such as by using the word "some" (Comment 37(c)(4)(iv)-2).

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)); and

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)

4. *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)).

5. *Optional Alternative Table for Transactions without a Seller or for simultaneous subordinate financing.* Determine whether, for transactions that do not involve a seller or for simultaneous subordinate financing, 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) (12 CFR 1026.37(d)(2)).

   NOTES:

   - In a purchase transaction, the optional alternative disclosure may be used for the simultaneous subordinate financing Loan Estimate only if the first-lien Closing Disclosure will record the entirety of the seller's transaction. (Comment 37(d)(2)-1) Creditors may only use this alternative estimated cash to close disclosure in conjunction with the alternative disclosure under 12 CFR 1026.37(h)(2) (Comment 37(d)(2)-1).

   - *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)

6. *Website Reference.* Determine whether the creditor discloses that the consumer may obtain general information and tools on the CFPB'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)

7. *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 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)

8. *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)); and

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), 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)

9. *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 disclosed as the sum of the loan costs, other costs, and lender credits, labeled "Total Closing Costs" (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, labeled "Closing Costs Financed (Paid from your Loan Amount)" (12 CFR 1026.37(h)(1)(ii). Determined by subtracting the estimated total amount of payments to third parties not otherwise disclosed under 12 CFR 1026.37(f) and (g) from the loan amount disclosed under 12 CFR 1026.37(b)(1);

   NOTE: (1) If the result of the calculation is zero or negative, the amount of zero dollars is disclosed. (2) If the result of the calculation is a positive number, the amount is disclosed as a negative number but only to the extent that the absolute value of the number does not exceed the total amount of closing costs (Comment 37(h)(1)(ii)-1).

   c. *Down payment/Funds from Borrower.* Labeled "Down Payment/Funds from Borrower":

i. In a purchase transaction as defined in 12 CFR 1026.37(a)(9)(i), disclosed as the amount determined by subtracting the sum of the loan amount disclosed under 12 CFR 1026.37(b)(1) and any amount of existing loans assumed or taken subject to that will be disclosed under 12 CFR 1026.38(j)(2)(iv), from the sale price of the property disclosed under 12 CFR 1026.37(a)(7)(i), except as required by 12 CFR 1026.37(h)(1)(iii)(A)(*2*) (12 CFR 1026.37(h)(1)(iii)(A)(*1*));

ii. For a purchase transaction as defined in 12 CFR 1026.37(a)(9)(i) that is a simultaneous subordinate financing transaction, a transaction involving improvements to be made on the property, or when the sum of the loan amount disclosed under 12 CFR 1026.37(b)(1) and any amount of existing loans assumed or taken subject to on the Closing Disclosure under 12 CFR 1026.38(j)(2)(iv) exceeds the sale price of the property disclosed under 12 CFR 1026.37(a)(7)(i), disclosed as the amount of estimated funds from the consumer determined in accordance with 12 CFR 1026.37(h)(1)(v) (12 CFR 1026.37(h)(1)(iii)(A)(*2*)); and

iii. For all other transactions, disclosed as the amount of estimated funds from the consumer determined in accordance with 12 CFR 1026.37(h)(1)(v) (12 CFR 1026.37(h)(1)(iii)(B)).

d. *Deposit.*

i. For a purchase transaction, disclosed 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, labeled "Deposit"; and

ii. For all other transactions, disclosed as zero dollars, labeled "Deposit" (12 CFR 1026.37(h)(1)(iv)).

e. *Funds for Borrower.* Disclosed as the amount of funds for the consumer, labeled "Funds for Borrower". Determined in accordance with 12 CFR 1026.37(h)(1)(v) by subtracting the sum of the loan amount disclosed under 12 CFR 1026.37(b)(1) and any amount of existing loans assumed or taken subject to that will be disclosed on the Closing Disclosure under 12 CFR 1026.38(j)(2)(iv) (excluding any closing costs financed disclosed under 12 CFR 1026.37(h)(1)(ii)) from the total amount of all existing debt being satisfied in the transaction. The total amount of all existing debt being satisfied in the transaction is the sum of the amounts that will be disclosed on the Closing Disclosure in the summaries of transactions table under 12 CFR 1026.38(j)(1)(ii), (iii), and (v), as applicable:

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)(A)(*2*) or (B), as applicable), and zero dollars are 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 zero dollars under the heading "Down Payment/Funds from Borrower under 12 CFR 1026.37(h)(1)(iii)(A)(*2*) or (B), as applicable) (12 CFR 1026.37(h)(1)(v)(B)); and

iii. If the calculation yields "0," then zero dollars are disclosed under both headings under 12 CFR 1026.37(h)(1)(iii)(A)(*2*) or (B), as applicable, and (h)(1)(v) (12 CFR 1026.37(h)(1)(v)(C)).

f. *Seller Credits.* Determined by totaling the amount that the seller will pay for Total Loan Costs under 1026.37(f)(4) and Total Other Costs under 12 CFR 1026.37(g)(5)), disclosed as a negative number, to the extent known by the creditor at the time of the delivery of the Loan Estimate, labeled "Seller Credits" (12 CFR 1026.37(h)(1)(vi));

NOTES:

- Non-specific seller credits. Determine whether general payments from the seller to the consumer that do not pay for a particular fee are disclosed in the seller credits row of the Calculating Cash to Close table (Comment 37(h)(1)(vi)-1));
- Seller credits for specific charges. Determine whether credits for specific items disclosed under 12 CFR 1026.37(f) and (g) are disclosed, at the creditor's option either:

  A. In the seller credits row of the Calculating Cash to Close table together with any non-specific seller credits; or

  B. By reducing the amount of the specific charge in the Loan Costs or Other Costs table (Comment 37(h)(1)(vi)-2).

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 not otherwise disclosed under 12 CFR 1026.37(f) or (g) that are required to be paid by the consumer at closing in a transaction using the "Down Payment/Funds from Borrower" calculation under 12 CFR 1026.37(h)(1)(iii)(A)(*1*) or pursuant to a purchase and sale contract, labeled "Adjustments and Other Credits" (12 CFR 1026.37(h)(1)(vii)).

NOTE: This includes amounts known at the time the Loan Estimate is issued that are expected to be paid at closing by third parties not otherwise associated with the transaction, such as gifts from family members, or others not associated with the transaction, as well as proceeds from subordinate financing or other sources (Comment 37(h)(1)(vii)-1 and -5).

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: Optional Alternative Calculating Cash to Close Table for Transactions without a Seller or for Simultaneous Subordinate Financing – 12 CFR 1026.37(h)(2) (Page 2 of the Loan Estimate)

10. *Optional Alternative Calculating Cash to Close Table for Transactions Without a Seller or for Simultaneous Subordinate Financing.* If the transaction does not involve a seller or for simultaneous subordinate financing, and the creditor has chosen to provide the optional Alternative Calculating Cash to Close table modeled in Form H-24(G) in Appendix H, determine whether the creditor accurately discloses 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)(2)):

    a. *Loan Amount* (12 CFR 1026.37(h)(2)(i));

    b. *Total Closing Costs.* Disclosed as a negative number if the amount disclosed under 12 CFR 1026.37(g)(6) is a positive number, and disclosed as a positive number if the amount disclosed under 12 CFR 1026.37(g)(6) is 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 (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)); and

    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: The optional Alternative Calculating Cash to Close table may only be provided in transactions without a seller or for simultaneous subordinate financing. In a purchase transaction, the optional alternative disclosure may be used for the simultaneous subordinate financing Loan Estimate only if the first lien Closing Disclosure will record the entirety of the transaction. The use of the alternative table for transactions without a seller or for simultaneous subordinate financing is optional, but creditors may only use this alternative estimated cash to close disclosure in conjunction with the alternative disclosure under 12 CFR 1026.37(d)(2) (Comment 37(h)(2)-1).

Closing Cost Details: Adjustable Payment (AP) Table – 12 CFR 1026.37(i) (Page 2 of the Loan Estimate)

11. *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:

    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)); and

    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)).

NOTE: The AP table is required only if the periodic principal and interest payment may change after consummation based on a loan term other than a change to the interest rate, or the transaction contains a seasonal payment product feature as described in (12 CFR 1026.37(a)(10)(ii)(E)). If the transaction does not contain such loan terms, this table may not appear on the Loan Estimate (Comment 37(i)-1).

Closing Cost Details: Adjustable Interest Rate (AIR) Table – 12 CFR 1026.37(j) (Page 2 of the Loan Estimate)

12. *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)):

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, if any, labeled "Index + Margin." (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, labeled "Interest Rate Adjustments" (12 CFR 1026.37(j)(2));

c. *Initial Interest Rate.* The disclosure must show the initial interest rate at consummation of the loan transaction, labeled "Initial Interest Rate" (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, labeled "Minimum/Maximum Interest Rate" (12 CFR 1026.37(j)(4));

e. *Frequency of Adjustments.* The following information, under the subheading "Change Frequency", is disclosed:

i. The month when the interest rate after consummation may first change, calculated from the date that interest for the first scheduled periodic payment begins to accrue, labeled "First Change"; and

ii. The frequency of interest rate adjustments after the initial adjustment to the interest rate, labeled "Subsequent Changes" (12 CFR 1026.37(j)(5)); and

f. *Limits on Interest Rate Changes.* The following information, under the subheading "Limits on Interest Rate Changes", is disclosed:

i. The maximum possible change for the first adjustment of the interest rate after consummation, labeled "First Change"; and

ii. The maximum possible change for subsequent adjustments of the interest rate after consummation, labeled "Subsequent Changes" (12 CFR 1026.37(j)(6)).

NOTE: If the legal obligation does not permit the interest rate to adjust after consummation, the AIR table is not permitted to appear on the Loan Estimate. The creditor may not disclose a blank table or a table with "N/A" inserted within each row (Comment 37(j)-1).

Additional Information About This Loan: Contact information – 12 CFR 1026.37(k) (Page 3 of the Loan Estimate)

13. Determine whether the creditor accurately discloses, under the master heading, "Additional Information About This Loan", the following information:

a. *Lender/Mortgage Broker.* The name and "NMLS ID/License ID" for the creditor (labeled "Lender") and the mortgage broker (labeled "Mortgage Broker"), if any. If the creditor or mortgage broker has not been assigned an NMLS 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 NMLS ID of the individual loan officer (labeled "Loan Officer" and "NMLS ID/License ID", respectively) 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 NMLS 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 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)

14. *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 five 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, using the term "Total Interest Percentage," the abbreviation "TIP," 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)).

    NOTE: The Total Interest Percentage includes prepaid interest that the consumer will pay but does not include prepaid interest that someone other than the consumer will pay (Comment 37(l)(3)-1).

Additional Information About This Loan: Other Considerations – 12 CFR 1026.37(m) (Page 3 of the Loan Estimate)

15. *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.* With the 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 pursuant to 12 CFR 1026.19(e)(3)(iv)(F) (12 CFR 1026.37(m)(8)).

Additional Information About This Loan: Confirm Receipt – 12 CFR 1026.37(n) (Page 3 of the Loan Estimate)

16. *Confirm Receipt.* If the creditor chooses 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)

17. *Form of disclosures.*[62] 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));

    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 (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 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);

[62] 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 using 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 (other than per diem prepaid interest), Initial Escrow Payment at Closing (other than monthly amounts of initial escrow payments), 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. *Rounding – nearest whole cent.* Determine that the creditor rounds or truncates the following to the nearest whole cent pursuant to (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)).

Percentages. Determine that the creditor discloses the following percentages by rounding the exact amounts to three decimal places and then dropping any trailing zeros that occur to the right of the decimal point (12 CFR 1026.37(o)(4)(ii)). This procedure applies to the following:

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));

E. Annual percentage rate, disclosed pursuant to (12 CFR 1026.37(l)(2)); and

F. 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)

2. *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.* For transactions where there is a seller, the sale price, labeled "Sale Price", and where there is no seller, the appraised property value, labeled "Appraised Prop. Value" (12 CFR 1026.38(a)(3)(vii)(A)-(B)).

NOTE: If the creditor has not obtained an appraisal, the creditor may disclose the estimated value of the property, using 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)

3. *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, labeled "Borrower" (12 CFR 1026.38(a)(4)(i));

   b. *Seller.* Where applicable, the seller's name and mailing address, labeled "Seller" (12 CFR 1026.38(a)(4)(ii)); and

   c. *Lender.* The name of the creditor making the disclosure, labeled "Lender" (12 CFR 1026.38(a)(4)(iii)).

Loan Information – 12 CFR 1026.38(a)(5) (Page 1 of the Closing Disclosure)

4. *Loan Information.* Determine whether all fields required by 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)

5. *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)

6. *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)

7. *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 CFR1026.38(f)(4) (Loan Costs), 1026.38(g)(5) (Other Costs), and 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 or for a simultaneous subordinate financing transaction. 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)

8. *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)); and

    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)

9. *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));

   NOTE: For additional guidance on taxes and other government fees, *see* Comments 37(g)(1)-1, -2, -3, and -4).

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. If prepaid interest is not collected for any period between closing and the date from which interest will be collected with the first monthly payment, then zero dollars are disclosed (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 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)); and

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)

10. *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)); and

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)).

NOTES:

- 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) (Comment 38(h)(3)-1).
- 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 (Comment 38(h)(3)-2).

Calculating Cash to Close – 12 CFR 1026.38(i) (Page 3 of the Closing Disclosure)

11. *Calculating Cash to Close*. Determine whether the creditor, for each of the following items, accurately includes the amount from the most recent Loan Estimate provided to the consumer, compared with 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 most recent Loan Estimate disclosed under 12 CFR 1026.37(h)(1)(i) compared with 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 (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 (12 CFR 1026.38(i)(1)(A)(*2*)); and

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), or, if a principal reduction is used to provide the refund, a statement directing the consumer to the principal reduction disclosure under 12 CFR 1026.38(j)(1)(v). 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 most recent 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 with 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., zero dollars), 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 most recent Loan Estimate under 12 CFR 1026.37(h)(1)(ii), compared with the actual amount of the closing costs that are to be paid out of loan proceeds, if any, stated as a negative number, under the subheading "Final" (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 most recent Loan Estimate), a statement of that fact (12 CFR 1026.38(i)(3)(iii)(B)).

NOTE: *Simultaneous subordinate financing*. For simultaneous subordinate financing transactions, regardless of whether a sale price was disclosed under 12 CFR 106.38(j)(1)(ii), no sale price will be included in the closing costs financed calculation as payment to third parties (Comment 38(i)(3)-1.ii).

d. *Down Payment/Funds from Borrower* (12 CFR 1026.38(i)(4)).

i. Under the subheading "Loan Estimate," the amount disclosed on the most recent Loan Estimate in the Calculating Cash to Close table under 12 CFR 1026.37(h)(1)(iii), labeled "Down Payment/Funds from Borrower" (12 CFR 1026.38(i)(4)(i)).

ii. Under the subheading "Final" (12 CFR 1026.38(i)(4)(ii)):

(A)

(1) In a purchase transaction as defined in 12 CFR 1026.37(a)(9)(i), the amount determined by subtracting the sum of the loan amount disclosed under 12 CFR 1026.38(b) and any amount of existing loans assumed or taken subject to that is disclosed under 12 CFR 1026.38(j)(2)(iv) from the sale price of the property disclosed under 12 CFR 1026.38(a)(3)(vii)(A), labeled "Down Payment/Funds from Borrower," except as required by 12 CFR 1026.38(i)(4)(ii)(A)(2);

(2) In a purchase transaction that is a simultaneous subordinate financing or that involves improvements to be made on the property, or when the sum of the loan amount disclosed under 12 CFR 1026.38(b) and any amount of existing loans assumed or taken subject to that is disclosed under 12 CFR 1026.38(j)(2)(iv) exceeds the sale price disclosed under 12 CFR 1026.38(a)(3)(vii)(A), the amount of funds from the consumer as determined in accordance with 12 CFR 1026.38(i)(6)(iv), labeled "Down Payment/Funds from Borrower."

(B) In all transactions not subject to 12 CFR 1026.38(i)(4)(ii)(A), the amount of funds from the consumer as determined in accordance with 12 CFR 1026.38(i)(6)(iv), labeled "Down Payment/Funds from Borrower".

iii Under the subheading "Did this change?", disclosed more prominently than the other disclosures under (12 CFR 1026.38(i)(4)):

A. 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 most recent 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

B. 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* (12 CFR 1026.38(i)(5)).

i. Under the subheading "Loan Estimate", the Deposit amount disclosed on the Calculating Cash to Close table on the most recent Loan Estimate under 12 CFR 1026.37(h)(1)(iv), labeled "Deposit";

ii. Under the subheading "Final", on the Summaries of Transactions table on the Closing Document, the amount under 12 CFR 1026.38(j)(2)(ii), stated as a negative number; and

iii. Under the subheading "Did this Change?", disclosed more prominently than the other disclosures under 12 CFR 1026.38(i)(5):

A. 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); or

B. 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 most recent Loan Estimate), a statement of that fact (12 CFR 1026.38(i)(5)(iii)(B)).

NOTE: Under 12 CFR 1026.37(h)(1)(iv), for all transactions other than a purchase transaction as defined in 12 CFR 1026.37(a)(9)(i), the amount required to be disclosed is zero dollars. In a purchase transaction in which no deposit is paid in connection with the transaction, the amount to be disclosed is zero dollars (Comment 38(i)(5)-1).

f. *Funds for Borrower* (12 CFR 1026.38(i)(6)).

i. Under the subheading "Loan Estimate", the amount disclosed on the Calculating Cash to Close table on the most recent Loan Estimate under 12 CFR 1026.37(h)(1)(v), labeled "Funds for Borrower".

ii. Under the subheading "Final", the "Funds for Borrower", labeled using that term, as determined in accordance with (12 CFR 1026.38(i)(6)(iv)).

NOTES:

- The "Final" amount of "Funds for Borrower" to be disclosed under 12 CFR 1026.38(i)(6)(ii) is calculated pursuant to 12 CFR 1026.38(i)(6)(iv) by subtracting the sum of the loan amount disclosed under 12 CFR 1026.38(b) and any amount of existing loans assumed or taken subject to that is disclosed under 12 CFR 1026.38(j)(2)(iv) (excluding any closing costs financed disclosed under 12 CFR 1026.38(i)(3)(ii)) from the total amount of all existing debt being satisfied in the transaction. The "Final" amount is disclosed either as a negative number or as zero dollars, depending on the result of the calculation, and is an amount to be disbursed to the consumer or a designee of the consumer at consummation, if any (Comment 38(i)(6)(ii)-1).
- When the down payment and funds from the borrower are determined in accordance with 12 CFR 1026.38(i)(4)(ii)(A)(*1*), the amount disclosed as "Funds for Borrower" is zero dollars (Comment 38(i)(6)(ii)-2).

iii. Under the subheading "Did this Change?", disclosed more prominently than the other disclosures under (12 CFR 1026.38(i)(6): Changes between the "Loan Estimate" and "Final" column amounts are noted in the "Did this Change?" column in accordance with the requirements of 12 CFR 1026.38(i)(6)(iii). 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

A. 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 most recent Loan Estimate), a statement of that fact (12 CFR 1026.38(i)(6)(iii)(B)).

g. *Seller Credits* (12 CFR 1026.38(i)(7)).

i. Under the subheading "Loan Estimate", the amount disclosed on the Calculating Cash to Close table on the most recent Loan Estimate under 12 CFR 1026.37(h)(1)(vi), labeled "Seller Credits".

ii. Under the subheading “Final”, the amount disclosed pursuant to 12 CFR 1026.38(j)(2)(v), stated as a negative number.

iii. Under the subheading “Did this Change?”, disclosed more prominently than the other disclosures under 12 CFR 1026.38(i)(7):

A. If the amounts are different, unless due to rounding, determine whether the creditor discloses a statement that the consumer should see the details disclosed either: (1) under 12 CFR 1026.38(j)(2)(v) in the summaries of transactions table and the seller-paid column of the closing cost details table under 12 CFR 1026.38(f) or (g); or (2) if the difference is attributable only to general seller credits disclosed under 12 CFR 1026.38(j)(2)(v), or only to specific seller credits disclosed in the seller-paid column of the closing cost details table under 12 CFR 1026.38(f) or (g), under only the applicable provision (12 CFR 1026.38(i)(7)(iii)(A)(1) and (2)); or

B. 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 most recent Loan Estimate), a statement of that fact (12 CFR 1026.38(i)(7)(iii)(B)).

h. *Adjustments and Other Credits.* Under the subheading “Loan Estimate,” the amount disclosed on the Calculating Cash to Close table on the most recent Loan Estimate under 12 CFR 1026.37(h)(1)(vii), compared with the total of the amounts disclosed under 12 CFR 1026.38(j)(1)(iii) and (v) (to the extent these amounts were not included in the calculation required by 12 CFR 1026.38(i)(4) or (6) and 12 CFR 1026.38(j)(1)(vi) 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)).

NOTE: If the calculation yields a negative number, the amount is disclosed as a negative number (Comment 38(i)(8)(ii)-1).

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 under 12 CFR 1026.38(i)(8)(i) (i.e., amount copied over from the most recent Loan Estimate), a statement of that fact (12 CFR 1026.38(i)(8)(iii)(B)).

i. *Cash to Close.* Under the subheading "Loan Estimate," the amount disclosed on the Calculating Cash to Close table on the most recent Loan Estimate under 12 CFR 1026.37(h)(1)(viii), compared with the "Final" 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 or for Simultaneous Subordinate Financing – 12 CFR 1026.38(e) (Page 3 of the Closing Disclosure)

12. Determine whether the creditor properly uses the optional Alternative Cash to Close table (12 CFR 1026.38(e)).

    NOTE: This table may be used only in a transaction without a seller or for a simultaneous subordinate financing transaction (Comment 38(e)-1). In a purchase transaction, the alternative disclosure may be used for the simultaneous subordinate financing Closing Disclosure only if the first-lien Closing Disclosure records the entirety of the seller's transaction. The use of this alternative calculating cash to close table for transactions without a seller or for simultaneous subordinate transactions is required if the Loan Estimate provided to the consumer disclosed the optional alternative table under 12 CR 1026.37(h)(2) (*See* Comments 38(e)-1, 38(j)-3, 38(k)(2)(vii)-1, and 38(t)(5)(vii)(B)-1 and -2 for further information regarding related disclosure requirements).

13. Determine whether the table is disclosed under the heading "Calculating Cash to Close," together with the statement "Use this table to see what has changed from your Loan Estimate" (12 CFR 1026.38(e)).

14. Determine whether the table includes:

    a. Loan Amount. Labeled "Loan Amount":
        i. Under the subheading "Loan Estimate," the loan amount disclosed on the most recent Loan Estimate under 12 CFR 1026.37(b)(1);
        ii. Under the subheading "Final," the loan amount disclosed under 12 CFR 1026.38(b); and
        iii. Disclosed more prominently than other disclosures in this section, under the subheading "Did this change?":
            A. 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.
            B. If there is no change, a statement of that fact (12 CFR 1026.38(e)(1)(i)-(iii)).

    b. *Total Closing Costs.* Labeled "Total Closing Costs" (12 CFR 1026.38(e)(2)):

        i. Under the subheading "Loan Estimate," the amount disclosed on the most recent Loan Estimate under 12 CFR 1026.37(h)(2)(ii);

ii. Under the subheading "Final," the final Total Closing Costs disclosed under 12 CFR 1026.38(h)(1), disclosed as a negative number if the amount disclosed under 12 CFR 1026.38(h)(1) is a positive number, and disclosed as a positive number if the amount disclosed under 12 CFR 1026.38(h)(1) is a negative number; and

iii. Disclosed more prominently than other disclosures, with the question "Did this change?":

A. If the amounts are different (unless due to rounding):

i. A statement of that fact (12 CFR 1026.38(e)(2)(iii)(A)(*1*));

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), or if applicable, a statement directing the consumer to the principal reduction disclosure under 12 CFR 1026.38(t)(5)(vii)(B) (12 CFR 1026.38(e)(2)(iii)(A)(3)).

B. If there is no change and the amount disclosed under 12 CFR 1026.38(e)(2)(i) is equal to the amount disclosed under 12 CFR 1026.38(e)(2)(ii), a statement of that fact.

c. *Closing Costs Paid before Closing*. Labeled "Closing Costs Paid Before Closing" (12 CFR 1026.38(e)(3)):

i. Under the subheading "Loan Estimate", the amount of zero dollars;

ii. Under the subheading "Final", any amount designated as Borrower-Paid before closing under 12 CFR 1026.38(h)(2), disclosed as a positive number;

iii. Disclosed more prominently than other disclosures, under the subheading "Did This Change?" (12 CFR 1026.38(e)(3)):

A. If the amount disclosed under 12 CFR 1026.38(e)(3)(ii) is different from 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

B. 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.* Labeled "Total Payoffs and Payments" (12 CFR 1026.38(e)(4)).

i. Under the subheading "Loan Estimate", the amount disclosed on the most recent Loan Estimate under (12 CFR 1026.37(h)(2)(iii));

ii. Under the subheading "Final," the 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 if the total amount disclosed under 12 CFR 1026.38(t)(5)(vii)(B) is a positive number, and disclosed as a positive number if the total amount disclosed under 12 CFR 1026.38(t)(5)(vii)(B) is a negative number; and

iii. Determine whether these disclosures are disclosed more prominently than other disclosures under this paragraph under the subheading "Did This Change?":

A. If the amount disclosed under 12 CFR 1026.38(e)(4)(ii) is different from the amount disclosed under 12 CFR 1026.38(e)(4)(i) (unless the difference is due to rounding), a statement of that fact, 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

B. 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 or from consumer.* Labeled "Cash to Close" (12 CFR 1026.38(e)(5)):

i. Under the subheading "Loan Estimate", a statement of whether the estimated amount is due from or to the consumer, as disclosed under 12 CFR 1026.37(h)(2)(iv) on the most recent Loan Estimate; and

ii. Under the subheading "Final", a disclosure of the final amount due from or to the consumer, disclosed as a positive number (12 CFR 1026.38(e)(5)(i)-(ii)).

f. *Closing Costs Financed (Paid from your Loan Amount).* Labeled "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)

15. 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));

    NOTE: On the simultaneous subordinate financing Closing Disclosure, no contract sales price is disclosed under 1026.38(j)(1)(ii) (Comment 38(j)(1)(ii)-1).

    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. *Contractual Adjustments and Other Consumer Charges.* 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));

    NOTES:

    - *Contractual Adjustments.* This section requires disclosure of amounts not otherwise disclosed under 12 CFR 1026.38(j) that are owed to the seller but payable to the consumer after the transaction closing (Comment 38(j)(1)(v)-1).

