Signature Bank

DISTINCTLY DIFFERENT

COMPLIANCE POLICY

Organizational Functional Area:	Compliance
Last Revision Date:	April 13, 2019
Annual Board Approval:	April 17, 2019
Individual Responsible For Maintaining / Updating Policy:	Chief Credit and Risk Officer

REGULATORY COMPLIANCE POLICY (1/2019)

PURPOSE

The purpose of this Policy is to emphasize the importance of the Bank's compliance with all applicable laws and regulations. It is imperative to the mission and business goals of the Bank to insure that a strong compliance program is implemented into the foundation the Bank. This program not only provides the Bank with measures to manage risk, but it also supports the Bank's primary objective of providing quality financial products and services equally to all members of the community.

POLICY STATEMENT

It is the policy of the bank to comply with all applicable laws and regulations.

The Board of Directors has overall responsibility to ensure that the Bank's activities are in compliance with all applicable laws and regulations. However, the Board has delegated the day-to-day management of the compliance function to the Director of Deposit Operations and the Director of Loan Operations (collectively, "Compliance Officer").

The compliance officer's general responsibilities will include:

- Developing compliance policies and procedures
- Training management and employees in consumer protection laws and regulations
- Assessing emerging issues or potential liabilities
- Coordinating responses to consumer complaints
- Reporting compliance activities and audit/review finding to the board
- Ensuring corrective actions

The compliance officer will be granted sufficient authority and independence to cross departmental lines, have access to all areas of the institution's operations and effect corrective action.

In addition, each employee is responsible and accountable for compliance issues arising from the performance of his or her duties. Through this process, the Board has delegated the responsibility for maintaining an ongoing compliance program and the enforcement of its standards and procedures down through senior management of the Bank and to each individual employee.

COMPLIANCE PROGRAM

To achieve the objective of this Policy, the Compliance Officer will establish and maintain a comprehensive compliance program that is designed to promote lawful and ethical conduct by all staff, and to proactively identify any issues, which do not support this Policy.

The compliance program will include the following:

- Establish policies and procedures to document the Bank's mandate for compliance.
- Implement monitoring and auditing systems to identify deficiencies.
- Establish procedures to ensure prompt corrective action on identified violations or deficiencies.
- Ensure effective reporting and communication of compliance matters.
- Develop training program to ensure ongoing compliance training.
- Develop system to monitor and track regulatory changes.

Policies and Procedures

Formal Board approved policies and Bank procedures will be established to address regulatory requirements. At a minimum, the Bank will document the following:

- Truth in Lending Act;
- Real Estate Settlement Procedures Act;
- Home Mortgage Disclosure Act;
- Flood Insurance Regulation;
- Equal Credit Opportunity Act;
- Fair Credit Reporting Act;
- Fact Act;
- Fair Housing Act;
- Unfair or Deceptive Practices Act;
- Insurance Sales;
- Truth in Savings Act;
- Expedited Funds Availability;
- Electronic Funds Transfer;
- Interest on Deposits;
- Privacy of Consumer Financial Information;
- Advertising and Public Notices;
- Right to Financial Privacy;
- Preservation of Consumer Claims and Defenses;
- Fair Debt Collection Practices Act;
- Homeownership Counselling;
- Servicemembers Civil Relief Act
- Community Reinvestment Act.

Auditing and Monitoring

Compliance audits will be conducted at least annually by an approved third-party who is qualified in the area of regulatory compliance. Compliance reviews will be performed using comprehensive audit plans that are designed to determine compliance with legal and regulatory requirements, and to identify deficiencies in policies and procedures, and internal controls. The scope of each audit will be reviewed and accepted through a formal engagement letter between the third-party and bank.

Established procedures will provide for monitoring processes to be implemented by Bank employees as a means to timely identify deficiencies in Bank operations. The timely detection of procedural or training weaknesses may preclude any significant violations that can adversely impact the institution. The monitoring system will be incorporated into the normal activities of every department so that it is readily accepted and used on an ongoing basis. Financial institutions that include a compliance officer in the planning, development, and implementation of business propositions increase the likelihood of success of its compliance monitoring function.

Established monitoring systems include:

- Periodic reviews of disclosures and verifying calculation tools for various loan and deposit products;
- Third-party service provider operation reviews verifying all major vendors are meeting contractual guidelines

- Internal compliance communication systems that provide updates and revisions of the applicable laws and regulations to management and staff
- Continuous reviews of marketing literature and advertising;
- Monthly review of Money Market Deposit Account excessive transaction report; and
- Testing of security devices to protect the Bank from illegal activities.
- Changes in regulations
- Changes in business operations, policies, or procedures
- New products or services, or changes in existing products or services
- Changes in staffing
- Transaction level monitoring is conducted for the following:
- New deposit accounts for accurate core system entry
- New deposit accounts for accurate completion of compliance related documents
- New loans for accurate core system entry
- New loans for accurate completion of compliance related documents
- Verify accurate completion of deposit and loan documents when software updates occur
- Verify APY or APR when software updates occur

Reporting and Communication

Upon completion of a compliance audit, a report detailing the findings and providing recommendations for corrective action will be issued to management. As a measure to ensure appropriate action, management will prepare a timely response to the audit report documenting corrective action taken or planned.

Written compliance audit reports, for audits completed internally or by an external source, include all of the following:

- Scope of audit
- Deficiencies or modifications identified
- Number of transactions sampled by category or product type
- Descriptions of, or suggestions for, corrective actions and time frames for correction

Areas of deficiency identified through monitoring systems will be communicated to management of applicable areas.

Each quarter, a summary of compliance audits and monitoring systems including findings and corrective action will be presented to the Board of Directors or an appointed management committee.

Corrective Action

As a means to ensure prompt corrective action, the Compliance Officer will establish procedures for the coordination and the implementation of any necessary action. For example, identification of the nature and cause of the violation, and determination of the best course of action to correct and prevent a recurrence

Training

Continuous training will be provided on compliance issues and will include the Bank's policies and procedures, as applicable. The Compliance Officer will coordinate the training of appropriate personnel, which may take the form of departmental meetings, or internal and external programs.

Additional training sessions may be necessary as a result of deficiencies identified in audits or regulatory examinations. Training will be provided, as necessary, to board members, management, and all other staff.

Management must ensure that employees are aware of the regulatory requirements associated with their job function. New employees will attend training sessions that will include compliance topics relevant to their job function.

Regulatory Requirements

The Compliance Officer will maintain a clear understanding of compliance requirements as well as any changes in applicable laws and regulations. Compliance consultants, publications and other external resources will be utilized to monitor and track regulatory issues.

REVIEW OF POLICY

The Board of Directors will review this Policy annually, making such revisions and amendments, as it deems appropriate.

Branch Closings – Section 42 of FDI Act 1/19

In accordance with Section 42 of the Federal Deposit Insurance Act, the bank has adopted the following branch closing policy and procedures:

If a branch has been consistently unprofitable, the Board of Directors and Management will consider closing the branch after:

- Attempts have been made, through any efforts reasonably available, to return the branch to profitability; and
- Management has met with community leaders to discuss community concerns.

If the Board and Management decide to close a branch, Management will:

- Notify the FDIC Regional Office (Atlanta) no later than 90 days prior to the proposed closing date. This notification will describe the reasons for the bank's decision and will contain information to support that decision.
- Mail a notice to existing branch customers (i.e. individuals who opened their account at that particular branch) no later than 90 days prior to the proposed closing date.
    a. This notice will contain the location of the branch to be closed, the proposed closing date, and the address and phone number of our other office where customers may obtain service following the closing date.
    b. In addition, the FDIC's address will be provided so customers may forward comments concerning the proposed closure to the FDIC for its consideration.
    c. For customers who receive periodic statements, this notice will be provided with that periodic statement.
    d. For customers who do not receive periodic statements, or whose periodic statements will not be mailed within the required time frame a separate notice will be mailed.
- Post a notice in the subject branch no later than 30 days prior to the proposed closing date. This notice will state the proposed closing date and identify the branch where customers may obtain service following the closing date. The FDIC's address will also be included on this notice.
- Final Branch Closing Notice
    a. Immediately after the branch is closed, and if the bank is an interstate bank and the branch to be closed is located in a low- or moderate-income area, submit a final branch closing notice to the licensing manager in the appropriate district office. The final notice should:
    b. List the branch's popular name, location, and authorization number (if known).
    c. Specify the date of the closure.
    d. If applicable, include a statement that the bank provided a 90-day advance notice of branch closing to its customers

COVERAGE

The branch closing requirements do not apply with respect to:

- An automated teller machine;
- The relocation of a branch or consolidation of one or more branches into another branch, if the relocation or consolidation--
    - Occurs within the immediate neighborhood; and
    - Does not substantially affect the nature of the business or customers served; or
    - A branch that is closed in connection with--
    - An emergency acquisition due to the bank's closing by regulators.

CAN SPAM – 1/19

INTRODUCTION

The CAN-SPAM Act of 2003 signed into law by President Bush on December 16, 2003, establishes the United States' first national standards for the sending of commercial e-mail and requires the Federal Trade Commission (FTC) to enforce its provisions. The acronym CAN-SPAM derives from the bill's full name: Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003.

CAN-SPAM covers any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose). It exempts "transactional or relationship messages", but even these must not contain false or misleading routing information.

I. OVERVIEW OF ACT

The CAN-SPAM Act establishes requirements for commercial related email messages, gives recipients the right to stop emails being sent to them, and spells out tough penalties for violations. The Act doesn't apply just to bulk email. All emails primarily for a commercial purpose (i.e. those that promote a product/service) must comply. Emails that primarily contain transactional or relationship content, which facilitates an already agreed-upon transaction or updates a customer about an ongoing transaction, is exempt from the provisions of the CAN-SPAM except that it may not contain false or misleading routing information. For example, a message to a former customer announcing a new deposit product must comply with all components of CAN-SPAM. A message to a customer regarding the terms of their account is considered relational and must only ensure that the routing information is not false or misleading. Each separate email in violation of the CAN-SPAM Act is subject to penalties of up to $40,654, so non-compliance can be costly. Refer to the following website for further details on the Act: https://www.ftc.gov/tips-advice/business-center/guidance/can-spam-act-compliance-guide-business.

II. REQUIREMENTS OF THE ACT

The requirements for emails sent with commercial content are as follows:

- **Don't use false or misleading header information.** Your "From," "To," "Reply-To," and routing information – including the originating domain name and email address – must be accurate and identify the person or business who initiated the message.
- **Don't use deceptive subject lines.** The subject line must accurately reflect the content of the message.
- **Identify the message as an ad.** The law gives you a lot of leeway in how to do this, but you must disclose clearly and conspicuously that your message is an advertisement.
- **Tell recipients where you're located.** Your message must include your valid physical postal address. This can be your current street address, a post office box you've registered with the U.S. Postal Service, or a private mailbox you've registered with a commercial mail receiving agency established under Postal Service regulations.
- **Tell recipients how to opt out of receiving future email from you.** Your message must include a clear and conspicuous explanation of how the recipient can opt out of getting email from you in the future.
- **Honor opt-out requests promptly.** Any opt-out mechanism you offer must be able to process opt-out requests for at least 30 days after you send your message and you must honor a recipient's opt-out request within 10 business days. No fee can be charged, no additional information other than an email address can be required, and the mechanism to opt-out can only be sending a reply email or visiting a single internet page. Once people have told you they don't want to receive more messages from you, you can't sell or transfer their email addresses, even in the form of a mailing list.
- **Monitor what others are doing on your behalf.** If you hire another company to handle your email marketing, you still have the legal responsibility to comply with the law. Both the company whose product is promoted in the message and the company that actually sends the message may be held legally responsible.

In addition to the above requirements, the Act also prohibits the following: using address harvesting and dictionary attacks which are indirect ways of obtaining email addresses by automated means; hijacking (which is the use of automated means to register for multiple email accounts or online user accounts from which to transmit a commercial e-mail message); knowingly relaying/retransmitting a commercial e-mail message that is unlawful; promoting goods/services in an unlawful commercial email message; and sending a commercial e-mail message containing sexually oriented material without a warning label (in the subject line and within the message body).

III. CAN-SPAM AUDITS

All employees will cooperate in periodic audits of any activity taken without any right to advance notice. If requested, employees agree to make available any and all promotional materials and communications used to market services or products. Employees may also be asked to provide any information relating to such promotions, including but not limited to email addresses, lists, names, times & dates of transmission, IP addresses, servers, mail systems, software devices, compliance methods, and any other such information reasonable and necessary to conduct an audit of promotional activities. Failure to cooperate in such an audit shall constitute grounds for termination of employment for cause.

CHILDRENS ONLINE PRIVACY PROTECTION ACT (COPPA) POLICY 1/19

Introduction

The Federal Trade Commission (FTC) is charged with the adoption and enforcement of rules to enact appropriate compliance with the COPPA, passed into law and which became effective April 21, 2000. The FTC's recent revision of their COPPA final rule accounts for technological advances relative to the Internet that have occurred since the initial passage of the act, and is effective as of July 1, 2013.

The primary goal of COPPA is to place parents in control over what information is collected from their young children online. The Rule was designed to protect children under age 13 while accounting for the dynamic nature of the Internet. The Rule applies to operators of commercial Web sites and online services (including mobile apps) directed to children under 13 that collect, use, or disclose **personal information** from children, and operators of general audience Web sites or online services with **actual knowledge** that they are collecting, using, or disclosing personal information from children under 13. The Rule also applies to Web sites or online services that have actual knowledge that they are collecting personal information directly from users of another Web site or online service directed to children.

PERSONAL INFORMATION

The FTC's amended Rule and this institution define **personal information** to include:

- First and last name;
- A home or other physical address including street name and name of a city or town;
- Online contact information;
- A screen or user name that functions as online contact information;
- A telephone number;
- A social security number;
- A persistent identifier that can be used to recognize a user over time and across different Web sites or online services;
- A photograph, video, or audio file, where such file contains a child's image or voice;
- Geolocation information sufficient to identify street name and name of a city or town; or
- Information concerning the child or the parents of that child that the operator collects online from the child and combines with an identifier described above.

PURPOSE AND USE

This financial institution will define its online media (including existing or prospective mobile apps) posture in terms of its business purpose and strategic use of personal information obtained from children under age 13 in achieving this purpose. To this end, the Board of Directors will regularly, or at least annually, review and approve the business purpose(s) identified with this financial institution's use of the specifically defined use of personal information obtained from children under age 13. This review and approval will articulate the use(s) to be employed in terms of the financial institution's overall strategic business plan. This approach will be broadly based to include any general audience Web pages of this institution's Website or online services only where this institution has **actual knowledge** that a child under age 13 is the person providing personal information. The Rule does not require operators to ask the age of visitors. Additionally, this institution will ensure that any service offered and available over the Internet, or that connects to the Internet or a wide-area network, including mobile banking applications, will be covered under this policy. Examples of online services include services that allow users to play network-connected games, engage in social networking activities, purchase goods or services online, receive online advertisements, or interact with other online content or services.

Mobile applications that connect to the Internet, Internet-enabled gaming platforms, voice-over-Internet protocol services, and Internet-enabled location-based services also are online services covered by the COPPA rule.

DEFINITIONS

Generally, as an **operator*** that is covered under the FTC's COPPA Final Rule effective as of July 1, 2013, this institution will:

1. Post a clear and comprehensive online privacy policy describing their information practices for personal information collected online from children;
2. Provide direct notice to parents and obtain verifiable parental consent, with limited exceptions, before collecting personal information online from children;
3. Give parents the choice of consenting to the operator's collection and internal use of a child's information, but prohibiting the operator from disclosing that information to third parties (unless disclosure is integral to the site or service, in which case, this must be made clear to parents);
4. Provide parents access to their child's personal information to review and/or have the information deleted;
5. Give parents the opportunity to prevent further use or online collection of a child's personal information;
6. Maintain the confidentiality, security, and integrity of information they collect from children, including by taking reasonable steps to release such information only to parties capable of maintaining its confidentiality and security; and retain personal information collected online from a child for only as long as is necessary to fulfill the purpose for which it was collected and delete the information using reasonable measures to protect against its unauthorized access or use.

* **Operator** means any person who operates a Web site located on the Internet or an online service and who collects or maintains personal information from or about the users of or visitors to such Web site or online service, or on whose behalf such information is collected or maintained, or offers products or services for sale through that Web site or online service, where such Web site or online service is operated for commercial purposes involving commerce among the several States or with 1 or more foreign nations; in any territory of the United States or in the District of Columbia, or between any such territory and another such territory or any State or foreign nation; or between the District of Columbia and any State, territory, or foreign nation. This definition does not include any nonprofit entity that would otherwise be exempt from coverage under Section 5 of the Federal Trade Commission Act (15 U.S.C. 45).
As an operator under the COPPA Final Rule, this institution acknowledges that it collects or maintains personal information on its own behalf when:

- It is collected or maintained by an agent or service provider of the operator; or
- The operator benefits by allowing another person to collect personal information directly from users of such Web site or online service.

Collects or **collection** means the gathering of any personal information from a child by any means, including but not limited to:

- Requesting, prompting, or encouraging a child to submit personal information online;
- Enabling a child to make personal information publicly available in identifiable form. An operator shall not be considered to have collected personal information under this paragraph if it
- takes reasonable measures to delete all or virtually all personal information from a child's postings before they are made public and also to delete such information from its records; or

- Passive tracking of a child online.

As a covered operator under the COPPA Final Rule, this institution understands that a **Web site or online service directed to children** means a commercial Web site or online service, or portion thereof that is targeted to children. This institution understands that this term is governed by the following suppositions:

- In determining whether a Web site or online service, or a portion thereof, is directed to children, this institution will consider its subject matter, visual content, use of animated characters or child-oriented activities and incentives, music or other audio content, age of models, presence of child celebrities or celebrities who appeal to children, language or other characteristics of the Web site or online service, as well as whether advertising promoting or appearing on the Web site or online service is directed to children. This institution will also consider competent and reliable empirical evidence regarding audience composition, and evidence regarding the intended audience.
- A Web site or online service shall be deemed directed to children when it has actual knowledge that it is collecting personal information directly from users of another Web site or online service directed to children.
- A Web site or online service that is directed to children under the criteria set forth in paragraph (1) above, but that does not target children as its primary audience, shall not be deemed directed to children if it:
  - Does not collect personal information from any visitor prior to collecting age information; and
  - Prevents the collection, use, or disclosure of personal information from visitors who identify themselves as under age 13 without first complying with the notice and parental consent provisions of the COPPA Final Rule.
- A Web site or online service shall not be deemed directed to children solely because it refers or links to a commercial Web site or online service directed to children by using information location tools, including a directory, index, reference, pointer, or hypertext link.

COPPA Policy Provisions

In order to comply fully with the COPPA Final Rule and general regulation of unfair or deceptive acts or practices in connection with the collection, use, and/or disclosure of personal information from and about children on the Internet, this policy directs this institution to:

- Provide notice on the Web site or online service of what information it collects from children, how it uses such information, and its disclosure practices for such information (§ 312.4(b));
- Obtain verifiable parental consent prior to any collection, use, and/or disclosure of personal information from children (§ 312.5);
- Provide a reasonable means for a parent to review the personal information collected from a child and to refuse to permit its further use or maintenance (§ 312.6);
- Not condition a child’s participation in a game, the offering of a prize, or another activity on the child disclosing more personal information than is reasonably necessary to participate in such activity (§ 312.7); and
- Establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children (§ 312.8).

The above-cited sections of the COPPA Final Rule referenced are as follows:

312.4(b) Direct notice to the parent.
An operator must make reasonable efforts, taking into account available technology, to ensure that a parent of a child receives direct notice of the operator’s practices with regard to the collection, use, or disclosure of

personal information from children, including notice of any material change in the collection, use, or disclosure practices to which the parent has previously consented.

312.5(b) Methods for verifiable parental consent.

- An operator must make reasonable efforts to obtain verifiable parental consent, taking into consideration available technology. Any method to obtain verifiable parental consent must be reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent.
- Existing methods to obtain verifiable parental consent that satisfy the requirements of this paragraph include:
  - Providing a consent form to be signed by the parent and returned to the operator by postal mail, facsimile, or electronic scan;
  - Requiring a parent, in connection with a monetary transaction, to use a credit card, debit card, or other online payment system that provides notification of each discrete transaction to the primary account holder;
  - Having a parent call a toll-free telephone number staffed by trained personnel;
  - Having a parent connect to trained personnel via video-conference;
  - Verifying a parent's identity by checking a form of government-issued identification against databases of such information, where the parent's identification is deleted by the operator from its records promptly after such verification is complete; or
  - Provided that, an operator that does not ''disclose'' (as defined by § 312.2) children's personal information, may use an email coupled with additional steps to provide assurances that the person providing the consent is the parent. Such additional steps include: Sending a confirmatory email to the parent following receipt of consent, or obtaining a postal address or telephone number from the parent and confirming the parent's consent by letter or telephone call. An operator that uses this method must provide notice that the parent can revoke any consent given in response to the earlier email.

312.6 Right of parent to review personal information provided by a child.

Upon request of a parent whose child has provided personal information to a Web site or online service, the operator of that Web site or online service is required to provide to that parent the following:

- A description of the specific types or categories of personal information collected from children by the operator, such as name, address, telephone number, email address, hobbies, and extracurricular activities;
- The opportunity at any time to refuse to permit the operator's further use or future online collection of personal information from that child, and to direct the operator to delete the child's personal information; and
- Notwithstanding any other provision of law, a means of reviewing any personal information collected from the child. The means employed by the operator to carry out this provision must:
  - Ensure that the requestor is a parent of that child, taking into account available technology; and
  - Not be unduly burdensome to the parent.

Neither an operator nor the operator's agent shall be held liable under any Federal or State law for any disclosure made in good faith and following reasonable procedures in responding to a request for disclosure of personal information under this section.

Subject to the limitations set forth in § 312.7, an operator may terminate any service provided to a child whose parent has refused, under above the paragraphs of this section, to permit the operator's further use or

collection of personal information from his or her child or has directed the operator to delete the child's personal information.

312.7 Prohibition against conditioning a child's participation on collection of personal information.
An operator is prohibited from conditioning a child's participation in a game, the offering of a prize, or another activity on the child's disclosing more personal information than is reasonably necessary to participate in such activity.

312.8 Confidentiality, security, and integrity of personal information collected from children.
The operator must establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children. The operator must also take reasonable steps to release children's personal information only to service providers and third parties who are capable of maintaining the confidentiality, security and integrity of such information, and who provide assurances that they will maintain the information in such a manner.

DATA RETENTION AND DELETION REQUIREMENTS

As an operator covered under the COPPA Final Rule, this institution will ensure that its Web site or online service shall retain personal information collected online from a child for only as long as is reasonably necessary to fulfill the purpose for which the information was collected. As an operator, this institution must delete such information using reasonable measures to protect against unauthorized access to, or use of, the information in connection with its deletion.

ONGOING COMPLIANCE

This institution will also use and follow, to the best of its ability in consideration of its size, scope and complexity as a covered operator under the COPPA Final Rule, any available guidance offered by the FTC and other federal regulatory agencies. This will include the FTC's "Complying with COPPA: Frequently Asked Questions; A Guide for Business and Parents and Small Entity Compliance Guide (revised June 2013)."

COMMUNITY REINVESTMENT ACT 1/19

Introduction

The Community Reinvestment Act (CRA) is part of the fair lending legislation aimed at prohibiting discrimination in the lending process. The primary purpose of the act is to encourage banks to help meet the credit needs of their communities, including the needs in low- and moderate-income neighborhoods.

This document provides an overview of the regulation. Employees can refer to the actual regulation and other related documents found at, https://www.ffiec.gov/cra/default.htm, for details of the requirements of CRA. Effective 1/1/18, the regulation was changed to align CRA with the changes made to HMDA which included changing the definition of "home mortgage loan" and "consumer loan" and the public file requirements. Details of these changes can be found at https://www.fdic.gov/news/news/press/2017/pr17086a.pdf. The federal regulators have most recently published/consolidated CRA Q&As on July 15, 2016 and can be found at http://www.ffiec.gov/cra/qnadoc.htm.

I. PERFORMANCE STANDARDS FOR SMALL BANKS

"*Small bank*" means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.252 billion. (Asset size effective January 1, 2018.)

The bank's record of helping to meet the credit needs of its assessment area(s) will be evaluated under the following criteria:

- The bank's loan-to-deposit ratio.
- The percentage of loans located in the bank's assessment area(s).
- The bank's record of lending to individuals of different income levels and businesses and farms of different sizes.
- The geographic distribution of the bank's loans, especially in the low- and moderate-income census tracts included in the bank's assessment area.
- The bank's record of taking action in response to written complaints about its performance in helping to meet credit needs in our assessment area(s).

II. PERFORMANCE STANDARDS FOR INTERMEDIATE SMALL BANKS

"Intermediate small bank" means a small bank with assets of at least $313 million as of December 31 of both of the prior two calendar years, and less than $1.252 billion as of December 31 of either of the prior two calendar years. (Asset size effective January 1, 2018.)

The bank's performance will be evaluated as described above for small banks and will also be evaluated under a flexible community development test that includes an evaluation of community development loans, investments, and services in light of community needs and the capacity of the bank. An intermediate small bank will be required to achieve satisfactory ratings on both the lending test and the community development test to receive an overall CRA rating of "satisfactory." However, the regulations continue to allow small banks, including intermediate small banks, to opt for an evaluation under the lending, investment and service tests, provided that the data are collected.

III. COMMUNITY DEVELOPMENT DEFINITIONS

Community Development means:

1. Affordable housing (including multifamily rental housing) for low- or moderate income individuals;

2. Community services targeted to low- or moderate-income individuals;
3. Activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of $1 million or less; or
4. Activities that revitalize or stabilize
   a. Low-or moderate-income geographies;
   b. Designated disaster areas; or
   c. Distressed or underserved nonmetropolitan middle-income geographies designated by the Board of Governors of the Federal Reserve System, FDIC, and Office of the Comptroller of the Currency, based on
      i. Rates of poverty, unemployment, and population loss; or
      ii. Population size, density, and dispersion. Activities revitalize and stabilize geographies designated based on population size, density, and dispersion if they help to meet essential community needs, including needs of low- and moderate-income individuals.

Community development loan means a loan that:
1. Has as its primary purpose community development;
2. Except in the case of a wholesale or limited purpose bank:
   a. Has not been reported or collected by the bank or an affiliate for consideration in the bank's assessment as a home mortgage, small business, small farm, or consumer loan, unless it is a multifamily dwelling loan (as described in Appendix A to Part 203 of this title); and
   b. Benefits the bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

Community development service means a service that:
1. Has as its primary purpose community development;
2. Is related to the provision of financial services; and
3. Has not been considered in the evaluation of the bank's retail banking services under §345.24(d) if FDIC, §25.24(d) if OCC, and §228.24(d) if FRB.

Community Development means:
Loans, investments and services that:
1. Support, enable or facilitate projects or activities that meet the ''eligible uses'' criteria described in Section 2301(c) of the Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. 2654, as amended, and are conducted in designated target areas identified in plans approved by the United States Department of Housing and Urban Development in accordance with the Neighborhood Stabilization Program (NSP);
2. Are provided no later than two years after the last date funds appropriated for the NSP are required to be spent by grantees; and
3. Benefit low-, moderate-, and middle-income individuals and geographies in the bank's assessment area(s) or areas outside the bank's assessment area(s) provided the bank has adequately addressed the community development needs of its assessment area(s).

Qualified investment means:

A lawful investment, deposit, membership share, or grant that has as its primary purpose community development.

IV. CRA PUBLIC FILE

The bank is required to maintain a CRA public file in the main office. Details of what items should be included in this file is detailed in the Advertising and Public Notices section.

V. CRA NOTICE

The bank is required to display a CRA Notice in the main office and branches. Information regarding the notices is included in the Advertising and Public Notices section.

VI. ASSESSMENT AREA REQUIREMENTS

A bank should define its assessment area according to the following requirements/guidelines:

- Consists of one or more MAs or contiguous political subdivisions (e.g., counties, cities, towns).
- Includes the geographies where the financial institution has its main office, branches, and deposit-taking ATMs, as well as the surrounding geographies in which the financial institution originated or purchased a substantial portion of its loans.
- Adjustments to the boundaries can be made if the assessment area would otherwise be too large for the financial institution to reasonably serve, have an unusual configuration, or include significant geographic barriers as long as the following requirements are met.
- Consists only of whole census tracts.
- Consists of separate delineations for areas that extend substantially across CMSA or state boundaries unless the assessment area is located in a multistate MSA.
- Does not reflect illegal discrimination
- Does not arbitrarily exclude any low- or moderate-income area(s), taking into account the financial institution's size, branching structure, and financial condition.
- Starting in 2017, the census tract maps are based on 2015 census information. The most current information should be utilized to identify the demographic makeup of the assessment area.

VII. Strategic Plans

Under the Community Reinvestment Act (CRA), a bank may apply to its primary federal regulator to be evaluated under a strategic plan. The strategic plan option provides a bank with the opportunity to tailor its CRA objectives to the needs of the community and to its own capacities, business strategies, and expertise. Community input into the development of the strategic plan is conducted by soliciting public comments. The community may submit comments on the draft plan for up to 30 days during the process.

Strategic plans must be approved by the bank's regulator in advance and must provide measurable performance goals sufficient for a satisfactory rating. Pre-defined performance goals may be included that, if met, would merit an outstanding rating.

ELDER FINANCIAL ABUSE POLICY 1/19

Introduction

Various federal and state authorities either require or encourage reporting of the possible financial exploitation of an older adult to the appropriate agency. Since this might be construed as a violation of sharing non-public personal information to a non-affiliated third party, on Sept. 24, 2013, the Consumer Financial Protection Bureau (CFPB), along with other federal regulatory agencies, released Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults. The Interagency Guidance clarifies that reporting suspected financial abuse of older adults to appropriate local agencies does not generally violate the privacy provisions of the Gramm-Leach-Bliley Act (GLBA) or its implementing regulations. In fact, specific privacy provisions of the GLBA permit the sharing of information related to possible financial abuse of older adults. This bank is committed to helping its older customers avoid being victims of the crime of financial abuse by reporting any incidences suspected while staying in compliance with the requirements of the GLBA.

Additionally, May 2018 as part of the Regulatory Reform bill, President Trump signed into law the Safe Senior Act. The Act provides protections to covered institutions and certain individuals within the institution when disclosure of information is made to covered agencies in connection with elder exploitation if the following conditions are met:

- The disclosing individual was employed by the covered financial institution at the time of the disclosure in a supervisory, compliance, or legal function
- Before the time of the disclosure, that individual received training in identifying and reporting senior exploitation
- The disclosure was made in good faith and with reasonable care

I. BACKGROUND

There are many forms of financial exploitation of the elderly which, according to recent studies, is the most common form of elder abuse. In general, financial exploitation is an effort by unscrupulous persons to extract money and resources through a variety of devious and illegal means from elderly persons. Perpetrators may employ fraud, deceit, forgery, coercion, or undue influence to gain access to an elderly person's assets. Older adults are attractive targets of financial exploitation because they may have significant assets or equity in their homes. They may also be especially vulnerable due to isolation, cognitive decline, physical disability, health problems, and/or the recent loss of a partner, family member, or friend. A bank's familiarity with the older adults it encounters may enable it to spot irregular transactions, account activity, or behavior. The bank's prompt reporting of suspected financial abuse to adult protective services, law enforcement (including the filing of a "Suspicious Activity Report"), and/or long-term care ombudsmen can trigger appropriate intervention, prevention of financial losses, and other remedies.

II. DEFINITION OF ELDER ABUSE

Elder abuse is a term referring to any knowing, intentional, or negligent act by a caregiver or any other person that causes harm or a serious risk of harm to a vulnerable adult. The specificity of laws varies from state to state, but broadly defined, abuse may be:

- Physical abuse — inflicting, or threatening to inflict, physical pain or injury on a vulnerable elder, or depriving them of a basic need;
- Emotional abuse — inflicting mental pain, anguish, or distress on an elder person through verbal or nonverbal acts;
- Sexual abuse — nonconsensual sexual contact of any kind;
- Financial Exploitation — illegal taking, misuse, or concealment of funds, property, or assets of a vulnerable elder;
- Neglect — refusal or failure by those responsible to provide food, shelter, healthcare or protection for a vulnerable elder; and

- Abandonment — desertion of a vulnerable elder by anyone who has assumed the responsibility for care or custody of that person.

III. RED FLAGS

Banks are well positioned to recognize scams against older consumers as well as unusual financial behavior. The following are some common "red flags" of which front-line and supervisory bank personnel may witness and should be aware of to help them determine whether elder financial exploitation may be occurring:

- Erratic or unusual changes in bank account or banking practice, including an unexplained withdrawal of large sums of money by a person accompanying the elder;
- Sudden non-sufficient fund activity;
- Uncharacteristic nonpayment for services, which may indicate a loss of funds or access to funds;
- Debit transactions that are inconsistent for the older adult;
- Uncharacteristic attempts to wire large sums of money;
- Closing of CDs or accounts without regard to penalties;
- Adding names to the elder person's accounts, including Power of Attorneys;
- Frequent large withdrawals of the elder's funds using their automated teller machine card up to the daily maximum allowed;
- Abrupt changes in a will or other financial documents;
- Unexplained disappearance of funds or valuable possessions;
- Substandard care being provided or bills unpaid despite the availability of adequate financial resources;
- Discovery of an elder's signature being forged for financial transactions or for the titles of his/her possessions;
- Sudden appearance of previously uninvolved relatives claiming their rights to an elder's affairs and possessions;
- Unexplained sudden transfer of assets to a family member or someone outside the family; and
- Adding financial services that are not necessary.

Other warning signs of potential elder financial abuse:

- A caregiver or other individual shows excessive interest in the older adult's finances or assets, does not allow the older adult to speak for himself, or is reluctant to leave the older adult's side during conversations;
- The older adult shows an unusual degree of fear or submissiveness toward a caregiver, or expresses a fear of eviction or nursing home placement if money is not given to caregiver;
- The financial institution is unable to speak directly with the older adult, despite repeated attempts to contact him or her;
- A new caretaker, relative, or friend suddenly begins conducting financial transactions on behalf of the older adult without proper documentation;
- The older adult moves away from existing relationships and toward new associations with other "friends" or strangers;
- The older adult's financial management suddenly changes, such as through a change of power of attorney to a different family member or a new individual;
- The older adult lacks knowledge about his or her financial status, or shows a sudden reluctance to discuss financial matters;

- Customer frequently forgets items needed to conduct business, such as a checkbook or deposit slip, becomes disoriented, doesn't know where he or she is, or indicates that he or she is forgetting where things are;
- There is a noticeable change in the appearance and grooming of the customer;
- Customer becomes paranoid about money in his or her accounts and the bank's handling of this money (which may trigger a review by a professional agency to determine whether or not there was any validity); and
- Customer's mood or disposition changes dramatically, or the customer begins to fear bank employees.

IV. PROCEDURES FOR TELLERS WHO SUSPECT ELDER ABUSE

- Tellers should attempt to learn the reason for suspected transactions. For example, if an elderly person is withdrawing an unusually large sum of money, tellers should ask the customer directly the reason for the withdrawal. Tellers should not ask the person accompanying the customer and should notify a supervisor if the elderly customer is prevented from answering the teller's questions.
- Tellers should always verify any authority a person suggests they have to act for the customer. Tellers must check all documentation, such as signature cards, guardianship, and power of attorney documents, to be sure that the person claiming to act for the elder has the authority to do so.
- If the teller suspects fraud, he or she should contact a supervisor immediately. The teller may choose to explain to the elder that a supervisor must review large or unusual transactions.

V. PROCEDURES FOR TELLER SUPERVISORS AND BANK OFFICERS

- The supervisor should separate the customer from any companion so that the supervisor is able to speak with the elder alone. The elder who is prevented from speaking for himself or herself is a potential fraud victim.
- The supervisor may warn the customer of the dangers of carrying, withdrawing, or wiring large amounts of cash.
- The supervisor should notify a senior officer of the bank of any questionable transaction.
- If an elder is thought to be in immediate physical danger, the bank will notify law enforcement. If the customer is in immediate danger of losing his or her money, a bank officer may wish to consider delaying the transaction and confer with legal counsel or a senior officer of the bank. For example, if the funds are being withdrawn from a savings account rather than a demand account, supervisors or senior officers may decide to invoke our right to require a 7-day written notice for the withdrawal of funds.

VI. REPORTING THE ABUSE USING A SAR

The bank will report elder abuse after it has conducted a thorough investigation and consulted with legal counsel. Depending on the circumstance, the bank may consider not processing a transaction requested by the elder person or the elder's representative. An elderly customer may be offended if the bank insinuates that the elder person is being victimized, and therefore, senior officers should be involved in the decision immediately. If the bank decides to report the situation, it will report it to the appropriate adult protection service in the state and may, if the conduct meets the requirements, also prepare a Suspicious Activity Report (SAR). The SAR must be made promptly after detecting any known or suspected violation of law or regulation involving the following:

- *Insider abuse involving any amount.* An SAR would be required if a financial institution employee, director, officer, or agent committed or aided the commission of suspected financial elder financial abuse.
- *Violations aggregating $5,000 or more, where a suspect can be identified.* An SAR would be required if one or more elder financial abuse transactions aggregating $5,000 or more are conducted through the financial institution and a suspect can be identified.

- *Violations aggregating $25,000 or more, regardless of whether a suspect can be identified.* An SAR would be required if one or more elder financial abuse transactions aggregating $25,000 or more are conducted through the financial institution, even if no suspect can be identified
- *Transactions aggregating $5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act.* An SAR would be required if one or more transactions aggregating $5,000 are conducted in order to disguise funds or assets derived from elder financial abuse.

VII. Procedures for Reporting to the State

In the State of Georgia, financial institutions are required by law to report elder abuse of those 65 and older according to the Department of Human Services website. After conducting an investigation that concludes a customer may be the victim of elder financial abuse, the bank's security officer, in consultation with legal counsel and/or other appropriate bank management, will notify Adult Protective Services. The following website contains information on how to report the elder abuse in Georgia: http://aging.dhs.georgia.gov/adult-protective-services. The bank will follow the guidance found on this link to report any elder financial abuse it suspects.