- *Other Consumer Charges.* The amounts disclosed under 12 CFR 1026.38(j)(1)(v) that are for charges owed by the consumer at the real estate closing not otherwise disclosed under 12 CFR 1026.38(f), (g), and (j) will not have a corresponding credit in the summary of the seller's transaction under 12 CFR 1026.38(k)(1)(iv) (Comment 38(j)(1)(v)-2).

- *Simultaneous Subordinate Financing Closing Disclosure.* On the simultaneous subordinate financing Closing Disclosure, the proceeds of the subordinate financing applied to the first-lien transaction may be included in the summaries of transactions table under 12 CFR 1026.38(j)(1)(v). *See also* Comments 37(h)(1)(v)-2 and 37(h)(1)(vii)-6 for an explanation of how to disclose on the Loan Estimate amounts that will be disclosed on the Closing Disclosure under 12 CFR 1026.38(j)(1)(v) (Comment 38(j)(1)(v)-3).

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)

16. *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) labeled "Other Credits"; and amounts and descriptions of any additional amounts owed to the consumer but payable to the seller before the real estate closing, under the heading "Adjustments" (12 CFR 1026.38(j)(2)(vi));

NOTE: Any financing arrangements or other new loans not otherwise disclosed under 1026.38(j)(2)(iii) or (iv) must be disclosed under 12 CFR 1026.38(j)(2)(vi) on the first-lien Closing Disclosure. The principal amount of subordinate financing is disclosed on the summaries of transactions table for the borrower's transaction either on line 04 under the subheading "L. Paid Already by or on Behalf of Borrower at Closing," or under the subheading "Other Credits" (Comment 38(j)(2)(vi)-2).

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));

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 that have not yet been paid and that the consumer is expected to pay after the real estate closing but that 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)

17. *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)).

18. *Paid Outside of Closing.* Determine whether the creditor discloses costs that are not paid from closing funds 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)

19. *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)

20. *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 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 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 that have not yet been paid and that the consumer is expected to pay after the real estate closing but that 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)

21. *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 at Closing.* The amount disclosed in the Closing Disclosure, on the line captioned "Due to 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)

22. 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)).

    NOTES:

    - 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)).
    - 12 CFR 1026.38(k) does not apply in a transaction where there is no seller, for example, in a refinance transaction, or a transaction with a construction purpose as defined in 12 CFR 1026.37(a)(9)(iii), or a simultaneous subordinate financing purchase transaction if the first-lien Closing Disclosure records the entirety of the seller's transaction (Comment 38(k)-1). If 12 CFR 1026.38(k) applies to a simultaneous subordinate financing transaction, 12 CFR 1026.38(k) is completed based only on the terms and conditions of the simultaneous subordinate financing transaction and no contract sales price is disclosed under 12 CFR 1026.38(k)(1)(ii) on the Closing Disclosure for the simultaneous subordinate financing. (Comment 38(k)(1)-1)

Payoffs and Payments Table for Transactions Without a Seller or Simultaneous Subordinate Financing Transaction – 12 CFR 1026.38(t)(5)(vii)(B) (Page 3 of the Closing Disclosure)

The following modifications to Form H-25 of Appendix H may be made for a transaction that does not involve a seller or for simultaneous subordinate financing, and for which the alternative tables are disclosed under 12 CFR 1026.38(d)(2) and (e), as illustrated by Form H-25(J).

23. *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, labeled "Total Payoffs and Payments."

NOTE: Funds provided by designees of the consumer may include gift funds, grants, proceeds from loans that satisfy the partial exemption criteria in 12 CFR 1026.3(h), and, on the Closing Disclosure for a simultaneous subordinate financing transaction, contributions from a seller for costs associated with the subordinate financing (Comment 38(t)(5)(vii)(B)-1).

24. *Disclosure of Subordinate Financing*. For a transaction without a seller, or for a simultaneous subordinate financing transaction, if a creditor chose to disclose the alternative tables under 12 CFR 1026.38(d)(2) and (e), determine whether a creditor's modifications to form H-25 of Appendix H, if any, were permissible pursuant to the requirements of 12 CFR 1026.38(t)(5)(vii).

   A. The information required by 12 CFR 1026.38(a)(4)(ii), and 12 CFR 1026.38(f), (g), and (h) with respect to loan costs, other costs, and closing costs paid by the seller, may be deleted (12 CFR 1026.38(t)(5)(vii)(A)).

   B. A table under the master heading "Closing Cost Details" required by 12 CFR 1026.38(f) may be added with the heading "Payoffs and Payments" that itemizes the amounts of payments made at closing 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, labeled "Total Payoffs and Payments" (12 CFR 1026.38(t)(5)(vii)(B)).

   C. The tables required to be disclosed by 12 CFR 1026.38(j) and (k) may be deleted (12 CFR 1026.38(t)(5)(vii)(C)).

NOTE: The commentary to 12 CFR 1026.38(t)(5)(vii)(B) provides guidance as follows:

- *First-lien Closing Disclosure.* On the Closing Disclosure for a first-lien transaction disclosed with the alternative tables pursuant to 12 CFR 1026.38(d)(2) and (e) that also has simultaneous subordinate financing, the proceeds of the subordinate financing are included in the payoff and payments table under 12 CFR 1026.38(t)(5)(vii)(B) by disclosing, as a credit, the principal amount of the subordinate financing, and if the net proceeds of the subordinate financing are less than the principal amount of the subordinate financing, the net proceeds (Comment 38(t)(5)(vii)(B)-2.i).

- *Simultaneous subordinate financing – Closing Disclosure*. On the Closing Disclosure for a simultaneous subordinate financing transaction disclosed with the alternative tables pursuant to 12 CFR 1026.38(d)(2) and (e), the proceeds of the subordinate financing applied to the first-lien transaction may be included in the payoffs and payments table under 12 CFR 1026.38(t)(5)(vii)(B) (Comment 38(t)(5)(vii)(B)-2.ii).

- *Simultaneous subordinate financing – Seller contribution*. If a creditor discloses the alternative tables pursuant 12 CFR 1026.38(d)(2) and (e) on the simultaneous subordinate financing Closing Disclosure, the creditor also discloses as a credit in the payoffs and payments table on the simultaneous subordinate financing Closing Disclosure, any contributions from the seller toward the simultaneous subordinate financing. (*See also* Comments 38(j)-3 and 38(k)(2)(vii)-1 for disclosure requirements applicable to the first-lien transaction when the alternative disclosures are used for a simultaneous subordinate financing transaction and a seller contributes to the costs of the subordinate financing.) (Comment 38(t)(5)(vii)(B)-2.iii).

NOTE: As required by 12 CFR 1026.38(a)(3)(vii)(B), a form used for a transaction that does not involve a seller and is modified under 12 CFR 1026.38(t)(5)(vii) must contain the label “Appraised Prop. Value”. Where an estimate is disclosed, rather than an appraisal, the label for the disclosure is changed to “Estimated Prop. Value” (Comment 38(a)(3)(vii)-1).

Additional Information About This Loan: Loan Disclosures – 12 CFR 1026.38(l) (Page 4 of the Closing Disclosure)

25. *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.* Under the subheading "Escrow Account" (12 CFR 1026.38(l)(7)), whether the creditor provides:

(i) Under the reference "For now," a statement that an escrow account may also be called an impound or trust account; a statement of whether the creditor has established or will establish (at or before consummation) an escrow account in connection with the transaction; and the following information required under 12 CFR 1026.38(l)(7)(i)(A) and (B);

(A) A statement 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; a statement that the consumer would have to pay such costs directly in the absence of the escrow account; and a table, entitled "Escrow," that contains, if an escrow account is or will be established, an itemization of the following:.

1) The total amount that the consumer will be required to pay into the account over the first year after consummation, labeled "Escrowed Property Costs

over Year 1," together with a descriptive name of each charge to be paid (in whole or in part) from the escrow account, 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 that the consumer is likely to pay during the first year after consummation for the mortgage-related obligations described in 12 CFR 1026.43(b)(8) 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*)).

NOTE: The creditor discloses this amount only if an escrow account will be established. The disclosure is based on payments during the first year after consummation. If the creditor elects to make disclosures required by 12 CFR 1026.38(l)(7)(i)(A)(*1*) and (*4*) based on amounts derived from the escrow account analysis required under Regulation X, 12 CFR 1024.17, then the creditor may make the disclosures required by 12 CFR 1026.38(l)(7)(i)(A)(*2*) based on a 12-month period beginning with the borrower's initial payment date (rather than beginning with consummation) (Comment 38(l)(7)(i)(A)(*2*)-2; Comment 38(l)(7)(i)(A)(*5*)-1).

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 an escrow account with each periodic payment during the first year after consummation, 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 that 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:

(1) The estimated total amount the consumer will pay directly for the mortgage-related obligations described in 12 CFR 1026.43(b)(8) 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”; and

(2) 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)).

NOTE: 12 CFR 1026.38(l)(7)(i)(B)(*1*) requires disclosure based on payments during the first year after consummation. A creditor may comply with this requirement by basing the disclosure on a 12-month period beginning with the borrower’s initial payment date or on a 12-month period beginning with consummation (Comment 38(l)(7)(i)(B)(*1*)-2).

(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 that 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)

26. *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)

27. *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)

28. *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. The disclosed total of payments for each transaction shall be treated as accurate if the amount disclosed as the total of payments:

    i. Is understated by no more than $100, or

    ii. Is greater than the amount required to be disclosed (12 CFR 1026.38(o)(1)).

    NOTE: For transactions subject to 12 CFR 1026.19(e) and (f), special tolerances apply to the disclosure of the total of payments for purposes of the right of rescission and foreclosure (12 CFR 1026.23(g)(1)(ii), (g)(2)(ii) and (h)(2)(ii)).

    b. *Finance Charge.* Expressed as a dollar amount, and including 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 APR) 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, with 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)); and

    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)

29. *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 advisor 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 (pursuant to 12 CFR 1026.37(n)(2)) that "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)).

Questions Notice – 12 CFR 1026.38(q) (Page 5 of the Closing Disclosure)

30. *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 http://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)

31. *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, NMLS 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)

32. *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)

33. Determine whether the creditor follows the format and content of Form H-25, set forth in Appendix H (12 CFR 1026.38(t)(1) and (3)), changes formatting only if there is an exception, including acceptable modifications in Appendix H for transactions without a seller (12 CFR 1026.38(t)(5)), 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 (12 CFR 1026.38(t)(4)(i)):

        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 required to be disclosed under 12 CFR 1026.38(b), (f)(1), (n), and (o)(4) and (5) must be disclosed by rounding the exact amounts to three decimal places and then dropping any trailing zeros to the right of the decimal point (12 CFR 1026.38(t)(4)(ii)).

c. *Loan amount.* The dollar 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)(4)(iii)).

d. *Use of Form H-25 not required in certain circumstances.* For a transaction that is not a federally related mortgage loan, the creditor is not required to use Form H-25 of Appendix H, but the disclosures must be made with headings, content, and format substantially similar to Form H-25 (12 CFR 1026.38(t)(3)(ii)).

NOTE: For such loans, the use of Form H-25, if properly completed with accurate content, constitutes compliance with the clear and conspicuous and segregation requirement of 12 CFR 1026.38(t)(1)(i) (Comment 38(t)(3)-1).

e. *Exceptions.* The changes required and permitted by 12 CFR 1026.38(t)(5) are permitted for federally related mortgage loans for which the use of form H-25 is required under (12 CFR 1026.38(t)(3)). For non-federally related mortgage loans, the changes required or permitted by 12 CFR 1026.38(t)(5) do not affect the substance, clarity, or meaningful sequence of the disclosure, and therefore, are permissible. Any changes to the disclosure not specified in 12 CFR 1026.38(t)(5) or not permitted by other provisions of 12 CFR 1026.38 are not permissible for federally related mortgage loans. Creditors in non-federally related mortgage loans making any changes that affect the substance, clarity, or meaningful sequence of the disclosure will lose their protection from civil liability under TILA section 130 (Comment 38(t)(5)-1). 12 CFR 1026.38(t)(5) contains important exceptions. For example, modifications of Form H-25 are permitted to separate consumer and seller information, if modifications comply with the requirements of (12 CFR 1026.38(t)(5)(v)).

Construction or Construction-Permanent Loan Disclosures (12 CFR 1026.17(c)(2), (c)(6); .19(e)(1); .37-.38; and Appendix D to Part 1026)

Regulation Z permits treating: (1) a series of advances under an agreement to extend credit up to a certain amount as one transaction, and (2) the construction and permanent phases of a multiple-advance construction loan that may be permanently financed by the same creditor as either one or more than one transaction 12 CFR 1026.17(c)(6); (Comments 17(c)(6)-1 through -5).

NOTE: A creditor has the option to use the methods provided in Appendix D to part 1026 to calculate the annual percentage rate and other disclosures for construction loans in disclosing construction financing (Comment 17(c)(6)-2). Further, creditors may use, at their discretion, methods in Appendix D to estimate and disclose the terms of multiple-advance construction loans pursuant to 12 CFR 1026.37 and .38 (Comment App. D-7).

The following provisions of Regulation Z and associated commentary apply to (1) construction-only, (2) construction-permanent combined (CP Loan-Combined), and/or (3) construction-permanent separate (CP Loan-Separate) disclosures, or some combination of these loan disclosures, as noted.

NOTE: Citations for violations are to be made to the appropriate regulatory provision, not to the Commentary. References below to Comments are provided for informational purposes.

Determine:

1. Timing of Loan Estimate (12 CFR 1026.19(e)(1)(iii); Comment 19(e)(1)(iii)-1 and -5)
    a. Whether the creditor has delivered or placed in the mail the Loan Estimate not later than the third business day after receiving the consumer's application and not later than the seventh business day before consummation of the transaction (12 CFR 1026.19(e)(1)(iii)); *See also* Comment 17(c)(6)-2 discussing disclosures for construction loans).

       NOTES:
       - For a *CP Loan-Combined*, the creditor delivers or places in the mail one combined disclosure within these time frames (Comment 19(e)(1)(iii)-5).

- For a *CP Loan-Separate* for which an application for the construction and permanent financing has been received (either as one application or as a separate application), the creditor delivers or places in the mail the separate Loan Estimates for each phase within these time frames (Comment 19(e)(1)(iii)-5). If the creditor receives the application at separate times, the creditor must provide the Loan Estimate for each phase no later than the time frames applicable to the date it received the specific phase's application (i.e., if the creditor received the application for the permanent phase three days after the construction phase, it must deliver or place in the mail the permanent phase disclosure not later than the third day after receiving that application, not the construction phase application) (Comment 19(e)(1)(iii)-5).

- A creditor may also provide a separate Loan Estimate for the permanent phase before receiving an application for permanent financing at any time not later than the seventh business day before consummation (Comment 19(e)(1)(iii)-5).

- For a *Construction-only* transaction for which an application has been received and the creditor is separately disclosing the advances, the creditor delivers or places in the mail separate Loan Estimates for each advance no later than three business days after receiving the consumer's application (Comment 19(e)(1)(iii)-1).

2. Allocation of fees and charges when disclosing multiple transactions
   a. Whether fees and charges are allocated in construction-permanent loan or multiple-advance construction-only loan disclosures for purposes of calculating disclosures (12 CFR 1026.17(c)(6)).

      NOTES (Comment 17(c)(6)-5):

      - If the creditor has charged separate amounts for finance charges under 12 CFR 1026.4, and points and fees under 12 CFR 1026.32(b)(1), such amounts are allocated to the phase for which they are charged.
      - For a *CP Loan-Separate*, the finance charges and points and fees that would not be imposed but for the construction financing are allocated to the construction phase, and all other finance charges and points and fees are allocated to the permanent financing.
      - For a *CP Loan-Separate,* if a creditor charges a greater origination fee for construction-permanent financing than for construction-only financing, the fee difference is allocated to the permanent phase.
      - For a *CP Loan-Separate*, fees and charges that are not used to compute the finance charge under 12 CFR 1026.4 or points and fees under 12 CFR

1026.32(b)(1) may be allocated between the transactions in any manner the creditor chooses.

3. Sale Price
   a. Loan Estimate (12 CFR 1026.37(a)(7)).
      i. For transactions that involve a seller, whether the contract sale price of the property is disclosed (12 CFR 1026.37(a)(7)(i)).
      ii. For transactions that do not involve a seller, whether the estimated value of the property is disclosed as "Prop. Value" (12 CFR 1026.37(a)(7)(ii)).

      NOTES:

      - For transactions that do not involve a seller and transactions that involve a seller where the sale price is not yet known, the creditor discloses the estimated value of the property based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer (Comment 37(a)(7)-1. See also 12 CFR 1026.17(c)(2)(i), Comment 17(c)(2)(i)-1, and Comment 19(e)(1)(i)-1).
      - For transactions involving construction where there is no seller, the creditor has the option to include the estimated value of the improvements to be made on the property (Comment 37(a)(7)-1).

   b. Closing Disclosure (12 CFR 1026.38(a)(3)(vii)).
      i. If there is a seller, whether the creditor has disclosed the contract sale price of the property (12 CFR 1026.38(a)(3)(vii)(A)).
      ii. Where there is no seller, whether the creditor has disclosed the appraised value of the property (12 CFR 1026.38(a)(3)(vii)(B)).

      NOTES:

      - The value disclosed is determined by the appraisal or valuation used to determine approval of the credit transaction. If the creditor has not obtained an appraisal, the creditor may disclose the estimated value of the property, labeled "Estimated Prop. Value" (Comment 38(a)(3)(vii)-1).
      - For transactions involving construction where there is no seller, this disclosure must be the value of the property that is used to determine the approval of the credit transaction. That disclosure includes any improvements to be made on the property if those improvements were considered when approving the loan (Comment 38(a)(3)(vii)-1).

4. Loan Term (12 CFR 1026.37(a)(8); .38(a)(5)(i))

   a. Whether the term to maturity of the credit transaction is disclosed (12 CFR 1026.37(a)(8); .38(a)(5)(i)).

      NOTES:

      - For a *CP Loan-Combined*, the loan term is the total combined term of the construction and permanent periods (Comment App. D-7.i.A).
      - For a *CP Loan-Separate (Permanent Phase)*, the loan term of the permanent financing is counted from the date that interest for the permanent financing periodic payments begins to accrue, regardless of when the permanent phase is disclosed (Comment App. D-7.i.B)).

5. Product Type (12 CFR 1026.37(a)(10); .38(a)(5)(iii))

   a. Whether the loan product description includes “Adjustable rate,” “Step rate,” or “Fixed rate,” as applicable, and the features that may change the periodic payment (Negative amortization, Interest only, Step payment, Balloon payment, Seasonal payment) (12 CFR 1026.37(a)(10); .38(a)(5)(iii)).

   b. “Interest Only” feature is disclosed if one or more regular periodic payments may be applied only to interest accrued and not to the loan principal (12 CFR 1026.37(a)(10)(ii)(B); .38(a)(5)(iii)).

      NOTES:

      - If there is a final balloon payment that includes principal (typically construction-only and separate construction phase disclosures), the final balloon payment is excluded for purposes of determining the duration of the “Interest Only” payment period (Comment App. D-7.ii.A).
      - For a *CP Loan-Combined,* the “Interest Only” payment period is the full term of the interest-only construction phase, plus any interest-only period in the permanent phase (Comment App. D-7.ii.B).

   c. “Adjustable Rate” product is disclosed if the interest rate may increase after consummation, but the rates that will apply or the periods for which they will apply are not known at consummation (12 CFR 1026.37(a)(10)(i)(A)).

      NOTES:

      - For a *CP Loan-Combined and CP Loan-Separate (Permanent Phase*), if the interest rate for the permanent phase is not known at consummation for a construction-permanent loan using a single, combined construction-permanent disclosure or using separate disclosures for the permanent phase, the creditor shall disclose the loan product under 12 CFR 1026.37(a)(10) and 12 CFR 1026.38(a)(5)(iii) as "Adjustable Rate" (Comment App. D-7.ii.C).

- For a *CP Loan-Combined and CP Loan-Separate (Permanent Phase)*, if the interest rate may increase under the terms of the legal obligation from the disclosures provided at consummation, the product is disclosed as "Adjustable Rate," even if the interest rate will be fixed for the term of the permanent phase once it is set (Comment App. D-7.ii.C).

d. "Step Rate" product is disclosed if the interest rate will change after consummation, and the rates that will apply and the periods for which they will apply are known at consummation (12 CFR 1026.37(a)(10)(i)(B)).

NOTE: For a *CP Loan-Combined* transaction*,* if the interest rates for both phases are fixed at consummation but are different rates, and the creditor does not reserve the right to modify the rate after consummation so that the interest rate for the permanent phase is known at consummation but different from the construction phase interest rate, the product is disclosed as "Step Rate" (12 CFR 1026.37(a)(10)(i)(B)).

6. Interest Rate (12 CFR 1026.37(b)(2))

a. Whether the interest rate that will be applicable to the transaction at consummation is disclosed, and if the interest rate at consummation is not known for an adjustable rate transaction, whether the fully indexed rate (i.e., the interest rate calculated using the index value and margin at the time of consummation) is disclosed (12 CFR 1026.37(b)(2)).

NOTES for *CP Loan-Combined and CP Loan-Separate (Permanent Phase):*

- If the permanent phase has an adjustable rate at consummation and separate disclosures are provided, the rate disclosed for the permanent financing is the fully indexed rate pursuant to 12 CFR 1026.37(b)(2) at the time of consummation (Comment App. D-7.iii).
- If the permanent phase has a rate that is not known at consummation, the creditor discloses the best information reasonably available at the time the disclosure is provided to the consumer (Comment 19(e)(1)(i)-1; 12 CFR 1026.17(c)(2)(i); Comment 17(c)(2)(i)-1).
- If the permanent phase has a fixed rate that will not be adjusted when the construction phase converts to the permanent phase, that fixed rate is used for disclosures (Comment App. D-7.iii)._

- If the loan contract secured by a principal dwelling provides that the permanent loan interest rate may adjust at conversion, and such rate adjustment results in a corresponding payment adjustment, and if the interest rate for the permanent phase will be fixed after the conversion, the adjustable rate disclosures in 12 CFR 1026.20(c), but not (d), are provided (Comment App. D-7.iii); however, if the loan contract secured by a principal dwelling provides that the permanent loan interest rate may adjust at conversion, and such rate adjustment results in a corresponding payment adjustment, and if the interest rate for the permanent phase is adjustable, the creditor provides the adjustable rate disclosures in 12 CFR1026.20(c) and (d) (Comment App. D-7.iii).

7. Projected Payments (12 CFR 1026.37(c); .38(c))

   a. Whether a separate table itemizes each separate periodic payment (or range), together with estimated taxes, insurance and assessments, and escrow account payments (12 CFR 1026.37(c) and 12 CFR 1026.38(c)).

      NOTES:

      - For a *Construction-Only and CP Loan-Separate (Construction Phase),* the construction phase is disclosed according to the requirements for the Projected Payments table, including disclosure of the amounts of any interest-only payments. If the terms of the construction phase do not account for repayment of the entire principal, the creditor must disclose a balloon payment feature (unless the transaction has negative amortization, interest-only, or step payment features) in a separate column, and balloon payment disclosures are provided (Comment App. D-7.v.A).
      - For a *CP Loan-Combined,* the Projected Payments table reflects the interest-only payments during the construction phase in the first column, which also reflects the amortizing payments, and mortgage insurance and escrow payments, if any, for the permanent phase if the term of the construction phase is not a full year (Comment App. D-7.v.B).
      - For a *CP Loan-Combined* when only the terms of the permanent phase require mortgage insurance or escrow, the disclosure of such amounts depends on whether the first column of the table exclusively discloses the construction phase. If the first column of the Projected Payment table exclusively discloses the construction phase, the creditor discloses "0" mortgage insurance and or a "-" for escrow in the first column if the construction phase does not include mortgage insurance or escrow. If payments for both phases are disclosed in the first column, the amount of the mortgage insurance premium or any escrow payment for the permanent phase is disclosed in the first column (Comment App. D-7.v.C).

8. Disclosure of Construction Costs (12 CFR 1026.37(h)(1)(v); 12 CFR 1026.37(h)(2)(iii); 12 CFR 1026.38(j)(1)(v); 12 CFR 1026.38(t)(5)(vii)(B)) *(Construction-only; CP-Combined; CP-Separate (Construction Phase)*

   NOTE: Construction costs are the costs of improvements to be made to the property that the consumer contracts for in connection with the financing transaction and that will be paid in whole or in part with loan proceeds (Comment App. D-7.vi.A).

   a. *Loan Estimate.* Whether on the Loan Estimate, a creditor factors construction costs into the "funds for borrower" calculation in the Calculating Cash to Close table under 12 CFR 1026.37(h)(1)(v) or the "Payoffs and Payments" calculation in the optional alternative Calculating Cash to Close table under 12 CFR 1026.37(h)(2)(iii) for transactions without a seller or for simultaneous subordinate financing (12 CFR 1026.37(h)); Comment App. D-7.vi.B).

   b. *Closing Disclosure.* Whether on the Closing Disclosure, a creditor includes construction costs in the "Itemization of amounts due from borrower" in the "Summary of Borrower's Transaction" under 12 CFR 1026.38(j)(1)(v) and factors them into the "Down payment/funds from borrower" and "Funds for borrower" calculations of the Calculating Cash to Close table under 12 CFR 1026.38(i)(4) and (6) or in the "Payoffs and Payments" section of the Closing Cost details in the optional alternative Calculating Cash to Close table for transactions without a seller or for simultaneous subordinate financing 12 CFR 1026.38(e) as modified under (12 CFR 1026.38(t)(5)(vii)(B)). (*See also* Comment App. D-7.vi.C).

      NOTE: If a creditor places a portion of a construction loan's proceeds in a reserve or other account at consummation, the creditor may separately disclose this from the other construction costs disclosed in the "Itemization of amounts due from borrower" in the Summary of Borrower's Transaction under 12 CFR 1026.38(j)(1)(v), if space permits (Comment App. D-7.vi.D). The creditor may disclose the amount of such reserve or other account as a separate itemized cost, along with an itemized cost for the balance of the construction costs, under disclosure and calculation options described in Comments App. D-7.vi.B and C (Comment App. D-7.vi.D).

9. Inspection and Handling fees (12 CFR 1026.37(f) and .38(f)) *(Construction-only; CP-Combined; CP-Separate (Construction Phase))*

   a. Whether inspection and handling fees, which are Loan Costs (12 CFR 1026.37(f) and .38(f)), are included in the Loan Costs table (or an addendum) and certain disclosures, including "In 5 Years" (12 CFR 1026.37(l)(1)) and "Total of Payments" (12 CFR 1026.38(o)(1)).