VIII. Discussion of Privacy Protections

The GLBA establishes a general rule that a financial institution may not disclose any nonpublic personal information about a consumer to any nonaffiliated third party unless the financial institution first provides the consumer with a notice that describes the disclosure (as well as other aspects of its privacy policies and practices) and a reasonable opportunity to opt out of the disclosure, and the consumer does not opt out. However, GLBA also provides a variety of exceptions to this general rule that permit a financial institution to disclose information to nonaffiliated third parties without first complying with notice and opt-out requirements. Generally, disclosure of nonpublic personal information about consumers to local, state, or federal agencies for the purpose of reporting suspected financial abuse of older adults fall within one or more of the exceptions. These disclosures of information may be made either at the agency's request or on the financial institution's initiative.

IX. Discussion of Privacy Protections

The following are specific exceptions to the GLBA's notice and opt-out requirement that, to the extent applicable, would permit sharing of nonpublic personal information about consumers with local, state, or federal agencies for the purpose of reporting suspected financial abuse of older adults without the consumer's authorization and without violating the GLBA:

- A financial institution may disclose nonpublic personal information to comply with federal, state, or local laws, rules and other applicable legal requirements, such as state laws that require reporting by financial institutions of suspected abuse;
- A financial institution may disclose nonpublic personal information to respond to a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by federal, state, or local authorities or to respond to judicial process or government regulatory authorities having jurisdiction for examination, compliance, or other purposes as authorized by law;
- A financial institution may disclose nonpublic personal information to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability. For example, this exception generally would allow a financial institution to disclose to appropriate authorities nonpublic personal information in order to:
  - report incidents that result in taking an older adult's funds without actual consent, or
  - report incidents of obtaining an older adult's consent to sign over assets through misrepresentation of the intent of the transaction;
- To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978, a financial institution may disclose nonpublic personal information

to law enforcement agencies (including the CFPB, the federal regulators, and the FTC), self-regulatory organizations, or for an investigation on a matter related to public safety; and

- Additionally, a financial institution may disclose nonpublic personal information with the consumer's consent or consent of the consumer's legal representative.

X. PREVENTING ELDER FINANCIAL ABUSE

The board directs management to provide in-depth training for both customer and noncustomer bank personnel that focuses on the red flags for elder abuse and the requirements of our bank and our state for investigating and reporting elder financial abuse as described in this policy. The bank will only share the information in accordance with the provisions described in the Interagency Guidance on Privacy Laws published on September 24, 2013.

E-SIGN ACT POLICY 1/19

Introduction

To facilitate and encourage electronic commerce, Congress enacted the Electronic Signatures in Global and National Commerce Act (E-Sign Act) on June 30, 2000. The E-Sign Act states that the validity or enforceability of a contract, electronic record, or signature for a transaction affecting interstate commerce cannot be challenged solely because it is in electronic form or because an electronic signature or record was used in the formation of the contract.

On November 9, 2007, the Federal Reserve Board adopted final rules establishing uniform standards for the electronic delivery of federally mandated disclosures for five consumer protection regulations: Regulation B, Equal Credit Opportunity; Regulation E, Electronic Fund Transfers; Regulation M, Consumer Leasing; Regulation Z, Truth in Lending; and Regulation DD, Truth in Savings. The final rules provided guidance on the timing and delivery of electronic disclosures. The E-Sign Act does not affect the regulation requirements for the timing, content, and format of consumer notices and disclosures. It was also noted in the final rule that banks satisfy the requirement to provide electronic disclosures in a form that the consumer can retain if the disclosures are provided in a standard electronic format that can be downloaded and saved or printed on a typical home personal computer.

I. E-SIGN ACT COMPLIANCE REQUIREMENTS

When businesses are legally required to make information available to a consumer in writing, the information can be delivered electronically as long as there is prior compliance with the E-Sign Act's consumer consent requirements which are detailed below:

1. **Availability of Paper Delivery or Paper Copies**

   Before seeking a consumer's consent to use electronic records, the bank must inform the consumer in a clear and conspicuous statement of:

   - any right or option to have the record provided in a non-electronic form;
   - the right to withdraw the consent;
   - the consequences of withdrawing the consent;
   - the fees imposed in the event of withdrawal; and
   - the consumer's right to request a paper copy of an electronic record and any fees that may apply.

2. **Consent Choices**

   Before seeking a consumer's consent to the use of electronic records, the bank must inform the consumer in a clear and conspicuous statement whether the consent relates to a particular transaction only or whether consent relates to broader categories of information.

3. **Consumer Actions**

   Banks must disclose to consumers the procedures to withdraw consent at a later date and to update the consumer's contact information, such as notifying the bank when the consumer's e-mail address changes.

4. **Hardware/Software Requirements**

   Banks must provide consumers with a statement detailing the hardware and software requirements to access and retain electronic records.

5. **Affirmatively Consent**

   To ensure a consumer can communicate electronically with the bank to which consent has been provided, the E-Sign Act requires that the consumer provide 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." The bank should maintain records of the consumer's consent process to prove that they obtained the consumer's consent properly.

6. "After Consent" Disclosure

When banks have changes in hardware and software requirements that create a material risk that consumers will not be able to access or retain electronic records the following procedures must be adhered to:

- Banks must provide consumers with a statement detailing any revised hardware and software requirements for access to and retention of electronic records, and the right to withdraw consent without the imposition of fees for such withdrawal and without the imposition of any condition or consequence that was not disclosed; and
- After providing the statement, banks must again obtain consumer's affirmative consent as in number 5.

II. RECORD RETENTION

Under the E-Sign Act, if a bank is legally required to maintain copies of a contract or other records of a transaction, the bank may rely on an electronic record of the information that accurately reflects the information in the contract or other record, and that remains accessible to all persons who are legally entitled to access the information in form that can later be reproduced.

FACT ACT 1/19

Introduction

The federal government, in response to the rising problem of identity theft and inaccurate information on credit reports, has written the Fair and Accurate Credit Transaction Act of 2003 (FACTA), an amendment to the Fair Credit Reporting Act (FCRA). FACTA, also known as the FACT Act calls for credit reporting and receiving agents to impose stricter guidelines on information accuracy and privacy, limits information sharing, and provides more rights for consumers.

I. PRESCREENING

Prescreening is a method used by banks and other financial institutions to send "preapproved" credit offers to consumers that meet minimum criteria set by the bank. The bank provides its criteria to a consumer reporting agency with instructions that the agency send back a list of names and addresses of consumers meeting the criteria.

There are several restrictions to this practice, however. Once the list is obtained from the consumer reporting agency, the bank must make a "firm offer of credit" to every name on the list, that is, everyone who satisfied the criteria. Prior to the 1996 amendments to FCRA, this requirement was almost absolute. Now the bank may verify information, such as income and collateral information, after the list is obtained, and may exclude names from the offer if the customer no longer meets the bank's initial credit criteria or collateral requirements. Also, the firm offer of credit may vary among names on the list. Not everyone must be offered the same amount of credit.

Disclosure of certain items must be made to any consumer receiving a firm offer of credit from any such prescreened list. The following must accompany the offer:

1. A statement that information from the consumer's credit file was used in connection with the solicitation.
2. A statement that the consumer meets the criteria used on consideration for the credit or insurance.
3. A statement that the consumer has the right to prohibit the use of his or her information for any such solicitations, and
4. A statement that the consumer may elect to have his or her name excluded from any such solicitation lists and how to accomplish this.

Consumers may elect to have their names excluded from credit screening by using a telephone notification system or by sending a notice of election form to the consumer reporting agencies. A telephone notification system is operated by the credit bureaus and consumers can call a toll-free number in order to inform the bureaus of their election. If the election is made by telephone, it becomes effective five days after the call and lasts for two years. After the telephone call, the credit bureau may send a notice of election form to the consumer. If this is completed and returned, the exclusion is effective permanently unless the consumer sends notice to terminate his or her election. At the time of this writing the telephone number is (888) 567-8688.

Banks are required to retain records relating to the criteria used in any prescreened solicitation. Records indicating the initial criteria used in requesting the initial list from the consumer reporting agency, final criteria used to determine creditworthiness, and any collateral criteria must be retained for three years.

II. SHARING INFORMATION WITH AFFILIATES

<u>Credit Report Information</u> The FCRA states that if a bank shares credit report information with third parties the bank becomes a credit-reporting agency subject to the attendant responsibilities and liabilities. One exception to that "no-sharing" rule is when a bank shares credit information with its own affiliates, that is other companies that have a commonality of ownership with the bank, either as a subsidiary of the bank, or as a sister company of the bank through ownership by the bank's holding company. To qualify for this exception, however, the bank

must advise the consumer in writing that it intends to share such information and the customer must be given a reasonable opportunity to opt out of such information sharing.

Transaction Information Until December 2004, the effective date of the provisions of the FACT Act, a bank had an unlimited right to share with its affiliates information regarding its own transactions with its customers. The FACT Act amendments to FCRA prohibit a bank sharing its consumer transaction information with an affiliate if the affiliate will use that information for a marketing purpose unless the consumer is provided a notice that the sharing will take place and the consumer is given a reasonable opportunity of opting out of the sharing. Note that the restriction on the affiliate sharing applies only if the affiliate will use the information for a marketing purpose. The bank providing the information to the affiliate is responsible for providing the opt-out notice. The opt out rules are similar to those in Regulation P. The consumer must be provided written notice of the proposed information sharing, given a reasonable method and time to opt out, and if the consumer has not opted out within thirty days, then the information may be shared. There are two exceptions to the opt out requirement for affiliate information sharing. The first is if the affiliate has a "pre-existing business relationship" with the consumer. Generally that means that the affiliate had an account or other continuing relationship with the consumer sometime during the 18-month period preceding the sharing. The second is that the consumer either consented to the sharing or requested the information sharing. One of the anomalies of the rules is that a bank may share consumer information for a marketing purpose with an unaffiliated financial institution without providing the consumer the right to opt out. When it shares with its own affiliates the opt-out right is mandatory. The rules do not prevent or restrict intrabank sharing of customer information. The deposit side of the bank may still share information with the loan department, the trust department and vice versa, for a marketing purpose or any other purpose. The restriction is only applied where the person with whom the information will be shared is an affiliate, that is, a separate corporation within the bank's corporate "family".

III. FRAUD AND ACTIVE DUTY ALERTS

Fraud Alerts If a consumer believes that he or she has been or is about to become a victim of fraud, including identity theft, he or she may request a consumer reporting agency to put a fraud alert in his or her file. Any consumer reporting agency receiving such a request must communicate it with the other consumer reporting agencies. The fraud alert must remain on the consumer's file for at least 90 days from the date of notification. An "identity theft report" is a copy of a report filed by a consumer with a law enforcement agency alleging identity theft, for which the consumer could be subject to criminal penalties if the information in the report is false. If a consumer submits an identity theft report to a consumer reporting agency, the consumer reporting agency must include a fraud alert in the consumer's file and retain it there for a period of seven years.

If a bank obtains a consumer report on a person and there is a fraud alert on the report the bank may not issue the consumer additional credit, other than an open line of credit under Regulation Z, issue additional cards on an existing credit account or increase the limit on an existing credit account unless the bank uses reasonable policies and procedures to form a reasonable belief that it knows the identity of the person making the request. In most instances a bank's notice of a customer's identity theft will come directly from the customer. Every bank should have procedures to follow in that event, including closing existing accounts and opening new accounts, hot-carding debit and credit cards and issuing new cards and taking other precautions so that no other unauthorized transactions can occur in the customer's account.

If a bank reports information to a credit bureau that a consumer identifies as resulting from an identity theft, the credit bureau must block the reporting of the information unless the credit bureau determines that the block was in error, the consumer misrepresented information, or the consumer benefited from the transactions. The credit bureau must also notify the bank that reported the information that the information may be the result of identity theft and that an identity theft report has been filed. If a bank receives such a notification it may not sell or place for collection a debt that has resulted from alleged identity theft.

If a bank receives an identity theft report either from a consumer reporting agency or from the consumer directly, it must not furnish information about transactions resulting from the alleged identity theft relating to the consumer unless the bank subsequently "knows or is informed by the consumer that the information is correct." Recognize that the standard in this instance is knowledge, not reasonable belief or some lesser standard.

Active Duty Alerts Similar to the fraud alert, a person in active military duty, or a reservist or national guard member, called into active duty who will be assigned to service away from his or her usual duty station may notify a credit bureau of his or her status. As with fraud alerts, the credit bureau notified must notify the other credit bureaus, and an active military alert will be placed on the person's credit file for a period of at least one year. Any bank that receives a credit report with the active duty alert must follow the same procedures as when it receives a fraud alert as described above.

IV. NOTICE OF NEGATIVE INFORMATION

If a bank furnishes negative information to a "consumer reporting agency that compiles and maintains files on consumers on a nationwide basis" about a customer regarding credit extended to the customer, the bank must provide the customer a notice in writing of such information sharing. The notice may be provided either before the information sharing or within 30 days thereafter.

The Federal Reserve has published two model notices to be provided to customers. The first is for when the notice is given prior to the information sharing. The second is for when the notice is given after the information sharing. The text of the notices is as follows:

> 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.
>
> 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.

The notice must be provided in writing to each customer to whom negative information will be or has been reported to a credit bureau and may not be "included in" the Truth in Lending disclosures.

V. RESIDENCE LOANS AND CREDIT SCORES

If a lender receives an application from a consumer for a closed end loan or the establishment of an open end loan for a consumer purpose that is to be secured by a 1- to 4-family residential real property and the lender uses a consumer credit score in the underwriting of the loan application, then as soon as reasonably practicable after receiving the credit score the lender shall provide to the loan applicant the following:

1. The applicant's credit score.
2. The range of possible credit scores under the model used.
3. All of the key factors that adversely affected the consumer's credit score up to a total of 4. (However, if one of the factors is the number of inquiries made with respect to the consumer, the number goes to five.)
4. The date on which the credit score was created.
5. The name, address, and telephone number of the credit bureau from which the credit score or the credit file from which the credit score was created.
6. The NOTICE TO THE HOME LOAN APPLICANT set out in Section 609(g)(1)(D) of the Fair Credit Reporting Act.

VI. OFFER OF LESS FAVORABLE TERMS/RISK BASED PRICING NOTICE

If an individual applies to a lender for a loan, and the loan is approved, but on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of the lender's consumer customers and the lender's decision to offer the materially less favorable terms was based, in whole or in part, upon a consumer report, then the lender must provide the applicant a notice of that fact. "Material", "materially" and 'substantially' are undefined terms. The banking agencies are to prescribe rules as to what these terms mean, but thus far they have not done so. Until they do, we believe that the material terms of a loan are the interest rate, the term, the collateral required, and the requirement of a guarantor when a guarantor would not normally be required. Assume that an applicant applies for a loan to be secured by a new automobile. The bank's standard terms for loans secured by a new automobile are 6% interest and a five-year term. Based on the applicant's credit report, the applicant is offered 6 ¼ % interest and a guarantor is required. In that instance the "material terms" are "materially" less favorable on two fronts, the interest rate and the requirement of a guarantor. The applicant would have to be provided the notice.

- Effective January 1, 2011, the risk-based pricing notice must be provided when a consumer report is used in connection with providing credit (open-end or closed-end) with materially less favorable terms than the most favorable available to a substantial proportion of customers.
- If the bank obtains a credit report (with or without a credit score) these requirements still apply.
- If the transaction involves more than one consumer, a notice must be provided to each consumer.
- The risk based pricing notice rules apply to credit for personal, household, or family purposes. It does no apply to business credit.
- Notice must be given before loan consummation, but not before approval decision has been communicated to the applicant.
- The notice requirement does not apply to denials.
- Options for determining which consumers receive the notice include.
  1. Direct Comparison Method.
  2. Credit Proxy Method.
  3. Tiered Pricing Method.
  4. Exception Notices Given to All Borrowers as follows:
     - Dwelling secured loan notice.
     - Non-mortgage notice.
     - Exception notice when no credit score is available.

(Note: The Exception notice option requires the least amount of analysis as it is provided to all borrowers regardless of the terms offered. It is available from credit bureaus or can be generated from most platform systems. Model forms H-1 through H-5 in the regulation should be used in order to have a safe harbor for compliance.)

Effective 7/21/11, the Dodd-Frank Act amended the content of some of the risk based pricing notices and added new model forms to address the new disclosure requirements concerning the credit score information. These are found in Model Forms H-6 and H-7. The exception notice did not change.

VII. MEDICAL INFORMATION

Generally the term "medical information" means any information that a bank may obtain from a health care provider or the consumer about the consumer's past, present or future mental or physical health, health care services the consumer may be receiving or the payment for those services. The bank is basically prohibited from

obtaining or using "medical information" (as just defined) in connection with any determination of the consumer's eligibility, or continued eligibility, for credit. These are two separate prohibitions. The bank is not allowed to "obtain" medical information, and if the bank ever ends up with it in its possession, regardless of how it was obtained, the bank is not allowed to use it in its credit decisions. Section 411(b) of the FACT Act additionally prohibits the bank (subject to some exclusions) from sharing any medically related information the bank ever falls into possession of with any affiliates if that information meets the definition of a "consumer report" as defined in section 603(d)(1) of the FCRA. Fortunately the regulations also make it clear that if information is received by a bank without requesting it, that there is no violation of the act. The FACT Act states "a creditor shall not obtain or use medical information . . . pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit." The regulations for this section of the FACT Act are in Regulation V. The regulations restate the requirement of the Act and then provide an exception allowing medical information to be used in determining creditworthiness provided that it is used in a manner that is no less favorable than similar nonmedical information would be used. Several examples are then given. If a consumer applies for credit and has past due medical bills, a bank may treat the medical past due obligations as it would any other past due obligations. Likewise if a consumer has medical obligations that are current, a bank may treat those as it would any nonmedical obligations. On the other hand, if a customer tells the loan officer that he or she is terminally ill and may not make it through the month, the loan officer may not use that information in making a credit decision. Even if the end is evident, the person is still creditworthy. The regulations also prohibit sharing medical information with an affiliate except in narrowly defined transactions such as processing a request for insurance.

The following information is NOT shared with affiliates, unless permissible by exception:

- Medical information
- An individualized list or description based on the payment transactions of the consumer for medical products or services.
- An aggregate list of identified consumers based on payment transactions for medical products or services.

Medical information is ONLY shared with affiliates as permissible below:

- In connection with the business of insurance or annuities (including activities described in the comment balloon).
- For any purpose permitted without authorization under the regulations promulgated by the Dept. of Health and Human Services pursuant to HIPAA. www.hhs.gov/hipaa
- For any purpose described in section 1179 of HIPAA.
- For any purpose described in section 502(e) of the Gramm-Leach-Bliley Act.
- In connection with a determination of the consumer's eligibility, or continued eligibility, for credit consistent with §1022.30. (see above)
- As otherwise permitted by order of the Bureau.

Medical information is obtained pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit only to the extent it is used:

- 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.
- To determine whether the consumer has the legal capacity to contract when a person seeks to exercise a power of attorney or legal representative for a consumer based on an asserted medical condition or event.
- To comply with applicable requirements of local, state, or Federal laws.

- 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:
  - designed to meet the special needs of consumers with medical conditions; and
  - established and administered pursuant to a written plan that (1) identifies the class of persons that the program is designed to benefit; and (2) sets forth procedures and standards for extending credit or providing other credit-related assistance under the program.
- To the extent necessary for purposes of fraud prevention or detection.
- 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 proceeds.
- Consistent with safe and sound practices, if the consumer or the consumer's legal representative specifically requests that the creditor use medical information in determining the consumer's eligibility, or continued eligibility.
- 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.
- 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.
- 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.

VIII. FREE CREDIT REPORTS

The FACT Act provides that every consumer is entitled to one free copy per year of his or her credit report.

IX. DISPOSAL OF RECORDS

The FACT Act requires that a bank utilize reasonable means in disposing of consumer information, or any compilation of consumer information, derived from consumer reports for a business purpose, to prevent unauthorized access to the information. Under the expansive definitions of the FCRA, this rule covers not only credit related information but also employment records, insurance information, check writing history, residential or tenant history and medical information. A bank is free to define how it will dispose of its sensitive records but must be certain to have a policy and procedures in place to ensure the destruction will permit anyone from reconstructing the information. The language used suggests “burning, pulverizing, or shredding of papers so that they cannot be practicably read or reconstructed.” Destruction of electronic media, however, may be more complicated as deleted files can often be retrieved. If a bank subcontracts out the disposal of records, due diligence is required to understand the prospective vendor’s operation and its information security policies and procedures.

X. RED FLAG GUIDELINES

The FACT Act requires the regulatory agencies to develop “red flag guidelines”, those being patterns of conduct or events that may be an indicator of identity theft. Along with the guidelines, the regulators are to proscribe procedures for a bank to follow when a red flag even occurs in order to minimize risks to bank customers or the bank’s safety and soundness. The law identifies two red flag guidelines. The first is a change of address. If a bank receives a change in address for a customer and within 30 days thereafter receives a request for an additional or replacement card (credit card, debit card or ATM card) for the person’s account, the bank may not issue the card unless it verifies the validity of the change in address request. It may do so by notifying the customer at the former address and providing a method of promptly reporting an incorrect address change, notifying the customer by such other method as may have been agreed upon, or using other means of assessing

the validity of the address change. The notice (written or electronic) must be clear and conspicuous and provided in a separate mailing. If the card issuer does not wish to notify the cardholder, a second option is provided. This option requires the card issuer to assess the validity of the request in accordance with its Identity Theft Prevention Program. A financial institution that uses this option must determine another way to verify the validity of the request and incorporate appropriate procedures in its Identity Theft Prevention Program. The rules also provide the card issuer with the option to validate all address change requests, rather than waiting for a request for an additional or replacement card. A bank needs to be able to flag accounts that have either a recent change of address, change of alternate address or addition of an alternate address.

The second red flag is a transaction in an account (either deposit accounts or credit lines) that has had no customer-initiated activity in the prior two years. If such a transaction does occur, the bank must have a procedure to notify the customer to reduce the likelihood of identity theft, or if identity theft has occurred, to minimize the loss. Most automation systems provide a bank the ability to put accounts in a dormant status at a bank selected time period and thereby put additional security on those accounts to block transactions.

Effective January 1, 2008, the Fact Act requires each covered financial institution or creditor to develop and implement a written Identity Theft Prevention Program to detect, prevent, and mitigate identity theft for certain new and existing accounts. The mandatory compliance date is November 1, 2008. The new requirements cover consumer as well as business accounts.

If technology is used to detect Red Flags, the system will be periodically verified to ensure it is working effectively to detect, prevent, and mitigate identity theft.

The Program must include reasonable policies and procedures to address each of the following elements:

- Identify relevant Red Flags for identity theft for covered accounts and incorporate those Red Flags into the Program.
- Detect Red Flags that have been incorporated into the Program.
- Respond appropriately to any Red Flags that are detected to prevent and mitigate identity theft.
- Ensure the Program is updated periodically to reflect changes in risks to customers or to the safety and soundness of the financial institution or creditor from identity theft.

The rules also set requirements for the continued administration of the Program, including:

1. Obtaining approval of the initial written Program by the Board or appropriate committee of the Board;
2. Providing oversight, development, implementation, and administration of the Program;
3. Providing staff training; and
4. Overseeing service provider arrangements.

The FDIC (and other bank regulators) issued frequently asked questions (FAQs) on identity theft “red flags”, address discrepancies, and change of address requests in FIL-30-2009 dated June 11, 2009. These FAQs help clarify the regulation’s requirements and are found in the bank’s compliance policies in a document entitled, “Fact Act – FAQs on Identity Theft Red Flags - Address Discrepancies”.

A report on compliance with the Red Flag Rules will be presented annually to the Board, committee of the Board, or the member of Senior Management designated as responsible for oversight.

The annual report will address the following:

- The effectiveness of the Identity Theft Prevention Program;
- Any significant incidents of identity theft and management's response;

- Oversight of service providers that perform activities related to covered accounts; and
- Any recommendations for material changes to the Program.

XI. ADDRESS DISCREPANCIES

A notice of address discrepancy is a notice sent to a user of a consumer report by a consumer reporting agency (CRA), that informs the user of a substantial difference between the address for the consumer provided by the user in requesting the consumer report, and the address or addresses the CRA has in the consumer's file.

In effort to form a reasonable belief that the consumer report relates to the consumer whose report was requested the bank can;

1. Compare information in the consumer report with information the Bank:
   a. has obtained and used to verify the consumer's identity as required by the CIP rules;
   b. maintains in its records; or
   c. obtains from a third party; or
2. Verifying the information in the consumer report with the consumer.

The financial institution can furnish the consumer reporting agency, an address for the consumer that has been reasonably confirmed as accurate, if the financial institution:

- can form a reasonable belief that the report relates to the consumer
- establishes a continuing relationship with the consumer, and
- regularly furnishes information to the consumer reporting agency.

The financial institution is required to furnish the confirmed address as part of the information it regularly furnishes to a consumer reporting agency during the reporting period in which it establishes a relationship with the consumer.

XII. DUTIES OF USERS OF CONSUMER REPORTS

Users of consumer reports are required to develop and implement reasonable policies and procedures to handle address discrepancy notices received from a national consumer reporting agency. An address discrepancy “notice” is provided by a consumer reporting agency to the user when the address in the user’s consumer report request “substantially” differs from the address in the report. The “notice” may not be a formal notice; it may appear as a code on the consumer report. The financial institution must to able to recognize such a code or some other format as an address discrepancy.

Reasonable policies and procedures must enable the user to:

- Form a reasonable belief that the consumer report is for the consumer for whom the report was requested, and
- Furnish the correct address to the consumer reporting agency if the financial institution (1) establishes a continuing relationship with the consumer and (2) regularly furnishes information to the agency. (This requirement applies only to new relationships that are established.)

FAIR CREDIT REPORTING ACT 1/19

Introduction

The Fair Credit Reporting Act (FCRA) was passed in 1970 in response to concerns by Congress and the public that there was a huge data base of information on consumers that:

- Was used by banks, employers, and insurance companies to determine whether people were granted loans, jobs, or insurance;
- Contained incorrect information which caused unjustified denials of loans, jobs, or insurance policies, and
- Was not open to inspection and correction by the people whose payment histories and other records were stored there.

Note: Effective 7/26/2011, the FTC rescinded the Commentary for the Fair Credit Reporting Act. However, on its website it has posted a booklet entitled "40 Years of Experience with the Fair Credit Reporting Act: An FTC Staff Report with Summary of Interpretations" which provides some guidance. This booklet can be found at: http://www.ftc.gov/os/2011/07/110720fcrareport.pdf.

I. KEY DEFINITIONS

Consumer Reporting Agency - Anyone who regularly assembles or evaluates information on consumers for the purposes of supplying reports of consumer credit information to third parties (consumer means a living, breathing person).

Consumer Report - Any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

Adverse Action - This means a decision or action taken against the consumer that is considered adverse to his or her interest influenced either wholly or partially by information contained in a consumer report. The definition includes actions adverse to the customer's interest when considering an application for a deposit account or a feature of a deposit account (such as an ATM or debit card), or reviewing an existing account.

II. OBTAINING CONSUMER REPORTS

Consumer Transactions: A consumer's credit report can only be obtained if the bank has a "permissible purpose" for obtaining the report. It is always a good policy to have written consent from the consumer before ordering a consumer report. To accomplish this, a short statement granting the bank permission to obtain a credit report can be included on application forms and account agreements. (If not for a permissible purpose, the requirement is that the consent be written. Oral consent is not sufficient.)

> **Note: Even if written authorization is not obtained, if the bank has a permissible purpose, it may obtain a consumer report in certain situations. Specifically, the bank may obtain a consumer report without the consumer's written consent when the information is used in connection with:**
>
> 1. A credit application or review of an existing credit, or
> 2. A legitimate business purpose in connection with a business transaction initiated by the consumer.

Many banks have programs to preapprove or prequalify a potential applicant for a loan. That by definition is not a request for credit. In effect what the customer is asking is "If I apply for credit in the future, tell me now what your response will be." Because that is not an application for credit, the customer's written consent is required before the person's credit report can be obtained.

If a person applies for a checking account or for a point-of sale or ATM card on an existing account, there is the potential that the account could become overdrawn. As such, the bank has a legitimate business purpose in obtaining the person's credit report. On the other hand, if the person applies to open a time deposit, there is no

potential of an overdraft or credit loss; as such, there is no legitimate business purpose for obtaining a credit report.

If a bank does not have one of the above permissible purposes, then it must have the person's written consent before it may obtain the person's credit report.

If a person offers or agrees to become a guarantor of another person's consumer loan, the bank to which the application has been made does not have a permissible purpose to obtain the guarantor's credit report unless the bank has the guarantor's written consent. The guarantor has neither applied for credit nor initiated a transaction. The legitimate business purpose is limited to business transactions initiated by the person whose credit report is to be obtained. It does not extend to third parties who may be involved in the transaction, but who did not initiate it.

Guarantors of Commercial Loans: When underwriting a commercial loan application, it is permissible to obtain a credit report on an individual, without the individual's prior written consent, if the individual has agreed to be personally liable on the debt.

III. CREDIT APPLICATION DENIALS

If credit is denied, approved for a lesser amount, or offered at an increased cost due partially or wholly to information from a consumer reporting agency or from another source, the FCRA requires that an adverse action notice be sent to each consumer whose negative information on a consumer report contributed either wholly or partially to the adverse decision. Although Regulation B allows the creditor the option of sending an adverse action notice only to the primary applicant in situations where there are joint applicants, FCRA contains no such provision.

Required Contents of the Adverse Action Notice for FCRA (only)

The adverse action notice must include the following:

1. A statement that the adverse decision was based on information in a consumer report.
2. The name, address, and toll-free telephone number of the consumer reporting agency that supplied the report.
3. A statement that the consumer reporting agency did not make the decision and cannot provide the reasons why the action was taken.
4. A statement that the consumer has the right to obtain a free copy of his or her consumer report from that agency if he or she submits a request to the agency that supplied the report within 60 days of receiving the adverse action notice.
5. A statement of the consumer's right to dispute the accuracy or completeness of information in his or her consumer report.

Although the consumer is entitled to receive a free copy of his or her consumer report if adverse action is taken against him or her, the bank is not required by FCRA to provide it (except when the adverse action is taken with regard to an employment decision, as discussed below). The consumer must send a written request to the consumer reporting agency in order to get the free copy. However, FCRA does state that credit bureaus may not prevent users of consumer reports, such as banks, from disclosing information on the consumer report when adverse action is taken. So the bank may show the consumer the report that was used in making the decision, regardless of any prohibition in a credit bureau agreement.

Effective July 21, 2011 as a result of the provisions of the Dodd-Frank Act, banks are now required to include the following additional information in the denial notice of loan applications if a credit score was used:

- **Credit score**
- **Date of credit score**

- **Range of scores under the model used**
- **4 key factors adversely affecting the score**

The model language for the notice is found in Appendix C of Regulation B and the portion related to the credit score is shown below.

[We also obtained your credit score from this consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes. Your credit score:_______ Date:_______ Scores range from a low of _______ to a high of _______ Key factors that adversely affected your credit score: _______ _______ _______ _______ [Number of recent inquiries on consumer report, as a key factor] [If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at: Address: _______ _______ [Toll-free] Telephone number:]] _______

IV. DEPOSIT APPLICATION DENIALS

Denied deposit applications or denial of other requests concerning deposit accounts, such as, request for an ATM or debit card, which are denied based partially or wholly on the information from a consumer reporting agency or from another source, must be provided with an adverse action notice as described in the previous section. This applies when the information was pulled from CHEX Systems or a credit agency, such as, Equifax.

Effective July 21, 2011 as a result of the provisions of the Dodd-Frank Act, banks are now required to include the following additional information in the denial notice of deposit account applications if a credit score was used:

- **Credit score**
- **Date of credit score**
- **Range of scores under the model used**
- **4 key factors adversely affecting the score**

The model language for the notice is found in Appendix C of Regulation B and the portion related to the credit score is shown below.

[We also obtained your credit score from this consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes. Your credit score:_______ Date:_______ Scores range from a low of _______ to a high of _______ Key factors that adversely affected your credit score: _______ _______ _______ _______ [Number of recent inquiries on consumer report, as a key factor] [If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at: Address: _______ _______ [Toll-free] Telephone number:]] _______

Note: A qualifile score reflected on some CHEX Systems report obtained by banks has been determined to be a "credit score" and, therefore, if a bank obtains this type score, the above information regarding the score is required to be on the deposit denial notice.

V. EMPLOYMENT PURPOSES

Obtaining Permission

There are some additional rules to follow when obtaining a consumer report in connection with an employment-related application. For FCRA purposes, almost any employment decision will qualify (from considering an applicant for a job opening to consideration of a present employee for a raise or promotion or decisions such as a demotion, transfer, or termination).

In employment circumstances, a bank must have a person's written consent to obtain the person's credit report and the authorization must be given to the employee or applicant on a separate document which contains

nothing else, and the employee or applicant must sign it. An authorization contained in an application form is not adequate

The following is an example of an authorization form:

Authorization to Obtain Credit Report Information From an Outside Source

By signing this document, I authorize (insert name of bank here) to obtain information regarding my credit worthiness, standing, or capacity, character, general reputation, personal characteristics, or mode of living from any outside source that regularly provides such information. I understand that information from such a report may be used by (insert name of bank here) in making a decision regarding my employment.

______________________________ ______________

Signed *Date*

Employment Adverse Action:

If an applicant is turned down for a job, a promotion is denied, or an employee is terminated and the decision is made either partially or entirely because of information contained in a consumer report, the adverse action requirements as detailed above apply.

However, there are some additional requirements for employment-related adverse action as follows:

- Employee/applicant must be given a copy of his or her consumer report *before** a final decision is made. This copy is given by the employer; there is no need for the employee to send away to the credit bureau for it.
- Bank must also include with the report a disclosure of rights under FCRA. This disclosure is given so that the person knows what to do if he or she feels the information in the report is inaccurate or incomplete. The content of the disclosure is mandated by the FTC. (This text is found in Appendix A.)
- After the above two items are done, a denial letter should be sent.

**Before: The FCRA does not define the word "before", but the FTC has stated that five days would be reasonable.*

VI. DISPUTED INFORMATION

Disputes Made to the Bank:

A consumer may dispute the accuracy of information in his or her credit report directly with the bank that provided the information to the credit reporting agency. If a bank receives such a consumer dispute it has 30 days from the date that it receives it to investigate the dispute and resolve it. If it determines that the information that it reported to the credit reporting agency was inaccurate, it must promptly notify each agency to which it reported the information and provide them with the accurate information. The bank must notify the consumer of the results of its investigation by the end of the 30-day period that it has to resolve the issue.

Effective July 1, 2010, a furnisher must conduct a reasonable investigation of a direct dispute if it relates to:

- The consumer's liability for a credit account or other debt, such as, disputes relating to 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.
- The terms of the credit account, such as, the type of account, principal balance, scheduled payment amount, or the amount of the credit limit.
- The consumer's performance, such as, high balance, payment date, date an account was opened/closed, etc.
- Any other information that bears on the consumer's creditworthiness, character, reputation, personal characteristics, or mode of living.

A furnisher is required to investigate a direct dispute only if a consumer submits a dispute notice to the furnisher at its address on the credit report, an address specified by the furnisher in writing or electronically, or any business address of the furnisher if a specific address has not been provided.

A direct dispute notice must include:

- Sufficient info to identify the account, such as, an account number and the name, address, and phone number of the consumer.
- The specific information that the consumer is disputing and an explanation of the basis for the dispute.
- All supporting documentation required by the furnisher to substantiate the basis of the dispute, like, a copy of the relevant portion of the credit report, police report, fraud or identify theft affidavit, etc.

After receiving a direct dispute, the furnisher must:

- Conduct a reasonable investigation of the disputed info.
- Review all relevant info provided by the consumer with the dispute notice.
- Complete its investigation of the dispute and report the results of the investigation before 30 days following the receipt of the notice.
- If info was reported inaccurately, promptly notify each CRA that received the inaccurate info that the info was incorrect and provide them with the correct info.

A furnisher is not required to investigate a direct dispute if the furnisher has reasonably determined that the dispute is frivolous or irrelevant which can be determined if: the consumer did not provide sufficient info for the investigation, or the dispute is substantially the same as a previous dispute made to the furnisher or the CRA.

Upon determination that a dispute is frivolous or irrelevant, the furnisher must notify the consumer of that determination not later than five business days after making the determination, by mail, or if authorized, by other means available. The notice should include the reasons for the determination and identify any information required to investigate the disputed information.

VII. ACCURACY AND INTEGRITY OF INFORMATION FURNISHED TO CRAS

Effective July 1, 2010, the FCRA requires that banks establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a consumer reporting agency (CRA).

- *Accuracy* means that information that a furnisher provides to a CRA about an account or other relationship with the consumer correctly:
  - Reflects the terms of and liability for the account or other relationship;
  - Reflects the consumer’s performance and other conduct with respect to the account or other relationship; and
  - Identifies the appropriate consumer.

- *Integrity* means that information that a furnisher provides to a consumer reporting agency about an account or other relationship with the CRA about an account or other relationship with the consumer:
  - Is substantiated by the furnisher’s records at the time it is furnished;
  - 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
  - Includes the information in the furnisher’s possession about the account or other relationship that the FDIC has: determined that the absence of which would likely be misleading in evaluating the consumer and includes the credit limit.

The bank must consider the guidelines in Appendix E of the FCRA in developing its policies and procedures

required by this section, and incorporate those guidelines that are appropriate. The bank must also review its policies and procedures periodically and update them as necessary to ensure their continued effectiveness.

APPENDIX E GUIDELINES:

Appendix E states that bank should consider its type of business activities; the nature and frequency of the information reported; and the technology used to report the information when establishing its policy and procedures.

Appendix E describes the following four objectives that should be addressed in the policy and procedures:

1. To furnish accurate information which: identifies the appropriate consumer; reflects the terms of and liability for those accounts; and reflects the consumer's performance.
2. To furnish information that has integrity which is: substantiated by the bank's records; furnished in a manner that is designed to minimize the likelihood of incorrect information by appropriately identifying information about the consumer and furnished in a standardized and clear form; and includes the credit limit.
3. To conduct reasonable investigations of consumer disputes and take appropriate actions based on the outcome of such investigations.
4. To update the information it furnishes as necessary to reflect the current status of the consumer's account, like any account transfer to a third party and any cure of the consumer's failure to abide by the terms of the account.

When establishing the policy and procedures, a furnisher should identify practices that can compromise the accuracy or integrity of the information furnished to CRAs by reviewing: current practices including the technological means that information is furnished; historical records relating to accuracy or integrity or disputes of the information furnished; any feedback received from CRAs, consumers, furnisher's staff; and potential impact on consumers.

Appendix E states that the policy and procedures should address the following as appropriate:

- Establish a system for furnishing consumer info to CRAs.
- Use standard data reporting formats for the electronic transmission of information.
- Maintain records for a reasonable period of time.
- Establish internal controls, such as, standard procedures and verifying random samples of information.
- Train staff that is involved in furnishing info.
- Oversight of service providers whose activities may affect the accuracy and integrity of information furnished.
- Furnish info about consumer to CRAs after mergers, tranfers, or acquisitions.
- Delete, update, and correct info in the furnisher's records to ensure accurate info.
- Conduct reasonable investigations of disputes.
- Design technological and other means of communication with CRAs to prevent duplicative reporting of accounts.
- Provide CRAs with sufficient info about each consumer to enable the CRA to properly identify they consumer.
- Conduct a periodic evaluation of its own practices, CRA practices, etc. that may affect the accuracy or integrity of info furnished to CRAs.
- Comply with applicable requirements under the FCRA and its implementing regulations.

VIII. SHARING INFORMATION

FAIR CREDIT REPORTING ACT 1/19

Until December 2004, the effective date of the provisions of the FACT Act, a bank had an unlimited right to share with its affiliates information regarding its own transactions with its customers. The FACT Act amendments to FCRA prohibit a bank sharing its consumer transaction information with an affiliate if the affiliate will use that information for a marketing purpose unless the consumer is provided a notice that the sharing will take place and the consumer is given a reasonable opportunity of opting out of the sharing. Note that the restriction on the affiliate sharing applies only if the affiliate will use the information for a marketing purpose. The bank providing the information to the affiliate is responsible for providing the opt-out notice. The opt out rules are similar to those in Regulation P. The consumer must be provided written notice of the proposed information sharing, given a reasonable method and time to opt out, and if the consumer has not opted out within thirty days, then the information may be shared

IX. PENALTIES

If a bank willfully violates the FCRA, it will be responsible for the actual damages to a consumer of between $100 and $1,000. If a bank obtains a consumer report without having a permissible purpose, this increases to the greater of the actual damages or $1,000. The bank may also be liable for punitive damages, court costs, and attorney fees.

Anyone who knowingly obtains or reveals credit information on a consumer which violates the FCRA can be imprisoned for up to two years.

X. RECORD RETENTION

For **25 months** (12 months for business credit) after notification of action taken on the application or on an existing account, the bank should retain the following:

1. The application or any notes on an oral application.
2. Any written information or notes used in evaluating the application.
3. A copy of the decline letter.
4. A copy of any written counter-offer made, or notes on an oral counter-offer.
5. The credit report used.

Appendix A - Summary of Your Rights Under the Fair Credit Reporting Act (Given to denied employee applicants)

A Summary of Your Rights Under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) is designed to promote accuracy, fairness, and privacy of information in the files of every "consumer reporting agency" (CRA). Most CRAs are credit bureaus that gather and sell information about you, such as if you pay your bills on time or have filed bankruptcy, to creditors, employers, landlords and other businesses. You can find the complete text of the FCRA, 15 U.S.C. §§1681 – 1681u, at the Federal Trade Commission's web site (*http://www.ftc.gov*). The FCRA gives you specific rights, as outlined below. You may have additional rights under state law. You may contact a state or local consumer protection agency or a state attorney general to learn those rights.

1. **You must be told if information in your file has been used against you**. Anyone who uses information from a CRA to take action against you, such as denying an application for credit, insurance, or employment, must tell you, and give you the name, address, and phone number of the CRA that provided the consumer report.
2. **You can find out what is in your file.** At your request a CRA must give you the information in your file, and a list of everyone who has requested it recently. There is no charge for the report if a person has taken action against you because of information supplied by the CRA, if you request the report within 60 days of receiving notice of the action. You also are entitled one free report every twelve months upon request if you certify that (1) you are unemployed and plan to seek employment within 60 days, (2) you are on welfare, or (3) your report is inaccurate due to fraud. Otherwise, a CRA may charge you up to eight dollars.
3. **You can dispute inaccurate information with the CRA**. If you tell a CRA that your file contains inaccurate information, the CRA must investigate the items (usually within 30 days) by presenting to its information source all relevant evidence you submit, unless your dispute is frivolous. The source must review your evidence and report its findings to the CRA. (The source also must advise national CRAs, to which it has provided the data, of any error.) The CRA must give you a written report of the investigation, and a copy of your report if the investigation results in any change. If the CRA's investigation does not resolve the dispute, you may add a brief statement to your file. The CRA must normally include a summary of your statement in future reports. If an item is deleted or a dispute statement is filed, you may ask that anyone who has recently received your report be notified of the change.
4. **Inaccurate information must be corrected or deleted.** A CRA must remove or correct inaccurate or unverified information from its files, usually within 30 days after you dispute it. **However, the CRA is not required to remove accurate data from your file unless it is outdated (as described below) or cannot be verified.** If your dispute results in any change to your report, the CRA cannot reinsert into your file a disputed item unless the information source verifies its accuracy and completeness. In addition, the CRA must give you a written notice telling you it has reinserted the item. The notice must include the name, address, and phone number of the information source.
5. **You can dispute inaccurate items with the source of the information.** If you tell anyone, such as a creditor who reports to a CRA, that you dispute an item, they may not then report the information to a CRA without including a notice of your dispute. In addition, once you have notified the source of the error in writing, the source may not continue to report the information if it is, in fact, in error.
6. **Outdated information may not be reported**. In most cases, a CRA may not report negative information that is more than seven years old; ten years for bankruptcies.
7. **Access to your file is limited.** A CRA may provide information about you only to people with a need recognized by the FCRA, usually to consider an application with a creditor, insurer, employer, landlord, or other business.
8. **Your consent is required for reports that are provided to employers or reports that contain medical information.** A CRA may not give out information about you to your employer, or prospective employer, without your written consent. A CRA may not report medical information about you to

creditors, insurers, or employers without your permission.

9. **You may choose to exclude your name from CRA lists for unsolicited credit and insurance offers.** Creditors and insurers may use file information as the basis for sending you unsolicited offers of credit or insurance. Such offers must include a toll–free phone number for you to call if you want your name and address removed from future lists. If you call, you must be kept off the lists for two years. If you request, complete, and return the CRA form provided for this purpose, you must be taken off the lists indefinitely.
10. **You may seek damages from violators.** If a CRA, user, or (in some cases) a provider of CRA data, violates the FCRA, you may sue them in state or federal court.

FAIR CREDIT REPORTING ACT 1/19

The FCRA gives several different federal agencies authority to enforce the FCRA.

FOR QUESTIONS OR CONCERNS REGARDING:	PLEASE CONTACT:
CRAs, creditors, and others not listed below.	Federal Trade Commission Bureau of Consumer Protection – FCRA Washington, DC 20580 (202) 326–3761
National banks, federal branches/agencies of foreign banks (word “National” or initials “N.A.” appear in or after bank’s name)	Office of the Controller of the Currency Compliance Management, Mail Stop 6–6 Washington, DC 20219 800–613–6743
Federal Reserve System member banks (except national banks and federal branches/agencies of foreign banks)	Federal Reserve Board Division of Consumer & Community Affairs Washington, DC 20551 (202) 452–3693
Savings associations and federally chartered savings banks (word “Federal” or initials “F.S.B.” appear in federal institution’s name)	Office of Thrift Supervision Consumer Programs Washington, DC 20552 800–842–6929
Federal credit unions (words “Federal Credit Union” appear in institution’s name)	National Credit Union Administration 1775 Duke Street Alexandria, VA 22314 (703) 518–6360
Banks that are state–chartered or are not Federal Reserve System members	Federal Deposit Insurance Corporation Division of Compliance & Community Affairs Washington, DC 20429 800–934–FDIC
Air, surface, or rail common carriers regulated by former Civil Aeronautics Board or Interstate Commerce Commission	Department of Transportation Office of Financial Management Washington, DC 20590 (202) 366–1306
Activities subject to the Packers and Stockyards Act, 1921	Department of Agriculture Office of Deputy Administrator – GIPSA Washington, DC 20250 (202) 750–7051

FAIR DEBT COLLECTION PRACTICES ACT 1/19

Introduction

This act is designed to eliminate abusive and deceptive debt collection practices and to ensure that reputable debt collectors are not competitively disadvantaged. It is applicable to consumer debts, but not to debts incurred for business or agricultural purposes. The bank is not subject to this act as long as it does not perform the following:

- Use a name other than its own in its collection efforts, or
- Regularly collect or attempt to collect debts for other unrelated institutions, including collection under reciprocal service agreements.

The bank will not be a debt collector subject to the Act when it:

- Collects debts due to another only in isolated instances.
- Collects, in the bank's own name, debts owed to the bank.
- Collects a debt which it originated.
- Collects a debt not in default when obtained.
- Collects a debt obtained as security for a commercial credit transaction involving the bank.
- Collects a debt incidental to a bona fide fiduciary relationship or escrow arrangement.
- Collects a debt for another person to whom it is related by common ownership or corporate control, as long as it does so only for those persons to whom it is so related.

Although a bank may not be considered a debt collector as long as it follows the above requirements, under federal law governing unfair or deceptive business practices, banks cannot engage in abusive behavior when trying to collect a debt. In general, the law prohibits a debt collector from calling the consumer before 8AM and after 9PM unless they agree. The law also requires a debt collector to stop contacting the consumer if they make the request in writing. The bank must not communicate directly with the customer if they become aware that the consumer is represented by an attorney with respect to such debt and has knowledge or can ready ascertain the name and address of such attorney, unless the attorney fails to respond within a reasonable time period or if the attorney consents to direct communication with the customer. Also, within 30 days from the initial contact made by a debt collector, the consumer has a right to dispute any of the debt they are told they owe. If they dispute the bill in writing, the debt collector cannot contact the consumer again until they are provided with proof of the debt.

If the Bank utilizes a third party to collect debt from customers, the Bank should perform due diligence on the third party to ensure their policies, procedures and practices include the following, when communicating with any person other than the consumer for the purpose of acquiring location information about the consumer, the debt collector will:

- Identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;
- Not state that such consumer owes any debt;
- Not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;
- Not communicate by post card;
- Not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the institution/debt collector is in the debt collection business or that the communication relates to the collection of a debt; and

- After the institution/debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to communication from the debt collector.

PENALTY

Any violator of the Fair Debt Collections Act provisions will be liable to the consumer for:

- Any actual damage sustained by the consumer, and
- Such additional damages as the court may allow, but not exceeding $1,000.

In the case of a class action, the violator's potential liability is set at a maximum of $500,000 or 1% of the violator's net worth. In any successful action to enforce the Act, the costs of the action, together with reasonable attorney's fees, shall be awarded to the consumer. However, if the court finds that the consumer's action was brought in bad faith and for the purpose of harassment, the court may award attorney's fees to the defendant.

FAIR HOUSING ACT (FHA) 1/19

Introduction

This act prohibits discrimination on the basis of covered conditions in rental, sale, or financing of residential real estate. The bases on which the FHA makes discrimination illegal are:

1. Race
2. Color
3. Religion
4. Sex
5. Handicap
6. Familial Status
7. National Origin

Most FHA violations fall within one of the following categories:

* Red-lining
* Excessively low appraisals
* Discouraging/Prescreening applications
* Creation of a racially exclusive image
* More onerous terms and conditions
* Gender discrimination
* Uneven loan collection standards

I. APPLICATIONS

A written application is required when the loan is primarily for the *purchase or refinancing* of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit will be secured by the dwelling. Race, sex, and ethnicity are required to be recorded for these type loans.

II. ADVERTISEMENTS/PUBLIC NOTICE

The bank must ensure that the medium and content of its advertising messages do not discriminate against a protected class of potential applicants. If the bank advertises loans for the purchase, construction, improvement, repair, or maintenance of a dwelling, its advertisements must indicate in a prominent manner that loans are made without regard to race, color, religion, sex, handicap, familial status, or national origin. This requirement can be met by including the Equal Housing Lender legend and logotype on the ad. In an oral advertisement, the bank should include a statement that the bank is an "Equal Housing Lender".

The bank should display the Equal Housing Lending Poster in the lobby or locations where loans are made where it is clearly visible to the public. It should measure at least 11 by 14 inches. The following applies to the regulator's address on the poster:

- Effective March 28, 2011, FDIC regulated banks should show: FDIC Consumer Response Center, 1100 Walnut St., Box #11, Kansas City, MO 64106. (This address should also be shown on the denial notices of FDIC supervised banks.)
- Effective October 29, 2007, Federal Reserve regulated banks should show: Federal Reserve Consumer Help (FRCH) P.O. Box 1200, Minneapolis, MN 55480.
- Effective August 7, 2003, OCC regulated banks should show: Comptroller of the Currency, Customer Assistance Group, 1301 McKinney Street, Suite 3450, Houston, TX 77010.

FAIR LENDING 1/19

BANK POLICY STATEMENT

The directors, officers, and employees of the bank are committed to making quality banking and credit services available to all members of the community on a fair and equal basis, based on creditworthiness issues and without regard to a prohibited basis.

We believe that a commitment to fair lending is a good business practice as well as a basic responsibility. The bank will continue to ensure safe and sound operating policies, including safe and sound lending decisions, but fair lending is not inconsistent with this goal.

The bank will also strive to meet community credit needs and fulfill its responsibilities under the Community Reinvestment Act. No applicant will be discouraged from completing a loan application. Assistance, loan counseling, and advice will be available, upon request or when a specific need is identified, on a non-discriminatory basis.

The bank's advertising, print communications, and verbal dialogue with members of the community will not contain any statements that may convey any discriminatory intent or customer preference.

The bank will make credit available to all applicants who meet its standards of creditworthiness, without regard to race, color, ethnicity, religion, national origin, sex, marital status, handicap, familial status, age (provided that the applicant is over the age of 18), receipt of public assistance, or the exercise of legal rights under the Consumer Credit Protection Act.

Training

The bank will not tolerate discrimination by any of its directors, officers, or employees against any current or potential customer. Bank management will ensure that all employees, officers, and directors receive annual training regarding the intent of the laws and regulations that govern the bank, including the Equal Credit Opportunity Act/Regulation B and the Fair Housing Act.

ECOA

The Equal Credit Opportunity Act (ECOA), and its implementing regulation, Regulation B, prohibit discrimination in any aspect of a consumer or business loan transaction based on ethnicity, race, color, religion, national origin, sex, marital status, age (if legal age), receipt of income derived from any public assistance program, or the applicant's good faith exercise of any right under the Consumer Credit Protection Act. Refer to our Regulation B policy for additional information.

FAIR HOUSING ACT

The Fair Housing Act prohibits discrimination in all aspects of residential real estate related transactions based on race, color, national origin, religion, sex, familial status, or handicap. This includes the following aspects of a real estate transaction:

- making loans to buy, build, repair, or improve a dwelling;
- purchasing real estate loans;
- selling, brokering, or appraising residential real estate; and
- selling or renting a dwelling.

Refer to the Fair Housing Policy for additional information.

FAIR LENDING 1/19

PROHIBITED ACTIONS

Under both the ECOA and the FHA, the bank may not, because of a prohibited factor:

- Fail to provide information on services or provide different information on services regarding any aspect of the lending process, including credit availability, application procedures, or lending standards;
- Discourage or selectively encourage applicants with respect to inquiries about or applications for credit;
- Refuse to extend credit or use different standards in determining whether to extend credit;
- Vary the terms of credit offered, including the amount, interest rate, term, or type of loan;
- Use different standards to evaluate collateral; or
- Treat a borrower differently in servicing a loan or invoking default remedies.

In addition, the bank may not express a preference orally or in writing (for example, in advertising) based on a prohibited basis or indicate that it will treat applicants differently based on a prohibited basis. The bank may not discriminate on a prohibited basis because of the characteristics of a person associated with a credit applicant (for example, a co-applicant, spouse, business partner, or live-in aid) or because of the present or prospective occupants of the area where property to be financed is located.

TYPES OF LENDING DISCRIMINATION

1. **Overt Discrimination**
   There is overt evidence of discrimination if the bank openly discriminates on a prohibited basis. There also may be overt discrimination if a lender expresses, but does not act on, a discriminatory preference.

   Overt discrimination may be one or more acts of discrimination by one or more loan officers, or it may be contained in a bank policy that is overtly discriminatory.

2. **Disparate Treatment**
   Disparate treatment could occur if the bank treated credit applicants differently based on one or more of the prohibited bases. The difference in treatment does not have to be motivated by prejudice or a conscious intention to discriminate to be considered discriminatory.

   Disparate treatment may involve unequal assistance being given to different applicants in the application process, or the presence or absence of discussion and investigation to clear up credit report problems, if this assistance to applicants varies on a prohibited basis.

3. **Disparate Impact**
   If the bank applies a policy or practice equally to credit applicants, but the policy or practice has a disproportionate adverse impact on applicants from a group protected against discrimination, the policy or practice is described as having a disparate impact. Not every member of the group must be adversely affected for the practice to have a disparate impact.

   A quantitative or statistical analysis is usually required to prove the existence of disparate impact. If the bank policy is based on "business necessity," the bank must be able to justify that a less discriminatory alternative policy does not exist.

The bank's policies and procedures are designed to avoid and prohibit all types of lending discrimination.

Underwriting Criteria and Loan Exceptions

An applicant's repayment history (credit history with the bank and with other creditors as reported on the credit bureau report) and an applicant's debt to income ratio will generally be the primary tools utilized in credit

decisions.

Loan officer discretion in credit decisions will be minimized through the use of written underwriting criteria and pricing guidelines. Loan officer discretion raises overall Fair Lending risk for the bank.

Exceptions to established loan policy and written underwriting standards, including pricing criteria, may be made only if the exception is well documented in writing and approved under exception guidelines established by senior management.

Exceptions will not be made favorably or unfavorably on any prohibited basis.

Predatory Lending – State of Georgia Guidelines
The bank will not engage in any lending practice that is considered to be predatory or abusive by the state of Georgia. Predatory practices may include, but are not limited to the following:

- Granting credit without a determination of the borrower's ability to repay the credit;
- Granting credit when the borrower clearly cannot repay the loan based on their current level of income and debt;
- Extending credit designed to result in the foreclosure of residential real estate or to facilitate the stripping of equity in that real estate;
- The use of single premium credit insurance or single premium DCC or DSA products on loans secured by residential real estate;
- The refinancing of a government sponsored or other subsidized lending programs without providing a tangible benefit to the borrower;
- The use of loan "flipping," the practice of frequent refinances that result in little or no tangible benefit to the borrower, particularly if these refinances are characterized by excessive fees;
- The charging of excessive loan fees, particularly fees which are not reflective of the cost of the lender and which may not be accurately disclosed in the documentation provided to the borrower;
- The use of loan rate structures such as negative amortization or accelerated interest rate structures which may be difficult for borrowers to understand and which make it difficult or impossible for the borrower to pay off the loan;
- The use of balloon payments on real estate loans unless this payment structure is clearly disclosed to the borrower, including the dollar amount of the balloon payment and when this payment will be due. Note: The use of a balloon payment structure is not inherently abusive and it may make sense for certain borrowers, depending on their individual circumstances and the structure of the note;
- Making loans to pay a contractor for home improvement or repair, when the underlying improvements have not been completed or have not been completed consistent with established building codes or by other acceptable methods, such as controlling disbursement of proceeds;
- The abusive structuring of prepayment penalties that make it difficult or impossible for a borrower to repay a loan before scheduled maturity. Note: There are circumstances where prepayment penalties could be beneficial to the borrower, such as "no fee" mortgage loans where these structures may be needed during the initial years of the loan to accommodate this mortgage structure. The total circumstances of the credit and the benefits to the borrower need to be considered in determining whether such a structure is abusive;
- The use of unrestricted "due on demand" features on residential mortgage loans that are not based on default;

- The use of mandatory arbitration clauses in loan contracts. Applicable case law regarding the use of mandatory arbitration should be considered and provisions that are unduly restrictive or weighted to the benefit of the creditor may be considered abusive;
- The lack of clear and proper disclosures or the making of misleading disclosures to consumers;
- Targeting inappropriate or costly loan products to financially unsophisticated customers, especially if these individuals would qualify for more reasonably priced credit products and terms.

  Source: Georgia Department of Banking and Finance, memo dated October 3, 2003, regarding the avoidance of predatory and abusive mortgage lending practices in Georgia banks.

Predatory Lending – FDIC Guidelines

Subprime lending includes loans to persons who present heightened credit risk because they have experienced problems repaying credit in the past, or because they have only a limited credit history. This includes programs that target borrowers with weakened credit histories typically characterized by payment delinquencies, previous charge-offs, judgments, or bankruptcies. Such programs may also target borrowers with questionable repayment capacity evidenced by low credit scores or high debt-burden ratios. Loans that serve these borrowers may have a legitimate place in the market when they have been responsibly underwritten, priced and administered; however, the bank generally does not engage in subprime lending.

Predatory lending, on the other hand, is not limited to one class of borrowers. Signs of predatory lending include the lack of a fair exchange of value or loan pricing that reaches beyond the risk that a borrower represents or other customary standards.

As outlined in the interagency *Expanded Examination Guidance for Subprime Lending Programs*, predatory lending involves at least one, and perhaps all three, of the following elements:

- Making unaffordable loans based on the assets of the borrower rather than on the borrower's ability to repay an obligation;
- Inducing a borrower to refinance a loan repeatedly in order to charge high points and fees each time the loan is refinanced ("loan flipping"); or
- Engaging in fraud or deception to conceal the true nature of the loan obligation, or ancillary products, from an unsuspecting or unsophisticated borrower.

The bank will not engage in practices that constitute predatory lending.

FLOOD INSURANCE REGULATION 1/19

Introduction

The purpose of this Policy is to provide guidance on the requirements of the National Flood Insurance Act and the applicable Federal banking agency regulations, which applies to loans secured by improved property located or to be located in areas determined by the Federal Emergency Management Agency ("FEMA") to have special flood hazards. The Act provides that a lender must not make, increase, extend, or renew any such designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. In addition to this policy, management should refer to the Interagency Q&As published as of July 29, 2009, for additional guidance (proposed question 62 no longer applicable due to Biggert-Waters Act).

The Act applies to **all** loans secured by improved real estate (both consumer and commercial) regardless of purpose, including mobile homes affixed to a permanent site (even if the land on which the mobile home is located does not secure the loans) and buildings under construction, alteration, or repair which are walled and roofed. Effective October 1, 2015, however, a detached structure that is separate from a primary residence and does not serve as a residence is not required to have insurance.

The Act applies even for loans in which the collateral is located in a community that does not participate in the National Flood Insurance Program (NFIP), although flood insurance is not required by the regulation in this situation. However, safety and soundness concerns should be considered.

I. FLOOD DETERMINATION REQUIREMENTS

Prior to loan closing, banks are required to determine:

- Whether an improved property is located in a special flood hazard area (SFHA); and, if so
- Whether the property is located in a community that participates in the National Flood Insurance Program (NFIP).

To document flood determinations, banks are required to use the FEMA Standard Flood Hazard Determination Form. This form records information regarding the Bank, the subject property location, flood map information, flood insurance availability, etc. The Standard Flood Hazard Determination Form is O.M.B. No. 1660-0040 with a May 30, 2015 expiration date should be obtained by institutions from their flood determination providers.

When increasing, extending, renewing or purchasing a loan, not when a lender originates or makes a loan, lenders may re-use an existing determination for a 7-year period if there have been no changes to the flood map for that area. To determine if there have been no changes, the bank would need to review the flood maps themselves or the original determination would have to have life of loan coverage which carries over to new loans. (The bank would need to check with its flood determination company to see if the life of loan coverage is based on the borrower name, property location, or a particular loan only.)

In some cases, a lender determines that a property is in a SFHA shown on a Flood Insurance Rate Map (FIRM) but the property owner disagrees with that determination. The SFHA is also known as the 100-year floodplain. It is more precisely defined as the floodplain associated with a flood that has a 1-percent-annual chance of being equaled or exceeded in any given year. Therefore the SFHA is not a flood event that happens once in a hundred years, rather a flood event that has a one percent chance of occurring every year. Property owners in this situation have a couple of options. Depending on the specific circumstances, the borrower may apply for a Letter of Determination Review (LODR), a Letter of Map Amendment (LOMA), or a Letter of Map Revision Based on Fill (LOMR-F).

The application forms for LOMAs and LOMR-Fs can be found on the FEMA Forms Webpage (at www.fema.gov) and provide comprehensive, step-by-step instructions for requesters to follow

ensuring that the submittal is complete and logically structured. Use of these forms allows FEMA to complete its review quicker and at lower cost to the National Flood Insurance Program. While completing the forms may seem burdensome, the advantages outweigh any inconvenience. Specific guidance on this process can be found at:

http://www.fema.gov/plan/prevent/fhm/fq_genhm.shtm#hm3

The bank should maintain insurance on the property while the discrepancy is being researched and resolved.

II. NOTIFICATION REQUIREMENTS FOR PROPERTY IN A FLOOD ZONE

Notice

Banks are required to notify the borrower if the flood determination discloses that the improved property is located in a SFHA. The Notice of Special Flood Hazard must be provided **prior** to loan closing (approx. 10 days prior) and must inform the borrower that the subject property is located in a SFHA and must state whether federal disaster relief is available in the event of flooding. The Notice must be signed and dated by the borrower no later than the loan closing date. A new notice must be provided when the loan is refinanced/renewed and should be dated by at least the new loan date.

Record of Receipt

The Bank should retain a record of the receipt of the Notice by the borrower for the period of time the Bank owns the loan. This is accomplished by requiring the borrower to sign the Notice prior to loan closing acknowledging the fact that they were notified that the property is located in a special flood hazard area.

If flood insurance is required, the Bank will obtain verification that the borrower has obtained flood insurance prior to closing, and that the amount is consistent with the required coverage.

If the property is located in a flood hazard area that is not in a participating community, the Bank is allowed to make a conventional loan. However, the Bank is not allowed to make a Government-guarantee or insured loan (i.e., VA, FHA) based on restrictions by Government lending programs.

The Bank should exercise good risk management practices to ensure that making loans on properties that are in special flood hazard areas where no flood insurance is available does not create unacceptable risk in the Bank's loan portfolio.

III. FLOOD INSURANCE REQUIREMENTS

If improved property is located in a SFHA and in a participating community, the Bank **must** require the borrower to obtain flood insurance no later than loan closing. The minimum amount of flood insurance coverage required must be equal to the lesser of the outstanding principal balance of the loan(s), the "insurable value" of the property, or the maximum insurance coverage available under the NFIP. Currently, the maximum coverage for residential structures is $250,000 for the building and $100,000 for the contents; and the maximum coverage for non-residential structures is $500,000 for the building and $500,000 for the contents. (The minimum amount of insurance required for condominium units is slightly different and is discussed below.) Additional insurance may be required if deemed necessary by the bank.

In addition, effective June 1, 2014, the coverage for "Other Residential Buildings," which is defined as *non-condominium* residential buildings designed for use for five or more families, has been increased from $250,000 to $500,000. Any new loans or policy renewals for loans secured by Other Residential Buildings after this date must reflect the new coverage amount. Should bank personnel determine that

the borrower has not increased their coverage to meet the new guidelines, force placement procedures should be followed.

The Flood regulation does not give banks the option of waiving flood insurance. If an improved property is included in the bank's security interest, flood insurance must be obtained even if the security interest is taken only out of an abundance of caution as additional collateral. The only way to avoid this requirement is to specifically exclude the improvements from the bank's security interest.

As discussed in question 9 of the *Questions and Answers Regarding Flood Insurance,* "insurable value" is considered the overall value of a property minus the land on which the property is located. FEMA's guidelines further state that the insurable value of a building is the same as the 100 percent replacement cost value of the insured building. Because a situation could occur in which a borrower is required to have more coverage than NFIP would pay, there may be adjustments. Refer to question 9 for further discussion.

The amount of flood insurance coverage that a lender must require with respect to residential condominium units is the lesser of:

- The outstanding principal balance of the loan(s) or
- The maximum amount insurance available under the NFIP, which is the lesser or:
  - The maximum limit available for the residential condo unit ($250,000) or
  - The "insurable value" allocated to the residential condo unit, which is the 100% replacement cost value of the condo building divided by the number of units.

    (For example, if the outstanding loan balance is $200,000; the maximum limit available for the condo unit is $250,000; and the 100% replacement cost value is $2 million divided by a total of 20 units [$100,000]; then the amount of insurance required is $100,000.)

For construction loans, flood insurance may be purchased at the time of origination, or the bank can allow the borrower to wait until the foundation has been poured and/or the elevation certificate has been issued, provided the bank has controls in place at the time of origination to ensure flood insurance is in place when the slab is poured and/or the elevation certificate is issued. The 30-day waiting period will not apply when the flood insurance policy is deferred in connection with a construction loan.

For loan participations, the bank must perform due diligence to ensure that the lead lender and agent are taking all of the necessary actions for flood insurance compliance.

Biggert-Waters Flood Insurance Reform Act of 2012 (Act) – Private Insurance

The Act was enacted on July 6, 2012, and included the following provisions for private flood insurance. However, the Agencies have stated that this provision of the Act is not effective until regulations are issued, which has not yet occurred as of the date of this policy.

Private flood insurance policies will satisfy the mandatory purchase requirement for flood insurance if the coverage provided satisfies the flood insurance requirements. In addition, the bank must disclose the following to the borrower:

- Flood insurance is available from private insurance companies or from the NFIP directly;
- The coverage from the private insurance company may provide the same level of coverage as an NFIP policy; and
- The borrower is encouraged to compare policies.

IV. FORCED PLACEMENT OF FLOOD INSURANCE

If the bank, or a servicer acting on behalf of the bank, determines at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required, then the Bank or its servicer will notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount sufficient to the required coverage for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the bank or its servicer will purchase insurance on the borrower's behalf.

- The bank or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance beginning on the date on which flood insurance coverage lapsed or did not provide sufficient coverage.
- Within 30 days of receiving confirmation from the borrower of existing flood insurance coverage, the bank will terminate any force-placed insurance and refund to the borrower all insurance premiums and any related fees paid by the borrower during the overlap period between the borrower's policy and the force-placed policy.
- A declarations page the includes the existing flood insurance policy number and identity and contact information for the insurance company or agent will be adequate confirmation of a borrower's existing flood insurance policy.

V. ESCROW ACCOUNTS

The following escrow conditions are effective January 1, 2016.

Requirement to Escrow
Unless a financial institution meets the small lender exception described below, it shall require the escrow of all premiums and fees for any flood insurance required for any designated loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016, payable with the same frequency as payments on the designated loan are required to be made for the duration of the loan.

This does not apply if:

- The loan is an extension of credit primarily for business, commercial, or agricultural purposes.
- The loan is in a subordinate position to a senior lien secured by the same residential improved real estate or mobile home for which the borrower has obtained flood insurance coverage.
- The flood insurance coverage is provided by a condominium association.
- The loan is a home equity line of credit.
- The loan is a nonperforming loan.
- The loan has a term of no longer than 12 months.

Escrow account
The financial institution shall deposit the flood insurance premiums and fees on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of RESPA, which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Administrator of FEMA or other provider of flood insurance that premiums are due, the financial institution shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

FLOOD INSURANCE REGULATION 1/19

Notice Required
For any loan for which a financial institution is required to escrow, the financial institution shall mail or deliver a written notice with the Notice of Special Flood Hazards stating that it is required to escrow all premiums and fees for required flood insurance.

Small lender exception
Except as may be required under applicable State law, the requirement to escrow does not apply to a financial institution:

- That has total assets of less than $1 billion as of December 31 of either of the two prior calendar years; and
- On or before July 6, 2012:
  - Was not required under Federal or State law to deposit taxes, insurance premiums, fees, or any other charges in an escrow account for the entire term of any loan secured by residential improved real estate or a mobile home; and
  - Did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for any loans secured by residential improved real estate or a mobile home.

Change in status
If a financial institution previously qualified for the exception, but no longer qualifies for the exception because it had assets of $1 billion or more for two consecutive calendar year ends, the financial institution must escrow premiums and fees for flood insurance for any designated loan made, increased, extended, or renewed on or after July 1 of the first calendar year of changed status.

Option to escrow
A financial institution shall offer and make available to the borrower the option to escrow all premiums and fees for any flood insurance required for any loan secured by residential improved real estate or a mobile home that is outstanding on January 1, 2016, or July 1 of the first calendar year in which the financial institution has had a change in status unless:

- The loan or the financial institution qualifies for an exception from the escrow requirement;
- The borrower is already escrowing all premiums and fees for flood insurance for the loan; or
- The financial institution is already required to escrow flood insurance premiums and fees.

Option to Escrow Notice
For any loan subject to the paragraph above, the financial institution shall mail or deliver to the borrower no later than June 30, 2016, or September 30 of the first calendar year in which the financial institution has had a change in status, a notice in writing, or if the borrower agrees, electronically, informing the borrower of the option to escrow all premiums and fees for any required flood insurance and the method(s) by which the borrower may request the escrow.

Timing
The financial institution must begin escrowing premiums and fees for flood insurance as soon as reasonably practicable after it receives the borrower's request to escrow.

VI. RECORD RETENTION

A copy of the completed FEMA form and a copy of a signed and dated Notice of Special Flood Hazards (if applicable) must be retained for the life of the loan.

VII. CIVIL MONEY PENALTIES

A "pattern or practice" of violations of any of the following requirements of the Act and the implementing Regulation triggers a mandatory civil money penalty:

- Purchase of flood insurance where available;
- Escrow of flood insurance premiums;
- Force placement of flood insurance;
- Notice of special flood hazards and the availability of Federal disaster relief assistance; and
- Notice of servicer and any change of servicer.

The amount of the penalty is not to exceed $2,000 per violation with no annual penalty cap.

HOME MORTGAGE DISCLOSURE ACT – REGULATION C 1/19

Introduction

The Home Mortgage Disclosure Act (HMDA) and its implementing regulation (Regulation C) requires the bank to record information relating to applications for home purchase loans, refinance loans, and home improvement loans on a Loan Application Register (LAR). This regulation provides the public loan data that can be used to assist in determining whether financial institutions are serving the housing needs of their communities; aid public officials in distributing public-sector investments so as to attract private investment to areas where it is needed; and help in identifying possible discriminatory lending patterns.

I. INSTITUTIONAL COVERAGE

For banks to be applicable to HMDA in 2017, they have to have all of the following:

- On the preceding December 31st, total assets have to exceed the coverage threshold. For 2017, the threshold is total assets of $44 million as of December 31, 2016.
- On the preceding December 31st, had a home or branch office in an MSA.
- In the preceding calendar year, originated at least one home purchase loan or refinancing of a home purchase loan secured by a first lien on a one-to-four family dwelling.
- Institution is federally insured or regulated.
- Effective 2017, in each of the two preceding calendar years, the institution originated at least 25 home purchase loans, including refinancings of home purchase loans.

For banks to be applicable to HMDA in 2018, they have to have all of the following:

- On the preceding December 31st, total assets have to exceed the coverage threshold. For 2018, the threshold is total assets of $45 million as of December 31, 2017.
- On the preceding December 31st, had a home or branch office in an MSA.
- In the preceding calendar year, originated at least one home purchase loan or refinancing of a home purchase loan secured by a first lien on a one-to-four family dwelling.
- Institution is federally insured or regulated.
- Effective 2018, a bank, savings association, or credit union will be subject to Regulation C if it originated at least 25 covered closed-end mortgage loans or at least 500 (100 starting in 2020) covered open-end lines of credit in each of the two preceding calendar years.
- If the Bank originated fewer than 500 closed-end mortgage loans or fewer than 500 open-end lines of credit, they will qualify for the partial exemption and are not required to report all of the expanded data fields.

The following link has a chart that can be used to determine if the bank is subject to HMDA in 2018: https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201709_cfpb_2018-hmda-institutional-coverage.pdf

II. DEFINITIONS OF VARIOUS TERMS (EFFECTIVE 1/2018)

Application means an oral or written request for a covered loan that is made in accordance with procedures used by a financial institution for the type of credit requested.

Covered loan means a closed-end mortgage loan or an open-end line of credit that is not an excluded transaction per the regulation.

Dwelling means a residential structure, whether or not attached to real property. The term includes but is not

limited to a detached home, an individual condominium or cooperative unit, a manufactured home or other factory-built home, or a multifamily residential structure or community

Excluded transactions are those exhibiting at least one of the following:

1. Closed-end mortgage loan or open-end line of credit originated or purchased by a financial institution acting in a fiduciary capacity; 2.(2)
2. Closed-end mortgage loan or open-end line of credit secured by a lien on unimproved land;
3. Closed-end mortgage loan or open-end line of credit considered temporary financing;
4. The purchase of an interest in a pool of closed-end mortgage loans or open-end lines of credit;
5. The purchase solely of the right to service closed-end mortgage loans or open-end lines of credit;
6. 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;
7. 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;
8. The purchase of a partial interest in a closed-end mortgage loan or open-end line of credit;
9. A closed-end mortgage loan or open-end line of credit used primarily for agricultural purposes;
10. 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, a home purchase loan, or a refinancing;
11. A closed-end mortgage loan, if the financial institution originated fewer than 25 closed-end mortgage loans in each of the two preceding calendar years; or
12. An open-end line of credit, if the financial institution originated fewer than 500 ((beginning in 2020 the minimum drops to 100) open-end lines of credit in each of the two preceding calendar years.

Home improvement loan means a closed-end mortgage loan or an open-end line of credit that is for the purpose, in whole or in part, of repairing, rehabilitating, remodeling, or improving a dwelling or the real property on which the dwelling is located.

Home purchase loan means a closed-end mortgage loan or an open-end line of credit that is for the purpose, in whole or in part, of purchasing a dwelling

Manufactured home means any residential structure as defined under regulations of the U.S. Department of Housing and Urban Development establishing manufactured home construction and safety standards. For purposes of HMDA, the term also includes a multifamily dwelling that is a manufactured home community.