NOTES:

- Inspection and handling fees for the staged disbursement of construction loan proceeds, including draw fees, are part of the finance charge (Comment 4(a)-1.ii.A and Comment App. D-7.vii).
- If inspection and handling fees are collected before or at consummation, the total of such fees is disclosed in the Loan Costs table (Comment 37(f)-3 and Comment App. D-7.vii).
- If inspection and handling fees will be collected after consummation, the total of such fees is disclosed in a separate addendum under the heading “Inspection and Handling Fees Collected After Closing” and the fees are not counted for purposes of the Calculating Cash to Close table (Comment 37(f)-3, Comment 37(f)(6)-3, Comment 38(f)-2, and Comment App. D-7.vii).
- If inspection and handling costs are collected, such costs are included in the sum of the “In 5 Years” disclosure (Loan Estimate) and the “Total of Payments” (Closing Disclosure), even when disclosed on an addendum (Comment App. D-7.vii).

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 12 CFR 1026.33, 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 1026.18(n))

n. Statement concerning certain security interest charges (12 CFR 1026.4(e) and 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)[63] (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

[63] For example, some home construction loans that are secured by real property or a dwelling are subject to 12 CFR 1026.18(s) and not 12 CFR 1026.18 (g). *See* Comment App. D-6 of Regulation Z. *See also* Comment App. D-7 for transactions subject to 12 CFR 1026.37 – .38.

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*[64] (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"[65] (12 CFR 1026.18(s)(2)(i)(C)).

iv. *For a negative amortization loan*[66] (12 CFR 1026.18(s)(2)(ii)):

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

[64] This category includes interest-only loans, as set forth in Comment 18(s)(2)(i)(C)-1.

[65] Because model forms and clauses published by the CFPB are safe harbors, this rate may also be labeled "maximum ever," pursuant to 12 CFR 1026.18(s)(2)(i)(B)(3).

[66] 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)).

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), 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); and

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 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)

1. 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; and

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 CFPB website to access state housing finance authorities' contact information.

2. 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; and 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; and

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.

NOTES:

- Model and sample disclosures H-4(D)(1) through (4) containing all necessary information can be found in Appendix H. The disclosures required under 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)).
- 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 12 CFR 1024.17(b)) is canceled, 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 that 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;

      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)); and

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 (12 CFR 1026.20(e)(2)(ii)(C)); and

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)); or

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)

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".

    b. The APR.

    c. 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)).

    d. Statement that the interest rate may increase and that the 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.

    e. 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.

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 12 CFR 1026.33 of this part, the following information about the covered person's partial payment policy, under the subheading "Partial Payment":

i. 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;

ii. 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;

iii. 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

iv. A statement that, if the loan is sold, the new covered person, using the term "lender", may have a different policy.

NOTES:

- The format of the disclosure illustrated by Form H-25 of Appendix H may be used (for the information required to be disclosed by 12 CFR 1026.38(l)(5)). The text on that form may be modified to suit the format of the covered person's disclosure under 12 CFR 1026.39. Any modifications must be appropriate and not affect the substance, clarity, or meaningful sequence of the disclosure (Comment 39(d)(5)-1).
- 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 (Comment 39(b)(5)-2).
- 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.

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 six 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 – 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 or her school or the 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; and

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 rate 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 or her school or the 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; and

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 rate 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 identity, the following disclosures:

A. A statement that the consumer has the right to cancel the loan, without penalty, at any time before 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 12 CFR 1026.5(a)(1)(ii)(A); 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, 1026.40, and 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 of 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). 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. APR 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)).

6. Determine that the card issuer discloses, on or with a solicitation or application (12 CFR 1026.60(b)):

    a. APR. 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 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 APR 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 APRs for multiple states in the table. Note, however, that issuers imposing APRs that vary by state may, at the issuer's option, disclose in the table: the specific APR applicable to the consumer's account; or the range of the annual percentage rates, if the disclosure includes a statement that the APR varies by state and refers the consumer to a disclosure provided with the table where the APR 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 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 that 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 is 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; and

vii. Frequency of APR changes.

r. Rules relating to changes in the index, APR, and payment amount:

i. Lifetime rate cap and any annual caps, or a statement that there is no annual limitation;

ii. The minimum payment requirement, using the maximum APR, and when the maximum APR may be imposed;

iii. A historical example, based on a $10,000 balance, reflecting all significant plan terms; and

iv. 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 APR 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 that 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 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 APRs 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 creditor 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 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 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) is provided with the account opening disclosures. 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, and

   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 APR 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 that the rate may change,

vi. The effect(s) of an increase, and

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 that 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 *a* through *j* 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 APR. If different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates apply shall also be disclosed and for variable-rate plans, the fact that the periodic rate(s) may vary (12 CFR 1026.7(a)(4)).

NOTES:

- 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.
- Further, an APR 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 amount(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 APR(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 (*a* through *n* 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 APR 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).

g. *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)).

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. 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)).

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(b)(9)).

j. *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)).

k. *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 APR(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)).

NOTES:

- 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.
- 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.

l. 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)); and

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 U.S. 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 U.S. 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 U.S. trustee or a bankruptcy administrator (12 CFR 1026.7(b)(12)(iv)(B)).

m. 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.

n. 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 six months or more than 18 months, to 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 section (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;

    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 section, 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; and

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 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. 3937 (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), 1026.9(c)(2)(iv)(B), and 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 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 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 one dollar 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 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)).

NOTE: For a high-cost mortgage, the three-business day waiting period requirement does not apply to a second offer of credit with a lower annual percentage rate consummated by the consumer (15 U.S.C. 1639(b)(3)).

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 12 CFR 1026.20(d)).

   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 (other than a transaction 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, disclosures 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 FDCPA and the consumer has notified the servicer to cease communication under Section 805(c) of 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 or a Cooperative Unit— Early Disclosures (Loan Estimates) – 12 CFR 1026.19(e)

Provision of Disclosures

1. For closed-end consumer loans secured by real property or a cooperative unit, 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 following criteria are met:

   (i) the transaction is secured by a subordinate lien;

   (ii) the transaction is for buyer assistance such as down payments or closing costs, rehabilitation loans, energy efficiency assistance, or foreclosure prevention;

   (iii) the credit contract does not require the payment of interest;

   (iv) the credit contract provides for repayment that is forgiven, deferred for 20 years, or deferred until the property is sold or is no longer the consumer's principal dwelling;

   (v) the costs payable by the consumer in connection with the transaction at consummation are limited to recording fees, transfer taxes, a reasonable application fee, and a reasonable fee for housing counseling services; and the total of costs payable by the consumer for the application and housing counseling services is less than 1percent of the amount of credit extended; and

   (vi) the creditor complies with the disclosure requirements in 12 CFR 1026.18. However, the creditor is permitted to provide the integrated disclosures (Loan Estimate and Closing Disclosure) as an alternative to providing the disclosure of the cost of credit under 12 CFR 1026.18, and does not need to provide the special information booklet, Good Faith Estimate, or HUD-1 settlement statement (12 CFR 1026.3(h); Comment 3(h)-1).

Timing

2. 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.

3. 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)).

4. 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 (12 CFR 1026.19(a)(3)).

Shopping for Settlement Service Providers

5. 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 (12 CFR 1026.19(e)(1)(vi)).

6. 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 the initial Loan Estimate but in accordance with the same timing requirements. The settlement service providers identified on the written list must correspond to required settlement services for which the consumer may shop, disclosed under 12 CFR 1026.37(f)(3) (12 CFR 1026.19(e)(1)(vi); Comment 19(e)(1)(vi)-3).

Pre-Disclosure Activity

7. *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)).

8. *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)).

9. *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

10. 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

11. 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); Comment 19(e)(3)(ii)-2);

    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)).

        i. A creditor may permit a consumer to shop even if a creditor fails to issue the written list of providers required by (12 CFR 1026.19(e)(1)(vi)(C)).

        ii. Determine whether the creditor permits the consumer to shop consistent with 12 CFR 1026.19(e)(1)(vi)(A) based on all the relevant facts and circumstances.

Variations Permitted for Certain Charges

12. For the following, determine whether the estimate has been made in good faith. An estimate 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, even if such charges are paid to the creditor or affiliates of the creditor, as long as the charges are bona fide; (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 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. Property taxes and other charges paid for third-party services not required by the creditor (12 CFR 1026.19(e)(3)(iii)(E)).

Revised Loan Estimates

13. Determine whether the creditor may use a revised estimate of charges, instead of the estimate of charges originally disclosed to the consumer, to compare charges actually paid by or imposed on the consumer for purposes of determining good faith (12 CFR 1026.19(e)(3)(iv)). Creditors are permitted to use a revised estimate for this purpose (i.e., to reset tolerances) for any of the following reasons (12 CFR 1026.19(e)(3)(iv)):

    a. *Changed circumstances affecting settlement charge.* 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 (12 CFR 1026.19(e)(3)(iv)(A) and (B)), *"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)).

e. *Intent to Proceed*. The consumer indicates an intent to proceed with the transaction more than 10 business days after the Loan Estimate is provided or within an extended period of time if the creditor has voluntarily extended the expiration date either orally or in writing (12 CFR 1026.19(e)(3)(iv)(E)).

f. *Construction loan*. The loan involves new construction where settlement is not expected to occur until more than 60 days after the Loan Estimate has been provided to the consumer and the creditor states clearly and conspicuously that a revised disclosure may be used at any time prior to 60 days before consummation, unless otherwise provided by 12 CFR 1026.19(e)(3)(iv) (12 CFR 1026.19(e)(3)(iv)(F)).

NOTE: A loan involves “new construction” if it is a loan for the purchase of a home that has yet to be constructed, or a loan to purchase a home under construction (i.e., construction is currently underway) (Comment 19(e)(3)(iv)(F)-1).

NOTE: A creditor may issue a revised disclosure for informational purposes, even if the revised disclosure may not be used for purposes of determining good faith under 12 CFR 1026.19(e)(3)(i) and (ii) (Comment 19(e)(3)(iv)-4).

14. Determine whether the revised disclosures, even those provided only for informational purposes (i.e., not to reset tolerances), were based on the best information reasonably available to the creditor at the time the disclosure was provided to the consumer (12 CFR 1026.17(c)(2)(i)).

Provision and Receipt of Revised Disclosures

15. Determine whether the creditor has already provided a Closing Disclosure in accordance with 12 CFR 1026.19(f)(1)(i).

NOTE: If the creditor has provided a Closing Disclosure, the creditor may not provide a revised version of the Loan Estimate on or after the date on which it provided the Closing Disclosure (12 CFR 1026.19(e)(4)(ii)). Instead, the creditor may use the initial or a corrected Closing Disclosure to reset tolerances for purposes of determining good faith if one of the reasons for a revised estimate is present (12 CFR 1026.19(e)(4)(i)).

16. Determine whether the creditor provides revised disclosures within three business days of receiving information sufficient to establish a reason for a revised disclosure, such as a changed circumstance or other reason pursuant to 12 CFR 1026.19(e)(3)(iv) (12 CFR 1026.19(e)(4)(i)).

    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

17. 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 or a Cooperative Unit—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 or a cooperative unit, other than a reverse mortgage subject to 12 CFR 1026.33 or loans otherwise excepted under 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 is (i) the transaction is secured by a subordinate lien, (ii) the loan is for buyer assistance such as down payments or closing costs, rehabilitation loans, energy efficiency assistance, or foreclosure prevention, (iii) the loan does not require the payment of interest, (iv) the loan provides for 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) the costs payable by the consumer in connection with the transaction at consummation are limited to recording fees, transfer taxes, a reasonable application fee, and a reasonable fee for housing counseling services, and fees for the application and housing counseling are less than 1percent of the amount of credit extended. For those transactions, creditors must comply with all Regulation Z requirements pertaining to disclosures. They may do so by complying with the disclosure requirements of 12 CFR 1026.18, or in the alternative, where criteria for the partial exemption are satisfied, they may provide a compliant Loan Estimate and Closing Disclosure, and do not need to provide a Good Faith Estimate or HUD-1 settlement statement (12 CFR 1026.3(h)).

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 CFR1026.19(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)).

5. Determine whether the creditor is relying on the Closing Disclosure to reset tolerances for purposes of determining good faith under 12 CFR 1026.19(e)(3). If so, confirm:

   a. A changed circumstance or other reason set forth in 12 CFR 1026.19(e)(3)(iv) is present;

   b. The revised disclosures were based on the best information reasonably available to the creditor at the time the disclosure was provided to the consumer (12 CFR 1026.17(c)(2)(i)); and

   c. The creditor provided the revised disclosures within three business days of receiving information sufficient to establish a reason for a revised estimate (12 CFR 1026.19(e)(4)).

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 CFR1026.22 (12 CFR 1026.19(f)(2)(ii)(A));

   NOTE: Generally, if the APR and finance charges are overstated because the interest rate has decreased, the APR is considered accurate and no new waiting period is required. (12 CFR 1026.22)).

   b. The loan product is changed, causing the information disclosed in the Loan Estimate under 12 CFR1026.38(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 the creditor is relying on the corrected Closing Disclosure to reset tolerances for purposes of determining good faith under 12 CFR 1026.19(e)(3). If so, confirm:

   a. A changed circumstance or other reason set forth in 12 CFR 1026.19(e)(3)(iv) is present;

   b. The revised disclosures were based on the best information reasonably available to the creditor at the time the disclosure was provided to the consumer (12 CFR 1026.17(c)(2)(i)); and

   c. The creditor provided the revised disclosures within three business days of receiving information sufficient to establish a reason for a revised estimate (12 CFR 1026.19(e)(4)).

   NOTE: Corrected Closing Disclosures require a new three-day waiting period only if one of the following is present: an inaccurate APR, a change in loan product, or the addition of a prepayment penalty (12 CFR 1026.19(f)(2)(ii)).

4. 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)).

5. 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. 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 previously disclosed, determine whether 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 (15 U.S.C. 7001(c)(1)(B)).

      i. 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. (15 U.S.C. 7001(c)(1)(C) and (D)).

ii. If the financial institution makes its disclosures available to consumers in electronic form, determine that the forms comply with the appropriate 12 CFR – 1026.5(a)(1); 1026.15(b); 1026.16(c); 1026.17(a)(1); 1026.17(g); 1026.19(c); 1026.23(b)(1); 1026.24(d); 1026.31(b); 1026.40(a)(3); and 1026.60(a)(2)(v).

iii. 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 Consumer Financial Protection Bureau – 12 CFR 1026.57(d)

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 Bureau (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 Consumer Financial Protection Bureau – 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 Bureau 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 Bureau, 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 Bureau 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 Bureau 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 Bureau 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 Bureau 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 five percent, eight percent, 10 percent, or 12 percent) or range of margins (such as the prime rate plus from five 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 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), 1026.60(d)(3), 1026.60(e)(4), or 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 the FFIEC Federal Computational Tool 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, and

   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 include: home equity lines of credit; timeshare loans, or for purposes of 12 CFR 1026.43(c)-(f): reverse mortgages; temporary or 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 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), by making qualified mortgages under 12 CFR 1026.43(e) and (f), or qualified mortgages under the safe harbor standard in 15 U.S.C. 1639c(b)(2)(F). Qualified mortgages, which limit certain loan features and practices, are presumed to satisfy the ability-to-repay requirements (12 CFR 1026.43(c)(1) and (2)).

Except as otherwise provided where a loan is a non-standard mortgage refinanced into a standard mortgage under 12 CFR 1026.43(d), or is a qualified mortgage under 12 CFR 1026.43(e), (f), or pursuant to 15 U.S.C. 1639c(b)(2)(F) (all of which are covered by procedures below), 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, at a minimum, on the criteria that follow (12 CFR 1026.43(c)(1)).

1. 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));

    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)).

2. 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. (12 CFR 1026.43(c)(3))

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 (12 CFR 1026.43(c)(3)(ii)); and

    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 (12 CFR 1026.43(c)(4)(vii)); and

    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 CFR1026.43(c)(2)(iii) and (c)(5)), simultaneous loans (as required by 12 CFR1026.43(c)(2)(iv) and (c)(6)), mortgage-related obligations (as required by 12 CFR1026.43(c)(2)(v)), and current debt obligations, alimony, and child support (as required by (12 CFR1026.43(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 CFR1026.43(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)).

   NOTE: In cases where the loan does not meet the requirements to be a qualified mortgage, the loan should be analyzed under ability to repay requirements as outlined in (12 CFR 1026.43(c)).

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).

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 CFR1026.32(b)(1)(i)):

i. Do not exceed the applicable thresholds of 12 CFR 1026.43(e)(2)(iii) and (3):

A. $100,000 or over: 3 percent of the total loan amount (*See* 12 CFR 1026.32(b)(4)(i));

B. $60,000 or over but less than $100,000: $3,000;

C. $20,000 or over but less than $60,000: 5 percent of the total loan amount;

D. $12,500 or over but less than $20,000: $1,000; or

E. Less than $12,500: 8 percent of the total loan amount.

NOTE: These numbers are annually adjusted for inflation on January 1.[67]

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

[67] The most recent updates can be found at: https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/truth-lending-regulation-z-annual-threshold-adjustments-card-act-hoepa/.

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:

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 five 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 (12 CFR 1026.43(e)(2)(v)):

i. Considers the consumer’s monthly debt-to-income ratio or residual income; 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; and debt obligations, alimony, and child support; and

ii. Verifies 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 and the consumer’s current debt obligations, alimony, and child support.

f. For which the annual percentage rate does not exceed the average prime offer rate for a comparable transaction as of the date the interest rate is set by the amounts specified below (12 CFR 1026.43(e)(2)(vi)):[68]

   i. For a first-lien covered transaction with a loan amount greater than or equal to $110,260, 2.25 or more percentage points (12 CFR 1026.43(e)(2)(vi)(A));

   ii. For a first-lien covered transaction with a loan amount greater than or equal to $66,156 but less than $110,260, 3.5 or more percentage points (12 CFR 1026.43(e)(2)(vi)(B));

   iii. For a first-lien covered transaction with a loan amount less than $66,156, 6.5 or more percentage points (12 CFR 1026.43(e)(2)(vi)(C));

   iv. For a first-lien covered transaction secured by a manufactured home with a loan amount less than $110,260, 6.5 or more percentage points (12 CFR 1026.43(e)(2)(vi)(D));

   v. For a subordinate-lien covered transaction with a loan amount greater than or equal to $66,156, 3.5 or more percentage points (12 CFR 1026.43(e)(2)(vi)(E));

   vi. For a subordinate-lien covered transaction with a loan amount less than $66,156, 6.5 or more percentage points (12 CFR 1026.43(e)(2)(vi)(F)).

   NOTE: These numbers are annually adjusted for inflation on January 1.[69]

Temporary Category of Qualified Mortgages – Other Agencies – 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 a qualified mortgage as defined by the U.S. Department of Housing and Urban Development (24 CFR 201.7 and 24 CFR 203.19), the U.S. Department of Veterans Affairs (38 CFR 36.4300 and 38 CFR 36.4500), or the U.S. Department of Agriculture (7 CFR 3555.109); or

   b. Meet the requirements of 12 CFR 1026.43(e)(2)(i) through (iii) (i.e., do not have negative amortization, interest-only payments, or balloon payments; loan terms that

[68] This subsection applies if the creditor chooses to rely on the pricing threshold method, which becomes compulsory for purposes of the General QM on October 1, 2022. Prior to that date, at the creditor's discretion, it may choose to rely on the previous debt-to-income based definition of the general qualified mortgage, under which the ratio of the consumer's total monthly debt to total monthly income, at the time of consummation, does not exceed 43 percent in accordance with former Appendix Q.

[69] The most recent updates can be found at: https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/truth-lending-regulation-z-annual-threshold-adjustments-card-act-hoepa/.

exceed 30 years; or points and fees that exceed the specified limits—generally, 3 percent of the total loan amount); and are eligible for purchase or guarantee Fannie Mae or Freddie Mac (or any limited-life regulatory entity succeeding the charter of either) operating under the conservatorship or receivership of the Federal Housing Finance Agency pursuant to section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(a)), and for which the creditor received the consumer's application prior to October 1, 2022.

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)(i)(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 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)(v) and (vi), 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)(i)(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)(i)(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)).

Seasoned Loan Qualified Mortgages – 12 CFR 1026.43(e)(7)

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, except as provided in 12 CFR 1026.43(e)(7)(iv) (12 CFR 1026.43(e)(7)(i)):

   a. Is a first-lien covered transaction;

b. Is a fixed-rate mortgage as defined in 12 CFR 1026.18(s)(7)(iii) with fully amortizing payments as defined in 12 CFR 1026.43(b)(2);

NOTE: Under 12 CFR 1026.18(s)(7)(iii), the term “fixed-rate mortgage” means a transaction secured by real property or a dwelling that is not an adjustable-rate mortgage or a step-rate mortgage. Thus, a covered transaction that is an adjustable-rate mortgage or step-rate mortgage is not eligible to become a seasoned qualified mortgage under 12 CFR 1026.43(e)(7) (Comment 43(e)(7)(i)(A)-1).

Only loans for which the scheduled periodic payments do not require a balloon payment, as defined in 12 CFR 1026.18(s), to fully amortize the loan within the loan term can become seasoned qualified mortgages for purposes of 12 CFR 1026.43(e)(7). However, 12 CFR 1026.43(e)(7)(i)(A) does not prohibit a qualifying change as defined in 12 CFR 1026.43(e)(7)(iv)(B) that is entered into during or after a temporary payment accommodation in connection with a disaster or pandemic-related national emergency, even if such a qualifying change involves a balloon payment or lengthened loan term (Comment 43(e)(7)(i)(A)-2).

c. Satisfies the requirements in 12 CFR 1026.43(e)(2)(i) through (v) because:

   i. The loan does not have negative amortization, interest-only payments, or balloon payments, or a loan term that exceeds 30 years;

   ii. The loan’s points and fees do not exceed the specified limits—generally, 3 percent of the total loan amount;

   iii. The loan is underwritten in compliance with 12 CFR 1026.43(e)(2)(iv); and

   iv. The creditor:

      A. Considered the consumer’s monthly debt-to-income ratio or residual income; 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; and debt obligations, alimony, and child support; and

      B. Verified 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 and the consumer's current debt obligations, alimony, and child support.

d. Is a covered transaction with no more than two delinquencies of 30 or more days and no delinquencies of 60 or more days at the end of the seasoning period (12 CFR 1026.43(e)(7)(ii)). The “seasoning period” generally means a period of 36 months beginning on the date on which the first periodic payment is due after consummation of the covered transaction, with certain exceptions (see 12 CFR

1026.43(e)(7)(iv)(C)(1) and (2)). For the definition of delinquency, see 12 CFR 1026.43(e)(7)(iv)(A).

e. Satisfies the portfolio requirements in 12 CFR 1026.43(e)(7)(iii) because:

   i. It is not subject, at consummation, to a commitment to be acquired by another person, except for a sale, assignment, or transfer permitted by 12 CFR 1026.43(e)(7)(iii)(B)(3); and

   ii. Legal title to the covered transaction is not sold, assigned, or otherwise transferred to another person before the end of the seasoning period, except as identified in 1026.43(e)(7)(iii)(B)(1) through (3).

f. Is not a high-cost mortgage as defined in 12 CFR 1026.32(a).

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 31 (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), and (e)(2)(iii) (points and fees under certain thresholds);

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.

Qualified Mortgage— Covered Institution Portfolio Loans–15 U.S.C. 1639c(b)(2)(F)[70]

1. Determine whether a creditor has complied with the ability-to-repay requirements of 15 U.S.C. 1639c(a) by making a qualified mortgage as follows:

   a. The creditor is a covered institution under 15 U.S.C. 1639c(b)(2)(F), which requires that the creditor is an insured depository institution or insured credit union that, together with its affiliates, has less than $10 billion in total consolidated assets;

   b. The covered institution originates and retains the loan in portfolio;

   c. The loan has total points and fees that comply with applicable limits

   d. The loan does not contain terms under the legal obligation for:

      i. Prepayment penalties for paying all or part of the principal following consummation, pursuant to the limitations as set forth in 15 U.S.C. 1639c(c)(1) and (c)(3);

      ii. Negative amortization (periodic payments that will result in an increase in the principal balance);

      iii. Interest-only payments (one or more of the periodic payments may be applied solely to accrued interest and not to loan principal);

[70] This statutory provision is effective without any requirement to adopt regulations, and Regulation Z has not been amended to incorporate this provision as of the date of these procedures.

e. The creditor considers and documents the debt, income, and financial resources of the consumer.

NOTE: Consideration and documentation need not comply with former Appendix Q to Part 1026 (12 CFR Part 1026); multiple methods of documentation are permitted.

2. Determine whether a qualified mortgage originated pursuant to 15 U.S.C. 1639c(b)(2)(F) no longer retains its qualified mortgage status because the creditor has sold, assigned, or transferred the legal title in any circumstances other than where the transfer was:

    a. Due to bankruptcy or failure of the covered institution;

    b. To another covered institution, so long as that transferee institution retains the loan in portfolio;

    c. Made pursuant to a merger or acquisition to or by another person, so long as the loan is retained in portfolio by the transferee; or

    d. To a wholly owned subsidiary of the covered institution, so long as the loan is considered to be an asset of the covered institution for regulatory accounting purposes.

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.

    NOTE: A member of a federal credit union may repay a loan prior to maturity in whole or in part on any business day without penalty (12 U.S.C. 1757(5)(A)(viii) 12 CFR 701.21(c)(6));

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)); 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)); 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, 1026.33, and 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)).

    NOTE: For a high-cost mortgage, the three business day waiting period requirement does not apply where a second offer of credit with a lower annual percentage rate is consummated by the consumer (15 U.S.C. 1639(b)(3)).

    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 H-16 in Appendix H):

   a. Notice containing the prescribed language (12 CFR 1026.32(c)(1));

   b. The APR (12 CFR 1026.32(c)(2));

   NOTE: For a high-cost mortgage, the three business day waiting period requirement does not apply where a second offer of credit with a lower annual percentage rate is consummated by the consumer (15 U.S.C. 1639(b)(3)).

   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 two 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, determine 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 Loan Estimate 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 4 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[71]

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).

2. Determine whether the creditor is deemed to comply with the requirement by:

   a. Ordering that the appraiser performs 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)).

   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.

[71] 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. There is no substantive difference among these three sets of rules.

3. 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, and

    j. A property abstract 12 CFR 1026.35(c)(4)(i) and (vi); *See* Appendix O).

4. 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.

5. 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 31, 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,[72] no loan originator receives, and no person pays to a loan originator, directly or indirectly, compensation[73] 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 (12 CFR 1026.36(a)(1)).

   NOTES:

   - 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. For purposes of 12 CFR 1026.36, "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 (12 CFR 1026.36(a)(6)).

   - A retailer of manufactured or modular homes, or an employee of such a retailer, who does not receive compensation or gain for engaging in loan originator activities *in excess* of any compensation or gain received in a comparable cash transaction, and who does not directly negotiate with the consumer or lender on credit terms, is not a mortgage originator if such retailer or employee (as applicable) discloses to the consumer in writing, any corporate affiliation with any creditor. Where the retailer has a corporate affiliation with any creditor, at least one unaffiliated creditor must also be disclosed (15 U.S.C. 1602(dd)(2)(C)(ii)).

[72] 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)).

[73] 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 36(a)-5.

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

- 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[74] 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)):

   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

[74] 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)).

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:[75]

   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 (12 CFR 1026.36(e)(3)(i)(B)); and

      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

[75] 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))

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[76] 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 (or excluded from those requirements because the individual is authorized to act with temporary authority pursuant to 12 U.S.C. 5117,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)).

NOTE: The SAFE Act provides certain loan originators with temporary authority to act as loan originators, while applying for a state-loan originator license (12 U.S.C. 5117). If an individual loan originator may act as a loan originator with temporary authority under 12 U.S.C. 5117, the loan originator organization is not required to comply with the screening and training requirements described in 12 CFR 1026.36(f)(3).[77]

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 12 CFR 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:

[76] For the purposes of 12 CFR 1026.36(f) and (g), all creditors are loan originators.

[77] Truth in Lending (Regulation Z); Screening and Training Requirements for Mortgage Loan Originators with Temporary Authority, 84 Fed. Reg. 63791 (Nov. 19, 2019).

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)(3)(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 two through five 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).

   NOTES:

   - "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)).

- 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).
- 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.

3. 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));

      i. 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 41(d)(1)-1);

      ii. 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 41(d)(1)-2).

      iii. If the loan contract had been permanently modified, verify that the amount due identified only the amount due under the modified loan contract (Comment 41(d)(1)-3).

   NOTE: Servicers may modify the sample forms for periodic statements provided in Appendix H, Sample forms H-30(A) through H-30(F), 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 41(c)-5)

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)).

i. 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 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 41(d)(2)-1).

ii. 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 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's 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 (12 CFR 1026.41(d)(8)(vi)); and

vii. A reference to homeownership counseling information required under 12 CFR 1026.41(d)(7)(v) (12 CFR 1026.41(d)(8)(vii)).

4. 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:

A. The monthly post-petition payment amount, including a breakdown showing how much, if any, would be applied to principal, interest, and escrow;

B. The total sum of any post-petition fees or charges imposed since the last statement; and

C. 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:

A. The total of all pre-petition payments received since the last statement;

B. The total of all pre-petition payments received since the beginning of the consumer's pre-petition arrearage; and

C. The current balance of the consumer's pre-petition arrearage (12 CFR 1026.41(f)(3)(v)).

vi. Must include, as applicable:

A. 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;

B. 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;

C. 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;

D. A statement that encourages the consumer to contact the consumer's attorney or the trustee with questions regarding the application of payments; and

E. 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)).

NOTES:

- 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)).
- 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)).
- 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.

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)).

5. 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)).

6. 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)).
7. For high-cost mortgages, determine whether the creditor or servicer charged a late payment greater than four percent of the payment past due (12 CFR 1026.34(a)(8)(i)).
8. 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)).
9. 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.
10. 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)).
11. 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)).
12. 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 (1026.36(c)(1)(i)).

13. 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 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 36(c)(1)(i)-4).

14. 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.

    a. 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

    b. 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)).

15. 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)).

16. 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)):

    a. 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

17. 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 31 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 31 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 31 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 (as defined in 12 CFR 1026.42(f)(4)(i) 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: Voluntary donation of appraisal services by a fee appraiser (as defined in 15 U.S.C. 1639e(i)(2)) to an organization eligible to receive tax-deductible charitable contributions meets the requirement to be customary-and-reasonable for purposes of 15 U.S.C. 1639e(i)(1) (15 U.S.C. 1639e(i)(2)(B)).

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;
    d. Increase in fee pursuant to evaluation under 12 CFR 1026.52 or adjustment to safe harbors;
    e. Increase in fees previously reduced under Servicemembers Civil Relief Act; or
    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 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 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 one dollar, 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 two 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 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 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)).

   NOTES:

   - The 25 percent limitation on fees does not apply to fees assessed prior to opening the account.
   - 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 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. 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 1–3 above 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. $28.00,

  b. $39.00 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 the subparagraphs above may 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. The amounts were increased to $28 and $39, respectively, effective January 1, 2019, as reflected here. Further adjustments may be made in subsequent years

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 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 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) 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. 3937,), 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 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 TILA Section 108:
    a. Determine 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:
        i. Prepare comments, discussing the need for improved internal controls to be included in the report of examination.
        ii. Notify your supervisory office for follow up with the regulator that has primary responsibility for the original creditor.
    c. 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 TILA Section 108, and discuss all substantive facts including the sample loans and calculations.
        v. Inform management of the financial institution's options under Section 130 of TILA for avoiding civil liability and of its option under Section 108 (e)(6) of TILA for avoiding a regulatory agency's order to reimburse affected customers.

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. 6.5 percentage points for most first-lien transactions; 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. 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.		

HIGH-COST MORTGAGE (12 CFR 1026.32) WORKSHEET

TEST 2 – POINTS AND FEES[78]

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[79]; and
- Up to 1 or 2 bona fide discount points, if eligible.[80]

[12 CFR 1026.32(b)(1)(i) (closed-end); 12 CFR 1026.32(b)(2)(i) (open-end)]

Finance Charge Items	Amount	Subtotals
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		

[78] 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.

[79] 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))

[80] 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); 1026.32(b)(3).)

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		
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		
I. 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 <u>Minus</u>: Prepaid finance charges (12 CFR 1026.2(a)(23)) o <u>Equals</u>: 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	

TEST 2 – POINTS AND FEES (continued)		
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 $20,000 or more (2014)		
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)		
C. Does Box B exceed Box A?	**Yes**	**No**
Transactions for less than $20,000 (2014)		
A. 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)) *2014: $1,000 (use the dollar amount corresponding to the year of origination or account opening)*		
C. Total Points & Fees (Step 1, Box I)		
D. Does Box C exceed the lesser of Box A or Box B?	**Yes**	**No**

If Yes, the transcaction 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[81]		
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.		

[81] 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.

Truth in Savings Act[1]

Regulation DD (12 CFR Part 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 CFR 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 12 CFR 1030.11(a)(1)(i), requiring the term “Total Overdraft Fees” to be used, was October 1, 2010) (75Fed. Reg. 31673).

The Dodd-Frank Act granted rulemaking authority under the Truth in Savings Act to the Consumer Financial Protection Bureau (CFPB) and, with respect to entities under its jurisdiction, granted authority to the CFPB to supervise for and enforce compliance with the Truth in Savings Act and its implementing regulations.[2] In December 2011, the CFPB restated the Federal Reserve’s implementing regulation at 12 CFR Part 1030 (76 Fed. Reg. 79276) (December 21, 2011).

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 under all of the following circumstances:

- When an account is opened.
- Upon request.
- When the terms of the account are changed.
- When a periodic statement is sent.
- For most time accounts, before the account matures.

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[1] These reflect FFIEC-approved procedures.

[2] Dodd-Frank Act Secs. 1002(12)(P), 1024(b)-(c), and 1025(b)-(c); 12 U.S.C. Secs. 5481(12)(P), 5514(b)-(c), and 5515(b)-(c). Section 1100B of the Dodd-Frank Act did not grant the CFPB Truth in Savings Act rulemaking authority over credit unions or repeal the National Credit Union Administration (NCUA)’s rulemaking authority over credit unions under 12 U.S.C. 4311. The NCUA’s rule can be found at 12 CFR Part 707.

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 – 12 CFR 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 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 – 12 CFR 1030.2

Section 1030.2 defines key terms used in Regulation DD. Among those definitions are the following:

Account – 12 CFR 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 – 12 CFR 1030.2(b)

An **advertisement** is a commercial message, appearing in any medium, that promotes directly or indirectly

- the availability or terms of, or a deposit in, a new account; and
- for purposes of 12 CFR 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 – 12 CFR 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 – 12 CFR 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.

Bonus – 12 CFR 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 – 12 CFR 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. Section 6103(a).

Consumer – 12 CFR 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 – 12 CFR 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 – 12 CFR 1030.2(j)

The terms **depository institution** and **institution** are defined in Section 19(b)(1)(A)(i)-(vi) of the Federal Reserve Act (12 U.S.C. Section 461). Credit unions are 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 – 12 CFR 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. Section 1831f(g)).

Fixed-Rate Account – 12 CFR 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 – 12 CFR 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 – 12 CFR 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 – 12 CFR 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 12 CFR 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 – 12 CFR 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 12 CFR 1030.6 if statements are sent four or more times a year.

Periodic Statement – 12 CFR 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 – 12 CFR 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 – 12 CFR 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 – 12 CFR 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 – 12 CFR 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 – 12 CFR 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 – 12 CFR 1030.3

General Requirements – 12 CFR 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

Regulation DD 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. Section 7001 et seq.).

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 the consumer can give consent, the institution must provide the consumer 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.
- The methods by which a consumer may obtain, upon request, a paper copy of an electronic record after having given consent to receive the information electronically and whether any fee will be charged.

Prior to consenting, the institution must provide the consumer 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."

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.

Under 12 CFR 1030.3(a), the disclosures required by 12 CFR 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 12 CFR 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 – 12 CFR 1030.3(c)

Disclosures required by and provided in accordance with the Electronic Fund Transfer Act (15 U.S.C. Section 1693 et seq.) and its implementing Regulation E (12 CFR Part 1005), that are also required by Regulation DD, may be substituted for the disclosures required by this regulation. Compliance with Regulation E is deemed to satisfy the disclosure requirements of Regulation DD, such as when:

- 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 CFR 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 general disclosure requirements include the following:

Multiple Consumers – 12 CFR 1030.3(d)

If an account is held by more than one consumer, the institution may make disclosures to any one of the consumers.

Oral Response to Inquiries – 12 CFR 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 – 12 CFR 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 that 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 – 12 CFR 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 – 12 CFR 1030.4(a)

Disclosures at Account Opening – 12 CFR 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 website) to apply to open an account or to request a service, the institutions must provide the disclosures before opening the account or providing the service.

Disclosures Upon Request – 12 CFR 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 requester 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, the institution must provide the disclosures 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, email, or via the institution's website, the institution may send the disclosures in paper form or, if the consumer agrees, may provide the disclosures electronically, such as to an email address that the consumer provides for that purpose, or on the institution's website, 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 12 CFR 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, 2010").

Content of Account Disclosures – 12 CFR 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 – 12 CFR 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 all of 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.
- Any limitation on the amount the interest rate may change.

Compounding and Crediting – 12 CFR 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 – 12 CFR 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:
  - Open the account;
  - Avoid the imposition of a fee; or
  - 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 12 CFR 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. The institution must disclose each method and corresponding period.

- **When interest begins to accrue** – An institution must state when interest begins to accrue on noncash deposits.

Fees – 12 CFR 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.

- 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 – 12 CFR 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.

- 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 – 12 CFR 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 the following:

  - If a penalty will or may be imposed for early withdrawal.

  - How it is calculated.

  - 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:

  - Monetary penalties, such as "$10.00" or "seven days' interest plus accrued but uncredited interest."

  - Adverse changes to terms such as a lowering of the interest rate, annual percentage yield, or compounding frequency for funds remaining on deposit.

  - Reclamation of bonuses.

- **Withdrawal of interest prior to maturity –** An institution must disclose the following, as applicable:

  - A statement that the annual percentage yield assumes interest remains on deposit until maturity and that a withdrawal will reduce earnings for accounts where:

    - Compounding occurs during the term; and

    - Interest may be withdrawn prior to maturity; or

  - A statement that interest cannot remain on deposit and that payout of interest is mandatory for accounts where:

  - The stated maturity is greater than one year;
  - Interest is not compounded on an annual or more frequent basis;
  - Interest is required to be paid out at least annually; and
  - 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 – 12 CFR 1030.4(b)(7)

For bonuses, an institution must disclose:

- The amount or type of any bonus.
- When the bonus will be provided.
- Any minimum balance and time requirements to obtain the bonus.

Subsequent Disclosures – 12 CFR 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 – 12 CFR 1030.5(a)

Advance Notice Required – 12 CFR 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 – 12 CFR 1030.5(a)(2)

An institution is not required to provide a notice for any of 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.
- 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 – 12 CFR 1030.5(b)

For automatically renewing time accounts with maturities 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. The institution must provide all disclosures before maturity. The requirements are summarized in the following pages, including in Table 1.

Table 1

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 (12 CFR 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 (12 CFR 1030.5(b)(1)).	*Timing* 10 calendar days before maturity *Content* Maturity date, and whether or not interest will be paid after maturity (12 CFR 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 12 CFR 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 (12 CFR 1030.5(b)(2)).	No subsequent notice required

Maturities Longer Than One Year – 12 CFR 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 12 CFR 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 the following:

- That those rates have not yet been determined.
- The date when they will be determined.
- 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 – 12 CFR 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 12 CFR 1030.5(b)(1) for accounts longer than one year; or
- Disclose to the consumer:
    - The date the existing account matures and the new maturity date if the account is renewed;
    - 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:
        - The date when they will be determined; and
        - A telephone number the consumer may call to obtain the interest rate and the annual percentage yield for the new account; and
    - Any difference in the terms of the new account as compared to the terms required to be disclosed for the existing account.

Delivery – 12 CFR 1030.5(b)

The institution must mail or deliver all disclosures at least 30 calendar days before maturity of the existing account. Alternatively, the institution may mail or deliver the disclosures 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 – 12 CFR 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 institution must mail or deliver the disclosures at least 10 calendar days before maturity of the existing account. The requirements are summarized in Table 1.

Periodic Statement Disclosures – 12 CFR 1030.6

Regulation DD does not require institutions to provide periodic statements. However, for institutions that mail or deliver periodic statements, 12 CFR 1030.6 sets forth specific information that must be included in a periodic statement.

General Requirements – 12 CFR 1030.6(a)

The statement must include the following disclosures:

Annual Percentage Yield Earned – 12 CFR 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 – 12 CFR 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 – 12 CFR 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 12 CFR 1030.11(a)(1) and (2). (The institution may, however, continue to itemize overdraft and returned item fees.)

Length of Period – 12 CFR 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 12 CFR 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 – 12 CFR 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 12 CFR 1030.11(a).

Special Rule for Average Daily Balance Method – 12 CFR 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 – 12 CFR 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 – 12 CFR 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 following methods:

- **Daily balance method**, where the daily periodic rate is applied to the full amount of principal in the account each day.

- **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.

- **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 12 CFR 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 12 CFR 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 12 CFR 1030.7(a)(1)-5)

Institutions are not required to pay interest after time accounts mature.

Dormant Accounts (Staff Commentary 12 CFR 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 – 12 CFR 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 12 CFR 1030.7(a)(2)-1 and 2)

An institution that requires a minimum balance may choose not to pay interest for days or period 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 12 CFR 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 12 CFR 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 – 12 CFR 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 – 12 CFR 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 – 12 CFR 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 – 12 CFR 1030.8(a) and (b)

Misleading or Inaccurate Advertising – 12 CFR 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.
- 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 12 CFR 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.

- 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 a website) displays a triggering term (such as a bonus or annual percentage yield), described elsewhere in 12 CFR 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 12 CFR 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 Regulation Z, 12 CFR Part 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 12 CFR 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 – 12 CFR 1030.8(b)

When an institution states a rate of return in an advertisement, it must do the following:

- State the rate as an "annual percentage yield," using that term.
- If the advertisement uses the abbreviation "APY," state the term "annual percentage yield" at least once in the advertisement.
- If the advertisement uses the term "interest rate," 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".
- 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 – 12 CFR 1030.8(c)

If an institution advertises an annual percentage yield for a product and the product includes one of the features listed in 12 CFR 1030.8(c)(1)-(6), then the institution must clearly and conspicuously disclose the information outlined in 12 CFR 1030.8(c)(1)-(6) as noted below. However, these requirements do not necessarily apply if the situation falls under the exemptions of 12 CFR 1030.8(e).

Variable Rates – 12 CFR 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 – 12 CFR 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 – 12 CFR 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 – 12 CFR 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 – 12 CFR 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 – 12 CFR 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.
- Required interest payouts – a statement that interest cannot remain on deposit and that payout of interest is mandatory for non-compounding time accounts with the following features:
  - The stated maturity is greater than one year.
  - Interest is not compounded on an annual or more frequent basis.
  - Interest is required to be paid out at least annually.
  - The annual percentage yield is determined in accordance with Section E of Appendix A of Regulation DD.

Bonuses – 12 CFR 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.
- Time when the bonus will be provided.

However, these requirements do not necessarily apply if the situation falls under the exemptions of 12 CFR 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 – 12 CFR 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 – 12 CFR 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 12 CFR 1030.8 rules, as outlined below:

- Exempted media
  - Broadcast or electronic media, such as television or radio. However, the exemption does not extend to Internet and email advertisements.
  - Outdoor media, such as billboards.
  - 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
  - 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.
  - 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 – 12 CFR 1030.8(e)(2)

If an institution posts account information on signs inside its premises (or the premises of a deposit broker), the postings 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 – 12 CFR 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 12 CFR 1030.11(b).

Record Retention – 12 CFR 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

Under Regulation DD, 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. In addition, if required by its supervising agency, an institution may need to retain records for a longer time period.

An institution may demonstrate its compliance by:

- Establishing and maintaining procedures for paying interest and providing timely disclosures.
- 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.

12 CFR 1030.10 – [Reserved]

Additional Disclosure Requirements for Overdraft Services – 12 CFR 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 – 12 CFR 1030.11(a)

Disclosure of Total Fees – 12 CFR 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.

	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 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 CFR 1026.

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 – 12 CFR 1030.11(b)

Disclosures – 12 CFR 1030.11(b)(1)

Unless an exception in 12 CFR 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.
- 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 – 12 CFR 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 CFR Part 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.
- 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 – 12 CFR 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.
- The circumstances under which the institution will not pay an overdraft.

Exception for Indoor Signs – 12 CFR 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 12 CFR 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 – 12 CFR 1030.11(c)

In general, 12 CFR 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 CFR 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 CFR 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 the Federal Reserve Board's 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 Regulation Z (12 CFR 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 Consumer Financial Protection Bureau to determine whether a state law is inconsistent with the TISA.

REFERENCES

Laws

12 U.S.C. 4301 et seq.	Truth in Savings Act
12 U.S.C. 4005 et seq.	Expedited Funds Availability Act
15 U.S.C. 7001 et seq.	Electronic Signatures in Global and National Commerce Act (E-Sign Act)

Regulations

Consumer Financial Protection Bureau Regulations (12 CFR)

Part 1005	Electronic Fund Transfer (Regulation E)
Part 1026	Truth in Lending (Regulation Z)
Part 1030	Truth in Savings (Regulation DD)

Federal Reserve Board Regulations (12 CFR)

Part 204	Reserve Requirements of Depository Institutions (Regulation D)
Part 229	Availability of Funds and Collection of Checks (Regulation CC)

National Credit Union Administration Regulation (12 CFR)

Part 707	Truth in Savings

Truth in Savings Act[1] [2]

Exam Date:	[Click&type]
Prepared By:	[Click&type]
Reviewer:	[Click&type]
Docket #:	[Click&type]
Entity Name:	[Click&type]

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.

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).

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2. Review relevant written policies and procedures, management's self-assessments, consumer complaints, and any compliance audit material including work papers and reports to determine whether:
   - The scope of the audit addresses all provisions as applicable.
   - Management has taken corrective actions to followup on previously identified deficiencies.
   - The testing includes samples covering all product types and decision centers.
   - The work performed is accurate.

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[1] These reflect FFIEC-approved procedures.

[2] The Consumer Financial Protection Bureau's implementing regulation is cited in these procedures. However, if examiners cite violations by a credit union, examiners should cite violations of the National Credit Union Administration's implementing regulation, 12 CFR Part 707.

- Significant deficiencies and their causes are included in reports to management and to the Board of Directors, as appropriate.
- The frequency of review is appropriate.

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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:
   - Organization charts;
   - Process flowcharts;
   - Policies and procedures;
   - Account documentation;
   - Checklists; and
   - Computer program documentation.

   [Click&type]

4. Through a review of the institution's training materials, determine whether:
   - The institution provides appropriate training to individuals responsible for Regulation DD compliance and operational procedures.
   - The training is comprehensive and covers the various aspects of Regulation DD that apply to the individual institution's product offerings and operations.
   - The training includes the timing requirements of 12 CFR 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, including branch employees, to provide such disclosures at the time of the request if the consumer makes the request in person or within ten business days if the consumer is not present when making the request.

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5. Determine the extent and adequacy of the institution's policies, procedures, and practices for ensuring compliance with the regulation. In particular, verify that:
   - Account disclosure information is available to be 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.

- Advance notice is given for any changes in terms required to be disclosed under 12 CFR 1030.4 and that exceptions to the advance notice requirements are limited to those set forth in 12 CFR 1030.5(a)(2).
- 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.
- 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.
- The institution's advertising policies are consistent with the requirements of the regulation, including advertising requirements for overdraft services.
- 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.
- The periodic statements separately disclose the total fees and charges for payment of items that overdraw the account and for returning items unpaid.These disclosures must be provided for the statement period and the calendar year-to-date.

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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 the size of each sample of deposit account disclosures, notices, and advertisements. Increase the sample size until you are confident that all aspects of the institution's activities and policies that are subject to the regulation are reviewed.

General Disclosure Requirements – 12 CFR 1030.3

1. Determine whether the institution makes disclosures clearly and conspicuously in writing and in a form the consumer may keep (12 CFR 1030.3(a)).

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2. If the disclosures are combined with other account disclosures, determine whether it is clear which disclosures are applicable to the consumer's account (12 CFR 1030.3(a)).

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3. If the institution provides a consumer disclosure 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.) (12 CFR 1030.3(a)).

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4. Determine whether the disclosures reflect the legal obligation of the account agreement between the consumer and the institution (12 CFR 1030.3(b)).

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5. If the institution provides disclosures in a language other than English, verify whether the disclosures are available in English upon request (12 CFR 1030.3(b)).

   [Click&type]

6. Determine whether disclosures use consistent terminology when describing terms or features that are required to be disclosed (Staff Commentary 1030.3(a)-2).

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7. Determine whether the institution substitutes disclosures required by Regulation E for disclosures required by Regulation DD (12 CFR 1030.3(c)).

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8. Determine whether the institution provides required disclosures to at least one account holder if there are multiple holders (12 CFR 1030.3(d)).

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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) by reviewing the institution's policies and procedures. If the institution chooses, it may also state the interest rate, but no other rate (12 CFR 1030.3(e)).

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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 (12 CFR 1030.3(f)(1)).

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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 (12 CFR 1030.3(f)(2)).

[Click&type]

Account Disclosures – 12 CFR 1030.4

Delivery of Account Disclosures

Account Opening

12. Determine whether the institution provides account disclosures to consumers before an account is opened or a service is provided, whichever is earlier (12 CFR 1030.4(a)(1)(i)).
    - If the consumer is not present when the account is opened or a service is provided (and has not already received the disclosures), the institution should mail or deliver the disclosures no later than 10 business days after the account is opened or the service is provided, whichever is earlier (12 CFR 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, the institution must provide the disclosures before the account is open or the service is provided (12 CFR 1030.4(a)(1)(ii)).

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Consumer Request

13. Determine whether the institution has available full account disclosures, including complete fee schedules, to provide 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.
    - If the request is made in person, determine whether the institution has disclosures available to provide upon the consumer's request.
    - 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) (12 CFR 1030.4(a)(2)(i)).

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14. Determine whether the institution chooses one of the following options when providing rate information (12 CFR 1030.4(a)(2)(ii)(A)).
    - Specifies an interest rate and APY that were offered within the most recent seven calendar days.

- States that the rate and yield are accurate as of an identified date.
- Provides a telephone number that consumers may call to obtain current rate information.

[Click&type]

15. For a time deposit account, the institution may state the maturity as a term rather than a date (12 CFR 1030.4(a)(2)(ii)(B)).

[Click&type]

Content of Disclosures

Rate information

16. Determine whether account disclosures include, as applicable:
    - The “annual percentage yield” and the “interest rate” using those terms.
    - For fixed-rate accounts the period of time the interest rate will be in effect (12 CFR 1030.4(b)(1)(i)).

[Click&type]

17. For variable-rate accounts, determine whether account disclosures include all of the following information (12 CFR 1030.4(b)(1)(ii)):
    - The fact that the interest rate and APY may change.
    - How the interest rate is determined.
    - The frequency with which the interest rate may change.
    - Any limitations on the amount the interest rate may change.

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Compounding and crediting

18. Determine whether account disclosures describe the frequency with which interest is compounded or credited (12 CFR 1030.4(b)(2)(i)).

[Click&type]

19. 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 (12 CFR 1030.4(b)(2)(ii)).

[Click&type]

Balance information

20. As applicable, determine whether account disclosures:

- Describe the minimum balance required to (12 CFR 1030.4(b)(3)(i)):
  - Open an account;
  - Avoid the imposition of a fee; or
  - Obtain the APY disclosed.
- Describe how the minimum balance requirement is determined to avoid the imposition of a fee or to obtain the APY disclosed (12 CFR 1030.4(b)(3)(i)).
- Explain the balance computation method (specified in 12 CFR 1030.7) used to calculate interest on the account (12 CFR 1030.4(b)(3)(ii)).
- State when interest begins to accrue on noncash deposits (12 CFR 1030.4(b)(3)(iii)).

[Click&type]

Fees

21. 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 (12 CFR 1030.4(b)(4)).
    - Determine whether the institution has specified the categories of transactions for which an overdraft fee may be imposed (Staff Commentary 12 CFR 1030.4(b)(4)-5).

    [Click&type]

Transaction Limitations

22. Determine whether the account disclosures state any limits on the number or dollar amount of withdrawals or deposits (12 CFR 1030.4(b)(5)).