Preapproval program means a **request for preapproval** for a home purchase loan, other than a home purchase loan that will be an open-end line of credit, a reverse mortgage, or secured by a multifamily dwelling, is an application under this section if the request is reviewed under a program in which the financial institution, after a comprehensive analysis of the creditworthiness of the applicant, issues a written commitment to the applicant valid for a designated period of time to extend a home purchase loan up to a specified amount. The written commitment may not be subject to conditions other than: conditions that require the identification of a suitable property; conditions that require that no material change has occurred in the applicant's financial condition or creditworthiness prior to closing; and limited conditions that are not related to the financial condition or creditworthiness of the applicant that the financial institution ordinarily attaches to a traditional home mortgage application.

Refinancing means a closed-end mortgage loan or an open-end line of credit in which a new, dwelling-secured debt obligation satisfies and replaces an existing, dwelling-secured debt obligation by the same borrower.

Temporary Financing provides that closed-end mortgage loans or open-end lines of credit obtained for temporary financing are excluded transactions. A loan or line of credit is considered temporary financing and excluded if the loan or line of credit is designed to be replaced by permanent financing at a later time. For example:

a. Lender A extends credit in the form of a bridge or swing loan to finance a borrower's down payment on a home purchase. The borrower pays off the bridge or swing loan with funds from the sale of his or her existing home and obtains permanent financing for his or her new home from Lender A. The bridge or swing loan is excluded as temporary financing.

b. Lender A extends credit to finance construction of a dwelling. A new extension of credit for permanent financing for the dwelling will be obtained, either from Lender A or from another lender, and either through a refinancing of the initial construction loan or a separate loan. The initial construction loan is excluded as temporary financing.

c. Assume the same scenario as in the above comment, except that the initial construction loan is, or may be, renewed one or more times before the permanent financing is made. The initial construction loan, including any renewal thereof, is excluded as temporary financing.

d. Lender A extends credit to finance construction of a dwelling. The loan automatically will convert to permanent financing with Lender A once the construction phase is complete. The loan is not designed to be replaced by permanent financing and therefore the temporary financing exclusion does not apply.

e. Lender A originates a loan with a nine-month term to enable an investor to purchase a home, renovate it, and re-sell it before the term expires. The loan is not designed to be replaced by permanent financing and therefore the temporary financing exclusion does not apply. Such a transaction is not temporary financing merely because its term is short.

Note: The 2017 HMDA Final Rule clarifies two categories of transactions that are excluded as temporary financing and not reported in HMDA data: (1) a construction-only loan or line of credit that is extended to a person exclusively to construct a dwelling for sale; and (2) a loan or line of credit designed to be replaced by separate permanent financing extended by any financial institution to the same borrower at a later time. Refer to the following executive summary published on August 24, 2017, which revises and clarifies this and some of the provisions found in the 2015 revised regulation: https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201707_cfpb_hmda-executive-summary.pdf

Refer to the actual regulation for descriptions of all defined terms

III. Transactional Coverage

The current HMDA Rule modifies the types of transactions that are covered under Regulation C. In general, the HMDA Rule adopts a dwelling-secured standard for transactional coverage.

Beginning on January 1, 2018, covered loans under the HMDA Rule generally will include closed-end mortgage loans and open-end lines of credit secured by a dwelling. However, the HMDA Rule only requires covered institutions that originated at least 500 (100 starting in 2020) covered open-end lines of credit in each of the two preceding calendar years to collect, record, and report information about open-end lines of credit.

Dwelling-secured business-purpose loans and lines of credit will be covered only if they are home purchase loans, home improvement loans, or refinancings. Covered loans and lines of credit will not include agricultural-purpose transactions or other specifically excluded transactions, even if they are dwelling-secured. Home improvement loans will only be covered loans if they are secured by a dwelling.

The HMDA Rule also changes the scope of covered preapproval requests. Currently, the collection, recording, and reporting of preapproval requests that are approved but not accepted is optional under Regulation C. Beginning January 1, 2018, covered institutions will be required to collect, record, and report information for approved but not accepted preapproval requests for home purchase loans.
However, preapproval requests for open-end lines of credit, reverse mortgages, and home purchase loans to be secured by multifamily dwellings will not be covered transactions under the HMDA Rule, effective January 1, 2018.

The chart found at https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201709_cfpb_2018-hmda-transactional-coverage.pdf can be used to determine if a loan is a covered transaction.

IV. Loan Data to Be Reported

For HMDA data collected on or after January 1, 2018, covered institutions will collect, record, and report additional information about originations of, purchases of, and applications for covered loans. The HMDA Rule adds the data points specifically identified in the Dodd-Frank Act as well as data points that the Bureau determined will assist in carrying out HMDA's purposes. The HMDA Rule adds new data points for applicant or borrower age, credit score, automated underwriting system information, unique loan identifier, property value, application channel, points and fees, borrower-paid origination charges, discount points, lender credits, loan term, prepayment penalty, non-amortizing loan features, interest rate, and loan originator identifier as well as other data points. The HMDA Rule also modifies several existing data points.

The following is a complete list of all the information which must be collected and reported each calendar year starting in 2018.

The below data points are required for all HMDA reporting institutions:

- Legal Entity Identifier
- Application Date
- Loan Type
- Loan Purpose
- Preapproval
- Construction Method
- Occupancy Type
- Loan Amount
- Action Taken
- Action Taken Date
- Property Location (County)
- Property Location (Census Tract)
- Property Location (State)
- Ethnicity
- Race
- Sex
- Age
- Income

- Type of Purchaser
- HOEPA Status
- Lien Status
- Total Units

The below data points are required for institutions who do not qualify for the partial exemption, in addition to the above data fields

- Credit Score
- Reason for Denial
- Total Loan Costs or Total Points & Fees
- Origination Charges
- Discount Points
- Lender Credits
- Interest Rate
- Prepayment Penalty Term
- Debt-to-Income Ratio
- Combined Loan-to-Value Ratio
- Loan Term
- Introductory Rate Period
- Non-amortizing Features
- Property Value
- Manufactured Home Security Property Type
- Manufactured Home Land Property Interest
- Multifamily Affordable Units
- Application Channel (Submission of Application and Initially Payable to Your Institution)
- Mortgage Loan Originator NMLSR Identifier
- Automated Underwriting System
- Reverse Mortgage
- Open-end Line of Credit
- Business or Commercial Purpose
- Universal Loan Identifier
- Rate Spread
- Property Address

Refer to the following chart for details on the reportable data: https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201710_cfpb_reportable-hmda-data_regulatory-and-reporting-overview-reference-chart.pdf.

V. Government Monitoring Information

For data collected in or after 2018, the HMDA Rule amends the requirements for collection and reporting of information regarding an applicant's or borrower's ethnicity, race, and sex.

First, the HMDA Rule adds a requirement to report how the institution collected the information about the applicant's or borrower's ethnicity, race, and sex. A covered institution will report whether or not it collected the information on the basis of visual observation or surname. Both the HMDA Rule and current Regulation C require a covered institution to collect information about an applicant's ethnicity, race, and sex on the basis of visual

observation or surname when an applicant chooses not to provide the information for an application taken in person.

Second, for applicant or borrower information collected on or after January 1, 2018, covered institutions must permit applicants to self-identify their ethnicity and race using disaggregated ethnic and racial subcategories. Covered institutions will report disaggregated information applicants provide. However, the HMDA Rule will not require or permit covered institutions to use the disaggregated subcategories when identifying the applicant's ethnicity and race based on visual observation or surname. The HMDA Rule includes a new sample data collection form in appendix B that provides the required aggregated categories and disaggregated subcategories for ethnicity and race.

Refer to Appendix B in the regulation for details of the requirement to collect government monitoring information.

REPORTING AND DISCLOSURE

Data Submission Process
Covered institutions will report data electronically using the new web-based submission tool beginning in 2018. Appendix A, which provides instructions for completing and submitting the HMDA loan/application register (LAR), is amended effective January 1, 2018 to include new transition requirements for data collected in 2017 and reported in 2018 and can be found at: http://www.consumerfinance.gov/hmda.

Effective January 1, 2019, appendix A is removed from Regulation C. Beginning in 2019, covered institutions will report the new dataset required by the HMDA Rule, using the new electronic submission tool and revised procedures that will be available at http://www.consumerfinance.gov/hmda.

Quarterly Reporting
Beginning in 2020, the HMDA Rule requires quarterly reporting for covered institutions that reported a combined total of at least 60,000 applications and covered loans in the preceding calendar year. When determining whether it is required to report on a quarterly basis, an institution will not count covered loans that it purchased in the preceding calendar year. In addition to their annual data submission, these larger-volume reporters will submit HMDA data for the first three quarters of the year on a quarterly basis. The first quarterly submission will be due by May 30, 2020.

Disclosure Requirements
Beginning in 2018, covered institutions will no longer be required to provide a disclosure statement or a modified LAR to the public upon request. Instead, in response to a request, a covered institution will provide a notice that its disclosure statement and modified LAR are available on the Bureau's website.

The HMDA Rule includes sample language that covered institutions can use for these purposes. These revised disclosure requirements will apply to data collected on or after January 1, 2017 and reported in or after 2018.

For data collected in or after 2018 and reported in or after 2019, the Bureau will use a balancing test to determine whether and, if so, how HMDA data should be modified prior to its disclosure in order to protect applicant and borrower privacy while also fulfilling HMDA's disclosure purposes. At a later date, the Bureau will provide a process for the public to provide input regarding the application of this balancing test to determine the HMDA data to be publicly disclosed.

HOMEOWNERSHIP COUNSELING 1/19

I. Requirements of Homeownership

If a borrower is delinquent on a loan secured by the borrower's principal residence then, within 45 days after the loan became delinquent, under some circumstances, the creditor must provide the borrower a notice that homeownership counseling is available. The notice is required when:

- The loan is secured by a one-family dwelling that is the borrower's principal dwelling, and
- The reason for the delinquency is a reduction in the income of the borrower, or anyone who contributes to the borrower's income, because of an involuntary loss of or reduction in employment.

The collateral for the loan must be the borrower's principal residence. It can be a traditional single family home, a condominium or cooperative, or a mobile home and the lot on which the mobile home is situated. While the law refers to a one-family principal dwelling, HUD has interpreted that to mean a residential building containing not more than four residential units, provided that the borrower occupies one of the units as his or her principal residence.

The requirement to provide a homeownership counseling notice is not dependent on the purpose of the loan. This notice requirement applies to both commercial and consumer loans. Further, it does not matter whether the loan is secured by a first or junior mortgage. In all cases, if the loan is secured by the borrower's principal residence and the qualifiers are met, the counseling notice must be provided within 45 days.

The counseling notice must be sent when the delinquency is the result of a reduction of income of the borrower or someone who contributes to the borrower's income because of the person's involuntary loss or reduction of employment.

II. Contents of Notice

The Homeownership Counseling Notice must:

Advise the homeowner of the availability of any homeownership counseling offered by the creditor and provide either:

- A list of the Housing and Urban Development (HUD)-approved nonprofit homeownership counseling organizations or
- The HUD toll-free telephone number (1-800-569-4287) through which the homeowner can obtain a list of HUD-approved nonprofit organizations serving the homeowner's residential area.

INSURANCE SALES 1-19

Introduction

The Gramm-Leach-Bliley Act of 2000 required the regulators to produce rules on sales of insurance by and on behalf of depository institutions. The effective date of the final rules was changed to October 1, 2001 to allow banks to make the necessary changes to sales and solicitation materials and advertisements. The FDIC put its regulation on Insurance Sales in Part 343.

I. DEFINITIONS

"Insurance" is not specifically defined, but the bank should treat any product as covered which has attributes of insurance. One example of insurance would be a product in which a consumer pays money now in exchange for a later payment of a larger amount upon the happening of a specified event, such as destruction of a piece of collateral or death or disability of a particular person.

The term consumer means an individual who purchases, applies to purchase, or is solicited to purchase from a covered person, insurance or annuities for personal, family, or household purposes.

A "purchase" of insurance is defined in the preamble to include any transaction in which there is a direct or indirect cost to the consumer for that product. A higher interest rate on a loan is one example, according to the preamble.

The requirements of this regulation pertain to banks. It also includes a person who sells, solicits, advertises, or offers an insurance product or annuity to a consumer at an office of the bank or on behalf of a bank.

II. PROHIBITION ON DOMESTIC VIOLENCE DISCRIMINATION

The bank may not sell or offer for sale, as principal, agent, or broker, any life or health insurance product if the status of the applicant or insured as a victim of domestic violence or as a provider of services to victims of domestic violence is considered as a criterion in any decision with regard to insurance underwriting, pricing, renewal, or scope of coverage of such product, or with regard to the payment of insurance claims on such product, except as required or expressly permitted under state law.

III. DISCLOSURES

Sale of Insurance disclosure: In connection with the initial purchase of an insurance product or annuity by a consumer from the bank, the bank must disclose to the consumer, except to the extent the disclosure would not be accurate, that:

1. The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the bank or an affiliate of the bank;
2. The insurance product or annuity is not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, the bank, or (if applicable) an affiliate of the bank; and
3. In the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value.

Credit Application Insurance disclosure: In the case of an application for credit in connection with which an insurance product or annuity is solicited, offered, or sold, the bank must disclose that it may not condition an extension of credit on either:

1. The consumer's purchase of an insurance product or annuity from the bank or any of its affiliates; or
2. The consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

<u>Timing and method of disclosures</u>:

1. The sale of insurance disclosure must be provided orally and in writing before the completion of the initial sale of an insurance product or annuity to a consumer. The credit application insurance disclosure must be made orally and in writing at the time the consumer applies for an extension of credit in connection with which an insurance product or annuity is solicited, offered, or sold.
2. Exception for transactions by mail. If an application for credit or sale of an insurance product or annuity is conducted by mail, the bank is not required to make the oral disclosures.
3. Exception for transactions by telephone. If a sale of an insurance product or annuity is conducted by telephone, the bank may provide the written disclosures by mail within 3 business days beginning on the first business day after the sale, excluding Sundays and the legal public holidays. If the bank takes an application for credit by telephone, it may provide the written disclosure by mail, provided it mails it to the consumer within three days beginning the first business day after the application is taken, excluding Sundays and the legal public holidays.

<u>Disclosures must be readily understandable</u>: The disclosures provided shall be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided. For instance, the bank may use the following disclosures in visual media, such as television broadcasting, ATM screens, billboards, signs, posters and written advertisements and promotional materials, as appropriate:

*NOT A DEPOSIT
*NOT FDIC-INSURED
*NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY
*NOT GUARANTEED BY THE BANK
*MAY GO DOWN IN VALUE

<u>Consumer acknowledgment</u>: The bank must obtain from the consumer, at the time a consumer receives the disclosures, or at the time of the initial purchase by the consumer of an insurance product or annuity, a written acknowledgment by the consumer that the consumer received the disclosures. The bank may permit a consumer to acknowledge receipt of the disclosures electronically or in paper form. If the required disclosures are provided in connection with a transaction that is conducted by telephone, the bank must:

1. Obtain an oral acknowledgment of receipt of the disclosures and maintain sufficient documentation to show that the acknowledgment was given; and
2. Make reasonable efforts to obtain a written acknowledgment from the consumer.

<u>Advertisements and other promotional material for insurance products or annuities</u>: The disclosures described above are required in advertisements and promotional material for insurance products or annuities unless the advertisements and promotional materials are of a general nature describing or listing the services or products offered by the bank.

IV. SEGREGATION OF FUNCTIONS

A bank must, to the extent practicable, keep the area where the bank conducts transactions involving insurance products or annuities physically segregated from areas where retail deposits are routinely accepted from the general public, identify the areas where insurance product or annuity sales activities occur, and clearly delineate and distinguish those areas from the areas where the bank's retail deposit-taking activities occur.

V. REFERRALS

Any person who accepts deposits from the public in an area where such transactions are routinely conducted in the bank may refer a consumer who seeks to purchase an insurance product or annuity to a qualified person who sells that product only if the person making the referral receives no more than a one-time, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

INSURANCE SALES 1-19

VI. QUALIFICATION AND LICENSING REQUIREMENTS FOR INSURANCE SALES

A bank may not permit any person to sell or offer for sale any insurance product or annuity in any part of its office or on its behalf, unless the person is at all times appropriately qualified and licensed under applicable State insurance licensing standards with regard to the specific products being sold or recommended.

INTEREST ON DEPOSITS 1/19

Introduction

It is the policy of this Bank to comply with the provisions of the Interest on Deposits laws and regulations. Regulation Q prohibited the payment of interest on demand deposits until the Dodd-Frank Act repealed Regulation Q thus enabling interest to be paid on demand deposit accounts effective July 21, 2011. Regulation D limits the transactions on money market deposit accounts (MMDAs) and savings accounts.

I. DEMAND DEPOSITS

Prior to July 21, 2011, banks were generally prohibited from paying interest on demand deposits.

Interest is defined as: Any payment to or for the account of any depositor as compensation for the use of his or her funds while on deposit at the institution.

Demand Deposits are defined as: Any deposit that is payable on demand, or a deposit issued with an original maturity of less than seven days.

Examples of demand deposits include:

- Checking account;
- Official bank check, such as a certified, cashier's or officer's check;
- Other check generally accepted by the public, such as a traveler's check or money order;
- Time deposits (i.e. CDs) that have matured. (Interest can be paid after maturity under certain provisions as described below.)

The Dodd-Frank Act repealed Regulation Q and effective July 21, 2011, bank's can now pay interest on demand deposit accounts. This is a new type of account, in addition to the NOW account and MMDA. The restrictions associated with NOW accounts and MMDA are still in effect.

II. TIME DEPOSITS

Time Deposits must have a have a term of at least 7 days. To be classified as a time deposit, certain minimum penalties must be required if a depositor withdraws funds prior to maturity under certain conditions. The minimum early withdrawal penalty for **all** time deposits is seven days' simple interest on funds withdrawn within the first six days of deposit. The early withdrawal penalty must be clearly stated in the deposit contract and fully disclosed to the depositor in the initial account disclosures. If the bank does not impose at least the legal minimum penalty on time deposits, then those deposits must be reclassified as savings deposits. A bank may waive the mandated early withdrawal penalty if the following reasons apply:

- Owner of the time deposit dies;
- Owner of the time deposit is declared legally incompetent;
- Where the time deposit provides for automatic renewal at the maturity date, the depositor may withdraw the funds within 10 days after the maturity date without penalty.

During the ten calendar days following the maturity of a time deposit, the bank may continue to pay interest on the matured deposit at the contract rate of the deposit, or at any lesser rate, if the deposit contract provides for such post-maturity interest. If the certificate is renewed within 10 calendar days after maturity, interest is payable for the period between the maturity date and the date of renewal.

III. NOW ACCOUNT ELIGIBILITY

Prior to July 21, 2011, the Federal Reserve Board's Regulation Q prohibited the payment of interest on demand deposits. In 1973, Congress passed a law permitting the payment of interest on accounts from which transfers could be made by negotiable orders of withdrawal - NOW accounts. The law contains severe restrictions on who is eligible to have a NOW account.

Individuals

An individual may deposit his or her own funds into a NOW account regardless of the purpose of the account. That is, an individual may hold a NOW account for a personal or consumer purpose as well as for a business purpose, such as a sole proprietorship. As long as an individual is using a NOW account for the deposit and withdrawal of his or her own funds, neither the source nor use of the funds nor the purpose of the account will disqualify it from NOW account eligibility.

The only instance in which an individual is not eligible for a NOW account is when the use of the account is to hold funds in a fiduciary or trust capacity, and all of the beneficiaries are not eligible to hold NOW accounts. For example, James Doe may have a NOW account to hold funds in trust for Mary Doe, but he may not have a NOW account to hold funds in trust for Walmart or for Walmart and Mary Doe, because in each of these last two examples Walmart is not entitled to hold a NOW account.

Nonindividuals

In most instances a nonindividual, that is, a corporation, partnership, association estate, business trust, or other juridical entity, **is not** eligible for a NOW account.

However, there are exceptions. A not-for-profit corporation that is operated primarily for a charitable purpose, government units, political organizations, and homeowner/condominium associations, in most cases, are eligible for a NOW account.

IV. MONEY MARKET DEPOSIT ACCOUNTS (MMDAS) AND SAVINGS ACCOUNTS

For money market and savings accounts, certain withdrawal transfers are limited to 6 per month, or statement cycle of at least 4 weeks, effective July 2, 2009. Types of transactions that fall within the six per month limitation (effective July 2, 2009) consist of the following: ACH debits; transfers from a customer's savings/MMDA account pursuant to a preauthorized agreement to cover overdrafts on a transaction account; transfers from a savings/MMDA account at the telephone request of the customer made either directly to a bank employee or indirectly through a voice-response system; computer transfers; and checks, drafts, and debit card transfers made to third parties. (Prior to July 2, 2009, only three transfers could be made by check, draft, debit card, or similar order made to third parties.)

An unlimited number of transfers are permitted for the purpose of repaying loans and associated expenses at the bank; for inter-account transfers in person or at an ATM from the MMDA or savings account to other accounts the depositor has at the bank; and for cash or check withdrawals made in person, by mail, messenger, ATM, or telephone via check mailed to the depositor.

Once an account loses its MMDA status, it can never be returned to that status.

INTEREST ON DEPOSITS 1/19

V. RECORD RETENTION

The Operations Officer should retain the following for five years:

1. Records that explain the waiver of a penalty on a CD due to emergency/other conditions.
2. Records showing review of the MMDAs/Savings accounts With Excessive Debits.

MILITARY LENDING ACT – 1/19

Introduction

The Department of Defense (DOD) issued a final rule amending the implementing regulations of the Military Lending Act of 2006 (MLA) which went into effect on October 1, 2015, as stated in the Federal Register published on July 22, 2015. The final rule expands specific protections provided to service members and their families under the MLA and addresses a wider range of credit products than the DOD's previous regulation. FDIC-supervised institutions and other creditors must comply with the rule for new covered transactions beginning **October 3, 2016**. For credit extended in a new credit card account under an open-end consumer credit plan, compliance is required beginning **October 3, 2017**.

This policy provides general information regarding the MLA. For the full regulation, refer to: https://www.federalregistoh goodnesser.gov/articles/2015/07/22/2015-17480/limitations-on-terms-of-consumer-credit-extended-to-service-members-and-dependents#h-43.

[Note that nothing in the MLA should be construed to limit or otherwise affect the applicability of any of the provisions of the Servicemembers Civil Relief Act.]

I. DEFINITIONS OF PERTINENT TERMS

Covered borrower:

Means a consumer who, at the time the consumer becomes obligated on a consumer credit transaction or establishes an account for consumer credit, is a covered member (i.e. a member or dependent of a member of the armed forces, including active guard and reserve, who is on active duty for more than 30 days). Should an initially considered covered borrower subsequently become a non-covered member (i.e. they are no longer on active duty), then they are no longer considered a covered borrower.

Consumer credit: (effective beginning October 3, 2016)

Means open or closed-end credit offered or extended to a covered borrower primarily for personal, family, or household purposes, and that is:

(i) Subject to a finance charge; or

(ii) Payable by a written agreement in more than four installments.

Exceptions: Consumer credit does not mean:

(i) A residential mortgage, which is any credit transaction secured by an interest in a dwelling, including a transaction to finance the purchase or initial construction of the dwelling, any refinance transaction, home equity loan or line of credit, or reverse mortgage;

(ii) * Any credit transaction that is expressly intended to finance the purchase of a motor vehicle when the credit is secured by the vehicle being purchased;

(iii) * Any credit transaction that is expressly intended to finance the purchase of personal property when the credit is secured by the property being purchased;

(iv) Any credit transaction that is an exempt transaction for the purposes of Regulation Z (other than a transaction exempt under 12 CFR 1026.29) or otherwise is not subject to disclosure requirements under Regulation Z; and

(v) Any credit transaction or account for credit for which a creditor determines that a consumer is not a covered borrower by using a method and by complying with the recordkeeping requirement set forth in the rule.

Examples of consumer credit: Payday loans, vehicle title loans, refund anticipation loans, deposit advance loans, installment loans, unsecured open-end lines of credit, and credit cards.

*On December 4, 2017, the Department of Defense issued a Q&A that further defined the exemption for credit transactions intended to finance the purchase of a motor vehicle or personal property. A credit transaction that that finances the object itself (and is secured by the object) as well as any costs expressly related to that object is covered by the exception. However, a credit transaction that also finances a credit-related product or service is not eligible for the exemption. The full Q&A can be read here https://www.federalregister.gov/documents/2017/12/14/2017-26974/military-lending-act-limitations-on-terms-of-consumer-credit-extended-to-service-members-and.

II. Requirements of MLA

The implementing regulation of the MLA provides several significant protections extended to active duty service members and their families, including:

1. A creditor who extends consumer credit to a covered borrower may not require the covered borrower to pay an MAPR for the credit greater than 36 percent for closed-end credit or in any billing cycle for open-end credit.

   Calculation of the MAPR: *Charges included in the MAPR.* The charges for the MAPR shall include, as applicable to the extension of consumer credit:

   - Any credit insurance premium or fee, any charge for single premium credit insurance, any fee for a debt cancellation contract, or any fee for a debt suspension agreement;
   - Any fee for a credit-related ancillary product sold in connection with the credit transaction for closed-end credit or an account for open-end credit; and
   - Finance charges associated with the consumer credit;
   - Any application fee charged to a covered borrower who applies for consumer credit, other than an application fee charged by a Federal credit union or an insured depository institution when making a short-term, small amount loan, provided that the application fee is charged to the covered borrower not more than once in any rolling 12-month period; and
   - Any fee imposed for participation in any plan or arrangement for consumer credit.

   Computing the MAPR

   - For closed-end credit, the MAPR shall be calculated following the rules for calculating and disclosing the "Annual Percentage Rate (APR)" for credit transactions under Regulation Z based on the charges described above.
   - In general, for open-end credit, the MAPR shall be calculated following the rules for calculating the effective annual percentage rate for a billing cycle as set forth in Regulation Z (as if a creditor must comply with that section) based on the charges set forth above. In addition, the amount of charges related to opening, renewing, or continuing an account must be included in the calculation of the MAPR to the extent those charges are set forth above.

     Exclusion of Bona Fide Fees for credit card accounts: The final rule exempts certain fees from the MAPR if the fees are both "bona fide" and "reasonable." This exclusion is designed to allow creditors to continue assessing fees specifically tied to a "bona fide, specific products or services" that are based on the servicemember's use of the account, such as cash

advance, participation, or foreign transaction fees, while also preventing creditors from issuing products with a low APR, but unusually high fees, as a means of evading the MLA's requirements. For each of these fees, the regulations provide a safe harbor if the fees is equal to or less than the average of the amount charge by five (5) other credit card issuers of sufficient size (more than $3 billion outstanding in credit card loans) for a "like-kind" fee.

2. The MLA prohibits creditors from requiring service members to: submit to mandatory arbitration and onerous legal notice requirements; waive their rights under the service members' Civil Relief Act; provide a payroll allotment as a condition of obtaining credit (other than from relief societies); be able to refinance a payday loan; be charged a penalty for prepayment; or be able to secure credit using a post-dated check, access to a bank account (other than at an interest rate of less than 36 percent MAPR), or a car title (other than with a bank, savings association or credit union).

III. Identification of a Covered Borrower

1. A creditor is permitted to apply its own method to assess whether a consumer is a covered borrower and is not subject to any restrictions.
2. For safe harbor status, a creditor may conclusively determine whether credit is offered or extended to a covered borrower by either or both of the following methods:
   - To determine whether a consumer is a covered borrower, a creditor may verify the status of a consumer by using information relating to that consumer, if any, obtained directly or indirectly from the database maintained by the Department, available at *https://www.dmdc.osd.mil/mla/welcome.xhtml*.
   - A search of the Department's database requires the entry of the consumer's last name, date of birth, and Social Security number. [Note: At any time after a consumer has entered into a transaction or established an account involving an extension of credit, a creditor (including an assignee) may not, directly or indirectly, obtain any information from any database maintained by the Department to ascertain whether a consumer had been a covered borrower as of the date of that transaction or as of the date that account was established.]
   - *Consumer report from a nationwide consumer reporting agency.* To determine whether a consumer is a covered borrower, a creditor may verify the status of a consumer by using a statement, code, or similar indicator describing that status, if any, contained in a consumer report obtained from a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, or a reseller of such a consumer report (as each of those terms is defined in the Fair Credit Reporting Act).
3. Determination *and recordkeeping; one-time determination permitted.* A creditor who makes a determination regarding the status of a consumer by using one or both of the methods set forth above shall be deemed to be conclusive with respect to that transaction or account involving consumer credit between the creditor and that consumer, so long as that creditor timely creates and thereafter maintains a record of the information so obtained. A creditor may make the determination described above, and keep the record of that information obtained at that time, solely at the time—

   (i) A consumer initiates the transaction or 30 days prior to that time;

   (ii) A consumer applies to establish the account or 30 days prior to that time; or

   (iii) The creditor develops or processes, with respect to a consumer, a firm offer of credit that (among the criteria used by the creditor for the offer) includes the status of the consumer as a covered borrower, so long as the consumer responds to that offer not later than 60 days after the time that the creditor had provided that offer to the consumer. If the consumer responds to the creditor's offer later than 60 days after the time that the creditor had provided that offer to the

consumer, then the creditor may not rely upon its initial determination in developing or processing that offer, and, instead, may act on the consumer's response as if the consumer is initiating the transaction or applying to establish the account.

If borrower has an existing account, a status check is conducted again when another account is opened.

If using other than the safe harbor method, the method used is conducted prior to the consumer becoming obligated on the account or establishing a line of credit and a record of the status check is maintained.

IV. MANDATORY LOAN DISCLOSURES

The following loan disclosures are required to be given to covered borrowers before or at the time of the borrower becomes obligated.

1. A statement of the MAPR applicable to the extension of consumer credit;
   - A creditor may satisfy this requirement by describing the charges the creditor may impose, in accordance with this part and subject to the terms and conditions of the agreement, relating to the consumer credit to calculate the MAPR. This section shall not be construed as requiring a creditor to describe the MAPR as a numerical value or to describe the total dollar amount of all charges in the MAPR that apply to the extension of consumer credit.
   - A creditor may include a statement of the MAPR applicable to the consumer credit in the agreement with the covered borrower involving the consumer credit transaction. [Note: This section shall not be construed as requiring a creditor to include a statement of the MAPR applicable to an extension of consumer credit in any advertisement relating to the credit.]
   - A statement substantially similar to the following statement may be used:

     "Federal law provides important protections to members of the Armed Forces and their dependents relating to extensions of consumer credit. In general, the cost of consumer credit to a member of the Armed Forces and his or her dependent may not exceed an annual percentage rate of 36 percent. This rate must include, as applicable to the credit transaction or account: The costs associated with credit insurance premiums; fees for ancillary products sold in connection with the credit transaction; any application fee charged (other than certain application fees for specified credit transactions or accounts); and any participation fee charged (other than certain participation fees for a credit card account)."

2. Any disclosure required by Regulation Z, which shall be provided only in accordance with the requirements of Regulation Z that apply to that disclosure; and

3. A clear description of the payment obligation of the covered borrower, as applicable. A payment schedule (in the case of closed-end credit) or account-opening disclosure (in the case of open-end credit) satisfies this requirement.

The creditor is required to provide the disclosures in writing and orally. The creditor can provide the oral disclosure to the covered borrower or provide a toll-free telephone number on the application or disclosure that the borrower can call to hear the disclosures orally.

The refinancing or renewal of consumer credit requires new disclosures under this section only when the transaction for that credit would be considered a new transaction that requires disclosures under Regulation Z.

V. Penalties and Remedies

The potential penalties and remedies for failure to comply with the MLA are the following:

- Misdemeanor – Fine and/or imprisonment
- Preservation of other remedies
- Void Contracts
- Arbitration restrictions
- Civil liability

PRESERVATION OF CONSUMER CLAIMS AND DEFENSES - FTC RULES 1/19

Introduction

In essence, the Rule (also known as Holder in Due Course) prohibits a seller from taking or receiving a consumer credit contract that does not contain a prescribed notice which preserves the consumer's claims and defenses in the event that the contract is negotiated or assigned to a third party creditor. In addition, the Rule provides that the seller may not accept the proceeds of a purchase money loan unless the evidence of the loan contains the prescribed notice preserving as against the lender whatever claims and defenses the consumer may have against the seller. Omission of the required notice by the seller, or acceptance by the seller of the proceeds of the purchase money loan where the evidence of the loan does not contain the notice, constitutes an unfair or deceptive practice within the meaning of Section 5 of the Federal Trade Commission.

> *(This rule was established to prevent the following circumstance: A consumer relying in good faith on what the seller has represented to be a product's characteristics, service warranty, etc., makes a purchase on credit terms. The consumer then finds the product unsatisfactory, it fails to measure up to the claims made on its behalf by the seller, or the seller refuses to provide promised maintenance. The consumer, therefore, seeks relief from his debt obligations only to find that no relief is possible. His debt obligation, he is told, is not to the seller but to a third party whose claim to payment is legally unrelated to any promises made about the product.)*

While the Rule admittedly is aimed at sellers, there are situations where the Rule will also affect banks. Under the Rule, banks which purchase consumer paper containing the notice required of sellers will no longer be able to avail themselves of the holder-in-due-course doctrine. Also, banks which make purchase money loans containing the notice will be subject to all claims and defenses which the consumer could assert against the seller.

I. NOTICE REQUIREMENT

Banks should not accept any consumer paper which fails to contain the notice required of sellers, since they may be considered to be a participant in the seller's violation of the Rule. In addition, banks making purchase money loans should include the prescribed notice in their contracts. The following is the required notice which should be at least ten point, bold face, type:

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

II. RECORD RETENTION

There is no retention period mentioned in this rule.

PRIVACY 1/19

Introduction

The Gramm-Leach-Bliley Act of 1999, also known as the Financial Services Modernization Act, instituted significant changes to the laws governing financial institutions. Title V of the Act set forth provisions addressing treatment of the non-public personal information about consumers by financial institutions. Regulation P, which implements the Act, became effective November 13, 2000, with a mandatory compliance date of July 1, 2001.

I. PURPOSE OF SCOPE

This regulation governs the treatment of nonpublic personal information about consumers by the bank:

1. Requires a bank to provide notice to customers about its privacy policies and practices;
2. Describes the conditions under which a financial institution may disclose nonpublic personal information about consumers to nonaffiliated third parties; and
3. Provides a method for consumers to prevent a financial institution from disclosing that information to most nonaffiliated third parties by "opting out" of that disclosure, subject to the exceptions in the regulation.

This regulation applies only to nonpublic personal information about individuals who obtain financial products or services primarily for personal, family, or household purposes. This part does not apply to information about companies or about individuals who obtain financial products or services for business, commercial, or agricultural purposes.

II. DEFINITIONS

Consumer means an individual who obtains or has obtained a financial product or service from you that is to be used primarily for personal, family, or household purposes, or that individual's legal representative. *Examples*--(An individual who applies to you for credit for personal, family, or household purposes is a consumer of a financial service, regardless of whether the credit is extended. An individual who provides nonpublic personal information to you in order to obtain a determination about whether he or she may qualify for a loan to be used primarily for personal, family, or household purposes is a consumer of a financial service, regardless of whether the loan is extended. An individual who provides nonpublic personal information to you in connection with obtaining or seeking to obtain financial, investment, or economic advisory services is a consumer regardless of whether you establish a continuing advisory relationship.)

Customer means a consumer who has a customer relationship with you.

Customer relationship means a continuing relationship between a consumer and the bank under which the bank provides one or more financial products or services to the consumer that are to be used primarily for personal, family, or household purposes.

Examples--Continuing relationship - A consumer has a continuing relationship with the bank if the consumer:

a) Has a deposit or investment account;
b) Obtains a loan;
c) Has a loan for which the bank owns the servicing rights;
d) Purchases an insurance product from the bank;
e) Holds an investment product through the bank, such as when the bank acts as a custodian for securities or for assets in an Individual Retirement Arrangement;
f) Enters into an agreement or understanding with the bank whereby the bank undertakes to arrange or broker a home mortgage loan for the consumer;

g) Enters into a lease of personal property with the bank; or
h) Obtains financial, investment, or economic advisory services from the bank for a fee.

No continuing relationship - A consumer does not, however, have a continuing relationship the bank if:

a) The consumer obtains a financial product or service only in isolated transactions, such as using an ATM to withdraw cash from an account at another financial institution or purchasing a cashier's check or money order;
b) The bank sells the consumer's loan and does not retain the rights to service that loan; or
c) The bank sells the consumer airline tickets, travel insurance, or traveler's checks in isolated transactions.

Nonpublic personal information means:

1. Personally identifiable financial information; and
2. Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.

Nonpublic personal information does not include:

a) Publicly available information.
b) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available.

Nonpublic personal information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as, account numbers.

However, nonpublic personal information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

Publicly available information means any information that you have a reasonable basis to believe is lawfully made available to the general public from:

1. Federal, State, or local government records;
2. Widely distributed media; or
3. Disclosures to the general public that are required to be made by federal, state, or local law.

III. PRIVACY NOTICE REQUIREMENTS

Content of Privacy Notice

The bank must establish a clear and conspicuous notice that accurately reflects its privacy policies and practices.

The Privacy Notice must contain the following information:

- The categories of nonpublic information the bank collects.
- The categories of nonpublic information the bank discloses.

- The categories of nonaffiliated third parties to whom the bank discloses nonpublic personal information, other than those parties to whom it discloses information under the legal exceptions specified in the regulation.
- A statement that the bank makes disclosures to other nonaffiliated third parties as permitted by law under the exceptions specified in the regulation.
- The categories of nonpublic personal information about the bank's former customers that it discloses and the categories of nonaffiliated third parties to whom it discloses nonpublic personal information about our former customers, other than those parties to whom we disclose information under the legal exceptions specified in the regulation.
- If the bank chooses to disclose nonpublic personal information to a nonaffiliated third party under a legal exception specified in the regulation (and no other legal exception specified in the regulation applies to that disclosure), a separate statement of the categories of third parties with whom the bank has contracted.
- An explanation of the customer's rights under the regulation to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the customer may exercise that right.
- The bank's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

The Opt Out requirements defined by the regulation and the legal exception to the Opt Out requirements specified in the regulation are discussed in detail in the "Opt Out Provisions" section of this policy.