    [Click&type]

Features of time accounts

23. For time accounts, determine whether account disclosures include, as applicable:
    - The maturity date (12 CFR 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 (12 CFR 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 interest remains on deposit until maturity and that a withdrawal will reduce earnings (12 CFR 1030.4(b)(6)(iii)).

- A statement that interest cannot remain on deposit and that payout of interest is mandatory for accounts (12 CFR 1030.4(b)(6)(iii)):
  - With a stated maturity greater than one year;
  - That do not compound interest on an annual or more frequent basis;
  - That require interest payouts at least annually; and
  - That disclose 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 (12 CFR 1030.4(b)(6)(iv)):
  - 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.
  - If it will not renew automatically, a statement of whether interest will be paid after maturity if the consumer does not renew the account.

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Bonuses

24. 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 (12 CFR 1030.4(b)(7)).

[Click&type]

Subsequent Disclosures – 12 CFR 1030.5

Change in Terms Notice

25. Determine whether the institution sends out advance change in terms notices to consumers of any change in a term, required to be disclosed under 12 CFR 1030.4(b), that may reduce the annual percentage yield (APY) or that otherwise adversely affects consumers. Verify that the notice (12 CFR 1030.5(a)(1)):
    - Includes the effective date of the change.
    - Is mailed or delivered at least 30 days before the effective date of the change.

    [Click&type]

26. Determine whether exceptions to the notice requirements are limited to (12 CFR 1030.5(a)(2)):
    - Variable-rate changes;
    - Check-printing fees; and

- Short-term time accounts (one month or less).

[Click&type]

Pre-Maturity Notices – Renewable Accounts

27. For time accounts with a maturity longer than one month and that renew automatically, determine whether the proper subsequent disclosures (12 CFR 1030.5(b)):

- Are mailed or delivered at least 30 days before maturity of the existing account. Alternatively, the institution may mail or deliver the disclosures 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 (12 CFR 1030.5(b)).
- For accounts with maturities of more than one year, include the following information (12 CFR 1030.5(b)(1)):
  - The account disclosures required in 12 CFR 1030.4(b) for new accounts;
  - The date the existing account matures;
  - 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.
- For accounts with maturities of one year or less, include the following information (12 CFR 1030.5(b)(2)):
  - The same account disclosures as required in 12 CFR 1030.5(b)(1) for accounts with maturities of more than one year;
    - Or disclose to the consumer:
  - 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;
    - 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.

[Click&type]

Pre-Maturity Notices – Nonrenewable Accounts

28. For time accounts with a maturity longer than one year and that do not renew automatically, determine whether the institution (12 CFR 1030.5(c)):
    - Discloses the maturity date.
    - Discloses whether interest will be paid after maturity.
    - Mails or delivers the disclosures at least 10 calendar days before maturity of the existing account.

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Periodic Statement Disclosures – 12 CFR 1030.6

29. If an institution mails or delivers a periodic statement, determine whether the statements include the following (12 CFR 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 (12 CFR 1030.6(a)(1)).
    - The amount of interest earned during the statement period (12 CFR 1030.6(a)(2)).
    - Any debited fees required to be disclosed under 12 CFR 1030.4(b)(4) itemized by dollar amount and type (12 CFR 1030.6(a)(3)).

      NOTE: Except as required in 12 CFR 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 (Staff Commentary 12 CFR 1030.6(a)(3)-2(iv)).
    - The total number of days in the statement period or the beginning and ending dates of the period (12 CFR 1030.6(a)(4)).
    - If applicable, the total overdraft and returned item fees required to be disclosed by 12 CFR 1030.11(a) (12 CFR 1030.6(a)(5)).

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30. If the institution uses the average daily balance method and calculates interest for a period other than the statement period, determine whether the institution 12 CFR 1030.6(b)):
    - Calculates and discloses the APY earned and the amount of interest earned based on the other period rather than the statement period; and
    - States the information required in 12 CFR 1030.6(a)(4), specifying the

period length for the other period as well as for the statement period.

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Payment of Interest – 12 CFR 1030.7

31. 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 12 CFR 1030.7(a)(1)).

[Click&type]

32. 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 12 CFR 1030.7(a)(2)).

NOTE: An institution may use an additional method that is unequivocally beneficial to the consumer 12 CFR 1030.7(a)(2)).

[Click&type]

33. 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 disclosed this practice in the initial account disclosures (Staff Commentary 12 CFR 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 (12 CFR 1030.7(b) and Staff Commentary 12 CFR 1030.7(b)-1).

[Click&type]

34. 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 229.14 (12 CFR 1030.7(c)).

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35. Determine whether interest accrues until the day funds are withdrawn (12 CFR 1030.7(c)).

[Click&type]

Advertising – 12 CFR 1030.8

General

36. Determine the types of advertising the institution uses, including visual, oral, or print, that meet the regulatory definition of an advertisement.

    [Click&type]

37. Determine that all types of advertisements do not contain misleading or inaccurate statements and do not misrepresent deposit contracts (12 CFR 1030.8(a)(1)).

    [Click&type]

38. Determine that advertisements of accounts do not:
    - Refer to or describe an account as “free” or “no cost” (or contain a similar term) if any maintenance or activity fee is charged;
    - Use the word profit to refer to interest paid on the account;
    - Use the term “fees waived” if a maintenance or activity fee can be imposed (12 CFR 1030.8(a)(2) and Staff Commentary 12 CFR 1030.8(a)-5).

    [Click&type]

39. 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 12 CFR 1030.8(a)-9).

    [Click&type]

40. For institutions that promote the payment of overdrafts in an advertisement, determine whether the advertisement includes the disclosures required by 12 CFR 1030.11(b) (12 CFR 1030.8(f)).

    [Click&type]

Permissible Advertisement Rates

41. For advertisements that state a rate of return, determine whether (12 CFR 1030.8(b)):
    - The rate is stated as an “annual percentage yield” using that term and that no other rate is stated except “interest rate.”
    - If the advertisement uses the abbreviation “APY,” the term “annual percentage yield” is stated at least once in the advertisement.
    - 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.

- Rates are rounded to the nearest one-hundredth of one percentage point (.01%) and expressed to two decimal places.

[Click&type]

42. For tiered-rate accounts, determine whether an annual percentage yield is stated for each tier, along with corresponding minimum balance requirements (Staff Commentary 12 CFR 1030.8(b)-1).

[Click&type]

43. For stepped-rate accounts, determine whether all interest rates and the time period that each rate is in effect are stated (Staff Commentary 12 CFR 1030.8(b)-2).

[Click&type]

Required Additional Disclosures

44. 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:

- For a variable rate account, that the rate may change after account opening (12 CFR 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 (12 CFR 1030.8(c)(2)).
- The minimum balance required to earn the advertised annual percentage yield (12 CFR 1030.8(c)(3)).
- For tiered accounts, the minimum balance required for each tier stated in close proximity and with equal prominence to the applicable APY, if applicable (12 CFR 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 (12 CFR 1030.8(c)(4)).
- A statement that maintenance or activity fees could reduce the earnings on the account(12 CFR 1030.8(c)(5) and Staff Commentary 12 CFR 1030.8(c)(5)-1).
- For time accounts:
  - Term of the account (12 CFR 1030.8(c)(6)(i)).
  - A statement that a penalty will or may be imposed for early withdrawal (12 CFR 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 (12 CFR 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.

[Click&type]

Bonuses

45. For advertisements that state a bonus (a premium, gift, award or other consideration worth more than $10), determine whether they state all of the following:
    - The “annual percentage yield,” using that term (12 CFR 1030.8(d)(1)).
    - The time requirement to obtain the bonus (12 CFR 1030.8(d)(2)).
    - The minimum balance required to obtain the bonus (12 CFR 1030.8(d)(3)).
    - The minimum balance required to open the account, if it is greater than the minimum balance required to obtain the bonus (12 CFR 1030.8(d)(4)).
    - When the bonus will be provided (12 CFR 1030.8(d)(5)).

    [Click&type]

Exemptions for certain advertisements

46. 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 email advertisements.) Determine whether advertisements made in these media contain the following information as applicable, clearly and conspicuously (12 CFR 1030.8(e)(1) and Staff Commentary 12 CFR 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 (12 CFR 1030.8(c)(3)).
    - For time accounts:
        - Term of the account (12 CFR 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(12 CFR 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.

o For advertisements that state a bonus (a premium, gift, award or other consideration worth more than $10):

- The “annual percentage yield,” using that term 12 CFR 1030.8(d)(1)).
- The time requirement to obtain the bonus (12 CFR 1030.8(d)(2)).
- The minimum balance required to obtain the bonus (12 CFR 1030.8(d)(3)).

[Click&type]

47. Indoor signs are exempted from most of the Regulation DD advertising requirements. Determine that indoor signs:

- Do not:
  - Contain misleading or inaccurate statements and do not misrepresent deposit contracts (12 CFR 1030.8(a)(1)).
  - Refer to or describe an account as “free” or “no cost” (or contain a similar term) if any maintenance or activity fee is charged (12 CFR 1030.8(a)(2)).
  - Use the word profit to refer to interest paid on the account (12 CFR 1030.8(a)(2)).
  - Use the term “fees waived” if a maintenance or activity fee can be imposed (Staff Commentary 12 CFR 1030.8(a)-5).
- If a rate of return is stated, determine whether the indoor sign:
  - 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 (12 CFR 1030.8(e)(2)(ii)(A)).
  - Contains a statement advising consumers to contact an employee for further information about applicable fees and terms (12 CFR 1030.8(e)(2)(ii)(B)).

[Click&type]

Record Retention Requirements – 12 CFR 1030.9

48 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. For example, review samples of advertising and disclosures, policies and procedures, and training activities, as appropriate (12 CFR 1030.9(c)).

[Click&type]

12 CFR 1030.10 – [Reserved]

Additional Disclosure Requirements for Overdraft Services – 12 CFR 1030.11

Periodic Statement Disclosures

49. 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 both of the following (12 CFR 1030.11(a)(1) and (a)(2)):

- 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) (12 CFR 1030.11(a)(1)(i));
- The total amount for all fees or charges imposed on the account for returning items unpaid (12 CFR 1030.11(a)(1)(ii).

[Click&type]

50. 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 12 CFR 1030.6(a)(3) (12 CFR 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.

[Click&type]

Advertisement Requirements

51. Unless an exception under 12 CFR 1030.11(b)(2)-(4) applies, when an institution advertises the payment of overdrafts, determine whether the institution clearly and conspicuously discloses in advertisements all of the

following:

- The fee(s) for the payment of each overdraft (12 CFR 1030.11(b)(1)(i)).
- The categories of transactions for which a fee may be imposed for paying an overdraft (12 CFR 1030.11(b)(1)(ii)).
- The time period by which the consumer must repay or cover any overdraft (12 CFR 1030.11(b)(1)(iii)).
- The circumstances under which the institution will not pay an overdraft (12 CFR 1030.11(b)(1)(iv)).

[Click&type]

52. Disclosure of Account Balances

- If the institution discloses account balance information through automated systems, determine whether:
  - o The balance excludes additional amounts that the institution may provide to cover items when there are insufficient or unavailable funds (12 CFR 1030.11(c)).
  - o 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 (12 CFR 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 12 CFR 1030.11(c)-2).

[Click&type]

Examiner's Summary, Recommendations, and Comments

[Click&type]

Truth in Savings Act[1]

General Disclosure Requirements – 12 CFR 1030.3[2]

Exam Date:	[Click&type]
Prepared By:	[Click&type]
Reviewer:	[Click&type]
Docket #:	[Click&type]
Entity Name:	[Click&type]

		Yes	No	NA
1.	Does the institution make the required disclosures clearly and conspicuously in writing and in a form the consumer may keep (12 CFR 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 (12 CFR 1030.3(a))?	☐	☐	☐
3.	Do the disclosures reflect the terms of the legal obligation of the account agreement between the consumer and the institution (12 CFR 1030.3(b))?	☐	☐	☐
4.	If the disclosures are provided in a language other than English, are disclosures also available in English upon request (12 CFR 1030.3(b))?	☐	☐	☐
5.	Do the disclosures use consistent terminology when describing terms or features that are required to be disclosed (Staff Commentary 12 CFR 1030.3(a)-2)?	☐	☐	☐
6.	Does the institution substitute disclosures required by Regulation E for disclosures required by this regulation (12 CFR 1030.3(c))?	☐	☐	☐
7.	Does the institution provide disclosures to at least one account holder if there are multiple holders (12 CFR 1030.3(d))?	☐	☐	☐
8.	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 (12 CFR 1030.3(e)).	☐	☐	☐
9.	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 (12 CFR 1030.3(f)(1))?	☐	☐	☐

[1] These reflect FFIEC-approved procedures.

[2] The Consumer Financial Protection Bureau's implementing regulation is cited in these procedures. However, if examiners cite violations by a credit union, examiners should cite violations of the National Credit Union Administration's implementing regulation, 12 CFR Part 707.

	Yes	No	NA
• For account disclosures, is the interest rate expressed to two or more decimal places (12 CFR 1030.3(f)(1))?	☐	☐	☐
10. 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 (12 CFR 1030.3(f)(2))?	☐	☐	☐

Account Disclosures – 12 CFR 1030.4

Delivery of Account Disclosures

Account Opening

	Yes	No	NA
1. Does the institution provide initial disclosures before an account is opened or a service provided, whichever is earlier (12 CFR 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 (12 CFR 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, does the institution provide the disclosures before the account is open or the service is provided (12 CFR 1030.4(a)(1)(ii))?	☐	☐	☐

Consumer Request

	Yes	No	NA
2. Does the institution have full account disclosures, including complete fee schedules, available to provide to consumers upon request? This requirement pertains to all consumer requests, whether or not the consumer is an existing customer or a prospective customer (12 CFR 1030.4(a)(2)(i)).	☐	☐	☐
• If the consumer makes the request in person, does the institution have disclosures available to provide 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) (12 CFR 1030.4(a)(2)(i))?	☐	☐	☐

3. In providing disclosures upon request, does the institution choose **one of the following options** when providing rate information (12 CFR 1030.4(a)(2)(ii)):

	Yes	No	NA
• Specify an interest rate and APY that were offered within the most recent seven calendar days (12 CFR 1030.4(a)(2)(ii)(A))?	☐	☐	☐
• State that the rate and yield are accurate as of an identified date (12 CFR 1030.4(a)(2)(ii)(A))?	☐	☐	☐
• Provide a telephone number that consumers may call to obtain current rate information (12 CFR 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 (12 CFR 1030.4(a)(2)(ii)(B))?	☐	☐	☐

Content of Disclosures

Rate Information

	Yes	No	NA
5. Do account disclosures include, as applicable (12 CFR 1030.4(b)):			
• The "annual percentage yield" and interest rate, using those terms (12 CFR 1030.4(b)(1)(i))?	☐	☐	☐
• For fixed-rate accounts, the period of time the interest rate will be in effect (12 CFR 1030.4(b)(1)(i))?	☐	☐	☐
6. For variable-rate accounts, do account disclosures include all of the following information (12 CFR 1030.4(b)(1)(ii)):			
• The fact that the interest rate and APY may change (12 CFR 1030.4(b)(1)(ii)(A))?	☐	☐	☐
• How the interest rate is determined (12 CFR 1030.4(b)(1)(ii)(B))?	☐	☐	☐
• The frequency with which the interest rate may change 12 CFR 1030.4(b)(1)(ii)(C))?	☐	☐	☐
• Any limitation on the amount the interest rate may change 12 CFR 1030.4(b)(1)(ii)(D))?	☐	☐	☐

Compounding and Crediting

	Yes	No	NA
7. Do the account disclosures describe the frequency with which interest is compounded and credited (12 CFR 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 (12 CFR 1030.4(b)(2)(ii))?	☐	☐	☐

	Yes	No	NA
Balance Information			
9. As applicable, do the account disclosures (12 CFR 1030.4(b)(3)(i)):			
• Describe the minimum balance required to:			
o Open an account (12 CFR 1030.4(b)(3)(i)(A)(1))?	☐	☐	☐
o Avoid the imposition of a fee (12 CFR 1030.4(b)(3)(i)(A)(2))?	☐	☐	☐
o Obtain the APY disclosed (12 CFR 1030.4(b)(3)(i)(A)(3))?	☐	☐	☐
• Explain the balance computation method used to calculate interest on the account (12 CFR 1030.4(b)(3)(ii))?	☐	☐	☐
• State when interest begins to accrue on noncash deposits (12 CFR 1030.4(b)(3)(iii))?	☐	☐	☐
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 (12 CFR 1030.4(b)(4))?	☐	☐	☐
• Regardless of whether the institution promotes overdraft payment, does it disclose specific categories of transactions that may cause an overdraft fee to be imposed on the accountholder (Staff Commentary 12 CFR 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 (12 CFR 1030.4(b)(5))?	☐	☐	☐
Features of Time Accounts			
12. For time accounts, do the account disclosures also include the following, as applicable (12 CFR 1030.4(b)(6)):			
• The maturity date (12 CFR 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 (12 CFR 1030.4(b)(6)(ii))?	☐	☐	☐

	Yes	No	NA
• 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 (12 CFR 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 (12 CFR 1030.4(b)(6)(iii)):	☐	☐	☐
○ With a stated maturity greater than one year;			
○ That do not compound interest on an annual or more frequent basis;			
○ That require interest payouts at least annually; and			
○ That disclose 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 (12 CFR 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 (12 CFR 1030.4(b)(7))?	☐	☐	☐

Subsequent Disclosures – 12 CFR 1030.5

Change in Terms Notice

	Yes	No	NA
1. Does the institution provide advance change in terms notices to consumers of any change to a term, required to be disclosed under 12 CFR 1030.4(b), that may reduce the annual percentage yield or that otherwise adversely affects the consumer? (12 CFR 1030.5(a)(1))	☐	☐	☐
• Does the notice include the effective date of the change (12 CFR 1030.5(a)(1))?	☐	☐	☐

	Yes	No	NA
• Is the notice mailed or delivered at least 30 days before the effective date of the change (12 CFR 1030.5(a)(1))?	☐	☐	☐
2. Are exceptions to the notice requirements limited to the following (12 CFR 1030.5(a)(2))?			
• Variable-rate changes (12 CFR 1030.5(a)(2)(i))?	☐	☐	☐
• Check-printing fees (12 CFR 1030.5(a)(2)(ii))?	☐	☐	☐
• Short-term time accounts (one month or less) (12 CFR 1030.5(a)(2)(iii))?	☐	☐	☐

Pre-Maturity Notices – Renewable Accounts

	Yes	No	NA
3. For time accounts with maturities longer than one month and that automatically renew, does the institution (12 CFR 1030.5(b)):			
• Mail or deliver subsequent disclosures at least 30 calendar days before maturity of existing account (12 CFR 1030.5(b))? (Alternatively, if grace period of at least five calendar days is allowed, the institution may mail or deliver disclosures at least 20 calendar days before the end of the grace period.)	☐	☐	☐
• For accounts with maturities longer than one year, include in the disclosures (12 CFR 1030.5(b)(1)):			
o The account disclosures outlined in 12 CFR 1030.4(b) for the new account?	☐	☐	☐
o The date the existing account matures?	☐	☐	☐
o If the interest rate and APY for the new account have not been determined:			
▪ The fact that the rates have not yet been determined?	☐	☐	☐
▪ The date that the rates will be determined?	☐	☐	☐
▪ 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 (12 CFR 1030.5(b)(2)):			
o The same account disclosures as required under 12 CFR 1030.5(b)(1) for accounts with maturities of more than one year (12 CFR 1030.5(b)(2)(i)):	☐	☐	☐

Or include:

	Yes	No	NA
o The date the existing account matures and the new maturity date if the account is renewed (12 CFR 1030.5(b)(2)(ii)(A))?	☐	☐	☐
o The interest rate and APY for the new account, if known (12 CFR 1030.5(b)(2)(ii)(B))?	☐	☐	☐
o If the rates are not known (12 CFR 1030.5(b)(2)(ii)(B)):			
▪ The fact that the rates have not yet been determined?	☐	☐	☐
▪ The date they will be determined?	☐	☐	☐
▪ A telephone number to call for the interest rate and APY that will be paid on the new account?	☐	☐	☐
o Any difference in the terms of the new account, compared to the existing account (12 CFR 1030.5(b)(2)(ii)(C))?	☐	☐	☐

Pre-Maturity Notices – Nonrenewable Accounts

4. For time accounts with maturities longer than one year and that do not automatically renew, does the institution (12 CFR 1030.5(c)):

	Yes	No	NA
• 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?	☐	☐	☐

Periodic Statement Disclosures – 12 CFR 1030.6

1. If an institution mails or delivers a periodic statement, do the statements include the following (12 CFR 1030.6(a)):

	Yes	No	NA
• The “annual percentage yield earned” during the statement period, using that term and calculated in accordance to Appendix A of Regulation DD (12 CFR 1030.6(a)(1))?	☐	☐	☐
• The amount of interest earned during the statement period (12 CFR 1030.6(a)(2))?	☐	☐	☐

	Yes	No	NA
• Any debited fees required to be disclosed under 12 CFR 1030.4(b)(4), itemized by dollar amount and type (12 CFR 1030.6(a)(3))? NOTE: Except as required in 12 CFR 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 (12 CFR 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 (12 CFR 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 12 CFR 1030.6(a)(4), specifying the period length for the other period as well as for the statement period?	☐	☐	☐

Payment of Interest – 12 CFR 1030.7

	Yes	No	NA
1. 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 (12 CFR 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 (12 CFR 1030.7(a)(2)).	☐	☐	☐

		Yes	No	NA
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 12 CFR 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 (12 CFR 1030.7(b) and Staff Commentary 12 CFR 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 (12 CFR 1030.7(c))?	☐	☐	☐
5.	Does interest accrue until the day the funds are withdrawn (12 CFR 1030.7(c))?	☐	☐	☐

Advertising Requirements – 12 CFR 1030.8

General

		Yes	No	NA
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 (12 CFR 1030.8(a)(1))?	☐	☐	☐
3.	Do the advertisements refrain from using (12 CFR 1030.8(a)(2) and Staff Commentary 12 CFR 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 12 CFR 1030.8(a)-9)?	☐	☐	☐

	Yes	No	NA
5. For an institution that promotes the payment of overdrafts in an advertisement, does the advertisement include the disclosures required by 12 CFR 1030.11(b) (12 CFR 1030.8(f))?	☐	☐	☐

Permissible Advertisement Rates

6. If the institution advertises a rate of return (12 CFR 1030.8(b)):

	Yes	No	NA
• 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 12 CFR 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 12 CFR 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, is the following information, as applicable, stated clearly and conspicuously (12 CFR 1030.8(c)):

	Yes	No	NA
• For a variable rate account, that the rate may change after account opening (12 CFR 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 (12 CFR1030.8(c)(2))?	☐	☐	☐

	Yes	No	NA
• The minimum balance required to earn the advertised annual percentage yield (12 CFR 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 (12 CFR 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 (12 CFR 1030.8(c)(4))?	☐	☐	☐
• A statement that maintenance or activity fees could reduce the earnings on the account (12 CFR 1030.8(c)(5) and Staff Commentary 12 CFR 1030.8(c)(5)-1)?	☐	☐	☐
• For time accounts, the following features (12 CFR 1030.8(c)(6)):			
○ Term of the account (12 CFR 1030.8(c)(6)(i))?	☐	☐	☐
○ A statement that a penalty will or may be imposed for early withdrawal (12 CFR 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 (12 CFR 1030.8(c)(6)(iii))?	☐	☐	☐
▪ A stated maturity greater than one year.			
▪ Interest is not compounded on an annual or more frequent basis.			
▪ Interest is required to be paid out at least annually.			
▪ The APY is determined in accordance with Section E of Appendix A.			

Bonuses

	Yes	No	NA
10. Unless an exception applies in 12 CFR 1030.8(e), if a bonus is stated in an advertisement, does the advertisement state the following information, as applicable, clearly and conspicuously (12 CFR 1030.8(d)):			
• The "annual percentage yield," using that term (12 CFR 1030.8(d)(1))?	☐	☐	☐
• The time requirement to obtain the bonus (12 CFR 1030.8(d)(2))?	☐	☐	☐

	Yes	No	NA
• The minimum balance required to obtain the bonus (12 CFR 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) (12 CFR 1030.8(d)(4))?	☐	☐	☐
• When the bonus will be provided (12 CFR 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 (12 CFR 1030.8(e)(1) and Staff Commentary 12 CFR 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 (12 CFR 1030.8(c)(3))?	☐	☐	☐
• For time accounts:			
○ Term of the account (12 CFR1030.8(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 (12 CFR 1030.8(c)(6)(iii)):	☐	☐	☐
▪ A stated maturity greater than one year.			
▪ Interest is not compounded on an annual or more frequent basis.			
▪ 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.			
• If an advertisement states a bonus:			
○ The “annual percentage yield,” using that term (12 CFR 1030.8(d)(1))?	☐	☐	☐
○ The time requirement to obtain the bonus (12 CFR 1030.8(d)(2))?	☐	☐	☐

	Yes	No	NA
○ The minimum balance required to obtain the bonus (12 CFR 1030.8(d)(3))?	☐	☐	☐
12. Do indoor signs:			
• Refrain from:			
o Containing misleading or inaccurate statements, and misrepresenting deposit contracts (12 CFR 1030.8(a)(1))?	☐	☐	☐
o Referring to or describe an account as “free” or “no cost” (or contain a similar term) if any maintenance or activity fee is charged?	☐	☐	☐
o Using the word profit to refer to interest paid on the account?	☐	☐	☐
o Using the term “fees waived” if a maintenance or activity fee can be imposed (12 CFR 1030.8(a)(2) and Staff Commentary 12 CFR 1030.8(a)-5)?	☐	☐	☐
• If a rate of return is stated:			
o 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.	☐	☐	☐
o Contain a statement advising consumers to contact an employee for further information about applicable fees and terms (12 CFR 1030.8(e)(2))?	☐	☐	☐

Record Retention Requirements – 12 CFR 1030.9

	Yes	No	NA
13. 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 (12 CFR 1030.9(c)).	☐	☐	☐

	Yes	No	NA

[Reserved] – 12 CFR 1030.10

Overdraft Payment Disclosure and Advertising Requirements – 12 CFR 1030.11

Periodic Statement Disclosures

	Yes	No	NA
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 both of the following (12 CFR 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" (12 CFR 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 imposed on an account for returning items unpaid (12 CFR 1030.11(a)(1)(ii))?	☐	☐	☐
2. Does the institution disclose the fees in close proximity to any fee identified in 12 CFR 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

	Yes	No	NA
3. Unless an exception under 12 CFR 1030.11(b)(2)-(4) applies, when an institution advertises the payment of overdrafts, are all of the following disclosed clearly and conspicuously in the advertisement:			
• The fee(s) for the payment of each overdraft (12 CFR 1030.11(b)(1)(i))?	☐	☐	☐
• The categories of transactions for which a fee may be imposed for paying an overdraft (12 CFR 1030.11(b)(1)(ii))?	☐	☐	☐
• The time period by which the consumer must repay or cover any overdraft (12 CFR 1030.11(b)(1)(iii))?	☐	☐	☐
• The circumstances under which the institution will not pay an overdraft (12 CFR 1030.11(b)(1)(iv))?	☐	☐	☐

	Yes	No	NA
Disclosure of Account Balances			
4. If the institution discloses account balance information to a consumer through an automated system, does:			
• The balance exclude additional amounts that the institution may provide to cover an item when there are insufficient or unavailable funds in the consumer's account (12 CFR 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 ((12 CFR 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 (12 CFR 1030.11(c))?	☐	☐	☐

Comments

[Click&type]

Unfair, Deceptive, or Abusive Acts or Practices

Unfair, deceptive, or abusive acts and practices (UDAAPs) can cause significant financial injury to consumers, erode consumer confidence, and undermine the financial marketplace. Under the Dodd-Frank Act, it is unlawful for any provider of consumer financial products or services or a service provider to engage in any unfair, deceptive or abusive act or practice.[1] The Act also provides CFPB with rule-making authority and, with respect to entities within its jurisdiction, enforcement authority to prevent unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.[2] In addition, CFPB has supervisory authority for detecting and assessing risks to consumers and to markets for consumer financial products and services.[3]

As examiners review products or services, such as deposit products or lending activities, they generally should identify the risks of harm to consumers that are particular to those activities. Examiners also should review products that combine features and terms in a manner that can increase the difficulty of consumer understanding of the overall costs or risks of the product and the potential harm to the consumer associated with the product.