Initial Privacy Notice

Unlike customers, a consumer only needs to receive a Privacy Notice if the bank shares the consumer's nonpublic personal information with nonaffiliated third party other than is permitted by the legal exceptions specified in the regulation. If the bank does not share this information, it does not need to give consumers a Privacy Notice.

Every customer must be provided with a Privacy Notice that accurately describes the bank's privacy policies and practices no later than the time the customer relationship is established.

However, the Privacy Notice may be provided within a reasonable time after the customer relationship is established under the following scenarios:

- If establishing the customer relationship is not at the customer's election.
- If providing the Privacy Notice before the customer relationship is established would substantially delay the customer's transaction, and the customer agrees to receive the notice at a later time.

Providing a copy of the Privacy Notice before or at the time the customer relationship is established would not substantially delay the customer's transaction when the relationship is initiated in person at one of the bank's offices or through other means by which the customer may view the notice, such as on the bank's website.

****The regulators published, effective 12/31/09, new model notices to be used for the Privacy Notice. Banks have until 12/31/10 to use the model form which will provide a safe harbor for compliance if completed correctly. After 12/31/10, use of the old sample language will no longer provide a safe harbor. A copy of the model form for banks that do not provide an opt out and do not want to include affiliate marketing is included as a separate document in the policies. The following is a link to the privacy notice online form builder:**

http://www.federalreserve.gov/newsevents/press/bcreg/privacy_notice_instructions.pdf.

It is also shown below:

Instructions for using the Privacy Notice Online Form Builder

1. Select your form, based on (1) whether you provide an opt out and (2) whether you include affiliate marketing:

   If you provide an opt out and you want to include affiliate marketing, use Form 1.
   If you provide an opt out and you do not want to include affiliate marketing, use Form 2.
   If you do not provide an opt out and you want to include affiliate marketing, use Form 3.
   If you do not provide an opt out and you do not want to include affiliate marketing, use Form 4.

2. The PDF forms have fillable areas, indicated by the shaded boxes outlined in red. Place your cursor in the box and fill in the appropriate text.

To learn more about the required text for each section, see the final rule notice published in the *Federal Register* on December 1, 2009 (pp. 62890–62994). The notice is available in PDF format at www.ftc.gov/privacy/privacyinitiatives/PrivacyModelForm_FR.pdf or in HTML format at www.gpo.gov/fdsys/pkg/FR-2009-12-01/html/E9-27882.htm.

For institutions supervised by the following agencies, information required to fill in the forms is detailed beginning on the *Federal Register* page number specified below:

Supervising Agency Page
Office of the Controller of the Currency 62916
Federal Reserve System 62925
Federal Deposit Insurance Corporation 62935
Office of Thrift Supervision 62945
National Credit Union Administration 62955
Federal Trade Commission 62965
Commodity Futures Trading Commission 62974
Securities and Exchange Commission 62984

3. If you have questions about the forms or any of the information required to fill in the designated areas, contact your federal regulator listed on p. 62890 of the *Federal Register* Notice.

4. If you have technical problems accessing these forms, please use the Contact Us link at the bottom of the page. Please provide a phone number where we can reach you.

http://www.federalreserve.gov/bankinforeg/privacy_notice_instructions.pdf April 1, 2010

Annual Privacy Notice

The bank must provide a copy of the Privacy Notice to its customers no less than annually during the continuation of the customer relationship. “Annually” means at least once in any period of twelve consecutive months during which that relationship exists.

Financial institutions may define the twelve month period, but it must be applied on a consistent basis. For example, a notice is provided annually if the twelve month period is defined as calendar year and the notice is provided to the customer once in each calendar year following the calendar year in which the initial Privacy Notice was provided. If a customer opens an account on any day of calendar year “1”, the annual Privacy Notice must be provided to that customer by December 31 of calendar year “2”.

The bank is not required to provide a Privacy Notice to former customers.

Fixing America's Surface Transportation (FAST) Act of 2015 enacted on December 4, 2015, amended Section 503 of the Gramm-Leach-Bliley Act (GLBA) to create an exception to the annual privacy notice requirement for financial institutions. Institutions that don't share nonpublic personal information in any way that requires an opt-out under Regulation P, and haven't changed their policies and practices for disclosing nonpublic personal information from those most recently disclosed will no longer be required to provide an annual disclosure.

Revised Privacy Notice

If the bank subsequently wants to disclose nonpublic personal information to nonaffiliated third parties in a way that is not accurately described in its Privacy Notice, the bank must provide a revised Privacy Notice to all of its customers (and, if applicable, all former customers) before making the disclosure in question.

For example, except as otherwise permitted by the legal exceptions specified the regulation, the bank must provide a revised Privacy Notice before it:

1. Discloses a new category of nonpublic personal information to any nonaffiliated third party;
2. Discloses nonpublic personal information to a new category of nonaffiliated third party; or
3. 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.

A revised Privacy Notice is not required if the bank discloses nonpublic personal information to a new nonaffiliated third party which falls into a category that was adequately described in the prior notice.

IV. DELIVERY OF PRIVACY NOTICES

The bank must provide initial, annual, and revised Privacy Notices in a manner such that each consumer can reasonably be expected to receive a copy of the actual notice in writing or, if the consumer agrees, electronically. The bank may not provide the Privacy Notice solely by explaining the notice, either in person or over the telephone. The notice must be provided in a form that the consumer can retain or obtain at a later date.

V. OPT OUT PROVISIONS

The bank may not disclose any nonpublic personal information about a consumer to a nonaffiliated third party (except as permitted by the legal exceptions in the regulation) unless:

1. The consumer has been provided with an initial Privacy Notice that contains a clear and conspicuous OPT OUT Notice;
2. The bank has given the consumer a reasonable opportunity to opt out before it discloses the information to the nonaffiliated third party;
3. The consumer does not opt out.

The Opt Out Notice must include the following information:

- All of the categories of nonpublic personal information that the bank discloses or reserves the right to disclose.
- All of the categories of nonaffiliated third parties to which the bank discloses nonpublic personal information.
- A statement that the consumer can opt out of the disclosure of that information.

- All of the financial products or services that the consumer obtains from the bank to which the opt out provision would apply.
- A reasonable means to opt out.
- An explanation of how the bank will treat an opt out direction by a joint customer.

A consumer is given a reasonable opportunity to opt out if:

1. The bank mails a Privacy Notice containing the required Opt Out Notice to the customer and allows the customer to opt out by mailing a form, calling a toll free number, or any other reasonable means within a 30 day period from the date the bank mailed the notice; or
2. For a customer that opens an online account and agrees to receive the notices electronically, the bank allows the customer to opt out by any reasonable means within thirty days after the date the customer acknowledges receipt of the Privacy Notice in conjunction with opening the account.

A customer is not given a reasonable opportunity to opt out if:

1. The only means of opting out is for the customer to write his or her own letter to exercise the opt out right;
2. The only means of opting out as described in an annual or revised Privacy Notice is to use the check off box that was provided with the initial Privacy Notice but was not included in the subsequent notice.

The bank must comply with a customer's opt out direction as soon as reasonably practicable after it is received. A customer may exercise the right to opt out at any time, and a customer's direction to opt out remains effective until the customer revokes it in writing or, if the consumer agrees, electronically. When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal information that was collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the bank, the opt out direction that applied to the former relationship does not apply to the new relationship.

If two or more consumers jointly obtain a financial product or service from the bank, it may provide a single copy of the opt out notice. Any of the joint consumers may exercise the right to opt out. The bank may either treat the opt out direction by a joint consumer as applying to all of the associated joint consumers or permit each consumer to opt out separately. If the bank permits each joint consumer to opt out separately, the bank must permit one of the joint consumers to opt out on behalf of all of the joint consumers. The bank may not require all joint consumers to opt out before it implements any opt out direction.

VI. Exceptions to Opt Out Requirements

The regulation contains a number of specific exceptions to the opt out requirements to ensure that financial institutions can continue to disclose information to nonaffiliated third parties in order to conduct routine business. For instance, there are exceptions to permit sharing for processing transactions, performing services for the financial institution, fraud or risk control, and certain joint marketing arrangements for financial products and services.

"Section 13" Exceptions:

Section 13 sets forth exceptions to the opt out requirements for third party service providers and joint marketing arrangements.

The opt out requirements do not apply when the bank provides nonpublic personal information to a nonaffiliated third party to perform services for the bank or functions on the bank's behalf, as long as the bank provides an

appropriate initial Privacy Disclosure and enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the bank disclosed the information.

The services a nonaffiliated third party performs for the bank under this section may include the marketing of the bank's products or services, or the marketing of financial products or services offered pursuant to joint agreements between the bank and one or more other financial institutions pursuant to which it jointly offers, endorses, or sponsors a financial product or service.

In order to qualify for "Section 13" exceptions, the bank's Privacy Notice must fully disclose the fact that the bank will provide this information and it must enter into a contract with the third party that requires it to maintain the confidentiality of the information. The contract must be designed to ensure that the third party will use the information solely for the purposes for which the information is disclosed, and will maintain the confidentiality of all the information at least to the same extent as is required by the bank.

"Section 14" Exceptions:

Section 14 sets forth exceptions to the notice and opt out requirements for processing and servicing transactions.

The opt out requirements do not apply if the bank discloses nonpublic personal information as necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes in connection with: 1) Servicing or processing a financial product or service that a customer requests or authorizes; 2) Maintaining or servicing the consumer's account with the bank, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or 3) A proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer.

"Section 15" Exceptions:

Section 15 sets forth other exceptions to the notice and opt out requirements for protecting the security of records, preventing fraud, cooperating with law enforcement, or with the consent or at the direction of the consumer.

VII. Limits on Sharing Account Number Information

The bank may not disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a consumer's credit card account, deposit account, transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer. An "account number," or similar form of access code, does not include a number or code in an encrypted form as long as the bank does not provide the recipient with a means to decode the number or code.

This prohibition does not apply if the bank discloses an account number or similar form of access number or access code either:

1. To an agent or service provider solely in order to perform marketing for the bank's own products or services, as long as the agent or service provider is not authorized to directly initiate charges to the account; or
2. To participate 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 the program.

PROTECTING TENANTS AT FORECLOUSRE 1/19

Purpose:

The purpose of the Protecting Tenants at Foreclosure Act, which is part of the Helping Families Save Their Homes Act of 2009, is to ensure that tenants facing eviction from a foreclosed property have adequate time to find alternative housing. To that end, the law establishes a minimum time period that a tenant can remain in a foreclosed property before eviction.

Scope:

The requirements set forth in the Act are self-executing and no federal agency has authority to issue regulations implementing the law or to interpret the law. In addition, the law does not affect any state or local law that provides longer time periods or other additional protections for tenants. On May 24, 2018 the President signed the bill to permanently extend this Act for the future.

Policy:

It is the policy of the Bank (the "lender") to comply with the requirements, as hereinafter described, Protecting Tenants at Foreclosure Act of 2009 (the "Act"). Management is directed to develop and implement the appropriate procedures and other controls, as necessary, to ensure compliance with this policy.

Requirements:

The requirements under the Act are not limited to FHA-insured or HUD-assisted housing. Coverage is very broad and applies to "any foreclosure" on:

(1) A federally related mortgage loan (*has the same meaning as that provided in section 3 of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2602),* or

(2) Any dwelling or residential real property *(which extends the requirements to all residential property foreclosures, regardless of type or entity involved in the foreclosure, and regardless of whether the tenants are recipients of any type of housing assistance.)*

The law requires any immediate successor in interest in such property pursuant to foreclosure to provide advance notice to tenants. The advance notice applies to tenants in any foreclosed dwelling or residential real property, regardless of the type of loan or other security interest on the property. The advance notice of 90 days is the minimum period of notification. A longer period may be provided, for example, if greater protections are provided by State or local law. The responsibility for providing the advance notice to tenants falls on the immediate successor in interest of the property, which will generally be the purchaser. The notice must be given to anyone who, as of the date of the notice of foreclosure, is a bona fide tenant, whether or not there is a lease.

In addition, a tenant under any bona fide lease entered into before the notice of foreclosure has the right to occupy the premises until the end of the remaining term of the lease. The only exception to preserving the remaining term of the lease is for a purchaser who will occupy the unit as a primary residence. Even under this exception, however, the tenant must still be provided with the 90-day advance notice to vacate.

A lease or tenancy must meet the following requirements to be considered "bona fide" for purposes of the notification requirements: (1) The tenant cannot be the mortgagor or the child, spouse, or parent of the mortgagor; (2) The lease or tenancy must be the result of an arms-length transaction; and (3) The rent required under the lease cannot be substantially less than fair market value rent for the property or the rent is subsidized by a Federal, State, or local subsidy.

FHA–Insured Single Family and Multifamily Housing Programs, and Housing Counselors

The Office of Housing will be providing additional guidance for its programs in an effort to ensure that, to the extent foreclosures involve FHA-insured or formerly FHA-insured mortgages, the requirements of the Act are to

be observed. Although terminations of tenancies are not usually sought immediately after foreclosure on HUD multifamily projects, prospective purchasers of multifamily properties in HUD's programs should nevertheless be aware that the Act's protections apply if, in fact, the immediate successor after a foreclosure wishes the tenants to vacate. HUD will include in its Invitation to Bid on multifamily foreclosures a reminder of the tenant protections that need to be followed if the new owner desires tenants to vacate the property.

The Act also addresses residential housing in which tenants who receive section 8 rental voucher assistance reside. The protections provided to tenants in the Act are not in lieu of the protections, but rather make conforming changes to the United States Housing Act of 1937 (1937 Act) to provide coverage for the leases and housing assistance payments contracts applicable for tenants receiving section 8 rental voucher assistance.

Section 8(o)(7) of the 1937 Act (42 U.S.C. 1437f(o)(7)) provides that each housing assistance payment (HAP) contract entered into by the public housing agency and the owner of a dwelling unit shall provide, among other things that, during the term of the lease, the owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause, and that an incident or incidents of actual or threatened domestic violence, dating violence, or stalking shall not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the tenancy or occupancy rights of the victim of such violence.

To these existing tenant protections, the Act provides that the HAP contract shall further provide that in the case of an owner who is an immediate successor in interest pursuant to foreclosure during the term of the lease, vacating the property prior to sale shall not constitute other good cause, except that the owner may terminate the tenancy effective on the date of transfer of the unit to the owner if the owner: (1) Will occupy the unit as a primary residence, and (2) Has provided the tenant a notice to vacate at least 90 days before the effective date of such notice;

Section 8(o)(7) of the 1937 Act is further amended by the Act to provide that the successor in interest in the case of any foreclosure of a property in which a voucher recipient resides assumes the interest in the property subject to the lease and HAP contract in place before the foreclosure. This provision confirms that the section 8 tenant's lease is, in effect, a bona fide lease and that the HAP contract survives the foreclosure, just as the lease does. The provisions of the Act shall not affect any State or local law that provides additional time frames or protections for tenants.

Participants in HUD's Section 8 Voucher Programs

Immediate successor owners of foreclosed properties in which section 8 voucher recipients reside become participants in HUD's Section 8(o) tenant-based voucher programs and must comply with the Act. The following requirements apply to such foreclosed properties as long as the immediate successor in interest retains the interest and until the sunset date of the Act, December 31, 2012.

- A demand upon the section 8 voucher recipient to vacate the property prior to a sale of the property shall not constitute ''other good cause'' as meant in HUD's regulations on termination of tenancy (24 CFR 982.310), except that:
  - The owner may terminate the tenancy effective on the date of the transfer to the owner if the owner:
    - Will occupy the unit as a primary residence; and
    - Has provided the tenant with a notice to vacate at least 90 days before the effective date of such notice.

Public Housing Agencies (PHAs)

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With respect to PHAs, a PHA, after foreclosure, provides payments under the HAP contract to the new owner for the remaining term of the HAP contract, subject to the exception for an owner who will occupy the unit as a primary residence. In the case of the owner/occupant, the HAP contract would continue for the required notice period.

The new owner also takes subject to the existing lease, which can only be terminated as described in this section. The Office of Public and Indian Housing will be providing additional guidance as PHAs may need to help ensure that the requirements of the Act are carried out where applicable.

EQUAL CREDIT OPPORTUNITY ACT - REGULATION B 1/19

Introduction

The Equal Credit Opportunity Act (ECOA) and its implementing regulation (Regulation B) prohibits discrimination on the basis of certain factors in any aspect of a credit transaction, including the application and underwriting process as well as advertising, loan servicing and collection activities. Regulation B applies to **all** types of credit transactions, including commercial loan transactions.

This act prohibits discrimination with respect to any aspect of a credit decision on the basis of the following 9 factors:

1. Race
2. Religion
3. Sex
4. National origin
5. Color
6. Marital status
7. Age (if capacity to contract exists)
8. Receipt of income from public assistance programs
9. Good faith exercise of any rights under the Consumer Credit Protection Act

I. TAKING APPLICATIONS

A bank must take written applications for loans to purchase or refinance a primary dwelling secured by the dwelling.

The bank is prohibited from making oral or written statements that would discourage a potential applicant on a prohibited basis from making or pursuing a credit application.

Banks are generally permitted to request any information in connection with an application; however, they are restricted concerning the following information:

- Marital status: If an applicant applies for individual unsecured credit, the bank is not permitted to inquire about the applicant's marital status, unless the applicant resides in a community property state or is relying on property located in a community property state as a basis for repayment. Georgia is not a community property state.

  If an applicant applies for another type of credit, the bank is permitted to inquire about the applicant's marital status, but is permitted to use only the following terms: “married,” “unmarried,” or “separated.”

- Disclosure about income from alimony, child support, or separate maintenance: The bank is not permitted to ask whether income stated in an application is derived from any of the above, except when the bank discloses to the applicant that such income does not need to be listed unless the applicant wishes for the bank to use it in considering the ability to repay.
- Sex (Gender): Except as required for loans to purchase or refinance a primary dwelling which are secured by the dwelling, the bank is not permitted to inquire about the sex of the applicant.
- Childbearing, childrearing: The bank is not permitted to inquire about the applicant’s birth control practices, intentions concerning having children, or ability to have children. The bank is permitted to inquire about the number and ages of the applicant's dependents.
- Race, color, religion, national origin: Except for self-tests and monitoring purposes, the bank is not permitted to request information concerning the race, color, religion, or national origin of the applicant or any other individual involved with the credit application.

- Spouse information: The bank is prohibited from requesting information about a spouse or former spouse unless:
  1. The spouse will be permitted to use the account;
  2. The spouse will be contractually liable on the account;
  3. The applicant is relying on the spouse's income as a source for repayment;
  4. The applicant resides in a community property state or is relying on a property located in a community property state; or
  5. The applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a source for repayment.

II. JOINT APPLICANTS

If there are joint applicants for a loan, the bank receiving the application must document the applicant's intent to become jointly liable for a credit obligation. Evidence of that intent must be provided **at the time of application**. The fact that two parties signed the promissory note is not evidence of intent to be jointly liable at the time of application. Mere submission of joint financial information does not constitute evidence of intent to apply for joint credit. The fact that the applicant jointly owns property and submits information about the joint owner and the property to establish creditworthiness does not necessarily mean the joint owner intends to be co-applicant on the loan. Signatures on a joint financial statement affirming the authenticity of information are not sufficient to establish intent to apply for joint credit. The intent to jointly apply must be expressly documented.

Signatures or initials on a credit application may be used to affirm applicants' intent to apply for joint credit. The method used to establish intent must be distinct from the means used by individuals to affirm the accuracy of information. Where there is no written application, the applicants' intent to apply for joint credit may be evidenced, for example, by the presence in the file of a written statement by the applicants that expresses such intent

III. PROVIDING APPRAISAL REPORTS

A creditor shall provide a copy of all appraisals and other written valuations developed in connection with any application (received on January 18, 2014 and after) for credit to be secured by a first lien on a dwelling. (This applies to consumer loans and business loans secured by a first lien on a dwelling: i.e., residential structure that contains one to four units whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit, and a mobile or other manufactured home.) A creditor must provide the appraisal or other valuation whether credit is extended or denied or if the application is incomplete or withdrawn.

A creditor shall provide a copy of each such appraisal or other written valuation promptly upon completion, or three business days prior to consummation of the transaction (for closed-end credit) or account opening (for open-end credit), whichever is earlier.

1. The ''promptly upon completion'' standard depends upon the facts and circumstances, including but not limited to when the creditor receives the appraisal or other written valuation, and the extent of any review or revision after the creditor receives it.
2. "Consummation" means no later than three business days before consummation (for closed-end credit) or account opening (for open-end credit), whichever is earlier.

When an applicant requests the renewal of an existing extension of credit and the creditor develops a new appraisal or other written valuation, this new valuation must be provided to the applicant. The creditor does not need to provide such materials when the creditor uses the appraisals and other written valuations that were previously developed in connection with the prior extension of credit to evaluate the renewal request.

An applicant may waive provision of the appraisal/valuation 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 of the appraisal or other written valuation provided to the applicant three or more business days prior to consummation or account opening. If the applicant provides a waiver and the transaction is not consummated or the account is not opened, the creditor must provide these copies no later than 30 days after the creditor determines consummation will not occur or the account will not be opened.

A creditor shall mail or deliver to an applicant, not 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 notice in writing of the applicant's right to receive a copy of all written appraisals developed in connection with the application.

In the case of an application for credit that is not to be secured by a first lien on a dwelling at the time of application, if the creditor later determines the credit will be secured by a first lien on a dwelling, the creditor shall mail or deliver the same notice in writing not later than the third business day after the creditor determines that the loan is to be secured by a first lien on a dwelling. The language of the written notice is contained in:

> *Form C–9—Sample Disclosure of Right To Receive a Copy of Appraisals*
> We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close.
>
> You can pay for an additional appraisal for your own use at your own cost.

A creditor may provide the notice 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).

A creditor shall not charge an applicant for providing a copy of appraisals and 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.

Examples of valuations include but are not limited to:

1. A report prepared by an appraiser (whether or not licensed or certified)
2. Including the appraiser's estimate or opinion of the property's value.
3. A document prepared by the creditor's staff that assigns value to the property.
4. A report approved by a government sponsored enterprise for describing to the applicant the estimate of the property's value developed pursuant to the proprietary methodology or mechanism of the government-sponsored enterprise.
5. A report generated by use of an automated valuation model to estimate the property's value.
6. A broker price opinion prepared by a real estate broker, agent, or sales person to estimate the property's value.

The term ''valuation'' includes any attachments and exhibits that are an integrated part of the valuation.

Examples of documents that discuss the valuation of the applicant's property or may reflect its value but nonetheless are not ''valuations'' include but are not limited to:

1. Internal documents that merely restate the estimated value of the dwelling contained in an appraisal or written valuation being provided to the applicant.

2. Governmental agency statements of appraised value that are publically available.
3. Publicly-available lists of valuations (such as published sales prices or mortgage amounts, tax assessments, and retail price ranges).
4. Manufacturers' invoices for manufactured homes.
5. Reports reflecting property inspections that do not provide an estimate or opinion of the value of the property and are not used to develop an estimate or opinion of the value of the property.

IV. NOTIFICATION OF ACTION TAKEN

Notification to consumer credit applicants:

The bank is required to notify a consumer applicant of its credit decision:

- 30 days after receiving a completed application that the bank approves, denies, or provides a counteroffer;
- 30 days after taking adverse action on an incomplete application;
- 30 days after taking adverse action on an existing account; or
- 90 days after notifying the applicant of a counteroffer that the applicant does not accept.

When providing a written Notice of Action Taken, the bank must state:

- The bank's name and address;
- A description of the action taken;
- The specific reason(s) for denial (up to 4), or, a disclosure of the applicant's right to a statement of specific reasons within 30 days;
- The name and address of the Federal regulator to be contacted if the applicant wishes to file a complaint alleging discrimination; and
- Information required by the Fair Credit Reporting Act and ECOA as to whether information from a consumer reporting agency or an outside source was used to make the credit decision including the name, address, and toll-free number of the credit agency.

Notification to business credit applicants:

For businesses which had gross revenues of $1 million or less in its preceding fiscal year a creditor can do what it does for consumer applicants as described above, but also has the following option:

a. The statement of the action taken may be given orally or in writing, when adverse action is taken; and
b. Disclosure of an applicant's right to a statement of reasons may be given at the time of application or adverse action.

For businesses that had gross revenues in excess of $1 million in its preceding fiscal year the bank must:

a. Notify the applicant, within a reasonable time, orally or in writing, of the action taken; and
b. Provide a written statement of the reasons for adverse action and the ECOA notice if the applicant makes a written request for the reasons within 60 days of the creditor's notification.

Incomplete Applications:

The bank has two options with regards to incomplete applications. The bank may either deny the application due to the missing information or it may provide a Notice of Incompleteness. The Notice of Incompleteness must specify the information needed and a date by which the applicant must furnish this information. The bank must

also inform the applicant that failure to provide this information will result in no further consideration being given to the application.

Effective 7/21/11, the Dodd Frank Act requires that the following additional information be disclosed when adverse action is taken based on information from a credit score:

- The name of the person or entity that provided the credit score
- The numerical credit score
- The range of possible scores under the model used,
- The date on which the credit score was created, and
- The key factors that adversely affected the credit score of the consumer in the model used.

The Federal Reserve Board has published model forms to guide institutions in advising applicants of adverse action. These are found in Appendix C of the regulation and should be referred to in generating the correct notice.

V. MONITORING INFORMATION

A creditor that receives an application for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit will be secured by the dwelling, should request as part of the application the following information regarding the applicant(s):

1. Ethnicity and race, using either:
   a. For ethnicity, the aggregate categories Hispanic or Latino, and not Hispanic or Latino; and for race the aggregate categories American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White; or
   b. The categories and subcategories for the collection of ethnicity and race set forth in appendix B to Regulation C (HMDA)
2. Sex;
3. Marital status, using the categories married, unmarried, and separated; and
4. Age.

Dwelling means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit and a mobile or other manufactured home.

Obtaining information regarding ethnicity, race, sex, marital status, and age may be listed, at the creditor's option, on the application form or on a separate form that refers to the application. The applicant(s) shall be asked but not required to supply the requested information. If the applicant(s) chooses not to provide the information or any part of it, that fact shall be noted on the form. The creditor shall then also note on the form, to the extent possible, the ethnicity, race, and sex of the applicant(s) on the basis of visual observation or surname.

Disclosure to applicant(s): The creditor shall inform the applicant(s) that the information regarding ethnicity, race, sex, marital status, and age is being requested by the federal government for the purpose of monitoring compliance with federal statutes that prohibit creditors from discriminating against applicants on those bases. The creditor shall also inform the applicant(s) that if the applicant(s) chooses not to provide the information, the creditor is required to note the ethnicity, race and sex on the basis of visual observation or surname.

VI. RECORD RETENTION

For **25 months** (12 months for business credit) after notification of action taken on the credit application, the bank should retain the following:

1. The application or any notes made about an oral application.
2. Any written information or notes used in evaluating the application including the credit report.
3. A copy of the decline letter (if applicable).
4. A copy of any written counter-offer made, or notes about an oral counter-offer.

EXPEDITED FUNDS AVAILABILITY - Regulation CC 1/19

Introduction

Regulation CC was promulgated by the Board of Governors of the Federal Reserve System to implement the provisions of the Expedited Funds Availability Act. The regulation contains rules regarding when a bank must make deposited funds available to its customers and rules regarding the prompt collection and return of checks through the banking system. Regulation CC became effective September 1, 1988.

Regulation CC prescribes the maximum length of time that a bank may withhold the availability of funds deposited by its customers. There are no regulations prohibiting a bank from making funds available sooner than the regulation requires.

Regulation CC applies to demand deposit or other transaction accounts, such as a checking accounts and NOW accounts. It includes both consumer and business transaction accounts with general third party payment powers. It does **not** include Savings accounts, including time deposits and money market deposit accounts.

I. FUND AVAILABILITY SCHEDULES

Under the regulation, a bank must follow either the "next-day availability" or "permanent availability" schedules for placing holds on accounts:

"Next-Day Availability" Schedule: Under the "next-day availability" schedule, all funds deposited into an account on a business day must be available for withdrawal on the next business day **unless** a written hold notice is provided to the customer. (For example, if a customer deposits a check on Tuesday morning, funds will be available on Wednesday morning.)

"Permanent Availability" Schedule: Under the "permanent availability" schedule, funds from the deposit of local checks must be available for withdrawal within 2 business days from the date of deposit. (For example, if a customer deposits a check on Tuesday morning, the funds must be available on Thursday morning.)

II. NEXT-DAY AVAILABILITY REQUIREMENTS

There are certain items that must always be made available for withdrawal on the first business day following the date of deposit. Holds may not be placed on the following items:

- Cash deposited in person to a bank employee; and
- Electronic payments received by the bank. (Treasury regulations require that direct deposits be made available on the day the bank receives the funds.)

In addition, the following items must be made available the next business day: [Note: "Exception" holds can be placed on the following items, but "case-by-case" holds cannot):

- U.S. Treasury checks deposited in an account held by the payee of the check;
- U.S. Postal Service money orders deposited in person to a bank employee and into an account held by the payee of the check;
- Federal Reserve Bank and Federal Home Loan Bank checks deposited in person to a bank employee and into an account held by the payee of the check;
- State or local government checks deposited in person to a bank employee and into an account held by the payee of the check, if the bank is in the same state as the payor of the check; and
- Cashier's, certified, or teller's checks deposited in person to a bank employee and into an account held by the payee of the check.

EXPEDITED FUNDS AVAILABILITY - Regulation CC 1/19

The time when a bank must make funds from a deposit available to its customer is measured from the time that the deposit is deemed to have been received by the bank. Generally, a deposit made at a staffed teller station, received by mail, placed in an ATM or a lobby depository, or transferred electronically is deemed made when received by the bank or put in the machine. A deposit in a nighttime depository is generally considered made the next banking day, as are deposits received on a non-business day or after a bank's cut-off hour.

III. METHODS FOR DELAYING FUNDS AVAILABILITY

Case-by-Case Holds

Times Allowed For Holds:

If a bank has a general policy of making funds available sooner than required by Regulation CC, it may extend availability to the limits of the "permanent availability" schedule. The bank may make funds available on the **second** business day provided the bank gives the customer written notice. The bank does not have to give the customer any reason for the hold, but must make the first $200 from the aggregate of non-next day items deposited available the next business day.

Hold Notice:

If a "case-by-case" hold is imposed, the bank must give a hold notice to the customer at the time of deposit or mail it by the close of the next business day. The notice must contain the following information:

- The customer's account number;
- The date of deposit;
- The amount of deposit that is being delayed; and
- The time period within which the funds will be available for withdrawal

Exception Holds

Reasons for Exception Holds:

Regulation CC describes the following 6 circumstances in which a bank may invoke an exception to the general rule of funds availability and delay the funds beyond the time normally permitted:

1. New accounts (i.e. accounts opened for 30 days or less);
2. Large deposits (Only the amount **over** $5,000 may be held for an extended period. $5,000 of the deposit must be made available according to the case-by-case rules described above.);
3. Re-deposited checks (Unless the check was returned due to a missing endorsement and endorsement has been obtained, or because the check was postdated when originally deposited and was not postdated when re-deposited.);
4. Repeated overdrafts (If the account had a negative balance, or would have had a negative balance if NSF items had been paid, on 6 banking days during the past 6 months; or if the account had a negative balance, or would have had a negative balance if NSF items had been paid, of $5,000 or more on 2 banking days during the past 6 months.);
5. Reasonable cause to doubt collectability; and
6. Emergency conditions beyond the control of the bank.

Times Allowed for Holds:

The following availability rules apply for exception holds (other than the "new account" exception):

- On-us checks - Second day availability
- Local checks - Seventh day availability

When a bank invokes an exception hold, it is **not** required to make $200 from the aggregate deposit available the next business day, unless the “large deposit” exception is invoked. Because the “large deposit” exception only applies to that portion of the deposit over $5,000, a “case-by-case” hold should be placed on the first $5,000 of the deposit. As such, the first $200 would be available on the next business day, $4,800 would be available on the second business day, and the amount of the deposit in excess of $5,000 would be available on the seventh business day.

New Account Holds:

For new accounts, deposits via cash, electronic payments, and the first $5,000 of official type checks must be made available on the next business day following the date of deposit if the deposit is made in person to an employee of the bank. The excess over $5,000 for official type checks must be made available on the **ninth** business day. Regulation CC does not specify when other items deposited into a new account must be made available; however, an institution will specify the number of days in its disclosure.

Hold Notice for Exception Holds:

If an exception hold is imposed, the bank must give a hold notice to the customer at the time of deposit or mail it by the close of the next business day. The notice must contain the following information:

- The customer's account number;
- The date of deposit;
- The amount of deposit that is being delayed;
- The time period within which the funds will be available for withdrawal; and
- The reason the specific exception hold was placed.

If the hold is placed because the bank has reasonable cause to doubt collectability, the notice must also contain the reason the bank believes that the check is uncollectible. If the reasonable cause to doubt collectability is based upon confidential information, that fact may be stated on the notice. However, the confidential information should **not** be disclosed to the customer, but **should** be noted on the copy of the notice retained for the bank’s records.

IV. OVERDRAFT AND RETURNED CHECK CHARGES

If a bank invokes an exception hold or a case-by-case hold, and does not give its customer proper notice, the bank may not charge an overdraft or returned-check charge if the overdraft or returned check would not have occurred if the hold had been placed on the deposit and the amount of the deposit held was paid by the paying bank. Alternatively, in such a case, a bank may assess the charge, but it must notify its customer that they may be entitled to a refund of the fees if the check held was, in fact, paid; and also tell the customer how to obtain the refund.

V. DISCLOSURES

Initial Disclosure:

A bank must provide a potential customer a written disclosure of its availability policy prior to opening an account. If, however, a customer opens an account by mail or telephone, the disclosure is sufficient if mailed to the customer on the first business day following the banking day that the request was received. Also, the disclosure must be available to anyone upon request.

The disclosure must reflect the policy for funds availability generally followed by the bank and any longer delays the bank may impose on a case-by-case basis or any exceptions it may invoke. As applicable, the following items must be set out in the disclosure:

- A summary of the bank's availability policy
- A description of the category of deposits or checks used by the bank when it delays availability (now all checks are "local" checks), how to determine the category to which a deposit or check belongs (i.e. all checks are now local checks regardless of the routing number), and when the category will be available for withdrawal (including a description of the bank's business days and when a deposit is considered received).
- A description of any of the exceptions that may be invoked, when funds will generally be available if an exception is invoked, and that the bank will provide the customer notice if an exception is invoked.
- If the bank makes funds available from deposits at nonproprietary ATMs later than deposits at proprietary ATMs, then a description of how a customer can differentiate between the two.
- If the bank has a policy of making funds available sooner than required by the regulation but extends the time for withdrawal on a case-by-case basis, then it should disclose:
  - That the time when deposited funds will be available can be extended, and if so, the latest time that funds will be available following a deposit.
  - That the bank will notify the customer if the general policy will not be followed.
  - That customers should ask if they need to be sure about when a particular deposit will be available for withdrawal.

Lobby Disclosure:

A Reg CC notice must be posted in a conspicuous place at each location where bank's employees receive deposits, such as, each teller window and CSR desk.

ATM & Preprinted Deposit Slip Disclosure:

A bank must include on all preprinted deposit slips and post or provide at all ATM locations, a notice stating that "funds deposited may not be available for immediate withdrawal". If it is an ATM that is serviced not more than two times per week, there must also be posted a disclosure of the days on which deposits made at the ATM will be considered received. If the bank's ATM does not accept deposits, then this disclosure is not required to be on the machine.

VI. Compliance and Liability

Regulation CC is one of the few regulations in which the regulation itself mandates that a bank establish procedures to ensure that it complies with the regulation, and must provide affected employees education as to the requirements of the act and the procedures applicable to their duties. If a bank fails to comply with the provisions of the regulation, the potential liability to an individual customer is the actual amount the customer was damaged plus $1,000. In a class action suit, the amount increases to the lesser of $500,000 or 1 percent of the net worth of the bank.

VII. Check 21

The Check 21 law was effective October 28, 2004. Its purpose is to reduce the costs of clearing, handling, and storing paper checks. It will allow a bank to "truncate" a paper check: stop the paper check from going any further in the collection chain, and send instead electronic information gleaned from the paper item. It does not require

any bank to accept electronic items. Instead, a bank may insist on paper items. Check 21 contains rules for some of those items that have been converted back into paper after having been passed around electronically.

Here is what a bank does not have to do under the new law:

1. Use electronic processing;
2. Receive electronic items; or
3. Create what are called "substitute checks," the paper reproductions of the electronic items that other banks may have created from checks written by your customers.

The main things the law does require a bank to do are:

1. Accept a legally-equivalent substitute check in place of the original check;
2. Place a "5" in Position 44 of the MICR band of a "qualified returned substitute check" instead of the "2" you would put there on a qualified returned original check;
3. Give disclosures to consumers in certain circumstances.

   Effective July 01, 2018 all checks, paper and electronic, must be returned in a manner that meets a modified version of the two-day test. The forward collection test will no longer be used. Under the new two-day test, the return must be received by the depositary bank no later than 2:00pm its local time on the second business day after the check was presented for payment. Not 4:00pm local time.

General Check 21 Disclosure Requirement and Content:

A brief disclosure should be provided to each of its consumer customers that describes:

1. That a substitute check is the legal equivalent of an original check; and
2. The consumer recredit rights that apply when a consumer in good faith believes that a substitute check was not properly charged to his or her account.

Disclosure to consumers who receive paid checks with periodic account statements

The above disclosures should be provided to a consumer customer who receives paid original checks or paid substitute checks with his or her periodic account statement at the time the customer relationship is initiated.

Disclosure to consumers who receive substitute checks on an occasional basis

1. The above disclosures should be provided to a consumer customer of the bank who requests an original check or a copy of a check and receives a substitute check. If feasible, the disclosure should be provided at the time of the consumer's request; otherwise, the disclosure will be provided no later than the time at which the bank provides a substitute check in response to the consumer's request.
2. The above disclosure will be provided to a consumer customer of the bank who receives a returned substitute check, at the time the bank provides such substitute check.