These examination procedures provide general guidance on:

- The principles of unfairness, deception, and abuse in the context of offering and providing consumer financial products and services;
- Assessing the risk that an institution's practices may be unfair, deceptive, or abusive;
- Identifying unfair, deceptive or abusive acts or practices (including by providing examples of potentially unfair or deceptive acts and practices); and
- Understanding the interplay between unfair, deceptive, or abusive acts or practices and other consumer protection and antidiscrimination statutes.

Unfair Acts or Practices

The standard for unfairness in the Dodd-Frank Act is that an act or practice is unfair when:

(1) It causes or is likely to cause substantial injury to consumers;

(2) The injury is not reasonably avoidable by consumers; and

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1 Dodd-Frank Act, Title X, Subtitle C, Sec. 1036; PL 111-203 (July 21, 2010).

2 Sec. 1031 of the Dodd-Frank Act. The principles of "unfair" and "deceptive" practices in the Act are similar to those under Sec. 5 of the Federal Trade Commission Act (FTC Act). The Federal Trade Commission (FTC) and federal banking regulators have applied these standards through case law, official policy statements, guidance, examination procedures, and enforcement actions that may inform CFPB.

3 Dodd-Frank Act, Secs. 1024; 1025(b)(1); 1026(b) of the Act.

(3) The injury is not outweighed by countervailing benefits to consumers or to competition.[4]

- ***The act or practice must cause or be likely to cause substantial injury to consumers.*** Substantial injury usually involves monetary harm. Monetary harm includes, for example, costs or fees paid by consumers as a result of an unfair practice.[5] An act or practice that causes a small amount of harm to a large number of people may be deemed to cause substantial injury. Foregone monetary benefits or denial of access to products or services, like that which may result from discriminatory behavior, may also cause substantial injury.

  Actual injury is not required in every case. A significant risk of concrete harm is also sufficient. However, trivial or merely speculative harms are typically insufficient for a finding of substantial injury. Emotional impact and other more subjective types of harm also will not ordinarily amount to substantial injury. Nevertheless, in certain circumstances, such as unreasonable debt collection harassment or discriminatory conduct, emotional impacts or dignitary harms may amount to or contribute to substantial injury.

- ***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 if the act or practice interferes with their ability to effectively make decisions or to take action to avoid injury. Normally the marketplace is self-correcting; it is governed by consumer choice and the ability of individual consumers to make their own private decisions without regulatory intervention. If material information about a product, such as pricing, is modified after the consumer has committed to purchasing the product, or withheld, the consumer cannot reasonably avoid the injury. Moreover, consumers cannot avoid injury if they are coerced into purchasing unwanted products or services or if a transaction occurs without their knowledge or consent. Consumers cannot reasonably avoid discrimination.

  A key question is not whether a consumer could have made a better choice. Rather, the question is whether an act or practice hinders a consumer's decision-making. For example, not having access to important information could prevent consumers from comparing available alternatives, choosing those that are most desirable to them, and avoiding those that are inadequate or unsatisfactory. In addition, if almost all market participants engage in a practice, a consumer's incentive to search elsewhere for better terms is reduced, and the practice may not be reasonably avoidable.[6]

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[4] The standard for unfairness in the Dodd-Frank Act has the same three-part test as the FTC Act. This standard was first stated in the FTC Policy Statement on Unfairness (Dec. 17, 1980), *available at*: http://www.ftc.gov/bcp/policystmt/ad-unfair.htm. Congress later amended the FTC Act to include this specific standard in the Act itself. 15 U.S.C. § 45(n).

[5] FTC Policy Statement on Unfairness, at p. 3.

[6] *See* Credit Practices Rule, 49 Fed. Reg. 7740, 7746 (1984).

For an injury to be reasonably avoidable, consumers must have practical means to avoid it, and the actions that a consumer is expected to take to avoid injury must be reasonable. While a consumer might avoid harm by hiring independent experts to test products in advance or by bringing legal claims for damages in every case of harm, these actions generally would be too expensive to be practical for individual consumers and, therefore, are not reasonable. There are many instances where consumers simply have no mechanism to avoid the injury. For example, consumers typically cannot avoid the harms of discrimination.

- ***The injury must not be outweighed by countervailing benefits to consumers or 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 also are produced by the act or practice. Offsetting consumer or competitive benefits of an act or practice may include lower prices to the consumer or a wider availability of products and services resulting from competition.

  Costs that would be incurred for measures to prevent the injury also are taken into account in determining whether an act or practice is unfair. These 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, as established by statute, regulation, judicial decision, or agency determination, may be considered with all other evidence to determine whether an act or practice is unfair. However, public policy considerations by themselves may not serve as the primary basis for determining that an act or practice is unfair.

Examples

The examples described below stem from federal enforcement actions. They provide insight into practices that have been alleged to be unfair by other regulators and may inform CFPB's determinations. However, the particular facts in a case are crucial to a determination of unfairness. It is important to bear in mind that a change in facts could change the appropriate determination. Moreover, the brief summaries below do not present all of the material facts relevant to the determinations in each case. The examples show how the unfairness standard may be applied.

Refusing to release lien after consumer makes final payment on a mortgage.[7] The Federal Trade Commission (FTC) brought an enforcement action against a mortgage company based on allegations, described below, that the company repeatedly failed to release liens after consumers fully paid the amount due on their mortgages.

[7] *FTC v. Capital City Mortgage Corp.*, Civil No. 98 CV-237 (D.D.C. Feb. 2005), *available at* http://www.ftc.gov/opa/2005/02/capitalcity.shtm.

- Substantial injury. Consumers sustained economic injury when the mortgage servicer did not release the liens on their properties after the consumers had repaid the total amount due on the mortgages.

- Not outweighed by benefits. Countervailing benefits to competition or consumers did not result from the servicer's alleged failure to appropriately service the mortgage loan and release the lien promptly.

- Not reasonably avoidable. Consumers had no way to know in advance of obtaining the loan that the mortgage servicer would not release the lien after full payment. Moreover, consumers generally cannot avoid the harm caused by an improper practice of a mortgage servicer because the servicer is chosen by the owner of the loan, not the borrower. Thus, consumers cannot choose their loan servicer and cannot change loan servicers when they are dissatisfied with the quality of the loan servicing.

Dishonoring credit card convenience checks without notice.[8] The Office of Thrift Supervision (OTS) and Federal Deposit Insurance Corporation (FDIC) brought enforcement actions against a credit card issuer that sent convenience checks with stated credit limits and expiration dates to customers. For a significant percentage of consumers, the issuer reduced credit lines after the checks were presented, and then the issuer dishonored the consumers' checks.

- Substantial injury. Consumers paid returned-check fees and may have experienced a negative impact on credit history.

- Not outweighed by benefits. The card issuer later reduced credit limits based on credit reviews. Based on the particular facts involved in the case, the harm to consumers from the dishonored convenience checks outweighed any benefit of using new credit reviews.

- Not reasonably avoidable. Consumers reasonably relied on their existing credit limits and expiration dates on the checks when deciding to use them for a payment. Consumers had received no notice that the checks they used were being dishonored until they learned from the payees. Thus, consumers could not reasonably have avoided the injury.

Processing payments for companies engaged in fraudulent activities.[9] The Office of the Comptroller of the Currency (OCC) brought an enforcement action in a case involving a bank that maintained deposit account relations with telemarketers and payment processors, based on the following allegations. The telemarketers regularly deposited large numbers of remotely created checks drawn against consumers' accounts. A large percentage of the checks were not authorized by consumers. The bank failed to establish appropriate policies and procedures to prevent, detect, or remedy such activities.

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[8] *In re American Express Bank, FSB* (Cease and Desist Order WN-09-016, and Order of Assessment of a Civil Money Penalty for $250,000, WN-09-017, June 29, 2009) OTS Docket No. 15648; *In re American Express Centurion Bank*, (Cease and Desist Order, June 30, 2009) Docket FDIC-09-251b, available at http://www.fdic.gov/news.

[9] *In re Wachovia Bank, National Association,* available at http://www.occ.treas.gov

- Substantial injury. Consumers lost money from fraudulent checks created remotely and drawn against their accounts.

- Not outweighed by benefits. The cost to the bank of establishing a minimum level of due diligence, monitoring, and response procedures sufficient to remedy the problem would have been far less than the amount of injury to consumers that resulted from the bank's avoiding those costs.

- Not reasonably avoidable. Consumers could not avoid the harm because the harm resulted principally from transactions to which the consumers had not consented.

Deceptive Acts or Practices

A representation, omission, act, or practice is deceptive when

(1) The representation, omission, act, or practice misleads or is likely to mislead the consumer;

(2) The consumer's interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and

(3) The misleading representation, omission, act, or practice is material.[10]

- ***There must be a representation, omission, act, or practice that misleads or is likely to mislead the consumer.***

  Deception is not limited to situations in which a consumer has already been misled. Instead, an act or practice may be deceptive if it is *likely to mislead* consumers.

  It is necessary to evaluate an individual statement, representation, or omission not in isolation, but rather in the context of the entire advertisement, transaction, or course of dealing, to determine whether the overall net impression is misleading or deceptive. A representation may be an express or implied claim or promise, and it may be written or oral. If material information is necessary to prevent a consumer from being misled, it may be deceptive to omit that information.

  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 or fine print disclosures or contract disclosures may be insufficient to cure a misleading headline or a prominent written representation. Similarly, a deceptive act or practice may not be cured by subsequent truthful disclosures.

  Acts or practices that may be deceptive include: making misleading cost or price claims; offering to provide a product or service that is not in fact available; using bait-and-switch

[10] *See* FTC Policy Statement on Deception, available at http://www.ftc.gov/bcp/policystmt/ad-decept.htm. Examiners should be informed by the FTC's standard for deception.

techniques; omitting material limitations or conditions from an offer; or failing to provide the promised services.

The FTC's "four Ps" test can assist in the evaluation of whether a representation, omission, act, or practice is likely to mislead:

- o Is the statement <u>prominent</u> enough for the consumer to notice?
- o Is the information <u>presented</u> 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?
- o Is the <u>placement</u> of the information in a location where consumers can be expected to look or hear?
- o Finally, is the information in close <u>proximity</u> to the claim it qualifies?[11]

- ***The representation, omission, act, or practice must be considered from the perspective of the reasonable consumer.***

  In determining whether an act or practice is misleading, one also must consider whether the consumer's interpretation of or reaction to the representation, omission, act, or practice is 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 representation. When representations or marketing practices target a specific audience, such as older Americans, young people, or financially distressed consumers, the communication must be reviewed from the point of view of a reasonable member of that group.

  Moreover, a representation may be deceptive if the majority of consumers in the target class do not share the consumer's interpretation, so long as a significant minority of such consumers is misled. When a seller's representation conveys more than one meaning to reasonable consumers, one of which is false, the seller is liable for the misleading interpretation.

  Exaggerated claims or "puffery," however, are not deceptive if the claims would not be taken seriously by a reasonable consumer.

- ***The representation, omission, or practice must be material.***

  A representation, omission, act, or practice is material if it is likely to affect a consumer's choice of, or conduct regarding, the product or service. Information that is important to consumers is material.

  Certain categories of information are presumed to be material. In general, information about the central characteristics of a product or service – such as costs, benefits, or

[11] FTC, *Dot Com Disclosures, Information about On-Line Advertising,* available at: http://business.ftc.gov/documents/bus41-dot-com-disclosures-information-about-online-advertising.pdf.

restrictions on the use or availability – is presumed to be material. Express claims made with respect to a financial product or service are presumed material. Implied claims are presumed to be material when evidence shows that the institution intended to make the claim (even though intent to deceive is not necessary for deception to exist).

Claims made with knowledge that they are false are presumed to be material. Omissions will be presumed to be material when the financial institution knew or should have known that the consumer needed the omitted information to evaluate the product or service.

If a representation or claim is not presumed to be material, it still would be considered material if there is evidence that it is likely to be considered important by consumers.

Examples

The examples described below stem from federal enforcement actions. They provide insight into practices that have been alleged to be deceptive by other regulators and may inform CFPB's determinations. However, as with unfairness, the particular facts in a case are crucial to a determination of deception. It is important to bear in mind that a change in facts could change the appropriate determination. Moreover, the brief summaries below do not present all of the material facts relevant to the determinations in each case. The examples show how the deception standard may be applied.

Inadequate disclosure of material lease terms in television advertising.[12] The FTC brought actions against vehicle leasing companies alleging that their television advertisements represented that consumers could lease vehicles for "$0 down" when advertising a monthly lease payment. However, the FTC alleged that the "blur" of "unreadable fine print" that flashed on the screen at the end of the advertisement disclosed costs of at least $1,000. The settlements prohibited the vehicle leasing companies from misrepresenting the amount consumers must pay when signing the lease.

In addition, the FTC required that if the companies make any representation about the amounts due at lease signing, or that there is "no down payment," the companies must make an equally prominent (readable and audible) disclosure of the total amount of all fees due when consumers sign the lease.

- Representation or omission likely to mislead. The television advertisements featured prominent statements of "no money down" or "$0 down" at lease signing. The advertisement also contained, at the bottom of the screen, a "blur" of small print in which disclosures of various costs required by Regulation M (the Consumer Leasing Act) were made. The FTC alleged that the disclosures were inadequate because they were not clear, prominent, or audible to consumers.

[12] *In the matters of Mazda Motor of America, Inc.; Mitsubishi Motor Sales of America, Inc.; American Honda Motor Company, Inc.; General Motors Corporation; American Isuzu Motors, Inc.*, available at http://www.ftc.gov/opa/1997/02/petapp09.shtm.

- Reasonable consumer perspective. A reasonable consumer would believe that he did not have to put any money down and that all he owed was the regular monthly payment.
- Material representation. The stated "no money down" or "$0 down" plus the low monthly lease payment were material representations to consumers. The fact that the additional, material costs were disclosed at signing of the lease did not cure the deceptive failure to disclose in the television advertising, the FTC claimed.

Misrepresentation about loan terms.[13] In 2004, the FTC sued a mortgage broker advertising mortgage refinance loans at "3.5% fixed payment 30-year loan" or "3.5% fixed payment for 30 years," implying that the offer was for a 30-year loan with a 3.5% fixed interest rate. Instead, the FTC claimed that the broker offered adjustable rate mortgages (ARMs) with an option to pay various amounts, including a minimum monthly payment that represented only a portion of the required interest. As a result, unpaid interest was added to the principal of the loan, resulting in negative amortization.[14]

- Practice likely to mislead. The FTC claimed that the advertisements were misleading because they compared payments on a mortgage that fully amortized to payments on a non-amortizing loan with payments that increased after the first year. In addition, the FTC claimed that after application, the broker provided Truth in Lending Act (TILA) disclosures that misstated the annual percentage rate (APR) and that failed to state that the loan was a variable rate loan.
- Reasonable consumer perspective. It was reasonable for consumers to believe that they would obtain fixed-rate mortgages, based on the representations.
- Material representation. The representations were material because consumers relied on them when making the decision to refinance their fully amortizing 30-year fixed loans. As a result, the consumers ended up with adjustable rate mortgages that would negatively amortize if they made payments at the stated 3.5% payment rate.

[13] FTC v. Chase Financial Funding, Inc., No. SACV04-549 (C.D.Cal. 2004), Stipulated Preliminary Injunction, available at http://www.ftc.gov/os/caselist/0223287/0223287.shtm.

[14] In 2008, amendments to the Truth in Lending Act's Regulation Z were adopted to prohibit certain advertising practices, such as misleading advertising of fixed rates and payments, for credit secured by a dwelling. Similar practices could be identified as deceptive in other product lines. See 73 Fed. Reg. 44522 (July 30, 2008) (promulgating 12 CFR 226.24), which has since been recodified as 12 CFR 1026.24.

Abusive Acts or Practices

The Dodd-Frank Act makes it unlawful for any covered person or service provider to engage in an "abusive act or practice."[15] An abusive act or practice:

- Materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service or

- Takes unreasonable advantage of:

  - A lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;

  - The inability of the consumer to protect its interests in selecting or using a consumer financial product or service; or

  - The reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

Although abusive acts also may be unfair or deceptive, examiners should be aware that the legal standards for abusive, unfair, and deceptive each are separate.

The Role of Consumer Complaints in Identifying Unfair, Deceptive, or Abusive Acts or Practices

Consumer complaints play a key role in the detection of unfair, deceptive, or abusive practices. Consumer complaints have been an essential source of information for examinations, enforcement, and rule-making for regulators. As a general matter, consumer complaints can indicate 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 unfair, deceptive, or abusive practices are not occurring, complaints may be one indication of UDAAPs. For example, the presence of complaints alleging that consumers did not understand the terms of a product or service may be a red flag indicating that examiners should conduct a detailed review of the relevant practice. This is especially true when numerous consumers make similar complaints about the same product or service. Because the perspective of a reasonable consumer is one of the tests for evaluating whether a representation, omission, act, or practice is potentially deceptive, consumer complaints alleging misrepresentations or misunderstanding may provide a window into the perspective of the reasonable consumer.

When reviewing complaints against an institution, examiners should consider complaints lodged against subsidiaries, affiliates, and third parties regarding the products and services offered through the institution or using the institution's name. In particular, examiners should determine

[15] Dodd-Frank Act, Sec. 1036(a)(1)(B), 12 U.S.C. § 5536(a)(1)(B).

whether an institution itself receives, monitors, and responds to complaints filed against subsidiaries, affiliates, and third parties. Consumers can file complaints at a number of entities: the institution itself, the Better Business Bureau, State Attorneys General, the FTC's Consumer Sentinel, the CFPB Consumer Response Center, other Federal and State agencies, or on-line consumer complaint boards such as www.ripoffreport.com or www.complaints.com.

Analyzing Complaints

Analysis of consumer complaints may assist in the identification of potential unfair, deceptive, or abusive practices. Examiners should consider the context and reliability of complaints; every complaint does not indicate violation of law. When consumers repeatedly complain about an institution's product or service, however, examiners should flag the issue for possible further review. Moreover, even a single substantive complaint may raise serious concerns that would warrant further review. Complaints that allege, for example, misleading or false statements, or missing disclosure information, may indicate possible unfair, deceptive, or abusive acts or practices needing review.

Another area that could indicate potential unfair, deceptive, or abusive acts or practices is a high volume of charge-backs or refunds for a product or service. While this information is relevant to the consumer complaint analysis, it may not appear in the institution's complaint records.

Relationship to Other Laws

An unfair, deceptive, or abusive act or practice may also violate other federal or state laws. For example, pursuant to the 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 be unfair, deceptive, or abusive. Similarly, a discriminatory act or practice that is unfair, deceptive, or abusive may also violate other antidiscrimination laws, such as ECOA.

Conversely, a transaction that is in technical compliance with other federal or state laws may nevertheless violate the prohibition against UDAAPs. For example, an advertisement may comply with TILA's requirements, but contain additional statements that are untrue or misleading, and compliance with TILA's disclosure requirements does not insulate the rest of the advertisement from the possibility of being deceptive. A discriminatory act or practice is not shielded from the possibility of being unfair, deceptive or abusive even when fair lending laws do not apply to the conduct. For example, not allowing African-American consumers to open deposit accounts, or subjecting African-American consumers to different requirements to open deposit accounts, may be an unfair practice even in those instances when ECOA does not apply to this type of transaction.

Unfair, Deceptive, or Abusive Acts and Practices

Exam Date:	[Click&type]
Prepared By:	[Click&type]
Reviewer:	[Click&type]
Docket #:	[Click&type]
Entity Name:	[Click&type]

Examination Objectives

- To assess the quality of the regulated entity's compliance risk management systems, including internal controls and policies and procedures, for avoiding unfair, deceptive, or abusive acts or practices (UDAAP).
- To identify acts or practices that materially increase the risk of consumers being treated in an unfair, deceptive, or abusive manner, including discriminatory acts or practices.
- To gather facts that help determine whether a regulated entity engages in acts or practices when offering or providing consumer financial products or services that are likely to be unfair, deceptive, or abusive.
- To determine, in consultation with Headquarters, whether an unfair, deceptive or abusive act or practice has occurred and whether further supervisory or enforcement actions are appropriate.

General Guidance

Based on the results of the risk assessment of the entity, examiners should review for potential unfair, deceptive, or abusive acts or practices, taking into account an entity's marketing programs, product and service mix, customer base, and other factors, as appropriate. Even if the risk assessment has not identified potential unfair, deceptive, or abusive acts or practices, examiners should be alert throughout an examination for situations that warrant review.

1. Document Review

To initially identify potential areas of UDAAP concerns, obtain and review copies of the following to the extent relevant to the examination

a. Training materials.

b. Lists of products and services, including descriptions, fee structure, disclosures, notices, agreements, and periodic and account statements.

c. Procedure manuals and written policies, including those for servicing and collections.

d. Minutes of the meetings of the Board of Directors and of management committees, including those related to compliance.

e. Internal control monitoring and auditing materials.

f. Compensation arrangements, including incentive programs for employees and third parties.

g. Documentation related to new product development, including relevant meeting minutes of Board of Directors, and of compliance and new product committees.

h. Marketing programs, advertisements, and other promotional material in all forms of media (including print, radio, television, telephone, Internet, or social media advertising).

i. Scripts and recorded calls for telemarketing and collections.

j. Organizational charts, including those related to affiliate relationships and work processes.

k. Agreements with affiliates and third parties that interact with consumers on behalf of the entity.

l. Consumer complaint files.

m. Documentation related to software development and testing, as applicable.

n. Documentation regarding the use of models, algorithms, and decision-making processes used in connection with consumer financial products and services.

o. Information collected, retained or used regarding customer demographics, including the demographics of customers using various products or services, and the breakdown of consumer demographics for various product uses, fees, revenue sources and costs, or the impacts of various products and services on specific demographics.

p. Any demographic research or analysis relating to marketing or advertising of consumer financial products or services.

Management and Policy-Related Examination Procedures

1. Identify potential UDAAP concerns by reviewing all relevant written policies and procedures, customer complaints received by the entity or by the CFPB, internal and external audit reports, statistical and management reports, and examination reports. Determine whether:

a. The scope of the entity's compliance audit includes a review of potential unfair, deceptive, or abusive acts or practices.

b. The compliance audit work is performed consistent with the audit plan and scope.

c. The frequency and depth of audit review is appropriate to the nature of the activities and size of the entity.

d. Management and the Board of Directors are made aware of and review significant deficiencies and their causes.

e. Management has taken corrective actions to follow up on any identified deficiencies.

f. The entity's compliance programs ensure that policies are being followed through its sampling of relevant product types and decision centers, including sales, processing, and underwriting.

g. The entity has a process to respond to consumer complaints in a timely manner and determine whether consumer complaints raise potential UDAAP concerns.

h. The entity has been subject to any enforcement actions or has been investigated by a regulatory or law enforcement agency for violations of consumer protection laws or regulations that may indicate potential UDAAP concerns.

i. The entity has a process to prevent discrimination in relation to all aspects of consumer financial products or services the entity offers or provides, which includes the evaluation of all policies, procedures and processes for discrimination prior to implementation or making changes, and continued monitoring for discrimination after implementation.

j. The entity's compliance program includes an established process for periodic analysis and monitoring of all decision-making processes used in connection with consumer financial products or services, and a process to take corrective action to address any potential UDAAP concerns related to their use, including discrimination.

2. Through discussions with management and a review of available information, determine whether the entity's internal controls are adequate to prevent unfair, deceptive or abusive acts or practices. Consider whether:

a. The compliance management program includes measures aimed at avoiding unfair, deceptive, or abusive practices, including:

- Organization charts and process flowcharts;
- Policies and procedures; and
- Monitoring and audit procedures.

b. The entity conducts prior UDAAP reviews of advertising and promotional materials, including promotional materials and marketing scripts for new products.

c. The entity evaluates initial and subsequent disclosures, including customer agreements and changes in terms, for potential UDAAP concerns.

d. The entity reviews new products and changes in the terms and conditions of existing products for potential UDAAP concerns.

e. The entity has a thorough process for receiving and responding to consumer complaints and has a process to receive complaints made to third parties, such as the Better Business Bureau or the CFPB.

f. The entity evaluates servicing and collections for UDAAP concerns.

g. The entity has established policies and controls relating to employee and third-party conduct, including:

  - Initial and ongoing training;
  - Performance reviews or audits;
  - Discipline policies and records of disciplinary actions;
  - Third-party agreements and contractual performance standards;
  - Compensation programs; and
  - Monitoring.

h. The entity's internal control processes are documented.

i. Computer programs are tested and documented to ensure accurate and timely disclosures to consumers.

j. The entity has established policies and procedures to review, test, and monitor any decision-making processes it uses for potential UDAAP concerns, including discrimination.

k. The entity has established policies and procedures to mitigate potential UDAAP concerns arising from the use of its decision-making processes, including discrimination.

l. The entity's policies, procedures and practices do not target or exclude consumers from products and services, or offer different terms and conditions, in a discriminatory manner.

m. The entity has appropriate training for customer service personnel to prevent discrimination.