Multiple account holders

1. A bank need not give separate disclosures to each customer on a jointly held account.

MODEL CHECK 21 POLICY DISCLOSURE FROM REGULATION CC APPENDIX:

Substitute Checks and Your Rights

[IMPORTANT INFORMATION ABOUT YOUR CHECKING ACCOUNT]

EXPEDITED FUNDS AVAILABILITY - Regulation CC 1/19

Substitute Checks and Your Rights

What Is a Substitute Check?

To make check processing faster, federal law permits banks to replace original checks with "substitute checks." These checks are similar in size to original checks with a slightly reduced image of the front and back of the original check. The front of a substitute check states: "This is a legal copy of your check. You can use it the same way you would use the original check." You may use a substitute check as proof of payment just like the original check.

Some or all of the checks that you receive back from us may be substitute checks. This notice describes rights you have when you receive substitute checks from us. The rights in this notice do not apply to original checks or to electronic debits to your account. However, you have rights under other law with respect to those transactions.

What Are My Rights Regarding Substitute Checks?

In certain cases, federal law provides a special procedure that allows you to request a refund for losses you suffer if a substitute check is posted to your account (for example, if you think that we withdrew the wrong amount from your account or that we withdrew money from your account more than once for the same check). The losses you may attempt to recover under this procedure may include the amount that was withdrawn from your account and fees that were charged as a result of the withdrawal (for example, bounced check fees).

The amount of your refund under this procedure is limited to the amount of your loss or the amount of the substitute check, whichever is less. You also are entitled to interest on the amount of your refund if your account is an interest-bearing account. If your loss exceeds the amount of the substitute check, you may be able to recover additional amounts under other law.

If you use this procedure, you may receive up to (amount, not lower than $2,500) of your refund (plus interest if your account earns interest) within (number of days, not more than 10) business days after we received your claim and the remainder of your refund (plus interest if your account earns interest) not later than (number of days, not more than 45) calendar days after we received your claim. We may reverse the refund (including any interest on the refund) if we later are able to demonstrate that the substitute check was correctly posted to your account.

How Do I Make a Claim for a Refund?

If you believe that you have suffered a loss relating to a substitute check that you received and that was posted to your account, please contact us at (contact information, for example phone number, mailing address, e-mail address). You must contact us within (number of days, not less than 40) calendar days of the date that we mailed (or otherwise delivered by a means to which you agreed) the substitute check in question or the account statement showing that the substitute check was posted to your account, whichever is later. We will extend this time period if you were not able to make a timely claim because of extraordinary circumstances.

Your claim must include—

1. A description of why you have suffered a loss (for example, you think the amount withdrawn was incorrect);
2. An estimate of the amount of your loss;
3. An explanation of why the substitute check you received is insufficient to confirm that you suffered a

loss; and

4. A copy of the substitute check [and/or] the following information to help us identify the substitute check: identifying information, for example the check number, the name of the person to whom you wrote the check, the amount of the check.

TRUTH IN SAVINGS - Regulation DD 1/19

Introduction

The purpose of this act is to require all financial institutions to provide consumers clear and uniform disclosure of deposit account interest rates and fees so that customers can make a meaningful comparison between depository institutions. Reg DD requires certain information to be disclosed on periodic statements and subsequent statements. It restricts how institutions calculate interest on accounts by requiring institutions to use the full balance in the account each day. In addition, negative balances cannot be used to determine the average daily balance. The act also establishes rules for advertising of deposit accounts.

A general rule to follow is the following types of deposits accounts are covered by the regulation:

- An account held by an individual for a nonbusiness purpose.
- An IRA, an ITF or POD account, or SEP.

I. INITIAL DISCLOSURES

Banks are required to provide account disclosures to a customer before an account is opened or a service is provided (whichever is earlier), and upon request. The disclosure can be for a particular account or all accounts. The customer must be able to keep the disclosure.

The initial account disclosure must reflect the legal obligation of the account agreement and must include the following:

- “Annual percentage yield” (APY);
- “Interest rate”;
- Time period that the interest rate will be in effect (for fixed rate accounts);
- The fact that the interest rate and annual percentage yield may change (for variable rate accounts);
- How the interest rate is determined (for variable rate accounts);
- The frequency with which the interest rate may change (for variable rate accounts);
- Any limitation on the amount the interest rate may change (for variable rate accounts);
- Compounding frequency;
- Crediting frequency;
- Effect of closing an account (if consumers forfeit interest if the close an account before interest is credit, a statement of that fact);
- Minimum balance to open the account,
- Minimum balance to avoid a fee;
- Minimum balance to obtain the stated APY (if interest is not paid under a certain balance);
- How the balance is determined to avoid fee and obtain APY;
- Balance-computation method;
- Fees; (Note: Fees for paying overdraft items and fees for returning unpaid items should be given separate names and these same two names should be used on the periodic statement to distinguish between these two types of fees. Also, the disclosure should disclose the condition under which the fees may be imposed, such as, “Insufficient Funds Fee - $XX per item. An insufficient funds item may be created by check, in-person withdrawal, ATM withdrawal or other electronic means.”)
- Transaction limits; and
- Bonus* information (amount and type of any bonus, when bonus will be provided, and any minimum balance and time requirement to obtain the bonus).

The following additional disclosures are required for time accounts:

- Maturity date;
- Early withdrawal penalties;
- Statement that the annual percentage yield assumes interest remains on deposit until maturity and that a withdrawal will reduce earnings; and
- Whether or not the time account is automatically renewable (also what the grace period is).

[**Bonus* means 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.]

II. SUBSEQUENT DISCLOSURES

Change in Terms Notice:

If the bank changes any of the terms initially disclosed and that change results in a reduced APY or otherwise adversely affects the customer, the bank must notify the customer of such change at least 30 calendar days before the effective date of the change.

Maturity Notices:

Automatically Renewable Accounts: For time accounts with a maturity longer than 1 month that renew automatically at maturity, the bank is required to provide the disclosures described below at least 30 calendar days before maturity of the existing account. Alternatively, the bank is permitted to provide the disclosures at least 20 calendar days before the end of the grace period on the existing account, provided the grace period is at least 5 calendar days.

- For time accounts with terms greater than 1 year, the bank is required to provide:
  1. Initial TIS disclosures for the new account;
  2. The date the existing account matures; and
  3. If the interest rate and APY for the new account are unknown, the date they will be determined and a telephone number the customer may call to obtain this information.

- For time accounts with terms of 1 year or less but more than 1 month, the bank is required to either provide the disclosures described in the paragraph above or it is required to disclose:
  1. The date the existing account matures;
  2. The new maturity date if the account is renewed;
  3. The interest rate and the APY of the new account or a date when they will be determined and a telephone number the customer may call to obtain the information; and
  4. Any difference in terms between the existing account and the new account.

Accounts Not Automatically Renewable: For time accounts with terms greater than 1 year that do not renew automatically, the bank is required to disclose the maturity date and whether interest will be paid after maturity. The bank must mail or deliver these disclosures at least 10 calendar days before maturity of the existing account.

III. PERIODIC STATEMENT DISCLOSURES

Regulation DD does not require periodic statements. However, if periodic statements are provided, banks are required to ensure that such statements contain the following information:

- Number of days in the statement period or the beginning and ending dates.

IV. PAYMENT OF INTEREST

Banks are permitted to use either the “daily balance method” or the “average daily balance” method to calculate interest and to determine whether minimum balance requirements are met. Interest must start accruing not later than the business day specified in the Expedited Funds Availability Act and interest must be accrued until the funds are withdrawn.

V. ADDITIONAL DISCLOSURE REQUIREMENTS REGARDING THE PAYMENT OF OVERDRAFTS

Periodic statement disclosures

Disclosure of Total Fees:

The following information must be included on each periodic statement:

1. The total dollar amount for all fees or charges imposed on the account for paying checks or other items when there are insufficient funds and the account becomes overdrawn; and
2. The total dollar amount for all fees imposed on the account for returning items unpaid.

The disclosures required by this paragraph must be provided for the statement period and for the calendar year to date.

**Effective January 1, 2010, the above periodic statement requirements apply to all banks, not just those that advertise the payment of overdrafts.

Also, effective January 1, 2010, banks must disclose the balance of the account without any additional amounts that the bank may provide to cover an item when there are insufficient funds. Another balance with the addition of available overdraft products can be displayed, but must be clearly explained.

Advertising disclosures for overdraft services

Disclosures

Except as provided below, any advertisement promoting the payment of overdrafts will disclose in a clear and conspicuous manner the following:

1. The fee or fees for the payment of each overdraft;
2. The categories of transactions for which a fee for paying an overdraft may be imposed;
3. The time period by which the consumer must repay or cover any overdraft; and
4. The circumstances under which the institution will not pay an overdraft.

Communications about the payment of overdrafts not subject to additional advertising disclosures

The above disclosures are not required for the following:

1. An advertisement promoting a service where the institution's payment of overdrafts will be agreed upon in writing and subject to the Board's Regulation Z;

2. A communication by an institution about the payment of overdrafts in response to a consumer-initiated inquiry about deposit accounts or overdrafts. 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 for purposes of this paragraph;
3. An advertisement made through broadcast or electronic media, such as television or radio;
4. An advertisement made on outdoor media, such as billboards;
5. An ATM receipt;
6. An in-person discussion with a consumer;
7. Disclosures required by federal or other applicable law;
8. Information included on a periodic statement or a notice informing a consumer about a specific overdrawn item or the amount the account is overdrawn;
9. A term in a deposit account agreement discussing the institution's right to pay overdrafts;
10. 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; or
11. Informational or educational materials concerning the payment of overdrafts if the materials do not specifically describe the institution's overdraft service.
12. 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

The following disclosures are not required in connection with any advertisement made on an ATM screen or using a telephone response machine.

1. The categories of transactions for which a fee for paying an overdraft may be imposed; and
2. The circumstances under which the institution will not pay an overdraft.

Exception for indoor signs

The disclosures are not required for advertisements for the payment of overdrafts on indoor signs as described in Regulation DD, provided that the sign contains a clear and conspicuous statement that fees may apply and that consumers should contact an employee for further information about applicable fees and terms. An indoor sign does not include an ATM screen.

VI. ADVERTISING REQUIREMENTS

Regulation DD sets forth all advertising requirements for consumer deposit accounts. Misleading advertisements are prohibited and the deposit terms promoted must accurately reflect the terms actually offered. An advertisement may not describe an account as “free” or “no cost” (or any similar term) if any maintenance or activity fee may be imposed on the account. The word “profit” may not be used in referring to interest paid on an account. When responding orally to a request for account rate information, the bank is required to disclose the APY, no other rate may be quoted except for the interest rate.

If any rate or yield is advertised, it must be expressed using the term “annual percentage yield.” The annual percentage yield may be abbreviated as “APY” if the term “annual percentage yield” is printed or stated in full at least once in the advertisement. The “interest rate” (using that term) that corresponds to the advertised APY may also be displayed; however, it may not be more conspicuous than the APY. APYs and interest rates must

be rounded to the nearest one-hundredth of a percentage point and expressed to two decimal places. (For example, 5.15%.)

If "tiered rate" accounts are advertised, all of the APYs (including ranges where applicable) and the corresponding minimum balance requirements must be displayed.

If an APY is stated in an advertisement, the following additional information must also be disclosed, as applicable:

1. For variable rate accounts, a statement that the rate may change after the account is opened;
2. The period of time the APY will be offered or a statement that the APY is accurate as of a specified date;
3. The minimum balance required to obtain the APY;
4. The minimum opening deposit required to obtain the APY, if it is greater than the minimum balance necessary to obtain the advertised APY;
5. A statement that fees could reduce earnings on the account;
6. For time accounts, the term of the account; and
7. For time accounts, a statement that a penalty may be imposed for early withdrawals.

If an advertisement displays a bonus, the following additional information must be disclosed, as applicable:

1. The "annual percentage yield" (which triggers the additional disclosures itemized above);
2. The time requirement to obtain the bonus;
3. The minimum balance required to obtain the bonus;
4. The minimum balance required to open the account, if it is greater than the minimum balance necessary to obtain the bonus; and
5. When the bonus will be provided.

If an advertisement is made through broadcast, electronic, or outdoor media (such as radio, television, or billboards), it need not include the information in items 1, 2, 4, 5, 7, 11, or 12.

Indoor signs should state the rate as an "annual percentage yield," using the term or the term "APY." The sign shall not state any other rate, except that the interest rate may be stated in conjunction with the annual percentage yield to which it relates. It should also contain a statement advising consumers to contact an employee for further information about applicable fees and terms.

Banks that promote the payment of overdrafts in an advertisement should include in the advertisement the disclosures detailed in the section regarding the advertisement of an overdraft program.

VII. RECORD RETENTION

Maintain evidence of compliance with Regulation DD for a minimum of 2 years from the date disclosures are required to be delivered.

ELECTRONIC FUNDS TRANSFER - Regulation E 1/19

Introduction

In 1978, Congress passed the Electronic Fund Transfer Act to clarify the rights and liabilities of users of electronic-fund-transfer systems. The principal purpose of the act was the protection of the consumer engaging in electronic fund transfers.

I. COVERAGE

For the purpose of Regulation E, an “electronic funds transfer” means any transfer of funds (other than a transaction originated by check, draft, or similar paper instrument) that is initiated through an electronic terminal, telephone, computer or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer deposit account.

Transactions that are covered include, but are not limited to the following:

- Point of sale transfers.
- Transfers resulting from debit-card transactions (even if no part of the transaction is electronic).
- Direct deposits and withdrawals.
- Any transactions initiated through an electronic terminal (ATM, telephone, computer, magnetic tape, etc.) for the purpose of debiting or crediting an account. (Transactions through a telephone response system or home banking system requiring an entry password are covered by Regulation E because issuance of a password constitutes the kind of prearranged agreement covered by Regulation E.)
- Electronic check transactions are covered as long as the consumer has agreed to electronic presentment of the check. This agreement can be obtained by written consent, or by the merchant posting a notice at the retail location where the transactions originate indicating that check are presented electronically.
- Payroll card accounts are covered. These accounts are established through an employer to process reoccurring electronic fund transfers of the consumer's wages, salary, or other employee compensation (such as commissions). These accounts do not include a card that’s strictly issued to pay the consumer a one time payment of a bonus or expense reimbursement.

Transactions that are NOT covered include:

- Credit card transactions.
- All nonpersonal accounts and business accounts.
- All transactions affecting loan accounts are excluded from Regulation E, but may be governed by Regulation Z.
- Wire transfers.
- Intra-bank automatic transfers between the customer’s account and the bank itself, between two accounts of the customer, or from the customer’s account to a family member’s account in the bank.
- Transactions affecting trust accounts.
- Preauthorized transactions where the assets of the account-holding institution are $100 million or less on the previous December 31.

II. ACCESS DEVICES

An access device is a card, code, or other means of access to a customer’s account that may be used for the purpose of initiating electronic fund transfers. A bank may issue an access device to a customer only:

1. In response to the customer's request,
2. As a substitution or renewal of an existing validated access device, or
3. If the device is not validated.

In the last case mentioned above, the device must be accompanied by an explanation that the device is not validated, how to validate it, and a complete disclosure of the customer's rights and liabilities if the device is validated. When a bank has activated an access device to enable a customer to use it to initiate an electronic transfer, the device is considered "validated" or an "accepted" access device.

III. INITIAL DISCLOSURE

Either at the time a consumer contracts for Electronic Funds Transfer ("EFT") services or before the first electronic funds transfer is made, the bank must disclose the following:

- A summary of the consumer's liability for unauthorized EFT transfers.
- The telephone number and address of the person or office to be notified if the customer believes that an unauthorized transfer has been or may be made.
- The financial institution's business days. ("Business day" means any day the bank is open for substantially all business functions. "Substantially all business functions" include both the public and the back-office operations of the institution.)
- The types of EFTs the consumer may make, and any limitation on frequency or dollar amount.
- Any fees for EFT transactions or for the right to make EFT transactions.
- The fact that when the customer uses an ATM not owned by this bank, a fee may be charged for using that ATM by the owner of the ATM and by any national, regional, or local network used to complete the transaction.
- A summary of the consumer's right to receive documentation of electronic fund transfers.
- A summary of the customer's right to stop payment of a preauthorized fund transfer, the procedure for initiating a stop-payment order, and a summary of the financial institution's liability if it fails to honor an appropriate stop-payment order.
- The circumstances under which, in the normal course of business, the financial institution will disclose information to third parties about the consumer's account.
- A notice concerning error-resolution procedures and the consumer's rights under them.

If, after the disclosures have been made, the bank wants to change, in a manner adverse to the consumer, any term or condition required to be disclosed, it must give the consumer 21 days written notice before the effective date of the change.

The error-resolution procedures must be delivered to each consumer annually or a modified version may be delivered on or with each periodic statement.

IV. TERMINAL DISCLOSURES

The bank is required to provide a written receipt to customers who use its electronic terminals. These receipts must disclose:

- The type of transaction, (i.e. deposit or withdrawal);
- The type of account to or from which the transfer was made (i.e. checking or savings), (this is not required if only one account can be accessed);

- The transaction amount;
- The date of transaction;
- Account identification number which need not exceed 4 digits;
- The terminal location or terminal number;
- The identification of any third party to or from whom the funds are being transferred; and
- The transaction fee (if applicable).

Effective August 6, 2007, the Federal Reserve amended Regulation E to eliminate the requirement for providing a receipt for a transaction if the amount is $15 or less. Banks that change its ATM to not provide a receipt for transactions of $15 or less will need to state this in their disclosure. However, a change of terms notice is not needed for previously opened accounts.

V. ATM Fee Disclosure

An automated teller machine operator that imposes a fee on a consumer for initiating an electronic fund transfer or a balance inquiry must provide a notice that a fee will be imposed for providing electronic fund transfer services or a balance inquiry that discloses the amount of the fee. An automated teller machine operator must provide the notice required (as stated in the previous sentence) either by showing it on the screen of the automated teller machine or by providing it on paper, before the consumer is committed to paying a fee.

An automated teller machine operator may impose a fee on a consumer for initiating an electronic fund transfer or a balance inquiry only if:

1. The consumer is provided the notice mentioned above, and
2. The consumer elects to continue the transaction or inquiry after receiving such notice.

VI. Periodic Statements

For any account to or from which EFT transactions can be made, the bank must provide the consumer a statement at least quarterly, and a monthly statement for each monthly cycle in which an EFT transaction has occurred. The periodic statement must include the following:

- The amount of the transfer (this amount may include ATM charges).
- The date the transfer was credited or debited to the consumer's account.
- The type of transfer and the type of consumer's account (e.g., checking, savings) to or from which funds were transferred.
- For each transfer that was initiated at an electronic terminal, either the terminal location or the terminal identification number that was on the terminal receipt.
- The name of any third party to or from whom funds were transferred.
- Account number.
- Fees for EFTS, right to make EFTs, or account maintenance.
- Balance in the account at the beginning and the end of the statement period.
- The address and telephone number to be used for inquiries or notice of errors preceded by the words, "Direct inquiries to." (Error resolution notice on statement can take the place of this.)

Note: Effective July 1, 2007, if a bank directly or indirectly holds a payroll card account or issues access devices for payroll card accounts, it is subject to Regulation E with respect to those cards and accounts.

The July 2007 amendments provide banks with an alternative to providing traditional periodic statements for these accounts. Instead of traditional periodic statements, banks can provide the following for payroll accounts:

- The consumer's balance through a telephone inquiry system;
- Access to an electronic history, such as through the bank's Website showing account activity for at least the past 60 days; and
- A written history of the consumer's account transactions covering at least 60 days from the date of a written or oral request from the consumer.

If the bank utilizes this alternative to providing periodic statements, the Regulation E disclosure provided at account opening must disclose: the telephone number that the consumer may call to obtain the account balance; the electronic means to access account activity for at least the past 60 days; and a summary of the consumer's right to receive a written history upon request, including a telephone number for the customer to call to request the history.

VII. Preauthorized Transfer Disclosures

When a customer's account is to be credited by a preauthorized EFT at least once every 60 days, the bank can either:

- Provide the customer with a positive notice that says that the transfer was made, or
- Provide a negative notice that the credit was not made as scheduled, or
- Provide a readily available telephone line disclosed on the periodic statement or initial disclosure that the customer can call to verify the credit was made.

Preauthorized electronic fund transfers debited from a consumer's account may be authorized only by a writing signed or similarly authenticated by the consumer. The person that obtains the authorization shall provide a copy to the consumer.

The bank cannot condition an extension of credit to a consumer on the consumer's repayment 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.

The bank cannot require a consumer to establish an account for receipt of EFT with a particular institution as a condition of employment or receipt of a government benefit.

Customers are permitted to stop payment on a pre-authorized EFT by giving the bank verbal or written notice at least 3 business days prior to the scheduled transfer. The bank may require the consumer to give written confirmation of a stop-payment order within 14 days of an oral notification. A bank that requires written confirmation shall inform the consumer of the requirement and provide the address where confirmation must be sent when the consumer gives the oral notification. An oral stop-payment order ceases to be binding after 14 days if the consumer fails to provide the required written confirmation.

VIII. Error Resolution

EFT errors should be reported by the consumer within 60 days after the bank sent a periodic statement showing the alleged error.

The bank has 10 business days (20 days if the transaction involved a new account) after receiving the customer's notice of the error to investigate/resolve the alleged error and provide the results to the customer. An account is

considered to be a "new account" during the first 30 calendar days after the first deposit to the account is made. When an error is asserted in a POS transaction by a consumer who used a debit card with the VISA brand on it, the association requires their member banks to resolve the dispute within five, not ten, days.

If the alleged error cannot be resolved within 10 business days, the bank may take up to 45 calendar days (90 days if the transaction involved a new account, was a point-of-sale transaction, or was conducted outside the USA) to investigate/resolve the alleged error, provided the bank:

1. Provisionally recredits the funds (including interest, where applicable) to the customer's account within the 10 business day period (20 days for new accounts);
2. Advise the customer within 2 business days of the provisional recrediting; and
3. Give the customer full use of the provisionally recredited funds during the investigation.

If an error occurred, the Bank must:

1. Correct the error within 1 business day, including the crediting of interest (if applicable) or the refunding of charges;
2. Provide an oral or written report of the correction to the customer within 3 business days of the completion of the investigation; and
3. As applicable, notify the customer that the provisional recrediting has been made final.

If no error occurred, or in a different manner or amount, the Bank must:

1. Mail or deliver a written explanation of its findings within 3 business days after concluding its investigation.
2. Include an explanation in the notice of the customer's right to request the documents upon which the bank relied in making its determination.
3. Provide the customer with the date and amount of the debiting of the provisional recredit and the fact that the bank will honor (without charge) checks or other items drawn on the provisionally recredited funds for a period of 5 business days after providing the notice, to the extent that these items would have been honored if the provisionally recredited funds had not been debited.
4. Upon the customer's request, provide the customer with copies of the documents the bank relied upon in making its determination.

IX. CUSTOMER'S LIABILITY FOR UNAUTHORIZED TRANSFERS

Regulation E limits the liability of a consumer for unauthorized EFT transactions according to the below table. In general, an EFT transaction is unauthorized if it was initiated by a person other than the account holder without the authority of the account holder and the account holder did not receive any benefit from the transaction. A transaction is not unauthorized if the account holder gave the person initiating the transaction the access device, unless the account holder notified the institution that the person was no longer authorized to use it.

EVENT	LIABILITY
Lost card, customer notifies bank within two days of discovering loss.	Lesser of $50 or unauthorized charges
Lost card, customer does not notify bank after discovering loss.	Lesser of $500 or unauthorized charges

Unauthorized transfer appearing on periodic statement, customer notifies bank within 60 calendar days.	Lesser of $50 or unauthorized charges
Unauthorized transfer appearing on periodic statement, customer does not notify bank.	Lesser of $50 or unauthorized transfers occurring prior to 60 calendar days after statement and unlimited liability for transfers after 60 calendar days after statement

X. Opt-In Requirement Before Fees Can Be Charged For ATM or One-Time Debit Card Overdraft Transactions

For accounts opened prior to July 1, 2010, a bank must not assess any fees or charges on a consumer's account on or after August 15, 2010, for paying an ATM or one-time debit card transaction pursuant to the overdraft service, unless the bank has complied with the following described items and obtained the consumer's affirmative consent.

For new accounts opened on or after July 1, 2010, a bank must comply with the following items and obtain the consumer's affirmative consent before the bank assesses any fee or charge on the consumer's account for paying an ATM or one-time debit card transaction pursuant to the bank's overdraft service.

The following four items must be complied with before a bank is allowed to assess a fee or charge on a consumer's account for paying an ATM or one-time debit card transaction pursuant to the bank's overdraft service:

- Provides the consumer with a notice in writing, or if the consumer agrees, electronically, segregated from all other information, describing the institution's overdraft service;
- Provides a reasonable opportunity for the consumer to affirmatively consent, or opt in, to the service for ATM and one-time debit card transactions;
- Obtains the consumer's affirmative consent, or opt-in, to the bank's payment of ATM or one-time debit card transaction; and
- Provides the consumer with confirmation of the consumer's consent in writing, or if the agrees, electronically, which includes a statement informing the consumer of the right to revoke such consent.

Regulation E includes a model form (Model Form A-9) in Appendix A which should be used for the written notice provided to the consumer. The model form can be found at
http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20091112a3.pdf

The Staff Commentary states that if the bank also offers lines of credit to cover overdrafts that that fact should be disclosed on the model form as well as overdraft sweeps from another account if those are also offered.

XI. Gift Cards

The gift card protections apply to all gift cards sold on or after August 22, 2010.

Covered products include:

- Retail gift cards
- Network branded gift cards

They do not include reloadable prepaid cards that are not labeled as a gift card and prepaid cards received

through a loyalty, award, or promotional program.

The protections include:

- Dormancy, inactivity, and service fees may only be assessed if (1) there has been at least 1 year of inactivity on card, (2) no more than one such fee is charged per month, and (3) the consumer is given clear and conspicuous disclosures about the fees.
    [Fees subject to the restrictions include, monthly maintenance or service fees, balance inquiry fees, reload fees, ATM fees, and POS fees.]
- Expiration date must be at least 5 years after date card is issued. Consumers must be given a reasonable opportunity to purchase a card with at least 5 years before the card expiration date. No fees can be assessed for replacing an expired card, or for refunding the remaining balance, if the underlying funds remain valid.

XII. REMITTANCE TRANSFER RULES

Effective 10/28/13, the Consumer Financial Protection Bureau has issued rules to protect consumers who send money electronically to foreign countries. These transactions are called “remittance transfers.”

Coverage

The rules apply to remittance transfers if they are:

- More than $15,
- Made by a consumer in the United States, and
- Sent to a person or company in a foreign country.

This includes many types of transfers, including wire transfers.

Exemption

A bank does not meet the definition of a remittance transfer provider if 100 or less remittance transfers (by consumers) were provided in the previous or current calendar year. When the bank meets the definition of a remittance provider, it must adhere to the following requirements.

Disclosure Requirements

- The first disclosure – known as a pre-payment disclosure – is given to the sender before he or she pays for the remittance transfer. This disclosure must list the amount of money to be transferred, the exchange rate, certain fees including those collected by the provider, taxes collected by the provider, and the amount of money expected to be delivered abroad, not including certain recipient institution fees or foreign taxes. The fact that the company provides this pre-payment disclosure does not mean that the sender is obligated to complete the transaction. Senders may compare these disclosures across a number of providers.
- A company must also provide a receipt when payment is made. The receipt must repeat the information in the pre-payment disclosure. (If the pre-payment disclosure is inaccurate, a corrected disclosure must be provided.) The receipt must also tell the sender the date of availability, recipient’s contact information, statement of sender’s rights, remittance transfer provider’s contact information, and regulator’s contact information.
- Instead of issuing a separate pre-payment disclosure and receipt, a company may opt to provide a single combined disclosure before the sender pays for the transfer, so long as proof of payment is given when payment is made.

Cancellation and Error Resolution Rights

- The rule gives senders 30 minutes to cancel a remittance transfer and receive a refund. Special cancellation rules apply to transfers scheduled three or more business days before the transfer date.
- Senders have 180 days to report errors in regards to a particular transfer. If a sender reports an error, a company must investigate it. For certain errors, senders can receive a refund or redelivery, without charge, of any amount that did not arrive. Remittance transfer providers are also responsible for mistakes made by their agents.

More detailed information can be found at: http://files.consumerfinance.gov/f/201408_cfpb_compliance-guide_intl-money-transfer-small-entity-compliance-guide.pdf in addition to the regulation.

XIII. RETENTION

A bank must retain evidence of its compliance with Regulation E for two years after a disclosure was required to be given or an action required to be taken.

Note: The Prepaid Card rule that was expected to take effect in April 2018 has been extended until April 2019. This policy will be updated for those requirements prior to that date in order to incorporate any additional changes released prior to that time.

REGULATION GG - Unlawful Internet Gambling 1/19

Introduction

In 2006, Congress passed the Unlawful Internet Gambling Enforcement Act which prohibits any person engaged in the business of betting or wagering (as defined in the Act) from knowingly accepting payments in connection with the participation of another person in unlawful internet gambling. The statute also required the regulatory agencies to identify which payment systems could be used to facilitate prohibited transactions, and require participants in those systems to have policies and procedures to identify and block prohibited transactions, or prevent or prohibit them. The Department of Treasury and the Federal Reserve Board have issued a joint final rule, Regulation GG, to implement this Act.

> Note: As defined in Regulation GG, unlawful internet gambling means to "place, receive or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received or otherwise made."

Purpose

The purpose of this regulation is to prevent unlawful Internet gambling businesses from utilizing the banking system. The bank has established this written policy and procedures to identify and block, or otherwise prevent or prohibit, restricted transactions involving unlawful internet gambling. The institution is a non-exempt participant under the regulation and will comply with its policies and procedures, as well as any policies and procedures of any designated payment systems with respect to which the institution is a non-exempt participant, to meet the requirements of Regulation GG.

Due Diligence

The rule focuses on screening for unlawful Internet gambling businesses at the time of account opening. If unlawful Internet gambling businesses are prevented from accessing the banking system, then they will not be able to make or receive payments using checks, credit or debit cards, wires, or ACH payments.

The likelihood of a commercial customer conducting restricted transactions will be assessed at account opening. This will be done as follows:

- Determine whether the account is for an individual or commercial customer.
- For accounts determined to be for individuals, no further steps are required.
- For commercial accounts on the Business account application the bank asks every potential business customer “Does your business engage in Internet Gambling?”
    - If the answer is yes, do not open the account.
    - If the answer is no, perform due diligence to determine if the account has minimum risk of engaging in internet gambling business then proceed with account opening procedures.

When the bank has "actual knowledge" (which is when a particular fact about a commercial customer is known by or brought to the attention of an employee responsible for compliance functions) that one of their commercial customers is participating in restricted transactions, the bank will complete an investigation which may result in the account being closed.

Discovery of restricted and unlawful gambling will initiate a Suspicious Activity Report (SAR) filing with the Bank Secrecy Act (BSA) Officer.

Notification to existing & new commercial customers

As required by the rule, the below one-time notification of the requirements under this law will be furnished to commercial customers no later than December 1, 2009.

REGULATION GG - Unlawful Internet Gambling 1/19

"In accordance with the requirements of the Unlawful Internet Gambling Enforcement Act of 2006 and Regulation GG, this notification is to inform you that restricted transactions are prohibited from being processed through your account or relationship with our institution. Restricted transactions are transactions in which a person accepts credit, funds, instruments or other proceeds from another person in connection with unlawful Internet gambling."

The Bank will provide a similar notification (one time) to new commercial customers within its new account agreement terms and conditions.

Training
Training, as necessary, to implement this policy and the related procedures will be conducted. Annually a report will be made to the Board of Directors regarding the institution's compliance with this policy and whether any changes should be considered.

TRUTH IN LENDING ACT - REGULATION Z 1-19

Introduction

This act is designed to assure uniform and meaningful disclosure of credit terms that will enable consumers to compare more readily the various terms available and to protect the consumer against inaccurate and unfair credit billing and credit card practices. It promotes disclosing consistent credit information to consumers; it does not regulate the cost or charge of the credit itself. The cost must be expressed in a dollar amount as the finance charge, and as an annual percentage rate computed on the amount financed.

I. REGULATION Z COVERAGE

Regulation Z applies only to credit offered, applied for, or extended to an individual for a consumer purpose.

This regulation does not apply to the following:

a. *Business, commercial, agricultural, or organizational credit.* An extension of credit primarily for a business, commercial or agricultural purpose. Credit extended to acquire, improve, or maintain rental property (regardless of the number of housing units) that is not owner-occupied is deemed to be for business purposes.
b. *Credit over $50,000 (adjusted annually) not secured by real property or a dwelling.* It was increased to $53,500, effective January 1, 2014; $54,600, effective January 1, 2015; remained at $54,600 effective January 1, 2016 and January 1, 2017; increased to $55,800, effective January 1, 2018. For future updates, refer to: https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/truth-lending-regulation-z-threshold-adjustments/
c. However, private education loans and loans secured by real property (such as mortgages) are still subject to TILA regardless of the amount of the loan.

II. CLOSED-END CREDIT DISCLOSURES

A. TRID Loan Disclosures

Initial Disclosure (TRID Loans):

Most closed-end consumer mortgages secured by real property primarily for personal, family, or household purposes including:

- Construction-only loans
- Home purchase loans
- Home refinance loans
- Home improvement loans
- Loans secured by vacant land or by 25 or more acres
- Credit extended to certain trusts for tax or estate planning purposes also are covered by the TILA-RESPA rule.

The TILA-RESPA rule does not apply to:

- Home equity lines of credit (HELOCs),
- Reverse mortgages,
- Chattel dwelling loans, i.e. mortgages secured by a mobile home or by a dwelling that is not attached to real property (i.e., land).
- Loans made by persons who are not considered “creditors,” because they make five or fewer mortgages in a year.

There is also a partial exemption for certain transactions associated with housing assistance loan programs for low- and moderate-income consumers.

B. Non-TRID Loan Disclosures

Initial Disclosure (non TRID loans):

[For closed-end loan transactions that do not fall under the Truth in Lending/RESPA Integrated Disclosure rule as described above, refer to the following information on the required Truth in Lending disclosure that must be provided.]

The bank must provide a Truth in Lending Disclosure Statement (TIL) to the borrower no later than loan consummation as detailed below:

- Creditor's identity: The bank's name and address.
- Amount financed:

  In accordance with regulatory requirements, the amount financed is included in the "Fed Box" of the TIL and in the "Itemization of the amount financed."

The amount financed is calculated by:

1. Taking the loan amount and
2. Subtracting the amount of those fees that are treated as "Prepaid finance charges." For instance, a $2,000 loan with a $50 loan fee would have an "Amount Financed" of $1,950.
   - Itemization of amount financed: Should detail:
     1. The amount of any proceeds distributed directly to the consumer.
     2. The amount credited to the consumer's account with the creditor.
     3. Any amounts paid to other persons by the creditor on the consumer's behalf. The creditor shall identify those persons.
     4. The prepaid finance charge.
   - Finance Charge:

The finance charge is the dollar amount cost of consumer credit and consists of charges that are not payable by the consumer in a comparable cash transaction. When paid by the borrower, the following fees or charges are "finance charges" for TIL purposes:

- Loan fee
- Life-of-loan flood determination fee
- Mortgage broker fee
- Underwriting fee
- Tax service fee
- Courier/express mail fee (unless borrower specifically requests service)
- Settlement or closing fee
- Odd days interest
- Private mortgage insurance premiums (including escrowed amounts)
- Assignment fee
- Appraisal fee (for non-real estate loans)

- Credit Report fee (for non-real estate loans)

The following fees or charges, if bona fide and reasonable, are excluded from the disclosed "Finance Charge" for TIL purposes:

- Appraisal fee (excluded only for real estate transactions)
- Credit report fee (excluded only for real estate transactions)
- Non-refundable application fee, if charged to all applicants
- Fees for title examinations, title insurance, etc.
- Fees for surveys, termite and pest inspections

  (Section 1026.4 of Regulation Z and the Official Staff Commentary should be consulted when determining if specific fees or charges should be disclosed as "prepaid finance charges" for TIL purposes. The guides in the Loan Forms section can also assist in determining what fees are finance charges.)

  TOLERANCES:

  Mortgage 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) shall be treated as accurate if the amount disclosed as the finance charge:

  a) Is understated by no more than $100; or
  b) Is greater than the amount required to be disclosed.

  Other credit:

  In any other transaction, the amount disclosed as the finance charge shall be treated as accurate if, in a transaction involving an amount financed of $1,000 or less, it is not more than $5 above or below the amount required to be disclosed; or, in a transaction involving an amount financed of more than $1,000, it is not more than $10 above or below the amount required to be disclosed.

- Annual Percentage Rate (APR).
- For loans without real property or a dwelling as collateral, the Payment Schedule, including the number, amounts, and timing of payments.
- Total of payments.
- Demand Feature. (if applicable)
- Variable rate.
  1. If the annual percentage rate may increase after consummation in a transaction not secured by the consumer's principal dwelling or in a transaction secured by the consumer's principal dwelling with a term of one year or less, the following disclosures:
     a. The circumstances under which the rate may increase.
     b. Any limitations on the increase
     c. The effect of an increase.
     d. An example of the payment terms that would result from an increase.

  2. If the annual percentage rate may increase after consummation in a transaction secured by the consumer's principal dwelling with a term greater than one year, the following disclosures.
     a. The fact that the transaction contains a variable-rate feature.

b. A statement that variable-rate disclosures have been provided earlier.

- Total sale price.

  In a credit sale, the "total sale price," using that term, and a descriptive explanation (including the amount of any downpayment) such as "the total price of your purchase on credit, including your downpayment of $."
- Prepayment features (penalties or rebate of finance charge)
- Late Payment charges.
- Security interest information.
- Insurance and debt cancellation.

  The items required by §1026.4(d) in order to exclude certain insurance premiums and debt cancellation fees from the finance charge. (Must state that the insurance is not required, give cost, term, and have consumer initial that they want the coverage. To exclude property insurance, the bank must allow the consumer to choose the insurer and disclose that fact.)
- Security interest charges.

  To exclude security interest charges (i.e., filing fees) from the "finance charge" calculation, these fees must be disclosed and itemized. Only the amount actually paid to the Public Officials may be excluded from the disclosed "Finance Charge."
- Contract reference.
- Assumption policy.

  For residential mortgage transactions, the TIL should indicate whether a subsequent purchaser may be permitted to assume the loan.
- Required Deposit.

  If the bank requires the consumer to maintain a deposit as a condition of a specific transaction (such as a CD secured loan) and the deposit is earning less than 5%, the bank must mark the "Required Deposit" part of the TIL.
- As of January 30, 2011, Interest rate and Payment information for loans secured by real property of a dwelling as shown in Appendix H of the Regulation Z. Some of the things to be disclosed include:
  1. The interest rate for fixed rate loans.
  2. For variable rate loans, the interest at consummation, the maximum interest rate in the first 5 years and during the life of loan.
  3. First adjustment of a payment increase if applicable.
  4. Principal and interest payment if applicable and the amount of the escrow if applicable.
  5. For interest only payments, the amount of the interest payment and the fact that none is going to pay principal.
  6. Amount of balloon payment, if applicable.

- No-guarantee-to-refinance statement. For a closed-end transaction secured by real property or a dwelling, a statement that there is no guarantee the consumer can refinance the transaction to lower the interest rate or periodic payments. Format should be like model in Appendix H.

Estimates:

If any information necessary for an accurate disclosure is unknown, make the disclosure based on the best information reasonably available at the time the disclosure is provided to the consumer. Place an (e) beside any estimate.

Example - For draw notes, the amount or timing of the draws are usually unknown. Place an "e" beside the APR, the finance charge, the amount financed, and the total payments that are located in the "Fed Box".

Timing:

Prior to July 30, 2009, for residential mortgage transactions subject to the Real Estate Settlement Procedures Act (RESPA), the bank must provide an "early" TIL no later than 3 business days after the bank receives a written loan application. A "residential mortgage transaction" is a loan to purchase the initial acquisition or construction of the consumer's principal dwelling. The only types of construction loans which are subject to RESPA are construction loans where the bank is going to do the permanent financing, or may do the permanent financing, or if the loan went to purchase the lot and do the construction.

Effective July 30, 2009, the "early" Truth in Lending disclosure should be provided to all closed-end mortgage loans secured by a dwelling subject to RESPA within 3 "business" days (a day on which the bank's offices are open to the public for carrying on substantially all of its business functions) of receiving the application. This new rule would now include refinances and home equity loans, in addition to home purchases. It also includes dwellings other than just principal dwellings as long as the loan is a consumer loan. The disclosure must be provided at least seven "business" days (all calendar days except Sundays and specified Federal legal public holidays) before closing; and if the APR on the disclosure is inaccurate outside of the standard APR tolerances, a revised disclosure will have to be received by the customer at least three "business" days (all calendar days except Sundays and specified Federal legal public holidays) prior to closing. The three/seven business day waiting periods may not be waived unless the consumer has a bona fide personal financial emergency. The consumer must provide a dated, written statement describing the emergency and specifically waiving or modifying the waiting period so that the loan can be closed. (These rules are similar to the current rescission waiver rules.)

In addition, no fees can be assessed for a closed-end mortgage transaction before a consumer has received the early disclosures except a credit report fee. A consumer is considered to have received the disclosure three "business" days (all calendar days except Sundays and specified Federal legal public holidays) after they are mailed.

In addition to the above new requirements, as of July 30, 2009, the "early" Truth in Lending disclosure form must include the following statement: "You are not required to complete the agreement merely because you have received these disclosures or signed a loan application."

C. Other Disclosures for Closed-end Loans

Initial Disclosures For Variable-Rate Closed-end Loan Transactions:

If the APR may increase after consummation in a transaction secured by the consumer's principal dwelling with a term greater than one year, the disclosures below must be given to the consumer at application.

1. The booklet "Consumer Handbook on Adjustable Rate Mortgages"

   Note: Balloon notes in which the rate doesn't change during the life of the loan are not variable rate loans. An example of a loan in which you would give this disclosure is a personal purpose loan based on the prime rate.

2. A loan program disclosure for each variable-rate program in which the consumer expresses an interest.

Refer to 1026.19 of Reg Z for details of what the disclosure should include.

New Adjustable-Rate Mortgage Disclosure rule (Effective January 10, 2014) For an adjustable-rate mortgage or ''ARM'', a closed-end consumer credit transaction secured by the consumer's principal dwelling in which the annual percentage rate may increase after consummation, the creditor, assignee, or servicer of an adjustable-rate mortgage shall provide consumers with:

- The initial rate adjustment provided to consumers at least 210, but no more than 240, days before the first payment at the adjusted level is due. If the first payment at the adjusted level is due within the first 210 days after consummation, the disclosures shall be provided at consummation.
- For rate adjustments with a corresponding change in payment, the creditor must disclose to consumers at least 60, but no more than 120, days before the first payment at the adjusted level is due.
- The disclosures shall be provided to consumers at least 25, but no more than 120, days before the first payment at the adjusted level is due for ARMs with uniformly scheduled interest rate adjustments occurring every 60 days or more frequently and for ARMs originated prior to January 10, 2015 in which the loan contract requires the adjusted interest rate and payment to be calculated based on the index figure available as of a date that is less than 45 days prior to the adjustment date.
- The disclosures shall be provided to consumers as soon as practicable, but not less than 25 days before the first payment at the adjusted level is due, for the first adjustment to an ARM if it occurs within 60 days of consummation and the new interest rate disclosed at consummation was an estimate.

Right of Rescission:

Rescission provisions apply to some types of closed-end credit transactions. Procedures described in Section IV below should be followed.

III. OPEN-END CREDIT DISCLOSURES

"Open-end credit" is defined as consumer credit extended under a plan in which:

- The creditor contemplates repeated transactions;
- The creditor may impose a finance charge on the unpaid balance; and
- The line of credit is re-usable when the outstanding balance is paid.

All three conditions must exist for the credit transaction to be considered "open end". If all three conditions are not satisfied, the transaction is considered to be "closed end".

The Credit Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act) amended Truth in Lending to establish fair and transparent practices for open-end credit plans, including credit cards. Since this bank does offer its own credit card, the provisions affecting credit cards are detailed in this policy. The provisions affecting other open-end credit are also detailed below.

A. Credit Cards

The Credit Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act) amended Truth in Lending to establish fair and transparent practices for open-end credit plans, including credit cards. (Refer to Appendix G in Regulation Z for models of the below described disclosure requirements.) The following details the requirements related to this type open-end credit effective 7/1/10:

- Application disclosures in tabular form which disclose:
  - Annual Percentage Rate.
  - Variable rate info, such as, how rate is determined, what index it is tied to, that the rate can vary if it can. (Note: If rate is not tied to an index, a change of terms notice should be sent at each rate adjustment.)
  - Discounted initial rate if applicable. Should also disclose rate that otherwise would apply.
  - Premium initial rate if applicable in 16-point font. (Bank can also disclose the rate after the premium rate expires in 16-point.)
  - Penalty rates if a rate may increase as a penalty for a specific event like late payment or going over the credit limit, and a description of the trigger events.
  - Under the table, a brief description of when an introductory rate can be revoked and the rate that will then apply after it is revoked.
  - Additional info concerning APRs that can vary by state or based on creditworthiness.
  - Fees and charges, including: annual fees, periodic fees, fixed finance charge with description, minimum interest charge, transaction charge, cash advance fee, late payment fee, over limit fee, transfer fee, returned payment fee.
  - If there is an account opening fee or security deposit that will be debited and is 15% or more of credit limit, then must disclose the credit limit available minus these items.
  - Grace period or fact that there is no grace period.
  - The balance computation method should be disclosed directly underneath the table.

Other disclosures should also be made, such as, billing error rights, when finance charges begin to accrue, taxes, security interest, etc. Note that the disclosures that must be in the table or are permitted to be in table are the only items that can be in table. The table cannot be modified to include additional items.

- Periodic Statement Requirements:
  - Must be furnished for each billing cycle in which the account as a debit or credit balance or a finance charge has been imposed, but no less than quarterly.
  - Must include: beginning and closing dates of period; beginning and closing balances; identification of each credit transaction; each periodic rate, the range of balances to which it is applicable, the corresponding "Annual Percentage Rate"; the types of transactions to which the periodic rates apply; the fact that the periodic rate may vary if it is a variable rate; promotional rate if used in that period; charges imposed, grouped together, near the transactions identified; finance charges; fees charged for the period and year-to-date; billing error notice; date by which balance must be paid to avoid finance charge; date by which balance must be paid to avoid additional finance charges (grace period) or fact that there is no grace period.
  - Must be sent at least 21 days prior to the end of the grace period if there is one.

- Advance Notice requirements:

  Change of terms notice must be sent at least 45 days before effective date of change. Specific formatting is required, such as, the use of a tabular format. (Refer to regulation prior to sending notice to ensure it incorporates all required information.)

B. Home Equity Lines of Credit

Initial "Early" HELOC Disclosure:

The bank must provide an application "early" HELOC disclosure and a copy of the Consumer Financial

Protection Bureau brochure “What You Should Know About Home Equity Lines of Credit” at the time of application, or within 3 business days for applications not submitted in person. The “early” application HELOC disclosure must address the following:

1. Retention of Information.
2. Conditions for disclosed terms.
3. Security interest and risk to consumer’s home.
4. Possible actions by the bank (i.e. when and how bank may terminate the plan).
5. Payment terms including the length of the draw and repayment periods.
6. Annual percentage rate.
7. Fees imposed by the bank stated as a dollar amount or a percentage of the loan.
8. Fees imposed by third parties to open the plan, including check fees.
9. Negative amortization.
10. Transaction requirements.
11. Tax implications.
12. Information regarding variable rate plans, including the index used.

Note/Disclosure:

A note/disclosure must be provided at closing for HELOCs. The note/disclosure must address the following:

1. Information regarding the finance charge, including under what circumstances the finance charge will be imposed and an explanation of how it will be determined.
2. Information regarding other charges.
3. Information regarding the bank’s security interest.
4. A statement of billing rights.
5. A statement of the conditions under which the plan may terminate or change the plan.
6. Payment information on both the draw and repayment periods.
7. Statement that negative amortization may occur (if applicable).
8. A statement of the transaction requirements.
9. A statement of the tax implications.
10. A statement of the APR does not include costs other than interest.
11. Variable rate disclosures (provided with “early HELOC disclosure”).

Periodic statements:

The periodic statements for HELOCs are required to contain:

1. The previous balance.
2. Identification of transactions.
3. Any credits.
4. Periodic rates and the corresponding APR (if variable rate, must disclose that the periodic rate may vary).
5. Balance on which the finance charge is computed.
6. Amount of the “finance charge.”
7. Any other charges.
8. “Annual percentage rate.”

9. Closing date of the billing cycle and the outstanding balance.
10. Any grace period.
11. Address to be used to notify the bank of billing errors.

C. OTHER OPEN-END LINES OF CREDIT (NOT SECURED BY A DWELLING)

Account Disclosures:

For non-dwelling secured, open-end lines of credit, a disclosure is not required at application, but one is required by consummation. Effective 2/22/10 and required by 7/1/10, these account disclosures need to be in tabular format. The table shall include to the extent applicable:

- Annual Percentage Rate. Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, cash advances, or balance transfers, expressed as an annual percentage rate.
- Variable Rate Information. If a rate is a variable rate, the creditor shall disclose the fact that the rate may vary and how the rate is determined, such as, the index it is tied to. (If a bank does not tie its variable –rate program to an index or formula, but may change the rate it charges from time-to-time, the bank must give a “change-in-terms” notice at each adjustment of the rate.)
- Discounted initial rates. If the initial rate is an introductory rate, disclose the rate that would otherwise apply to the account. The creditor is not required to, by may disclose in the table the introductory rate along with the rate that would otherwise apply to the account if it also discloses the time period the introductory rate will remain in effect and use the term “introductory” or “intro” in close proximity to the introductory rate.
- Premium initial rate. If the initial rate is temporary and is higher than the rate that will apply after the temporary rate expires, disclose the premium initial rate in at least 16-point type. The creditor can also (but is not required) to disclosure in the table the rate that will apply after the premium rate expires in 16-point type.
- Penalty rates. 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 exceeding the credit limit, the creditor must disclose the increased rate that may apply, a brief description of the event that may result in the increased rate and how long the increased rate will remain in effect.
- Introductory rates. If an intro rate is disclosed, briefly disclose directly beneath the table the circumstances under which the intro rate may be revoked and the rate that will apply after the intro rate is revoked.
- Point of sale where APRs vary by state or based on creditworthiness. APRs that vary by state or based on the consumer’s creditworthiness in the account-opening table: the specific APR applicable 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.
- Fees and charges that must be disclosed in the account opening disclosures (Generally, lenders may not collect any fee before account-opening disclosures are provided.):
    - Annual or other periodic fee for the issuance or availability of an open-end plan, including any fee based on account activity or inactivity.
    - Any non-periodic fee that relates to opening the plan and the fact that the fee is a one-time fee.
    - Any fixed charge and a brief description of the charge.
    - Any minimum interest charge that could be imposed during a billing cycle and a brief description of the charge.
    - Any transaction charge imposed by the creditor for use of the open-end plan for purchases.

- Any fees imposed for: a cash advance, late payment, exceeding the credit limit, outstanding balance transfers, returned payment, insurance or debt cancellation coverage.

NOTE: Effective March 28, 2013, the total fee limitation that can be charged to a consumer with respect to 25 percent of the credit limit when the account is opened may only be applied during the first year after the account is opened. This effectively amends Section 1026.52(a), Limitation on Fees, in the regulation's provisions.

- Grace Period. The date by which credit can be repaid without incurring a finance charge or if no grace period is provided, that fact must be disclosed. For 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, the phrase "Paying Interest" shall be used.
- Balance Computation Method. The Balance Computation Method would be listed directly below the required table.
- Billing Error Rights. Disclosure is required with language mandated by the regulation.
- Additional charges, such as, finance charges, charges from the consumer's failure to use the plan as agreed, taxes, charges imposed for termination a plan; and charges for voluntary credit insurance, debt cancellation or debt suspension.
- Security Interest.

Some of the account-opening disclosures must be provided to the consumer in the form of a table similar to any of the applicable tables in Appendix G-17. Some other disclosures must be located directly below the table. The table may not be modified.

Periodic Statements:

The periodic statements for other consumer lines of credit (non-home secured) are required to contain:

1. Previous Balance.
2. Identification of transactions.
3. Credits. Any credit to the account during the billing cycle, including the amount and the date of the crediting. The date need not be provided if a delay in crediting does not result in any finance or other charge.
4. Periodic rates. Except as provided in paragraph 1026.7(b)(4)(ii) , 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 a range of balances to which it is applicable. 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 rate apply shall also be disclosed. For variable-rate plans, the fact that the annual percentage rate may vary.

   (ii) *Exception.* A promotional rate, as that term is defined in §1026.16(g)(2)(I) is required to be disclosed only in periods in which the offered rate is actually applied.

5. 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". 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. As and alternative to providing an explanation of how the balance was determined, a creditor that uses a balance computation method identified in 1026.5a(g) may, at the creditor's

option, identify the name of the balance method and provide a toll-free telephone number where consumers may obtain from the creditor more information about the balance computation method and how resulting interest charges were determined. If the method used is not identified in 1026.5a(g), the creditor shall provide a brief explanation of the method used.

6. Charges imposed.
   (i) the amounts of any charges imposed as part of a plan as stated in 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.
   (ii) 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) in Appendix G.
   (iii) 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 “Fees”, 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.
7. Change in terms and increased penalty rate summary. Creditors that provide a change in terms notice or a rate increase notice, on or with the periodic statement, must disclose the information required by the regulation on the periodic statement in the required format. Refer to Forms G-18(F) and G-18(G).
8. Grace period.
9. Address for notice of billing errors.
10. Closing date of billing cycle; new balance.

[Note: Compliance with paragraphs 1026.7(b)(11)-(13), relates to credit cards only and are not included.]

11. Deferred interest of similar transactions. See Sample G-18(H) for example of disclosure.

It is stated in the Credit CARD Act that, effective August 20, 2009, periodic statements (for any type of consumer open-end credit) must be sent at least 21 days prior to the end of the grace period/payment due date, rather than the previously required 14 days prior to the end of the grace period/payment due date.

D. Other Requirements for Open-End Credit

Payment Requirements:

- The bank is required to credit a payment to the consumer's account as of the date of receipt. (This is required except when a delay in crediting does not result in a finance or other charge).
- The bank may specify reasonable requirements (such as, being sent with the account number or payment stub, setting reasonable cut-off times, paying by check, and sending payments to a particular address) for payments that enable most consumers to make conforming payments.
- If the bank accepts a payment that does not conform to its stated requirements, the bank shall credit the payment within five days of receipt.

- If the bank fails to credit a payment in the required timeframes, the bank is required to adjust the consumer's account so that any charges imposed are credited to the consumer's account during the next billing cycle.

Treatment of Credit Balances:

When a credit balance in excess of $1 is created on a credit account (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 the consumer), the creditor shall:

- Credit the amount of the credit balance to the consumer's account;
- Refund any part of the remaining credit balance within seven business days from receipt of a written request from the consumer;
- 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. (Note: No further action is required if the consumer's current location is not known to the bank and cannot be traced through the consumer's last known address or telephone number.)

Requirements Regarding Account Termination:

The bank shall not terminate an account prior to its expiration date solely because the consumer does not incur a finance charge. However, the regulation does not prohibit a bank from terminating an account that is inactive (i.e. no credit has been extended) for three consecutive months and if the account has no outstanding balance.

Statement of Billing Rights:

Statement of billing rights: Banks are required to provide consumers with an annual disclosure regarding billing rights. This disclosure is required at least once each calendar year between 6 and 18 months apart. Alternatively, banks are permitted to provide the language contained in Appendix G-4 of Regulation Z with each periodic statement.

Change in Terms:

For HELOCs, if any of the terms originally disclosed change, the bank is required to notify the borrower at least 15 days prior to the effective change date. If the bank prohibits additional extensions of credit or reduces the customer's credit limit, the bank must notify the customer of the bank's action no later than 3 business days after the action is taken. This notice must contain specific reasons for the action.

For open-end lines of credit (not secured by a dwelling), the bank must provide a change of terms notice when it makes a significant change in the terms of the plan. A significant change includes increases (but not decreases) to the APR. The 45-day change of terms notice is required when the change is an increase in a variable APR that is based on an index in the bank's control including plans with a floor.

Right of Rescission:

Rescission provisions may apply to home equity line of credit transactions. Procedures described in Section IV below should be followed.

IV. RIGHT OF RESCISSION

In a transaction where a security interest will be retained or acquired in a customer's principal dwelling, the bank must provide each customer who has an ownership interest in the dwelling with two copies of the Notice of the Right to Rescind. This does not apply; however, to "residential mortgage transactions" which are loans to finance the acquisition or initial construction of a consumer's principal dwelling or closed-end loans which refinance a

loan at the same bank with no new money advanced. *Note: Right to Rescind does apply to all refinances of open-end loans secured by the borrower's principal dwelling even if the amounts of the lines are the same.*

The notice should provide the following information:

1. The retention or acquisition of a security interest in the consumer's principal dwelling.
2. The consumer's right to rescind the transaction.
3. How to exercise the right to rescind, with a form for that purpose, designating the street address for our place of business.
4. The effects of rescission (as defined in 226.23(d) of Regulation Z).
5. The date rescission expires.

The customer has the right to rescind the transaction until midnight of the third business day following whichever event occurs last:

1. Consummation of the transaction.
2. Delivery of the rescission notice.
3. Delivery of all material disclosures (i.e. APR, finance charge, etc.).

Every day except Sundays and legal public holidays are considered "business days" for purposes of determining the 3 day rescission period. For example, if a rescindable transaction closes on Thursday and the rescission notice and other material disclosures are also provided on Thursday, the customer has the right to rescind the transaction by placing a written notice in the mail before midnight on Monday. The first day funds may be disbursed is Tuesday.

The bank or settlement agent is not permitted to disburse funds (other than into escrow) or perform services until the rescission period has expired and it is satisfied that the customer has not rescinded.

If the extension of credit is needed to meet a "bona fide personal financial emergency" the customer may waive the right of rescission. A waiver must be written by the borrower, must describe the emergency, must indicate that the borrower specifically waives the right to rescind the transaction, and must be signed by all customers who are entitled to rescind the transaction. Printed waiver forms are specifically prohibited.

V. SECTION 32 HIGH-COST MORTGAGES (HOEPA)

Section 1026.32 of Regulation Z (referred to as Section 32) defines "high rate, high cost" mortgage loans and places additional disclosure requirements on them.

Section 32 applies to consumer purpose loans secured by the borrower's principal dwelling, including home equity lines of credit (HELOCs) in which the annual percentage rate is calculated as described below exceeds the average prime offer rate by more than:

1. 6.5 percentage points for a first-lien transaction if the loan amount is $50,000 or more;
2. 8.5 percentage points for a first-lien transaction if the dwelling is personal property and the loan amount is less than $50,000; or
3. 8.5 percentage points for a subordinate-lien transaction.

In addition, a loan may be a high-cost loan if the points and fees as defined below will exceed:

1. 5 percent of the total loan amount for a transaction with a loan amount of $20,000 or more; or
2. The lesser of 8 percent of the total loan amount or $1,000 for a transaction with a loan amount of less

than $20,000.

Each of the above amounts are adjusted annually on January 1 based on the change in the Consumer Price Index on the preceding June 1.

The following link shows the adjusted amounts effective January 1, 2018:
https://www.federalregister.gov/documents/2017/08/30/2017-18003/truth-in-lending-regulation-z-annual-threshold-adjustments-credit-cards-hoepa-and-atrqm

The following link shows the adjusted amounts effective January 1, 2017:
https://www.federalregister.gov/documents/2016/06/27/2016-14782/truth-in-lending-regulation-z-annual-threshold-adjustments-card-act-hoepa-and-atrqm

The following link shows the adjusted amounts effective January 1, 2016:
https://www.federalregister.gov/articles/2015/09/21/2015-22987/truth-in-lending-regulation-z-annual-threshold-adjustments-card-act-hoepa-and-atrqm

The following link shows the adjusted amounts effective January 1, 2015:
https://www.federalregister.gov/articles/2014/08/15/2014-18838/truth-in-lending-regulation-z-annual-threshold-adjustments-card-act-hoepa-and-atrqm

If the creditor can charge a prepayment penalty, as defined in §1026.32(b)(6) of Regulation Z, more than 36 months after account opening or the prepayment penalty will exceed more than 2 percent of the amount prepaid, the open-end line of credit is considered to be a high-cost loan.

Transactions exempt from the above requirements include:

1. A reverse mortgage transaction subject to §1026.33;
2. A transaction to finance the initial construction of a dwelling;
3. A transaction originated by a Housing Finance Agency, where the Housing Finance Agency is the creditor for the transaction; or
4. A transaction originated pursuant to the United States Department of Agriculture's Rural Development Section 502 Direct Loan Program.

The annual percentage rate will be determined for both a closed- or open-end credit transaction based on the following:

1. For a fixed rate transaction the interest rate in effect as of the date the interest rate for the transaction is set;
2. For a variable rate transaction in which the interest rate is set based on 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 value of the index rate in effect as of the date the interest rate for the transaction is set, or the introductory interest rate, whichever is greater; and
3. For a variable rate transaction not based on an index, the maximum interest rate that may be imposed during the term of the loan or credit plan.

For the purposes of the “points and fees” test for closed-end credit, the total loan amount is calculated by taking the Amount Financed, as determined for Regulation Z calculation purposes, and deducting any Section 32 cost that is both included as points and fees and financed by the bank.

For the purposes of the "points and fees" test for open-end credit, the total loan amount is the credit limit for the plan when opened.

Points and fees are specifically defined in §1026.32(b)(1) for closed-end credit and §1026.32(b)(2) for open-end credit. Due to the various definitions of fees that are included or that may be excluded for each type of credit, a separate points and fees test specific to the bank will be developed outside this policy.

If a loan is considered to be a "high rate, high cost" mortgage loan under Section 32, a written disclosure that the customer may keep must be provided to the borrower at least 3 business days prior to closing. The disclosure must contain:

- The following statement:

  "You are not required to complete the 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 this loan."

- The APR.
- The amount of the regular monthly (or other periodic) payment as defined in §1026.32(c)(3)(i) and (ii) for closed-end and open-end credit respectively;
- The balloon payment as permitted.
- If the plan is a variable rate transaction, a statement that the interest rate may increase, along with the amount of the maximum single monthly payment, based on the maximum interest rate.
- If the loan is a refinancing, the total amount the consumer will borrow, as reflected by the face amount on the note; and where the amount borrowed includes premiums for optional credit insurance or debt cancellation coverage, the fact shall be stated, grouped together with the disclosure of the amount borrowed.
- Amount borrowed or credit limit.

In general a high-cost mortgage will not include the following:

- Balloon payments (a payment more than two times a regular payment) unless the balloon meets one of the conditions outlined in §1026.32(d)(1)(ii) or (iii) depending on whether the loan is closed- or open-end credit.
- Negative amortization.
- Payments that consolidates more than two periodic payments made on the loan in advance of the proceeds.
- An increase in the interest rate after default.
- Any rebate of interest from a loan acceleration due to default calculated by a method less favorable than the actuarial method.
- Prepayment penalties.
- A demand feature permitting the bank to accelerate the debt by terminating the high-cost mortgage in advance of the original maturity date except in the circumstances outlined in the regulation.

VI. CUSTOMER INQUIRES

When the bank orally responds to a customer's request concerning the cost of credit, the bank must quote the APR (either for that specific transaction or an example). The bank may also quote the simple interest rate if it is

applied to the unpaid balance.

VII. ADVERTISING

Closed End Credit Products:

The bank may advertise credit terms that are actually available. If an advertisement states an interest rate, the bank is required to state that rate as the "annual percentage rate" using that term or the abbreviation "APR". The bank is permitted to also state the simple interest rate or periodic rate that is applied to an unpaid balance, but these rates may not be more conspicuous that the APR.

If the advertisement contains any of the following four "triggering terms;"

1. The amount or percentage of any down payment (limited to credit sale transactions).
2. The number of payments or period of repayment.
3. The amount of any payment.
4. The amount of any finance charge (even if implicitly stated).

Then the following additional terms must be disclosed:

1. The amount or percentage of down payment.
2. The terms of repayment.
3. The annual percentage rate, using that term or the abbreviation "APR" as well as a statement concerning whether the rate may be increased after consummation.

**Effective October 1, 2009, the following information outlines several practices needed to comply with the clear and conspicuous standard for the advertising of closed-end loans secured by dwellings:

Disclosure Changes to Advertisements for Closed-end Dwelling-Secured Loans. Under the new rules, advertisements for home-secured loans may include only the simple annual interest rate, or the rate at which interest will accrue, along with and not more conspicuously than the disclosed APR. In addition, if an advertisement for a dwelling-secured loan includes a simple annual interest rate, such as a teaser rate, and more than one rate may apply during the loan's term, the advertisement must include:

- each simple annual rate of interest that will apply;
- the time period for which the rate will apply; and
- the loan's APR

If an advertisement for a dwelling-secured loan states any payment amount, the advertisement must include:

- the amount of each payment that will apply during the loan's term, including any balloon payment;
- the period of time each payment will apply; and
- the fact that the payments do not include taxes and insurance premiums if a first-lien loan

The additional disclosures discussed above must be equally prominent and in close proximity to the advertised payment or rate that triggered the required disclosures.

Tax Implications. If an ad (other than radio or TV) is for a loan secured by a principal dwelling states that the advertised extension of credit may exceed the fair market value of the dwelling, the ad should also state that: 1) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not

tax deductible for Federal income tax purposes; and 2) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

Prohibited Advertising Practices. The final rule prohibits a number of advertising practices for dwelling-secured loans deemed to be unfair, deceptive, associated with abusive lending practices, or otherwise not in the borrower's interest. These prohibited practices are:

1. using the term "fixed" when advertising a variable- rate loan or a transaction with a planned payment increase without including information about the time period for which the rate or payment is fixed and also using a term such as "ARM," before the use of the term "fixed" in the ad;
2. comparing the advertised rate or payment to an actual or hypothetical rate or payment without disclosing the rates or payments that will apply during the entire loan's term;
3. misrepresenting that a loan is government endorsed;
4. using the name of the borrower's current lender without including the actual advertiser's name and disclosing that the current lender is not associated with the advertisement;
5. making a misleading claim that debt will be eliminated or waived rather than replaced;
6. using the term "counselor" to refer to a for-profit mortgage broker or creditor; and
7. providing information on some trigger terms or disclosures in one language while providing information on some other trigger terms or disclosures in another language.

Open-End Credit Products:
As with closed-end credit products, the bank may only advertise credit terms that are actually available. The bank is specifically prohibited from referring to a home equity plan as "free money" or a similarly misleading term. If an advertisement for a home equity line of credit refers to tax deductibility, it may not be misleading in this regard and must include a statement like, "consult a tax advisor regarding the deductibility of interest".

Furthermore, if the advertisement contains any of the following four "triggering terms:"

1. The periodic rate that may be used to compute the finance charge.
2. A statement of when finance charges begin to accrue.
3. An explanation of how the amount of any finance charge will be determined.
4. The amount of any charge other than a finance charge that may be imposed as part of the plan.

Then the following additional terms must be disclosed:

1. Any periodic rate that may be applied expressed as an "annual percentage rate."
2. If the plan provides for a variable periodic rate, that fact must be disclosed.
3. Any minimum, fixed, transaction, activity, or similar charge that could be imposed.
4. Any membership or participation fee that could be imposed.

If any "triggering term" appears in an advertisement for a home equity line of credit, the following information must also be included:

1. Any periodic rate used to compute the finance charge expressed as an "annual percentage rate" using that term or the abbreviation "APR."
2. Whether the plan provides for a variable rate, and if so, the maximum annual percentage rate that may be imposed.
3. Any loan fee that is a percentage of the credit limit under the plan.

4. An estimate of any other fees imposed for opening the plan, stated as a single dollar amount or a reasonable range.
5. If the advertisement sets forth discounted or premium rates (meaning the initial annual percentage rate is not based on the index and margin used to make later rate adjustments in a variable rate plan), the advertisement must also state the period of time the rate will be in effect and with equal prominence to the initial rate, a reasonably current fully indexed annual percentage rate.
6. If the advertisement sets forth a minimum periodic payment, the advertisement must state that a balloon payment may result (if applicable).

**Effective October 1, 2009, the following additional requirements regarding advertising HELOC products apply:

- If an advertisement states an initial APR that is not based on the index and margin used for later rate adjustments, then the ad should state in equal prominence and in close proximity to the initial rate: 1) the period of time the initial rate is in effect; 2) a reasonably current APR that would have been in effect using the index and margin.
- If an ad contains a statement of any minimum periodic payment and a balloon payment will result if only the minimum payments are made, the ad should also state that a balloon payment will result and the amount and timing of the balloon payment if the consumer only makes the minimum payments for the maximum period of time that the consumer is permitted to make the such payment.
- If an ad (other than on radio or TV) for a HELOC secured by a principal dwelling states that the advertised extension of credit may exceed the fair market value of the dwelling, the ad should also state that: 1) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and 2) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.
- If the ad states a promotional rate or a promotional payment, the ad (other than a TV or radio ad) should stated: 1) the period of time during which the promotional rate or promotional payment will apply; 2) in the case of a promotional rate, any APR that will apply under the plan; and 3) in the case of a promotional payment, the amounts and time periods of any payments that will apply under the plan.

NOTE: An advertisement for a home-equity plan made through television or radio stating any of the terms requiring additional disclosures may alternatively comply by stating the APR and listing a toll-free telephone number, or any telephone number that allows a consumer to reverse the phone charges when calling for information, along with a reference that such number may be used by consumers to obtain additional cost information.

Effective July 1, 2010, the triggering terms for all open-end loans (non-home secured and home secured) can be a positive or negative reference. A negative reference would be “no closing costs” a positive reference would be “$100 in closing costs”.

VIII. PROMPT CREDITING OF PAYMENTS

This section applies to both open and closed- end loans secured by a consumer’s principal dwelling.

When processing a payment for a consumer credit transaction secured by a consumer's principal dwelling, the bank will:

1. Credit a periodic payment to the consumer's loan account as of the date of receipt, except when a delay in crediting does not result in any charge to the consumer or in the reporting of negative information to a consumer reporting agency. A periodic payment is an amount sufficient to cover principal, interest,

and escrow (if applicable) for a given billing cycle. A payment qualifies as a periodic payment even if it does not include amounts required to cover late fees, other fees, or non-escrow payments advanced on a consumer's behalf.

However, the crediting of the receipt of the payment may be delayed up to 5 days if the bank has specified in advance and in writing the requirements for the consumer to follow when making payments and the payment does not conform to these requirements.

2. If a partial payment is received (any payment less than a periodic payment), the bank may:
   a. Credit the partial payment upon receipt.
   b. Return the partial payment to the consumer.
   c. Hold the payment in a suspense or unapplied funds account.

   If the funds are held in a suspense account the following actions will take place.

   i. The bank will disclose on the consumer's periodic statement the total amount of funds held in the account, if a periodic statement is required. Upon accumulation of sufficient funds for a periodic payment, the amount will be credited to the account as a regular periodic payment.

3. If the bank receives a non-conforming payment and accepts the payment, the bank will credit the payment within 5 days of receipt, if the requirements for payment have been specified in writing. If no specific payment requirements have been provided to the borrower in advance and in writing, then the bank must accept payments by cash, money order, draft, or other negotiable instrument or electronic fund transfer and credit the payment as of the day of receipt.

   Examples of a non-conforming payment are any payment that does not meet one of the following requirements:
   a. Requiring that payments be accompanied by the account number or payment coupon.
   b. Setting a cutoff hour for payment to be received, or setting different hours for payment by mail and payments made in person.
   c. Specifying that only checks or money orders should be sent by mail.
   d. Accepting only U.S. dollars as payment.
   e. Having one particular address for receiving payments, such as a post office box.

   The bank may impose other reasonable requirements; however, the bank may not require customers to pay only by preauthorized electronic funds transfer.

IX. PAYOFF STATEMENTS

This section applies to both open and closed- end loans secured by a consumer's dwelling.

When providing a payoff statement in response to a written request from a consumer, the bank must provide the statement within 7 business days as of a specified date. If the bank is not able to provide the statement within this time period because a loan is in bankruptcy, foreclosure, is a reverse mortgage, a shared appreciation mortgage, or because of natural disasters or other similar circumstances, the payoff statement must be provided within a reasonable time.

X. RECORD RETENTION

TRUTH IN LENDING ACT - REGULATION Z 1-19

The bank is required to retain evidence of compliance with Regulation Z for 2 years from the date disclosures are required to be provided or action is required to be taken.

Effective January 1, 2014, the Ability to Repay (ATR)/ Qualified Mortgage (QM) rules require the creditor to retain evidence of compliance, including the prepayment penalty limitations, for three years after the date of consummation [Section 1026.43(c)(3)].

XI. Higher-Priced Mortgage Loans

The July 14, 2008, approved amendments to Regulation Z created a new category of mortgage loans called "Higher-Priced Mortgage Loans" effective October 1, 2009. A "higher-priced" mortgage loan is any closed-end mortgage (purchase money or non-purchase money) secured by a consumer's principal dwelling with an Annual Percentage Rate (APR) exceeding the "average prime offer rate" on prime loans (published by the Federal Reserve Board) by at least 1.50 percentage points for first-lien loans and 3.5 percentage points for subordinate-lien loans. The new rate spread calculator found at ffiec.gov can be used to determine if a loan is a higher-priced mortgage. If the result is "NA" the loan is not a higher-priced mortgage. If the result is a number equal to or greater than 1.5% for first liens or 3.5% for subordinate liens, then it is a higher-priced mortgage.

"Higher-priced" mortgages do not include home equity lines of credit, reverse mortgages, a loan for the initial construction of the dwelling, or temporary or "bridge" loans with terms of 12 months or less.

The "average prime offer rate" is an APR derived from average interest rates, points, and other loan pricing terms offered to consumers by a representative sample of creditors for mortgage transactions with low-risk pricing characteristics.

Effective October 1, 2009, creditors originating "higher-priced" mortgage loans are prohibited from the following (most of these also apply to "high cost" mortgages and are noted specifically if they do not apply):

- Relying on the collateral securing the loan without regard to the consumer's ability to repay the loan;
- Relying on the consumer's income or assets without verifying such amounts through reasonably reliable third-party documents; and
- Imposing a prepayment penalty if the consumer's payment can change in the first 4 years of the loan term.
- Imposing a prepayment penalty after two years.
- Imposing a prepayment penalty if the source of the prepayment funds is a refinancing by the same mortgage lender or an affiliate.
- Originating a higher-priced mortgage loan secured by a first lien without establishing an escrow account of at least 5 years (effective as of June 1, 2013) for property taxes and homeowners' insurance. The bank must escrow for RESPA and non-RESPA "higher priced" first lien mortgages. [Note: this prohibition does not apply to "high cost" mortgages.]
- Structuring a home-secured loan as an open-end plan to evade Regulation Z's "higher-priced" and "high cost" mortgage provisions.

Effective October 1, 2009, Regulation Z set forth the requirements for a *presumption of compliance* for HPML and HOEPA loans. Under the regulation, you are presumed to have complied with the repayment ability requirement if you have:

- Verified the consumer's repayment ability through the consumer's tax documents, payroll receipts, financial institution records, or other third-party documents that provide reasonable reliable evidence of the consumer's income or assets.

- Determined the consumer's repayment ability using the largest payment of principal and interest scheduled in the first 7 years following consummation and taking into account current obligations and mortgage-related obligations, which include taxes, insurance, homeowner association fees, etc.; and
- Assessed the consumer's repayment ability taking into account at least one of the following: the ratio of total debt obligations to income or the income the consumer will have after paying debt obligations.