3. Potential Areas for Transaction Testing

Through a high-level assessment of the entity's products, services, and customer base, identify areas for potential transaction testing. This process should determine whether:

a. The entity does not underwrite a given credit product on the basis of ability to repay.

b. A product's profitability depends significantly on penalty fees or "back-end" rather than upfront fees.

c. A product has high rates of repricing or other changes in terms.

d. A product combines features and terms in a manner that can increase the difficulty of consumer understanding of the overall costs or risks of the product and the potential harm.

e. Penalties are imposed when a customer terminates the relationship with the entity.

f. Fees or other costs are imposed on a consumer to obtain information about the account.

g. A product is targeted to particular populations, without appropriate tailoring of marketing, disclosures, and other materials designed to ensure understanding by the consumers.

h. The entity improperly gives inferior terms to one customer demographic as compared to other customer demographics.

i. The entity improperly offers or provides more products or services to one customer demographic as compared to other customer demographics.

j. Customer service representatives improperly treat customers of certain demographics worse or provide extra assistance or exceptions to customers of certain demographics.

k. The entity engages in targeted advertising or marketing in a discriminatory way.

l. The entity uses decision-making processes in its eligibility determinations, underwriting, pricing, servicing or collections that result in discrimination.

m. The entity fails to evaluate and make necessary adjustments and corrections to prevent discrimination.

Transaction-Related Examination Procedures

If upon conclusion of the management and policy-related examination procedures, procedural weaknesses, or other UDAAP risks require further investigation, conduct transaction testing, as necessary, using the following examination procedures. Use judgment in deciding to what extent to sample individual products, services, or marketing programs. Increase the sample size to achieve confidence that all aspects of the entity's products and services are reviewed sufficiently. Consult with Headquarters to obtain assistance with the sampling process.

1. Marketing and Disclosures

Through a review of marketing materials, customer agreements, and other disclosures, determine whether, before the consumer chooses to obtain the product or service:

a. All representations are factually based.

b. All materials describe clearly, prominently, and accurately:

- costs, benefits, and other material terms of the products or services being offered;
- related products or services being offered either as an option or required to obtained certain terms; and

  - material limitations or conditions on the terms or availability of products and services, such as time limitations for favorable rates, promotional features, expiration dates, prerequisites for obtaining particular products or services, or conditions for canceling services.

c. The customer's attention is drawn to key terms, including limitations and conditions, that are important to enable the consumer to make an informed decision.

d. All materials clearly and prominently disclose the fees, penalties, and other charges that may be imposed and the reason for the imposition.

e. Contracts clearly inform customers of contract provisions that permit changes in terms and conditions of the product or service.

f. All materials clearly communicate the costs, benefits, availability, and other terms in language that can be understood when products are targeted to particular populations, such as reverse mortgage loans for the elderly.

g. Materials do not misrepresent costs, conditions, limitations, or other terms either affirmatively or by omission.

h. The entity avoids advertising terms that are generally not available to the typical targeted consumer.

i. Marketing or advertising do not improperly target or exclude consumers on a discriminatory basis, including through digital advertising.

2. Availability of Terms or Services as Advertised

Evaluate whether product(s) and service(s) that consumers are receiving are consistent with the disclosures and policies. For each product and service being reviewed, select a sample that:

a. Is sufficient in size to reach a supportable conclusion about such consistency;

b. Includes, as appropriate, transactions from different origination and underwriting channels — for example, different geographical areas or different sectors of the entity's organization structure;

c. Includes approved and/or denied accounts; and

d. Identifies the decision-making processes used to determine approval or denial for a product and the terms of the offer, as well as the corresponding inputs used in the decision-making processes for each account in the sample.

Determine whether:

a. Consumers are reasonably able to obtain the products and services, including interest rates or rewards, as represented by the entity.

b. The entity offers products and services to consumers in a manner that prevents discrimination.

c. Consumers receive the specific product or service that they request.

d. Counter-offers clearly, prominently, and accurately explain the difference between the original product or services requested and the one being offered.

e. Actual practices are consistent with stated policies, procedures, or account disclosures.

3. Availability of Actual Credit to the Consumer

Evaluate whether the entity represents the amount of useable credit that the consumer will receive in a truthful way. Consider whether:

a. The available credit is sufficient to allow the consumer to use the product as advertised and disclosed to the consumer.

b. The fees and charges, typically imposed on the average targeted customer, both initially and throughout the term of the loan, remain in a range that does not prevent the availability of credit.

c. The entity honors convenience checks when used by the customer in a manner consistent with introductory or promotional materials and disclosures.

4. Employees and Third Parties Interacting with Consumers

Evaluate how the entity monitors the activities of employees and third-party contractors, marketing sales personnel, vendors, and service providers to ensure they do not engage in unfair, deceptive, or abusive acts or practices with respect to consumer interactions. Interview employees and third parties, as appropriate. Specifically, consider whether:

a. The entity ensures that employees and third parties who market or promote products or services are adequately trained so that they do not engage in unfair, deceptive, or abusive acts or practices, including discrimination.

b. The entity conducts periodic evaluations or audits to check whether employees or third parties follow the entity's training and procedures and has a disciplinary policy in place to deal with any deficiencies.

c. The entity reviews compensation arrangements for employees, third-party contractors, and service providers to ensure that they do not create unintended incentives to engage in unfair, deceptive, or abusive acts or practices, particularly with respect to product sales, loan originations, and collections.

d. Performance evaluation criteria do not create unintended incentives to engage in unfair, deceptive, or abusive acts or practices, including criteria for sales personnel based on sales volume, size, terms of sale, or account performance.

e. The entity implements and maintains effective risk and supervisory controls to select and manage third-party contractors and service providers.

f. The entity has a process to take prompt corrective action if the decision-making processes it uses produce deficiencies or discriminatory results.

5. Servicing and Collections

Evaluate whether servicing and collections practices raise potential UDAAP concerns, by considering whether**:**

a. The entity has policies detailing servicing and collections practices and has monitoring systems to prevent unfair, deceptive or abusive acts or practices.

b. Call centers, either operated by the entity itself or by third parties, effectively respond to consumers' calls, including calls from consumers with limited English proficiency.

c. The entity ensures that employees and third party contractors:

- represent fees or charges on periodic statements in a manner that is not misleading;
- post and credit consumer payments in a timely manner;
- apply payments in a manner that does not unnecessarily increase customer payments, without clear justification;
- only charge customers for products and services, such as insurance or credit protection programs, that are specifically agreed to;
- mail periodic statements in time to provide the consumer ample opportunity to avoid late payments; and
- do not represent to consumers that they may pay less than the minimum amount without clearly and prominently disclosing any fees for paying the reduced amount.

d. The entity ensures that employees and third party contractors refrain from engaging in servicing or collection practices that lead to differential treatment or disproportionately adverse impacts on a discriminatory basis.

e. The entity has policies to ensure compliance with the standards under the Fair Debt Collections Practices Act to prevent abusive, deceptive, or unfair debt collection practices.

f. Employees and third party contractors clearly indicate to consumers that they are calling about the collection of a debt.

g. Employees and third party contractors do not disclose the existence of a consumer's debt to the public without the consent of the consumer, except as permitted by law.

h. The entity avoids repeated telephone calls to consumers that annoy, abuse, or harass any person at the number called.

6. Interviews with Consumers

If potential UDAAP issues are identified that would necessitate interviews with consumers, consult with regional management who will confer with Headquarters.

Entity Name: **Prepared by:**
Docket Number: **Date:**

Docket Number:	Click here to enter text.
Entity Name	Click here to enter text.
City	Click here to enter text.
State	Click here to enter text.
Prudential and/or State Regulator(s)	Click here to enter text.
Contact Name	Click here to enter text.
Contact Information	Click here to enter text.
Work City	Click here to enter text.
Work State	Click here to enter text.
Top Tier Entity	Click here to enter text.
Affiliated DIs (RSSD)	Click here to enter text.
Principal products or lines of business	Click here to enter text.
CFPB Region	Click here to enter text.
Total Assets (000)	Click here to enter text.
Assets as-of date	Click here to enter text.
Attach current Risk Assessment results	Click here to enter text.
Current Compliance Rating	Click here to enter text.
Last Compliance Exam Started	Click here to enter text.
Next Compliance Exam Scheduled	Click here to enter text.
Current CAMELS	Click here to enter text.
CAMELS as-of date	Click here to enter text.
Formal Action in Place	Click here to enter text.
Formal Action in Process	Click here to enter text.

CFPB Entity Profile

Entity Name: **Prepared by:**
Docket Number: **Date:**

Enforcement Attorney Name	Click here to enter text.
Contact Information	Click here to enter text.
Informal Agreement in Place	Click here to enter text.
Informal Agreement in Process	Click here to enter text.
Safety and Soundness Action(s)	Click here to enter text.
Fair Lending Issues	Click here to enter text.
Fair Lending Data Analysis Results	Click here to enter text.
HMDA Outlier (Y/N)	Click here to enter text.
Previous Outlier Years	Click here to enter text.
# Discrimination Complaints	Click here to enter text.
OFLEO Contact	Click here to enter text.
Contact Information	Click here to enter text.
UDAAP Issues	Click here to enter text.
Other Significant Regulatory Issues	Click here to enter text.
Complaint Analysis	Click here to enter text.
Other Noteworthy Information	Click here to enter text.

EXAMINATION REPORT

Initial Information Request Date:	**Click here to enter a date.**
Entity name:	**[type]**
City, State:	**[type]**
Institution Product Line(s) Reviewed:	**Choose an item.**
Affiliated Organizations Reviewed:	If examiners reviewed the activities of affiliated organizations that fall under the CFPB's jurisdiction, Insert the organizations' names. If not, type N/A.

CFPB Region:	**Choose an item.**
CFPB Event ID:	**0000**
CFPB Supervision ID:	**00000**
Entity Type:	**Choose an item.**
Review Type	**Point-in-Time Examination**

Prohibition of Disclosure or Release

This document is the property of the Consumer Financial Protection Bureau (CFPB), and the CFPB furnishes this document to the entity for its confidential use. The entity's directors, officers, or employees may not disclose the report or any portion of it except as provided in 12 CFR Part 1070.

If the entity receives a subpoena or other legal process calling for production of, or testimony regarding, this document, notify the Regional Director and the CFPB General Counsel immediately. Advise the party issuing the subpoena and, as appropriate, the court of the above prohibition and refer them to 12 CFR Part 1070.

Table of Contents

Scope of Review

Use sample language below, as appropriate.

Consumer Financial Protection Bureau (CFPB or Bureau) examiners conducted a point-in-time examination of <Insert entity's full name> (<Insert entity's short name>). *<Insert optional one – two sentences describing the entity's business operation and size.>* The review period for the examination was Click here to enter a date., through Click here to enter a date. *<Insert optional sentence regarding on-site start date.>*

Examiners evaluated the Bank's compliance management system (CMS) with respect to <Insert IPL>. Examiners reviewed the following CMS components:

- Board and management oversight
- Compliance program (policies and procedures, training, monitoring and/or audit, and consumer complaint response)
- Service provider oversight

Examiners used the following modules from the <Insert IPL> examination procedures found in the *CFPB Supervision and Examination Manual*:

- Module <Insert module number and title>
- Module <Insert module number and title>
- Module <Insert module number and title>

Examiners reviewed <Insert entity's short name>'s <Insert IPL(s)> activities for compliance with certain requirements of the following Federal consumer financial laws:[1]

- Consumer Leasing Act (CLA) – Regulation M
- Electronic Fund Transfer Act (EFTA) – Regulation E
- Equal Credit Opportunity Act (ECOA) – Regulation B
- Fair Credit Reporting Act (FCRA) – Regulation V
- Fair Debt Collection Practices Act (FDCPA)
- Home Mortgage Disclosure Act (HMDA) – Regulation C
- Homeowners Protection Act (HPA)
- Privacy of Consumer Financial Information – Regulation P
- Real Estate Settlement Procedures Act (RESPA) – Regulation X
- Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) – Regulation G
- Truth in Lending Act (TILA) – Regulation Z
- Truth in Savings Act (TISA) – Regulation DD

Include the following sentence (and footnote that includes the legal citation) only if:

- *Examiners used the CFPB's examination procedures for Unfair, Deceptive, or Abusive Acts or Practices (UDAAP);*
- *The IPL modules reviewed specifically required a review for UDAAP; or*

[1] Federal consumer financial law is defined by Section 1002(14) of Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (12 USC 5481(14)).

- *The examiners found issues during the review that were determined to be UDAAPs.*

Examiners also reviewed whether the entity was engaging in unfair, deceptive, or abusive acts or practices (UDAAP).[2]

Conclusions and Comments

[type]

<*If the report contains Supervisory Recommendations, insert the following sentence after comments and conclusions related to CMS:* This report contains Supervisory Recommendations for management to consider related to these CMS weaknesses.>

At the end of Conclusions and Comments, use the sample language below if the CFPB will use the Enforcement process to address certain specified matters.

<*Insert one of the following as a lead-in to the sentence:* Some of these violations *or* All of these violations>, any additional violations that might be identified in the course of investigating this conduct, and any <Insert "additional" if applicable> corrective action, including remediation, will be addressed through the Enforcement process.

[2] 12 USC 5531 and 5536.

Consumer Compliance Rating[3]

The overall compliance rating is "Choose the consumer compliance rating." and is based on the findings discussed in this Examination Report. The rating is based upon a scale of "1" through "5" in increasing order of supervisory concern; a rating of "1" represents the highest rating and consequently the lowest level of supervisory concern, while "5" represents the lowest, most critically deficient level of performance, and therefore, the highest degree of supervisory concern.

Include one of the following and delete the other statement:

In a prior CFPB examination report, transmitted <Insert transmittal date>, <Insert entity's name> was rated "Choose the consumer compliance rating."

OR

The CFPB has not previously examined <Insert entity's name>.

/s/ EIC signature
Insert typed name of EIC
Examiner-in-Charge

/s/ FM signature
Insert typed name of FM
Field Manager

[3] The CFPB has adopted the FFIEC Uniform Consumer Compliance Rating System. For more information, see the chapter "Examination Process" in the *CFPB Supervision and Examination Manual* (https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/).

Matters Requiring Attention (MRAs)

Select one of the following sentences:

This Examination Report includes no matters requiring attention (MRAs).
OR
The following matters requiring attention (MRAs) require a written response to the CFPB.
OR
The following matter requiring attention (MRA) requires a written response to the CFPB.

Reporting date: **<Insert # of days>** calendar days from the transmittal[4] of this Examination Report and, every **<Insert # of days>** calendar days thereafter until the MRA is complete, provide the CFPB progress reports on fulfilling the following MRAs. Include in the report(s) details on the steps taken to complete the MRA(s) and the results.[5]

Area Reviewed: Choose an item.

Insert module title, where possible.

1. <Insert MRA>
   Completion due date: **<Insert # of days>** calendar days from the transmittal of this Report.

Insert module title, where possible

2. <Insert MRA>
   Completion due date: **<Insert # of days>** calendar days from the transmittal of this Report.

Insert module title, where possible

3. <Insert MRA>
   Completion due date: **<Insert # of days>** calendar days from the transmittal of this Report.

[4] The transmittal date is the date that the CFPB emails the Report to the supervised entity.
[5] If a reporting date falls on a weekend or holiday, the report will be considered timely on the following business day.

Review and Findings

Compliance Management Review

Conclusion

The <Insert entity's short name>'s compliance management system (CMS) is Choose an item.. [type]

Comments and Supporting Analysis

Board and Management Oversight

The <Insert entity's short name>'s Board and management oversight is Choose an item.. <Insert discussion after the lead-in sentence.>

Supervisory Recommendation(s):

1. <Insert SR>

Compliance Program

The <Insert entity's short name>'s compliance program is Choose an item.. <Insert discussion after the lead-in sentence.>

Policies and Procedures

The <Insert entity's short name>'s policies and procedures are Choose an item.. <Insert discussion after the lead-in sentence.>

Supervisory Recommendation(s):

1. <Insert SR>

Training

The <Insert entity's short name>'s training is Choose an item.. <Insert discussion after the lead-in sentence.>

Supervisory Recommendation(s):

1. <Insert SR>

Monitoring and/or Audit

The <Insert entity's short name>'s monitoring is Choose an item.. <Insert discussion after the lead-in sentence.> The <Insert entity's short name>'s audit is Choose an item.. <Insert discussion after the lead-in sentence.>

Supervisory Recommendation(s):

1. <Insert SR>

Consumer Complaint Response

The <Insert entity's short name>'s consumer complaint response is Choose an item.. <Insert discussion after the lead-in sentence.>

Supervisory Recommendation(s):
1. <Insert SR>

Service Provider Oversight
The <Insert entity's short name>'s service provider oversight is Choose an item.. <Insert discussion after the lead-in sentence.>

Supervisory Recommendation(s):
1. <Insert SR>

Area Reviewed: Choose an item.

Conclusion
[type]

Comments and Supporting Analysis
[type]

Entity Name:
Event ID:
Supervision ID:
Date:
Prepared by:

BACKGROUND INFORMATION

Entity Information	
Name of Supervised Entity:	<Insert name of entity>
Entity Headquarters (City, State):	<Insert location>
Entity Website:	<Insert website>
Entity Type:	<Choose an Entity Type>
Event Type:	<Choose an event type>
Area(s) of Focus:	<Insert concise description of the IPL(s) that will be included in the supervisory event (based on the information in the Scope section later in the document)>
Subordinate and Affiliated Organizations Reviewed (if applicable):	<Insert organization names>
On-Site Location(s):	<Insert location(s)>
Other Participating Prudential or State Regulators (if applicable):	<Insert regulator(s)>

Examination Dates	
Information Request Sent Date:	<Click here to select a date>
On-Site Start Date:	<Click here to select a date>
Scheduled On-Site Completion Date:	<Click here to select a date>
Review Period:	<Click here to select the review period start date> – <Click here to select the review period end date>

Examination Team	
Lead Regional Office:	<Choose a Region>
Regional Office(s) Performing Examination:	<Insert office(s)>

Name	Email & Phone Number	Title/Role	Area Reviewed/Modules
<Insert name>	<Insert email>; <Insert phone>	Examiner-in-Charge	<Insert area/module>
<Insert name>	<Insert email>; <Insert phone>	Central Point of Contact (if applicable)	<Insert area/module>
<Insert name>	<Insert email>; <Insert phone>	Field Manager	N/A
<Insert name>	<Insert email>;	Assistant Regional	N/A

Entity Name:
Event ID:
Supervision ID:
Date:
Prepared by:

	<Insert phone>	Director	
<Insert name>	<Insert email>; <Insert phone>	<Insert title>	<Insert area/module>
<Insert name>	<Insert email>; <Insert phone>	<Insert title>	<Insert area/module>
<Insert name>	<Insert email>; <Insert phone>	<Insert title>	<Insert area/module>
<Insert name>	<Insert email>; <Insert phone>	<Insert title>	<Insert area/module>
<Insert name>	<Insert email>; <Insert phone>	<Insert title>	<Insert area/module>
<Insert name>	<Insert email>; <Insert phone>	OSP Contact	N/A
<Insert name>	<Insert email>; <Insert phone>	OFLEO Contact	N/A
<Insert name>	<Insert email>; <Insert phone>	ENF Contact	N/A

Prudential Regulators *Delete table if prudential regulators are not involved*	
Prudential Regulator(s):	<Insert regulator>
Regulator Contact(s):	<Insert contact name>
Contact Phone Number:	<Insert phone number>
Contact Email:	<Insert email>

State Regulators *Delete table if state regulators are not involved*	
State Regulator(s):	<Insert regulator>
Regulator Contact(s):	<Insert contact name>
Contact Phone Number:	<Insert phone number>
Contact Email:	<Insert email>

Entity Name: **Date:**
Event ID: **Prepared by:**
Supervision ID:

Communication Plan

- *Provide name and contact information for the entity's compliance officer and/or point of contact responsible for coordinating with the examination team or serving as liaisons*
- *Provide expectations for communications with the entity (e.g., all requests for information or meetings to be provided to EIC/team member who will contact entity staff)*
- *List any expected or scheduled meetings (including the entrance, progress, and closing meetings outlined in the Supervision and Examination Manual)*
- *Detail expectations for any status updates on examination or target review progress/findings*
- *Detail any information pertaining to choreographing examination or review activities with any other federal or state regulator(s)*

Entity's Compliance Contact(s):	<Insert contact name>
Contact Phone Number:	<Insert phone number>
Contact Email:	<Insert email>

<Insert details pertaining to the examination team's communication plan>

Entity Name: **Date:**
Event ID: **Prepared by:**
Supervision ID:

SCOPE

Event Narrative
<Provide a brief, free-form summary of the reasoning behind this supervisory event and its scope. To obtain information about the priorities determined by SEFL HQ, reach out to your OSP contact.><Provide a brief, free-form summary of the reasoning behind this examination or target review and its scope. To obtain information about the priorities determined by SEFL HQ, reach out to your OSP contact.>

Institution Product Lines (IPLs) to be Reviewed
LISTED BY PRIORITY

- *Use the dropdown box in the next row to select the highest-priority IPL under examination or review*
- *Insert the modules or regulations associated with the chosen IPL, listed by priority*
- *Fill out the row for each module or regulation.*
- *If transaction testing is planned, include in the second column the estimated number of transactions to be tested and the specific sampling methodology used to select each sample (judgmental or statistical). DO NOT use "TBD": an estimated number must be included.*
- *For any IPL (excluding Baseline Compliance Management System), include information pertaining to the examination team's plans to evaluate the supervised entity's compliance management system as it pertains to that specific IPL*
- *If additional IPLs or areas of focus will be examined, copy this table starting with the next row and paste it as a new table following this one*

<Choose an IPL>

Module/Regulation and Priority Ranking LISTED NUMERICALLY	**Estimated Number of Transactions to be Tested and description of the Sampling Methodology used**	**Comments**
<Insert module or regulation name> Choose an option	<Insert estimated number and type of transactions to be tested; number can be expressed using a range, as needed. Include a description of the sampling methodology used to select each sample>	<Insert any comments applicable to this module/regulation, such as reason(s) for inclusion or exclusion and any of its sections that will or will not be reviewed>

Entity Name: **Date:**
Event ID: **Prepared by:**
Supervision ID:

<Insert module or regulation name> Choose an option	<Insert estimated number and type of transactions to be tested; number can be expressed using a range, as needed. Include a description of the sampling methodology used to select each sample>	<Insert any comments applicable to this module/regulation, such as reason(s) for inclusion or exclusion and any of its sections that will or will not be reviewed>
<Insert module or regulation name> Choose an option	<Insert estimated number and type of transactions to be tested; number can be expressed using a range, as needed. Include a description of the sampling methodology used to select each sample>	<Insert any comments applicable to this module/regulation, such as reason(s) for inclusion or exclusion and any of its sections that will or will not be reviewed>
<Insert module or regulation name> Choose an option	<Insert estimated number and type of transactions to be tested; number can be expressed using a range, as needed. Include a description of the sampling methodology used to select each sample>	<Insert any comments applicable to this module/regulation, such as reason(s) for inclusion or exclusion and any of its sections that will or will not be reviewed>

Complaints
<Insert information on consumer complaints about the entity received by the Bureau during the associated review period, which can be obtained from Consumer Response>

Outstanding Enforcement Actions

List any outstanding enforcement actions (BCFP and any known actions from other regulators) related to the scope of this particular examination or target review

Type of Action	Issue Date	Agency	Comments
<Insert EA type>	<Click here to select a date>	<Insert agency>	<Insert comments>
<Insert EA type>	<Click here to select a date>	<Insert agency>	<Insert comments>

Entity Name: **Date:**
Event ID: **Prepared by:**
Supervision ID:

Open Matters Requiring Attention *List those related to the scope of this particular examination or target review*		
Matter Requiring Attention	**Due Date**	**Comments**
<Insert MRA and any required response>	<Click here to select a date>	<Insert comments>
<Insert MRA and any required response>	<Click here to select a date>	<Insert comments>

Final Pre-Review Scope Summary

- *Insert a brief description of the final pre-review scope that was established following an analysis of the entity's response to the Information Request; note that this content should essentially summarize the earlier portions of this document.*
- *Include the finalized transaction testing plan, which should describe:*
  - *the data set(s) selected for review (the population)*
  - *the methodology used to select the sample(s) (i.e. judgmental, statistical)*
  - *the number of transactions selected for testing (the sample)*
  - *the reason for selecting those transactions*

Final Post-Review Scope

Insert a brief description of modifications made to the scope that occurred during the supervisory event, and an explanation of the reasoning behind those changes (e.g. time constraints, serious findings in one area, etc).

Major Scope Modifications Made Between Pre- and Post-Review *Major scope modifications may include, but are not limited to, the reprioritization, addition, or removal of IPLs and/or modules within an IPL; and adjustments made to transaction testing samples*		
Modification	**Date**	**Made by**
<Insert a description of the modification and its ramifications on the examination/target review overall>	<Click here to select a date>	<Insert approver name>
<Insert a description of the modification and its ramifications on the examination/target review overall>	<Click here to select a date>	<Insert approver name>
<Insert a description of the modification and its ramifications on the examination/target review overall>	<Click here to select a date>	<Insert approver name>
<Insert a description of the modification and its ramifications on the examination/target review overall>	<Click here to select a date>	<Insert approver name>

Considerations for Future Reviews

<Insert considerations for the scope of the next examination>

Entity Name: **Prepared by:**
Docket Number: **Date:**

Consumer Risk Assessment

CFPB's Risk Assessment process is designed to evaluate on a consistent basis the extent of risk to consumers arising from the activities of a particular supervised entity and to identify the sources of that risk. "Risk to consumers" for the purpose of the CFPB Risk Assessment is the potential for consumers to suffer economic loss or other legally-cognizable injury as a result of a violation of Federal consumer financial law. To determine risk to consumers, the Risk Assessment considers the interaction of two broad sets of factors: the inherent risks in a particular line of business or the entity as a whole and the quality of controls implemented by the entity to manage and mitigate those risks. As noted below, the Risk Assessment will be used during CFPB's supervision planning process to set priorities and focus examination and supervision activities.

Inherent risk includes factors that increase the potential for unfair, deceptive or abusive acts or practices, for discrimination, or for violations of other Federal consumer financial laws. It also includes factors that increase the compliance management challenges of a business and thereby increase the risk of such violations. The quality of risk controls includes factors related to both managing and mitigating specific inherent risks as well as the strength of an entity's overall system of compliance management.

The questions and considerations in this template may be used to conduct risk assessments of individual lines of business, supervised entities as a whole, and groups of affiliated entities when feasible and applicable. Assessments of individual lines of business in large complex entities may be considered together to reach conclusions about the entity as a whole.

The risk assessment is not a determination of whether a violation of law exists.

Using the Risk Assessment Template

The template provides a series of factors that bear on inherent risk and relevant risk controls. Examiners conducting the assessment should rate each relevant factor (low, moderate, or high inherent risk; strong, adequate, or weak risk controls and mitigation), and comment briefly on the basis for each rating and issues to consider during the examination. The factor ratings, taken as a whole, result in the Risk Summary, which is a conclusion about whether the overall risk to consumers is low, moderate, or high. The Risk Summary also includes a judgment about the expected change in the overall risk (decreasing, increasing, or stable/unchanged), and when that direction last changed. The Risk Summary, and the basis for it, will be included with the Examination Report.

The factor ratings and comments should be used to inform the Examination Scope. For example, if the nature and structure of certain products point to high inherent risk and the quality of risk controls is only adequate, then the examination scope should likely include a review of those products and the related compliance controls. The magnitude and severity of potential consumer harm arising from particular risks should be considered when setting priorities for review.

There may be other institution or industry-specific risk factors beyond those included in the template that should be considered when assessing risk to consumers. Examiners should use their knowledge and judgment to identify risks that are unique to a particular entity or its specialized business focus.

Entity Name: **Prepared by:**
Docket Number: **Date:**

The sections below include (1) factors that specifically increase the risk that unfair, deceptive, abusive acts or practices, discrimination, or other violations of Federal consumer financial law will occur and (2) factors that generally increase the difficulty of managing compliance in an organization.

Inherent Risk
Comments in each section should identify any specific factors present in the line of business or entity being assessed, note the potential UDAAP, discrimination, or other regulatory issues to review during an examination, and comment briefly on the basis for the rating assigned to that factor. The rating should reflect the degree of risk.

Nature and Structure of Products	**Comments**
The profitability of a product is dependent upon penalty fees (e.g., fees for a late payment, for exceeding a credit limit, or for overdrawing deposited funds).	[Click&type]
The terms of the product are subject to change at the discretion of the entity, and the entity has frequently made changes in the terms.	
The entity reverses fees at a significantly higher rate than other entities of similar size offering similar products.	
Pricing structure (interest rate, points, fees) and other features and terms are combined in a manner that is likely to make the total costs of the product difficult for consumers to understand.	
Products are bundled in a way that may obscure relative costs.	
Consumers pay penalties to terminate a relationship, including forgoing money or benefits they would otherwise earn.	

Consumers face barriers to information, such as costs to access customer service or information about their account.	
Credit decision-makers have wide discretion over setting terms and features of products with inadequate policies and procedures addressing appropriate exercise of that discretion.	
Credit products are not underwritten based upon the likely ability of the consumer to make the required (or, in the case of adjustable rate products, potentially required) payments over the term of the loan.	
RATING – Nature and Structure of Products	☐ **Low** ☐ **Moderate** ☐ **High**

Consumers to whom products are marketed	**Comments**
Consider the extent to which the marketing of a product or service is targeted to particular populations including: • Students or young adults; • Elderly; • Minorities; • Immigrants; • Consumers of certain national origins; • Members of specific religious groups or denominations; • Military service members or former service members; • Consumers with limited education;	[Click&type]

Entity Name: **Prepared by:**
Docket Number: **Date:**

• Consumers with limited English proficiency; • Low-income consumers or consumers on limited fixed incomes; • Consumers receiving any type of public assistance; • Consumers with limited experience with financial products or services; • Consumers in or who have recently experienced financial distress; • Consumers with low credit scores (e.g., FICO below 620); or • Consumers of a certain gender or marital status. Products targeted to consumers who fall in multiple categories may be of particular concern. Consider whether any particular populations are missing or excluded from the entity's advertising.	
RATING – Consumers to whom products are marketed	☐ **Low** ☐ **Moderate** ☐ **High**

Entity Name:
Docket Number:

Prepared by:
Date:

Marketing methods and sales organizations	**Comments**
Incentives and Compensation	[Click&type]
Incentives encourage the sale of high-cost products regardless of consumer's request or situation.	
Compensation or performance evaluation of person-to-person sales staff (telephone, face-to-face)is based on: • The number of sales made; • The size of the sales made (for example, average loan size) or the volume of sales; • The price of the product sold; or • The particular product sold without consideration of product outcomes or performance(for example, default or attrition rates, etc.).	
Person-to-person sales staff has discretion to set prices (interest rate, points, fees) with inadequate policies and procedures addressing exercise of that discretion.	
Person-to-person sales staff is not accountable for product outcomes or performance (default rates, attrition rates, etc.).	
Marketing and Advertising	
Marketing materials are not written in a language or at a level understandable by targeted consumers.	
Key product terms or features are not readily available to consumers.	
Targeted consumers would not likely qualify for advertised products or terms.	

Entity Name: **Prepared by:**
Docket Number: **Date:**

Advertising includes teaser rates or low fees with little or no information about important conditions (such as periodic or exit charges).	
Complex products are marketed to consumers not likely to benefit from them or who may likely be harmed by them.	
Product marketing and sales, including branch locations, are targeted in a manner that may be discriminatory.	
Advertising utilizes media outlets targeted to particular populations only to advertise its higher-cost products and not its full range of products.	
RATING – Marketing Methods and Sales Organization	☐ **Low** ☐ **Moderate** ☐ **High**

Entity Name:
Docket Number:
Prepared by:
Date:

Ongoing customer relationship management	**Comments**
Employees with customer service responsibilities, including collections, are not evaluated or compensated based on the quality of service or level of customer satisfaction.	[Click&type]
The compensation of customer service representatives with discretion to adjust prices or modify other terms is impacted by the frequency and/or size of such adjustments.	
Customer service representatives with discretion to adjust prices or modify other terms operate with inadequate policies and procedures addressing exercise of that discretion.	
Vendors with customer service responsibilities, including collections, are not evaluated based on quality of service or level of customer satisfaction.	
The compensation of vendors that provide customer service representatives with discretion to adjust prices or modify other terms is impacted by the frequency and/or size of such adjustments.	
Vendors that provide customer service representatives with discretion in pricing operate with inadequate policies and procedures addressing exercise of that discretion.	
The number of customer service staff is insufficient to provide timely service.	
Customer service information systems do not have sufficient capacity to support the number of customers.	
RATING – Ongoing customer relationship management	☐ **Low** ☐ **Moderate** ☐ **High**

Entity Name:
Docket Number:

Prepared by:
Date:

Compliance management challenges	Comments
The entity maintains multiple, discrete un-integrated information systems to originate and service product relationships, including new product relationships with existing customers.	[Click&type]
Solicitation is conducted through active cross-selling, outbound telemarketing, or use of third parties for direct marketing.	
The entity uses internet advertising or a wide variety of other mass media.	
The entity has an extensive or decentralized retail network.	
Numerous subsidiaries or affiliates provide consumer financial products and services on behalf of the entity.	
The entity relies heavily on third parties other than subsidiaries or other affiliates to provide products and services to consumers.	
RATING – Compliance Management Challenges	☐ **Low** ☐ **Moderate** ☐ **High**

Other factors that point to heightened consumer risk	Comments
DESCRIBE FACTOR	[Click&type]
RATING – Other factors	☐ **Low** ☐ **Moderate** ☐ **High**

Entity Name: **Prepared by:**
Docket Number: **Date:**

The considerations below bear on both the general quality of an entity's consumer compliance risk management and specifically on controlling the risks of unfair, deceptive or abusive acts or practices, discrimination, or other violations of Federal consumer financial law. The specific factors indicate strong compliance management.

QUALITY OF CONSUMER COMPLIANCE RISK CONTROLS AND MITIGATION

Comments in each section should identify any factors of concern in the line of business or entity being assessed, note particular compliance management issues to review during an examination, and comment briefly on the basis for the rating assigned to that factor. The rating should reflect the strength of compliance management.

Board of Directors and Management	Comments
The board of directors has adopted comprehensive policies that establish clear standards for compliance with applicable laws, including laws prohibiting unfair, deceptive or abusive acts or practices, and discrimination: • Policies and procedures are comprehensive and thorough. • Policies are current and consistent with consumer business activities, and reflect current laws and regulations. • A clear process exists for aligning compliance policies with changing business activities.	[Click&type]
Management's commitment to consumer compliance has been communicated throughout the regulated entity.	
The board and management receive regular and meaningful reporting with respect to consumer protection issues, consumer compliance, or complaints.	

Entity Name:
Docket Number:
Prepared by:
Date:

The board and management follow up on a timely basis on issues identified with respect to consumer compliance.	
Management anticipates, plans, and reacts promptly to changes in markets, technology, regulations, or consumer need.	
RATING – Board of Directors and Management	☐ **Strong** ☐ **Adequate** ☐ **Weak**

Authority and accountability for compliance	**Comments**
Sufficient resources have been allocated to compliance, including monitoring of compliance throughout the organization and monitoring third parties that perform activities involving consumers.	[Click&type]
Management and staff responsible for compliance with consumer protection laws are independent from the business line when appropriate given the size, nature, and complexity of the entity and have clear authority to identify and resolve consumer compliance issues.	
Unit or individual performance expectations include responsibility for compliance.	
Units or individuals have sufficient authority to effect a strong compliance program.	
RATING – Authority and accountability for compliance	☐ **Strong** ☐ **Adequate** ☐ **Weak**

Entity Name:
Docket Number:

Prepared by:
Date:

Compliance risk management program and oversight	**Comments**
The compliance risk management program is well tailored to the size, nature, and complexity of the entity.	[Click&type]
The compliance program is independent from the business line when appropriate given the size, nature, and complexity of the entity and provides sufficient oversight of the entity.	
The compliance program provides sufficient oversight of third parties interacting with consumers on behalf of the entity in relation to consumer compliance risk.	
Regular compliance testing is conducted and includes samples of sufficient size covering all relevant product types, decision centers, customer points of contact, and customer communications.	
Compliance testing includes regular and comprehensive self-assessments for compliance with consumer laws and regulations including fair lending.	
The compliance management program promptly addresses issues of potential unfairness, deception, abuse, or discrimination.	
The compliance risk management program includes comprehensive controls and systems to assure prompt and thorough corrective action when problems are found.	
RATING – Compliance risk management program and oversight	☐ **Strong** ☐ **Adequate** ☐ **Weak**

Entity Name:
Docket Number:

Prepared by:
Date:

Product and system development and modification	**Comments**
Consumer compliance risks are considered throughout the product and system lifecycle.	[Click&type]
Management and staff responsible for consumer compliance are involved in the product life cycle, including product development and changes, marketing, product delivery, and customer service.	
Possible unfair, deceptive, abusive, or discriminatory effects of product design or delivery are considered and resolved at an early stage.	
Management and staff responsible for consumer compliance are involved in the structuring of incentives, including those for employees and third-party vendors and their employees who interact with consumers.	
RATING – Product and system development and modification	☐ **Strong** ☐ **Adequate** ☐ **Weak**

Entity Name:
Docket Number:
Prepared by:
Date:

Training	**Comments**
Appropriate training is provided to all staff, including those responsible for product development, marketing, and customer service and covers consumer protection laws and the obligation to avoid unfair, deceptive, abusive, or discriminatory practices.	[Click&type]
Training is timely, repeated as necessary, and tailored to the particular responsibilities of the staff receiving it.	
Training encourages all employees to take responsibility for consumer compliance and to identify and correct issues.	
Policies and procedures and oversight mechanisms are designed to ensure that appropriate and current training is provided to employees of third parties who interact with consumers.	
RATING – Training	☐ **Strong** ☐ **Adequate** ☐ **Weak**

Entity Name: **Prepared by:**
Docket Number: **Date:**

Complaint Management	Comments
The entity provides consumers with the opportunity to submit complaints through channels of the customer's choice, including mail, email, or phone.	[Click&type]
The entity provides complete and timely responses to complaints received either directly from consumers or indirectly through regulators or other third parties that process complaints.	
Third parties that provide services involving consumers have an established complaint process that is appropriately monitored by the supervised entity.	
The entity tracks all types of complaints.	
The entity actively monitors complaints to identify issues that may require changes in products, procedures, and/or training.	
The entity tracks the time to final resolution of consumer complaints.	
Complaints are resolved without requiring the direction or involvement of executives, regulators, or third parties (such as the Better Business Bureau), or the prospect of litigation or enforcement actions.	
RATING – Complaint Management	☐ **Strong** ☐ **Adequate** ☐ **Weak**

Entity Name: **Prepared by:**
Docket Number: **Date:**

Other factors that point to potential lack of controls or mitigation	**Comments**
<DESCRIBE FACTOR>	[Click&type]
RATING – Other factors	☐ **Strong** ☐ **Adequate** ☐ **Weak**

Magnitude and Severity of Potential Harm – *This factor should be considered when setting priorities for examination activities based on potential risks identified in particular products, lines of business, or the entity overall. Comments should discuss and compare the likely magnitude and severity of potential harm from any identified sources of risk.*	**Comments**
The magnitude and severity of potential harm to consumers will vary based upon the number of consumers who may be directly impacted and the risks identified. For example, a smaller entity, or smaller line of business within an entity, may pose a greater risk to consumers than a larger one if the consumers potentially impacted by the smaller entity or line of business face much larger harmful consequences than those of the larger entity.	[Click&type]
RATING – Magnitude and Severity of Potential Harm	☐ **Low** ☐ **Moderate** ☐ **High**

Entity Name: **Prepared by:**
Docket Number: **Date:**

Background Considerations – these factors indicate a likelihood of existing weaknesses and may bear on the direction of risk

Supervisory History – Regulatory violations and Matters Requiring Attention identified in previous examinations; consumer compliance rating	**Comments**
Violations involve prohibited kickbacks, discrimination, unfair, deceptive or abusive acts or practices, need for reimbursements, or other harm to consumers.	[Click&type]
Violations are repeated or continuing.	
Violations result from systemic causes.	
Violations and Matters Requiring Attention reflect compliance management weaknesses.	
Consumer compliance rating of 3, 4 or 5.	
RATING – Supervisory History	☐ **Low** ☐ **Moderate** ☐ **High**

Entity Name: **Prepared by:**
Docket Number: **Date:**

Consumer complaints	**Comments**
Numerous complaints from consumers are filed against the entity, or its third-party vendors that interact with consumers, relative to the size of the customer base or in comparison to other entities of similar size offering similar products.	[Click&type]
Complaints allege or involve: • Misleading or false statements; • Lack of disclosure of information about material terms of a product or service; • Unauthorized fees, fees for services not provided, or duplicative fees; • Previously undisclosed charges; • Customer service; or • Loan servicing and collections.	
Complaints evidence non-compliance with consumer protection laws.	
Complaints raise issues of discrimination.	
Complaints raise issues of potential unfair, deceptive, or abusive acts or practices.	
RATING – Consumer Complaints	☐ **Low** ☐ **Moderate** ☐ **High**

Entity Name: **Prepared by:**
Docket Number: **Date:**

SUMMARY WORKSHEET

Use this worksheet for an overall view of the Risk Assessment findings.

Enter the rating for the different risk factors reviewed on the previous pages and note the priorities for examination review.

Risk Factors	Rating	Review Priorities
INHERENT RISK		[Click&type]
Nature and structure of products	[Click&type]	
Consumers to whom products are marketed	[Click&type]	
Marketing methods and sales organization	[Click&type]	
Ongoing customer relationship management	[Click&type]	
Complexity of organization	[Click&type]	
Other factors	[Click&type]	
RISK CONTROLS AND MITIGATION		
Board of directors and management	[Click&type]	
Authority and accountability for compliance	[Click&type]	
Compliance risk management program and oversight	[Click&type]	

Entity Name:
Docket Number:

Prepared by:
Date:

Product and system development and modification	[Click&type]	
Training	[Click&type]	
Complaint management	[Click&type]	
Other factors	[Click&type]	
Magnitude and severity of potential harm	[Click&type]	
BACKGROUND CONSIDERATIONS		
Supervisory history – regulatory violations, Matters Requiring Attention, rating	[Click&type]	
Consumer complaints	[Click&type]	

Entity Name:
Docket Number:
Prepared by:
Date:

RISK ASSESSMENT CONCLUSIONS

Risk Summary

Supervised entity or line of business reviewed: [Click&type]

Element	Current MM/DD/YYYY	Preceding MM/DD/YYYY
Inherent Risk	[Click&type]	[Click&type]
Quality of Risk Controls and Mitigation	[Click&type]	[Click&type]
Overall Risk to Consumers*	[Click&type]	[Click&type]

Expected Change/Direction of Risk	☐ Increasing ☐ Decreasing ☐ Stable
Last Change in Direction	MM/DD/YYYY ☐ Increasing ☐ Decreasing ☐ Stable

Entity Name: **Prepared by:**
Docket Number: **Date:**

**Overall Risk to Consumers:*

The overall risk is the inherent risk identified in a particular business line or supervised entity, mitigated or amplified by the strength or weakness of the controls to address those risks. The following chart is a general guide to assessing the overall risk to consumers. Examiners must apply their judgment in making this determination; however, a risk controls conclusion of "Weak" should result in an overall risk conclusion that is no more favorable than "Moderate," even if the degree of risk is concluded to be "Low."

Overall Risk to Consumers				
		Quality of Risk Controls		
		Strong	Adequate	Weak
Inherent Risk	High	Moderate	High	High
	Moderate	Low	Moderate	High
	Low	Low	Low	Moderate

Summarize the primary bases for the summary conclusions:

[Click&type]

Entity Name: **Prepared by:**
Docket Number: **Date:**

Supervision Plan for Depository Institutions and Affiliates

Data Section	
CFPB Docket #	[Click&type]
Entity Name	[Click&type]
City, State	[Click&type]
Affiliated Entity Name(s)	[Click&type]

Narrative Section
Institution Profile *Summarize the current Profile of the lead institution and any affiliate(s).*
[Click&type]

Risk Assessment *Summarize the results of the current Risk Assessment(s).*
[Click&type]

Supervision Plan *Based on the Profile and Risk Assessment, summarize the plan for supervising the institution and its affiliates. Identify the purpose of particular activities, and note any that require particularly close coordination with Enforcement or Fair Lending.*
[Click&type]
***Priorities**: Describe the priorities for CFPB supervision activities, which should relate to the risks present in the institution and its affiliates. Clarifying priorities will assist in scheduling examiner resources.*
[Click&type]
***Monitoring**: Describe the plan and timeline for monitoring the institution and affiliates, including any follow-up for Matters Requiring Attention or Enforcement Actions.*
[Click&type]

Entity Name:
Docket Number:

Prepared by:
Date:

Examination(s)*: Describe the proposed focus, scope,and schedule of examination activities during the year (either in a full examination or a series of limited examinations). Note the location of proposed activities. Include information about coordination with the prudential or state regulator(s), including examination schedule(s) if known. If an examination is not scheduled during the current year, note why.*
[Click&type]
Examination Resource Requirements*: Proposed number of examiners, any special skills or knowledge needed, and projected number of examiner work weeks.*
[Click&type]
Additional Notes
[Click&type]

SUPERVISORY LETTER

Initial Information Request Date:	**Click here to enter a date.**
Entity name:	**[type]**
City, State:	**[type]**
Institution Product Line(s) Reviewed:	**Choose an item.**
Affiliated Organizations Reviewed:	If examiners reviewed the activities of affiliated organizations that fall under the CFPB's jurisdiction, insert the organizations' names. If not, type N/A.

CFPB Region:	**Choose an item.**
CFPB Event ID:	**0000**
CFPB Supervision ID:	**00000**
Entity Type:	**Choose an item.**
Review Type:	*For Target Reviews, if applicable, also list the following (after a bullet):* • Compliance Management System Review • ECOA Baseline Review • ECOA Target Review – <Insert the IPL reviewed> • HMDA Compliance Review • Follow-Up Review – <Insert "Matters Requiring Attention," "Memorandum of Understanding," "Resolution," and/or "Consent Order">

Prohibition of Disclosure or Release

This document is the property of the Consumer Financial Protection Bureau (CFPB), and the CFPB furnishes this document to the entity for its confidential use. The entity's directors, officers, or employees may not disclose the report or any portion of it except as provided in 12 CFR Part 1070.

If the entity receives a subpoena or other legal process calling for production of, or testimony regarding, this document, notify the Regional Director and the CFPB General Counsel immediately. Advise the party issuing the subpoena and, as appropriate, the court of the above prohibition and refer them to 12 CFR Part 1070.

Table of Contents

Scope of Review

Use sample language below, as appropriate.

Consumer Financial Protection Bureau (CFPB or Bureau) examiners conducted a targeted review of <Insert entity's full name> (<Insert entity's short name>). *<Insert optional one – two sentences describing the entity's business operation and size.*> The review period for the examination was Click here to enter a date., through Click here to enter a date. *<Insert optional sentence regarding on-site start date.>*

Examiners evaluated <(Insert entity's short name)>'s compliance management system (CMS) with respect to <Insert IPL if applicable. *If not applicable, end the sentence after (CMS).*>. Examiners reviewed the following CMS components:

- Board and management oversight
- Compliance program (policies and procedures, training, monitoring and/or audit, and consumer complaint response)
- Service provider oversight

Examiners used the following modules from the <Insert IPL> examination procedures found in the *CFPB Supervision and Examination Manual*:

- Module <Insert module number and title>
- Module <Insert module number and title>
- Module <Insert module number and title>

Examiners reviewed <Insert entity's short name>'s <Insert IPL(s)> activities for compliance with certain requirements of the following Federal consumer financial laws:[1]

- Consumer Leasing Act (CLA) – Regulation M
- Electronic Fund Transfer Act (EFTA) – Regulation E
- Equal Credit Opportunity Act (ECOA) – Regulation B
- Fair Credit Reporting Act (FCRA) – Regulation V
- Fair Debt Collection Practices Act (FDCPA)
- Home Mortgage Disclosure Act (HMDA) – Regulation C
- Homeowners Protection Act (HPA)
- Privacy of Consumer Financial Information – Regulation P
- Real Estate Settlement Procedures Act (RESPA) – Regulation X
- Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) – Regulation G
- Truth in Lending Act (TILA) – Regulation Z
- Truth in Savings Act (TISA) – Regulation DD

Include the following sentence (and footnote that includes the legal citation) only if:

- *Examiners used the CFPB's examination procedures for Unfair, Deceptive, or Abusive Acts or Practices (UDAAP);*

[1] Federal consumer financial law is defined by Section 1002(14) of Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (12 USC 5481(14)).

- *The IPL modules reviewed specifically required a review for UDAAP; or*
- *The examiners found issues during the review that were determined to be UDAAPs.*

Examiners also reviewed whether the entity was engaging in unfair, deceptive, or abusive acts or practices (UDAAP).[2]

Conclusions and Comments

[type]

<*If the letter contains Supervisory Recommendations, insert the following sentence after comments and conclusions related to CMS:* This letter contains Supervisory Recommendations for management to consider related to these CMS weaknesses.>

At the end of Conclusions and Comments, use the sample language below if the CFPB will use the Enforcement process to address certain specified matters.

<*Insert one of the following as a lead-in to the sentence:* Some of these violations *or* All of these violations>, any additional violations that might be identified in the course of investigating this conduct, and any <Insert "additional" if applicable> corrective action, including remediation, will be addressed through the Enforcement process.

/s/ EIC signature
Insert typed name of EIC
Examiner-in-Charge

/s/ FM signature
Insert typed name of FM
Field Manager

[2] 12 USC 5531 and 5536.

Matters Requiring Attention (MRAs)

Select one of the following sentences:

This Supervisory Letter includes no matters requiring attention (MRAs).
OR
The following matters requiring attention (MRAs) require a written response to the CFPB.
OR
The following matter requiring attention (MRA) requires a written response to the CFPB.

Reporting date: **<Insert # of days>** calendar days from the transmittal[3] of this Supervisory Letter (Letter) and, every **<Insert # of days>** calendar days thereafter until the MRA is complete, provide the CFPB progress reports on fulfilling the following MRAs. Include in the report(s) details on the steps taken to complete the MRA(s) and the results.[4]

Area Reviewed: Choose an item.

Insert module title, where possible.

1. <Insert MRA>
   Completion due date: <Insert # of days> calendar days from the transmittal of this Letter.

Insert module title, where possible

2. <Insert MRA>
   Completion due date: <Insert # of days> calendar days from the transmittal of this Letter.

Insert module title, where possible

3. <Insert MRA>
   Completion due date: <Insert # of days> calendar days from the transmittal of this Letter.

[3] The transmittal date is the date that the CFPB emails the Supervisory Letter to the supervised entity.
[4] If a reporting date falls on a weekend or holiday, the report will be considered timely on the following business day.

Review and Findings

Compliance Management Review

Conclusion

The <Insert entity's short name>'s compliance management system (CMS) is Choose an item.. [type]

Comments and Supporting Analysis

Board and Management Oversight

The <Insert entity's short name>'s Board and management oversight is Choose an item.. <Insert discussion after the lead-in sentence.>

Supervisory Recommendation(s):

1. <Insert SR>

Compliance Program

The <Insert entity's short name>'s compliance program is Choose an item.. <Insert discussion after the lead-in sentence.>

Policies and Procedures

The <Insert entity's short name>'s policies and procedures are Choose an item.. <Insert discussion after the lead-in sentence.>

Supervisory Recommendation(s):

1. <Insert SR>

Training

The <Insert entity's short name>'s training is Choose an item.. <Insert discussion after the lead-in sentence.>

Supervisory Recommendation(s):

1. <Insert SR>

Monitoring and/or Audit

The <Insert entity's short name>'s monitoring is Choose an item.. <Insert discussion after the lead-in sentence.> The <Insert entity's short name>'s audit is Choose an item.. <Insert discussion after the lead-in sentence.>

Supervisory Recommendation(s):

1. <Insert SR>

Consumer Complaint Response

The <Insert entity's short name>'s consumer complaint response is Choose an item.. <Insert discussion after the lead-in sentence.>

Supervisory Recommendation(s):
1. <Insert SR>

<u>*Service Provider Oversight*</u>
The <Insert entity's short name>'s service provider oversight is Choose an item.. <Insert discussion after the lead-in sentence.>

Supervisory Recommendation(s):
1. <Insert SR>

Area Reviewed: Choose an item.

Conclusion
[type]

Comments and Supporting Analysis
[type]