The following information was published by the Federal Reserve on November 9, 2009, in letter (CA 09-12), to further clarify Regulation Z's repayment ability rule for higher-priced balloon mortgage loans with terms of less than 7 years since they are excluded from the presumption of compliance:

- Short-term balloon loans that are higher-priced are not prohibited if the creditor uses prudent underwriting standards and after considering the consumer's income, employment, obligations and assets other than the collateral, determines that the value of the collateral (the home) is not the basis for repaying the obligation including the balloon payment).
- The creditor must verify that the consumer's ability to make regular monthly payments and verify that the consumer would likely be able to satisfy the balloon payment obligation by refinancing the loan or through income or assets other than the collateral.
- Verify that the consumer could qualify for a refinancing before the balloon payment is due the creditor by engaging in prudent underwriting and consider factors such as the loan-to-value ratio and the borrower's debt-to-income ratio as of the time of consummation. A borrower with a high debt-to-income ratio, and/or with little or no equity in the property, will be less likely to refinance the loan before the balloon payment is due. The creditor is not required to predict the consumer's future financial circumstances, interest rate environment, and home value.

The final rules for higher-priced mortgage loan (HPML) escrow were released by the CFPB on January 22, 2013 in the *Federal Register*. These rules are effective June 1, 2013 for all applicable first-lien transactions that meet the definition of higher-priced mortgages.

A creditor may not extend a HPML secured by a first lien on a consumer's 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, such as insurance against liability arising out of the ownership or use of the property, or insurance protecting the creditor against the consumer's default or other credit loss.

The following do not require establishment of an escrow account: (1) a transaction secured by shares in a cooperative; (2) a transaction to finance the initial construction of a dwelling; (3) temporary or "bridge" loan with a loan term of twelve months or less, such as a loan to purchase a new dwelling where the consumer plans to sell a current dwelling within twelve months; and (4) a reverse mortgage transaction.

The final rules provide for specific exemptions to escrow for certain transactions extended by a creditor who:

- Operated in a rural or underserved area in the preceding calendar year, meaning that at least one covered transaction originated in the prior calendar year was secured by a first lien on a property located in a rural or underserved area. The published list of rural or underserved counties can be found here: https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/rural-and-underserved-counties-list/together with its affiliates, originated 2,000 or fewer first-lien covered transactions during the preceding calendar year;
- Has an asset size less than $2.028 billion (for the year 2014), $2.060 billion (for the year 2015); $2.052 billion (for the year 2016); $2.069 billion (for the year 2017); and, $2.112 billion (for the year 2018).
- Together with its affiliates, generally does not escrow for any mortgage obligation that it or its affiliates currently services, except in limited circumstances.

Under the escrow final rule, eligible creditors need not establish escrow accounts for mortgages intended at consummation to be held in portfolio, but must establish accounts at consummation for mortgages that are subject to a forward commitment to be purchased by an investor that does not itself qualify for the exemption. Under the rule, eligible creditors need not establish escrow accounts for mortgages intended at consummation to be held in portfolio, but must establish accounts at consummation for mortgages that are subject to a forward commitment to be purchased by an investor that does not itself qualify for the exemption.

“Rural” is defined as a county during a calendar year if it is neither in a metropolitan statistical area nor in a micropolitan statistical area that is adjacent to a metropolitan statistical area, as those terms are defined by the U.S. Office of Management and Budget and applied under currently applicable Urban Influence Codes (UICs), established by the united States Department of Agriculture’s Economic Research Service (USDA-ERS).

“Underserved” is defined as a county during a calendar year if, according to Home Mortgage Disclosure Act (HMDA) data for that year, no more than two creditors extend covered transactions secured by a first lien five or more times in the county.

A creditor may rely as a safe harbor on the list of counties published by the CFPB to determine whether a county qualifies as either “rural” or underserved for a particular calendar year.

A creditor or servicer may cancel an escrow account required by the final rule upon the earlier of: (1) termination of the underlying debt obligation; or (2) receipt of no earlier than five years after consummation of a consumer’s request top cancel the escrow account.

A creditor or servicer may not cancel an escrow account in response to a consumer’s request unless the following conditions are met:

- the unpaid principal balance is less than 80 percent of the original value of the property securing the underlying debt obligation; and
- the consumer currently is not delinquent or in default on the underlying debt obligation.

A creditor is prohibited from structuring a home-secured loan as an open-end plan to evade the escrow rule requirements.

NOTE: The CFPB further clarified the final rules for escrow relative to HPMLs with its proposal released April 12, 2013. The proposal clarified some technically interpretative omissions of disclosures that are to be included in the January 2014 effective final rules for ability to pay and prepayment penalties. The proposal’s comment period extends 15 days from publication in the *Federal Register* and will be updated to the CFPB’s escrows rule page after that the end of the comment period.

The CFPB’s proposed escrow rule clarifications include the following provisions regarding HPML disclosures:

- A creditor shall not extend credit based on the value of the consumer's collateral without regard to the consumer's repayment ability as of consummation;
- A loan may not include a prepayment penalty unless the penalty is otherwise permitted by law and under the terms of the loan: (1) the penalty will not apply after the two-year period following consummation; (2) the penalty will not apply if the source of the prepayment funds is a refinancing by the creditor or an affiliate of the creditor; and (3) the amount of the periodic payment of principal or interest or both may not change during the four-year period following consummation.

- Whether a prepayment penalty is permitted or prohibited in connection with particular payment changes includes the condition that, at consummation, the consumer's total monthly debt payments may not exceed 50 percent of the consumer's monthly gross income.
- A loan may not have a payment schedule with regular periodic payments that cause the principal balance to increase, i.e., not include payment changes that cause negative amortization.

The CFPB's proposed escrow rule comments include:

An exemption rule example: if a creditor originated 90 covered transactions secured by a first lien during 2013, the creditor meets the condition for an exemption in 2014 if at least 46 of those transactions are secured by first liens on properties that are located in such counties.

Further clarification of whether a county is rural by commenting that "adjacent" entails a county not only being physically contiguous with a metropolitan statistical area but also meeting certain minimum population commuting patterns.

A county for which there is no currently applicable UIC (because the county has been created since the USDA-ERS last categorized counties) is "rural" only if all counties from which the new county's land was taken are themselves rural under currently applicable UICs.

A county is "underserved" during a calendar year if, according to Home Mortgage Disclosure Act (HMDA) data for the preceding calendar year, no more than two creditors extended covered transactions. A county is "underserved" if, in the applicable calendar year's public HMDA aggregate dataset, no more than two creditors have reported five or more first-lien covered transactions with HMDA geocoding that places the properties in that county.

The qualifying transactions under the "underserved" counties exemption includes all first lien originations (and only first-lien originations) reported in the HMDA data are counted except those for which the owner-occupancy status is reported as "Not owner-occupied" (HMDA code 2), the property type is reported as "Multifamily" (HMDA code 3), the applicant's or co-applicant's race is reported as "Not applicable" (HMDA code 7), or the applicant's or co-applicant's sex is reported as "Not applicable" (HMDA code 4).

**Appraisals Required for HPMLs (effective January 18, 2014) **

A creditor shall not extend a higher-priced mortgage loan to a consumer without obtaining, prior to consummation, a written appraisal of the property to be mortgaged. The appraisal must be performed by a certified or licensed appraiser who conducts a physical visit of the interior of the property that will secure the transaction.

A creditor obtains a written appraisal that meets the requirements for an appraisal required under the HPML appraisal rules if the creditor:

1. Orders that the appraiser perform the appraisal in conformity with the
2. Uniform Standards of Professional Appraisal Practice and title XI of the
3. Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (12 U.S.C. 3331 et seq.), and any implementing regulations in effect at the time the appraiser signs the appraiser's certification;
4. Verifies 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;

5. Confirms that the elements of safe harbor set forth in Appendix N (shown below at the end of these HPML appraisal requirements) to this part are addressed in the written appraisal; and
6. Has no actual knowledge contrary to the facts or certifications contained in the written appraisal.

The HPML appraisal requirement does not apply to the following types of transactions:

- A qualified mortgage (as defined in the following Ability to Repay rule below);
- A transaction secured by a new manufactured home;
- 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;
- Loans of $25,500 or less, effective 1/1/15, 1/1/16, & 1/1/17; loans of $26,000 or less effective 1/1/18. (This amount is indexed annually and can be found at: https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/appraisals-higher-priced-mortgage-loans-exemption-threshold-adjustments/)
- Certain "streamlined" refinances; and
- A reverse-mortgage transaction.

In addition, until July 18, 2015, all transactions secured in whole or in part by a manufactured home are exempt from the requirements.

A creditor shall not extend a higher-priced mortgage loan to a consumer to finance the acquisition of the consumer's principal dwelling without obtaining, prior to consummation, two written appraisals, if:

1. The seller acquired the property 90 or fewer days prior to the date of the consumer's agreement to acquire the property and the price in the consumer's agreement to acquire the property exceeds the seller's acquisition price by more than 10 percent; or
2. The seller acquired the property 91 to 180 days prior to the date of the consumer's agreement to acquire the property and the price in the consumer's agreement to acquire the property exceeds the seller's acquisition price by more than 20 percent.

The two appraisals required by a higher-priced mortgage loan to a consumer to finance the acquisition of the consumer's principal dwelling may not be performed by the same certified or licensed appraiser.

The additional appraisal required as noted above shall not apply to extensions of credit that finance a consumer's acquisition of 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 procedure as a result of the person's exercise of rights as the holder of a defaulted mortgage loan;
- From a non-profit entity as part of a local, State, or Federal government program under which the non-profit entity is permitted to acquire title to single-family properties for resale from a seller who acquired title to the property through the process of foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedure;
- From a person who acquired title to the property by inheritance or pursuant to a court order of dissolution of marriage, civil union, or domestic partnership, or of partition of joint or marital assets to which the seller was a party;

- 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 an area designated by the President as a federal disaster area, if and for as long as the Federal financial institutions regulatory agencies, as defined in 12 U.S.C. 3350(6), waive the requirements in title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (12 U.S.C. 3331 et seq.), and any implementing regulations in that area; or
- Located in a rural county (as defined above in the Higher-Priced Mortgage Loans section of this policy, noted on page 28).

A creditor shall provide to the consumer a copy of each written appraisal:

- No later than three business days prior to consummation of the loan; or
- In the case of a loan that is not consummated, no later than 30 days after the creditor determines that the loan will not be consummated.

Any copy of a written appraisal required 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.*).

A creditor shall not charge the consumer for a copy of a written appraisal required to be provided to the consumer under the appraisal rules for HPMLs.

Appendix N - Higher-Priced Mortgage Loan Appraisal Safe Harbor Review
To qualify for the safe harbor provided by the HPML appraisal rule, a creditor must confirm that the written appraisal:

1. Identifies the creditor who ordered the appraisal and the property and the interest being appraised.
2. Indicates whether the contract price was analyzed.
3. Addresses conditions in the property's neighborhood.
4. Addresses the condition of the property and any improvements to the property.
5. Indicates which valuation approaches were used, and includes a reconciliation if more than one valuation approach was used.
6. Provides an opinion of the property's market value and an effective date for the opinion.
7. Indicates that a physical property visit of the interior of the property was performed.
8. Includes a certification signed by the appraiser that the appraisal was prepared in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice.
9. Includes a certification signed by the appraiser that the appraisal was prepared in accordance with the requirements of title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended (12 U.S.C. 3331 *et seq.*), and any implementing regulations.

XII. **ABILITY TO REPAY (ATR) RULE CHANGES – EFFECTIVE JANUARY 10, 2014**

[Section 1026.43(c)(2) Repayment ability - Basis for determination]

General Requirement: A creditor shall not make a loan that is a covered transaction unless 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.

TRUTH IN LENDING ACT - REGULATION Z 1-19

Covered transaction means a consumer credit transaction that is secured by a dwelling (meaning a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.), including any real property attached to a dwelling, other than a transaction exempt from coverage. These exemptions include:

- Home equity lines of credit;
- Mortgage transactions secured by a consumer's interest in a timeshare plan;
- Reverse mortgages;
- Temporary or ''bridge'' loans with terms 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;
- Construction phases of 12 months or less of a construction-to-permanent loan;
- An extension of credit made pursuant to a program administered by a Housing Finance Agency;
- An extension of credit made by:
  1. A creditor designated as a Community Development Financial Institution, as defined under 12 CFR 1805.104(h);
  2. A creditor designated as a Downpayment Assistance through Secondary Financing Provider operating in accordance with regulations prescribed by the U.S. Department of Housing and Urban Development applicable to such persons;
  3. A creditor designated as a Community Housing Development Organization provided that the creditor has entered into a commitment with a participating jurisdiction and is undertaking a project under the HOME program, pursuant to the provisions of 24 CFR 92.300(a), and as the terms community housing development organization, commitment, participating jurisdiction, and project are defined under 24 CFR 92.2; or
  4. A creditor with a tax exemption ruling or determination letter from the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3); 26 CFR 1.501(c)(3)–1), provided that:
     (*1*) During the calendar year preceding receipt of the consumer's application, the creditor extended credit secured by a dwelling no more than 200 times;
     (*2*) During the calendar year preceding receipt of the consumer's application, the creditor extended credit secured by a dwelling only to consumers with income that did not exceed the low- and moderate-income household limit as established pursuant to section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(20)) and amended from time to time by the U.S. Department of Housing and Urban Development, pursuant to 24 CFR 570.3;
     (*3*) The extension of credit is to a consumer with income that does not exceed the household limit specified in paragraph (a)(3)(v)(D)(*2*) of this section; and
     (*4*) The creditor determines, in accordance with written procedures, that the consumer has a reasonable ability to repay the extension of credit.
  5. An extension of credit made pursuant to a program authorized by sections 101 and 109 of the Emergency Economic Stabilization Act of 2008.

In making the repayment ability determination required under the ATR rule, a creditor must consider the following eight underwriting factors:

(i) The consumer's current or reasonably expected income or assets, other than the value of the dwelling, including any real property attached to the dwelling, that secures the loan;

(ii) If the creditor relies on income from the consumer's employment in determining repayment ability, the consumer's current employment status;

(iii) The consumer's monthly payment on the covered transaction, calculated (using the introductory or fully-indexed rate, whichever is higher, and monthly, fully-amortizing payments that are substantially equal);
(iv) The consumer's monthly payment on any simultaneous loan that the creditor knows or has reason to know will be made, including loans with a balloon payment, interest-only loans, and negative amortization loans or a home equity line of credit using the periodic payment required under the terms of the plan and the amount of credit to be drawn at or before consummation;
(v) The consumer's monthly payment for mortgage-related obligations;
(vi) The consumer's current debt obligations, alimony, and child support;
(vii) The consumer's monthly debt-to-income ratio or residual income calculated using the total of all of the mortgage and non-mortgage obligations as a ratio of gross monthly income; and
(viii) The consumer's credit history.

A creditor must verify the information that the creditor relies on in determining a consumer's repayment ability using reasonably reliable third-party records. A creditor must verify the amounts of income or assets to determine a consumer's ability to repay a covered transaction using third-party records that provide reasonably reliable evidence of the consumer's income or assets.

A third-party record means:

1. A document or other record prepared or reviewed by an appropriate person other than the consumer, the creditor, or the mortgage broker, or an agent of the creditor or mortgage broker;
2. A copy of a tax return filed with the Internal Revenue Service or a State taxing authority;
3. A record the creditor maintains for an account of the consumer held by the creditor; or
4. If the consumer is an employee of the creditor or the mortgage broker, a document or other record maintained by the creditor or mortgage broker regarding the consumer's employment status or employment income.

A creditor may verify the consumer's income using a tax-return transcript issued by the Internal Revenue Service (IRS). Other records the creditor may use to verify the consumer's income or assets include:

- Copies of tax returns the consumer filed with the IRS or a State taxing authority;
- IRS Form W–2s or similar IRS forms used for reporting wages or tax withholding;
- Payroll statements, including military Leave and Earnings Statements;
- Financial institution records;
- Records from the consumer's employer or a third party that obtained information from the employer;
- Records from a Federal, State, or local government agency stating the consumer's income from benefits or entitlements;
- Receipts from the consumer's use of check cashing services; and
- Receipts from the consumer's use of a funds transfer service.

In determining the consumer's monthly payment as an underwriting factor, a creditor must take into consideration: (1) the fully indexed rate or any introductory interest rate, whichever is greater; and (2), the monthly, fully amortizing payments that are substantially equal.

For the following types of covered transactions, the creditor must calculate the monthly payment based upon the conditions noted:

A loan with a balloon payment, using:

(*1*) 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; or

(*2*) The maximum payment in the payment schedule, including any balloon payment, for a higher-priced covered transaction;

An interest-only loan, using:

(*1*) The fully indexed rate or any introductory interest rate, whichever is greater; and

(*2*) 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.

A negative amortization loan, using:

(*1*) The fully indexed rate or any introductory interest rate, whichever is greater; and

(*2*) Substantially equal, monthly payments of principal and interest that will repay the maximum loan amount over the term of the loan remaining as of the date the loan is recast.

A creditor must follow specific payment calculations for simultaneous loans, defined as covered transactions or home equity line of credit that will be secured by the same dwelling and made to the same consumer at or before consummation of the covered transaction or, if to be made after consummation, will cover closing costs of the first covered transaction.

For simultaneous loans, a creditor must consider, taking into account any mortgage-related obligations, a consumer's payment on a simultaneous loan that is:

- A covered transaction, or
- A home equity line of credit by using the periodic payment required under the terms of the plan and the amount of credit to be drawn at or before consummation of the covered transaction.

Although there is no required debt-to-income ratio or residual income thresholds prescribed by the general ATR, a creditor must consider the ratio of the consumer's total monthly debt obligations to the consumer's total monthly income. The creditor must also consider the consumer's remaining income after subtracting the consumer's total monthly debt obligations from the consumer's total monthly income.

Exemption from the ATR eight underwriting factors will apply to standard mortgages as covered transactions that exhibit the following conditions:

1. Provide for regular periodic payments that do not:
    - Cause the principal balance to increase;
    - Allow the consumer to defer repayment of principal; or
    - Result in a balloon payment

2. Has total points and fees payable in connection with the transaction that do not exceed the amounts noted under the qualified mortgage definition (below);

3. The term does not exceed 40 years;

4. The interest rate is fixed for at least the first five years after consummation; and

5. The proceeds from the loan are used solely for the following purposes:
    - To pay off the outstanding principal balance on the non-standard mortgage; and

- To pay closing or settlement charges required to be disclosed under the Real Estate Settlement Procedures Act.

A non-standard mortgage means a covered transaction 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 creditor may refinance a non-standard mortgage into a standard mortgage when the following conditions are met:

- 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;
- The monthly payment for the standard mortgage is materially lower than the monthly payment for the nonstandard mortgage;
- The creditor receives the consumer's written application for the standard mortgage no later than two months after the non-standard mortgage has recast;
- The consumer has made no more than one payment more than 30 days late on the non-standard mortgage during the 12 months immediately preceding the creditor's receipt of the consumer's written application for the standard mortgage;
- The consumer has made no payments more than 30 days late during the six months immediately preceding the creditor's receipt of the consumer's written application for the standard mortgage; and
- If the non-standard mortgage was consummated on or after January 10, 2014, the non-standard mortgage was made in accordance with either the ATR or QM underwriting standards.

A loan is recast based upon the following circumstances:

1. For an adjustable-rate mortgage, the expiration of the period during which payments based on the introductory fixed interest rate are permitted under the terms of the legal obligation;
2. For an interest-only loan, the expiration of the period during which interest-only payments are permitted under the terms of the legal obligation; and
3. For a negative amortization loan, the expiration of the period during which negatively amortizing payments are permitted under the terms of the legal obligation.

A creditor must calculate the monthly payment for a non-standard mortgage 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 written 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
- A remaining loan amount that is:
    1. For an adjustable-rate mortgage, the outstanding principal balance as of the date of the recast, 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;
    2. For an interest-only loan, the outstanding principal balance as of the date of the recast, 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; or

3. For a negative amortization loan, the maximum loan amount, determined after adjusting for the outstanding principal balance.

The monthly payment for a standard mortgage must be based on substantially equal, monthly, fully amortizing payments based on the maximum interest rate that may apply during the first five years after consummation.

Presumption of Compliance and Safe Harbor

A creditor or assignee of a qualified mortgage that is not a higher priced covered transaction complies with the ATR repayment ability requirements. Such a qualified mortgage is conclusively presumed to comply with the ATR requirements. Under a safe harbor, if a court finds that the mortgage originated was a qualified mortgage, then that finding conclusively establishes that the creditor complied with the ATR requirements when originating the mortgage.

A creditor or assignee of a qualified mortgage that is a higher-priced covered transaction is presumed to comply with the ATR repayment ability requirements. A higher-priced covered transaction means a covered transaction with an annual percentage rate 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 a first-lien covered transaction, other than a qualified mortgage; by 3.5 or more percentage points for a first-lien covered transaction that is a qualified mortgage; or by 3.5 or more percentage points for a subordinate-lien covered transaction.

To rebut this safe harbor presumption of compliance, it must be proven that, despite meeting the ATR underwriting standard requirements, the creditor did not make a reasonable and good faith determination of the consumer's repayment ability at the time of consummation, by showing that the consumer's income, debt obligations, alimony, child support, and the consumer's monthly payment (including mortgage-related obligations) on the covered transaction and on any 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 (including any real property attached to the dwelling) that secures the loan with which to meet living expenses, including any recurring and material non-debt obligations of which the creditor was aware at the time of consummation.

Qualified Mortgages and Related Conditions

A qualified mortgage is a covered transaction that

- Provides 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. However, a qualified mortgage may not:
- Result in an increase of the principal balance;
- Defer repayment of principal except as permitted for balloon payment qualified mortgages*; or
- Result in a balloon payment*;
- Has a loan term that does not exceed 30 years;
- Includes total points and fees payable in connection with the loan that do not exceed the amounts specified in the ATR rule;
- Where the creditor underwrites the loan, taking into account the monthly payment for mortgage-related obligations, using:
  1. 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

2. Periodic payments of principal and interest that will repay either:
   a) The outstanding principal balance over the remaining term of the loan as of the date the interest rate adjusts to the maximum interest rate, assuming the consumer will have made all required payments as due prior to that date; or
   b) The loan amount over the loan term;

- Where the creditor considers and verifies at or before consummation the following:
  1. 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 ATR underwriting requirements; and
  2. The consumer's current debt obligations, alimony, and child support in accordance with ATR underwriting requirements; and
- For which the ratio of the consumer's total monthly debt to total monthly income at the time of consummation does not exceed 43 percent. The ratio of the consumer's total monthly debt to total monthly income is determined in accordance with the ATR underwriting standards, using the consumer's monthly payment on:
  1. The covered transaction, including the monthly payment for mortgage related obligations; and
  2. Any simultaneous loan that the creditor knows or has reason to know will be made; and
- Including loans made and held in portfolio by small creditors that have total assets less than $2.069 billion effective 1/1/17, and $2.112 billion effective 1/1/18 (found at:

  https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/truth-lending-act-regulation-z-adjustment-asset-size-exemption-threshold/) at the end of the previous calendar year and, together with all affiliates, originated 2,000 or fewer first-lien covered transactions during the previous calendar year.

* A qualified mortgage may provide for a balloon payment, provided:

- The loan satisfies the requirements for a qualified mortgage;
- The creditor determines at or before consummation that the consumer can make all of the scheduled payments under the terms of the legal obligation, together with the consumer's monthly payments for all mortgage-related obligations and excluding the balloon payment, from the consumer's current or reasonably expected income or assets other than the dwelling that secures the loan;
- 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 ATR underwriting factors, except that the calculation of the payment on the covered transaction for purposes of determining the consumer's total monthly debt obligations shall be determined as payments that are substantially equal, calculated using an amortization period that does not exceed 30 years together with the consumer's monthly payments for all mortgage-related obligations and excluding the balloon payment;
- The legal obligation provides for:
  1. Scheduled payments that are substantially equal, calculated using an amortization period that does not exceed 30 years;
  2. An interest rate that does not increase over the term of the loan; and
  3. A loan term of five years or longer.
- The loan is not subject, at consummation, to a commitment to be acquired by another person, other than a person that satisfies the requirements of the ATR rule's small creditor.

Small creditors are permitted to extend qualified mortgages with balloon payment subject to certain limitations.

- Until January 10, 2016, all small creditors regardless of the bank's lending area may make balloon payment qualified mortgages. After that date, only small creditors located in rural or underserved areas will be permitted to make balloon payment qualified mortgages.
- Interest only and negative amortization loans are prohibited.
- Points and fee limitations for all qualified mortgages must be met.
- The interest rate must be fixed.
- Periodic payments excluding the balloon payment must amortized the loan over 30 years or less.
- The loan term must be 5 years or more.
- The loan may only be sold to another lender eligible to make balloon payment qualified mortgages.
- The consumer's ability to repay the loan must be calculated excluding the balloon payment. Loans should meet the bank's debt to income requirements.
- Income or assets and debts, alimony, and child support must be evaluated and verified.

A qualified mortgage has total points and fees payable in connection with the transaction that do not exceed the amounts shown as follows:

- For a loan amount greater than or equal to $100,000 (indexed for inflation): 3 percent of the total loan amount;
- For a loan amount greater than or equal to $60,000 (indexed for inflation) but less than $100,000 (indexed for inflation): $3,000 (indexed for inflation);
- For a loan amount greater than or equal to $20,000 (indexed for inflation) but less than $60,000 (indexed for inflation): 5 percent of the total loan amount;
- For a loan amount greater than or equal to $12,500 (indexed for inflation) but less than $20,000 (indexed for inflation): $1,000 (indexed for inflation); and
- For a loan amount less than $12,500 (indexed for inflation): 8 percent of the total loan amount;

The following link shows the 2015 indexed amounts for the amounts listed in the above paragraph. https://www.federalregister.gov/articles/2014/08/15/2014-18838/truth-in-lending-regulation-z-annual-threshold-adjustments-card-act-hoepa-and-atrqm

The following link shows the 2016 indexed amounts for the amounts listed in the above paragraph. https://www.federalregister.gov/articles/2015/09/21/2015-22987/truth-in-lending-regulation-z-annual-threshold-adjustments-card-act-hoepa-and-atrqm

The following link shows the 2017 indexed amounts for the amounts listed in the above paragraph. https://www.federalregister.gov/documents/2016/06/27/2016-14782/truth-in-lending-regulation-z-annual-threshold-adjustments-card-act-hoepa-and-atrqm

The following link shows the 2018 indexed amounts for the amounts listed in the above paragraph: https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/truth-lending-regulation-z-annual-threshold-adjustments-card-act-hoepa/

A qualified mortgage is eligible to be purchased or guaranteed by:

1. The Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation operating under the conservatorship or receivership of the Federal Housing Finance Agency pursuant to section 1367(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C.

4617(a)); or

2. Any limited-life regulatory entity succeeding the charter of either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation pursuant to section 1367(i) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(i)).

A qualified mortgage is eligible to be insured or guaranteed by:

1. The U.S. Department of Housing and Urban Development under the National Housing Act (12 U.S.C. 1707 et seq.);
2. The U.S. Department of Veterans Affairs;
3. The U.S. Department of Agriculture pursuant to 42 U.S.C.
4. 1472(h); or
5. The Rural Housing Service.

A qualified mortgage under the above noted special eligibility rules for purchase, guarantee or insured status shall expire on the effective date of a rule issued by each respective agency pursuant to its authority under TILA section 129C(b)(3)(ii) to define a qualified mortgage. Unless otherwise expired, the special eligibility rules for qualified mortgages are available only for covered transactions consummated on or before January 10, 2021.

Prepayment Penalties in Qualified Mortgages

A covered transaction must not include a prepayment penalty unless the prepayment penalty is otherwise permitted by law and the transaction:

- Has an annual percentage rate that cannot increase after consummation;
- Is a qualified mortgage under the ATR rule; and
- Is not a higher-priced mortgage loan.

A prepayment penalty:

- Must not apply after the three-year period following consummation; and
- Must not exceed the following percentages of the amount of the outstanding loan balance prepaid:
- 2 percent, if incurred during the first two years following consummation; and
- 1 percent, if incurred during the third year following consummation.

A creditor must not offer a consumer a covered transaction with a prepayment penalty unless the creditor also offers the consumer an alternative covered transaction without a prepayment penalty and the alternative covered transaction:

- Has an annual percentage rate that cannot increase after consummation and has the same type of interest rate as the covered transaction with a prepayment penalty; (the term ‘‘type of interest rate’’ refers to whether a transaction is a fixed-rate mortgage; or is a step-rate mortgage);
- Has the same loan term as the loan term for the covered transaction with a prepayment penalty;
- Satisfies the periodic payment conditions under qualified mortgages;
- Satisfies the points and fees conditions under qualified mortgages, based on the information known to the creditor at the time the transaction is offered; and
- Is a transaction 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 covered transaction without a prepayment penalty.

If the creditor offers a covered transaction with a prepayment penalty to the consumer through a mortgage broker, the creditor must:

1. Present the mortgage broker an alternative covered transaction without a prepayment penalty that satisfies the alternative requirements above; and
2. Establish by agreement that the mortgage broker must present the consumer an alternative covered transaction without a prepayment penalty that satisfies the requirements noted above, offered by:
   - The creditor; or
   - Another creditor, if the transaction offered by the other creditor has a lower interest rate or a lower total dollar amount of discount points and origination points or fees.

If the creditor is a loan originator, and the creditor presents the consumer a covered transaction offered by a person to which the creditor would assign the covered transaction after consummation, the creditor must present the consumer an alternative covered transaction without a prepayment penalty that satisfies the alternative offered covered transaction requirements noted above, offered by:

- The assignee; or
- Another person, if the transaction offered by the other person has a lower interest rate or a lower total dollar amount of origination discount points and points or fees.

The above noted prepayment penalty ATR rules apply only if a covered transaction is consummated with a prepayment penalty and is not violated if:

- A covered transaction is consummated without a prepayment penalty; or
- The creditor and consumer do not consummate a covered transaction.

In connection with credit secured by a consumer's dwelling that does not meet the definition of open-end credit, a creditor shall not structure the loan as an open-end plan to evade the ATR rule requirements.

The Regulatory Relief Act taking effect in May 2018 amended TILA to allow a depository institution with assets below $10 billion to forgo certain ATR requirements regarding residential mortgage loans. Requirements are waived if a loan:

- Is originated by and retained by the institution,
- Complies with requirements regarding prepayment penalties and points and fees
- Does not have negative amortization or interest-only terms.

Furthermore, for such requirements to be waived, the institution must still consider and verify the debt, income, and financial resources of the consumer.

Circumstances in which such requirements shall be waived with respect to a loan that is transferred: (1) by reason of bankruptcy or failure of the originating institution, (2) to a similar institution, (3) in the event of a merger, or (4) to a wholly owned subsidiary of the institution.

If all conditions are met, the Bank will not be required to follow Reg Z's Appendix Q (Standards for Determining Monthly Debt and Income)

XIII. Prohibited Practices for All Closed-End Mortgage Loans Secured by a Consumer's Principal Dwelling

Effective October 1, 2009, the following applies to all closed-end mortgage loans secured by a consumer's principal dwelling:

- Creditors and mortgage brokers are prohibited from coercing, influencing, or encouraging an appraiser to misrepresent the value of the property.
- Servicers are prohibited from:
  - Failing to credit a payment to the consumer's account as of the date of its receipt (if a servicer specifies in writing requirements for the consumer to following in making payments, but accepts a payment that does not conform to the requirements, the servicer shall the credit the payment as of 5 days after receipt);
  - Failing to provide a pay-off statement within a reasonable amount of time after a request; and
  - "Pyramiding" late fees (i.e. levying or collecting a delinquency charge on a payment, when the only delinquency is attributable to late fees or delinquency charges assessed on earlier installments).

For applications received on or after April 1, 2011, for dwelling secured loans (do not have to be principal dwelling):

- Payments to loan originators, including mortgage brokers and loan officers, are prohibited from being based on the interest rate or terms of the mortgage, other than the loan amount. This change eliminates the practice of paying yield spread premiums.
- Loan originators will be prohibited from steering customers to loan products, not in the consumer's interest, based on greater compensation for the loan originator.

XIV. Mortgage Transfer Disclosures

On November 20, 2009, the requirements for providing a disclosure when a consumer, mortgage loan secured by a principal dwelling is transferred or sold was added to Regulation Z and is effective for loans made on or after January 19, 2010. Section 226.39 of Regulation Z now requires anyone who becomes an owner of an existing mortgage loan that is secured by a consumer's principal dwelling to provide a conforming notice of transfer of ownership to the consumer who is liable on the debt. (This is separate from the servicing transfer notice required under RESPA). The new notice of the transfer of ownership of the debt is required to be provided by mail or delivery within 30 calendar days of the date the debt is acquired. If the debt is acquired and transferred again within the 30 days then no notice is required. The notice that is provided to the consumer must cover the following:

- Identify the loan that was acquired or transferred.
- State the identity, address, and telephone number of the person(s) that acquired the loan.
- State the acquisition date.
- If someone else is agent for the loan (other than the new owner of the loan) then the notice must state how to reach the agent or party having authority to act on behalf of the owner and indicate who is authorized to receive legal notices on behalf of the owner. It must also indicate who is authorized to resolve issues concerning the consumer's payments on the loan.
- Indicate the location where the transfer of ownership of the debt is recorded. If the transfer of ownership has not been recorded in public records at the time of the disclosure, this requirement is satisfied by stating that fact.

TRUTH IN LENDING ACT - REGULATION Z 1-19

XV. PRIVATE EDUCATION LOANS

In August 2008, the Higher Education Opportunity Act (HEOA) was signed into law. This resulted in new disclosures and other requirements as listed in Regulation Z (226.46, 226.47, & 226.48) for a covered loan which meets the definition of being a "private education loan" effective February 14, 2010. Regulation Z defines a private education loan as an extension of credit that:

- is not made, insured, or guaranteed under title IV of the Higher Education Act;
- is extended to a consumer expressly, in whole or in part, for postsecondary educational expenses;
- does not include open-end credit or any loan that is secured by real property or a dwelling; and
- does not include certain extensions of credit where the education institution is the creditor.

Covered private education loans will be subject to the following requirements:

- Three new disclosures will be required.
  - One at the time of application that will provide a generalized description of the private education product.
  - A second disclosure at the time the applicant is approved for the loan. The consumer has the right to accept the offer within 30 days after the date the 2nd disclosure was received.
  - A third disclosure is required at loan closing.
- When making two of the three disclosures, lenders will be required to disclose specific rate information about alternative Federal loan programs, such as, the Perkins, Stafford, and Plus programs. Regulation Z has model forms (H-18 through H-23) for all three disclosures which can be found at: http://www.fdic.gov/regulations/laws/rules/6500-1950.html#fdic6500appendixhtopart226

REAL ESTATE SETTLEMENT PROCEDURES ACT - REGULATION X 1/19

Introduction

The purpose of RESPA is to provide customers with accurate advance disclosure of all costs associated with a consumer mortgage transaction. The act also protects borrowers against certain abusive practices such as kickbacks, referral fees, or unearned fees.

I. COVERAGE

RESPA is applicable to all "federally related mortgage loans" except for the exemptions listed below.

"Federally related mortgage loans" are defined as loans including refinancing's that satisfy the following two criteria:

- the loan is secured by a first or subordinate lien on residential real property upon which either a 1-4 family structure or manufactured home is located or is to be constructed using proceeds of the loan; and
- the loan falls within one of the following categories:
    - loans made by a lender, creditor, dealer;
    - loans made or insured by an agency of the federal government;
    - loans made in connection with a housing or urban development program;
    - loans made and intended to be sold by the origination lender or creditor to FNMA, GNMA, or FHLMC; or
    - loans that are the subject of a home equity conversion of 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:

The following transactions are exempt from coverage:

- Loan primarily for business, commercial, or agricultural purposes. (Same definition as Reg Z.)
- 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 1-4 family residential structure. If the proceeds will be used to locate a manufactured home or construct a structure within two years form 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 charged an additional fee for the conversion.

- A bona fide transfer of a loan obligation in the secondary market. (However, the mortgage servicing requirements still apply.) Mortgage broker transactions that are table funded are not secondary market transactions and therefore are covered by RESPA.

Partial Exemptions for Certain Mortgage Loans:

Most closed-end mortgage loans are exempt from the requirement to provide the Good Faith Estimate, HUD-1, and application servicing disclosure requirements. Instead, these loans are subject to the disclosure, timing, and other requirements under the Truth in Lending/RESPA Integrated Disclosure Rule (TRID). (Refer to the Regulation Z policy for details on the disclosures required for these loans.) This includes most consumer, closed-end, federally related mortgage loans secured by real property as set forth in Regulation Z such as:

- Home purchase loans
- Home refinance loans
- Home improvement loans
- Construction-only loans
- Bridge loans
- Loans secured by vacant land or by 25 or more acres
- Credit extended to certain trusts for tax or estate planning purposes also are covered by the TILA-RESPA rule.

The TILA-RESPA Integrated Disclosure rule (TRID) does not apply to:

- Home equity lines of credit (HELOCs),
- Reverse mortgages,
- Chattel dwelling loans, i.e. mortgages secured by a mobile home or by a dwelling that is not attached to real property (i.e., land).
- Loans made by persons who are not considered “creditors,” because they make five or fewer mortgages in a year.

Creditors originating these types of excluded (non-TRID) mortgages must continue to use, as applicable, the GFE, HUD-1, and Truth-in-Lending disclosures required under current law.

Additional Partial Exemption:

There is also a partial exemption for certain transactions associated with housing assistance loan programs for low- and moderate-income consumers.

For transactions associated with the partial exemption for housing assistance loan programs for low- and moderate-income consumers:

- Creditors are exempt from the requirement to provide the RESPA settlement cost booklet, RESPA GFE, RESPA settlement statement, and application servicing disclosure statement requirements.
- Creditors are also exempt from the requirements to provide a **Loan Estimate**, **Closing Disclosure**, and Special Information Booklet for these loans.

NOTE: Creditors are not prohibited from using the Integrated Disclosure forms on loans that are not covered by TILA or RESPA (e.g., mortgages associated with housing assistance loan programs for low- and moderate-

income consumers). However, a creditor cannot use the new Integrated Disclosure forms instead of the GFE, HUD-1, and Truth-in-Lending forms for transactions that are covered by TILA or RESPA that require those disclosures (e.g., reverse mortgages).

The TILA-RESPA rule is effective October 3, 2015. The new Integrated Disclosures must be provided by a creditor or mortgage broker that receives an **application** from a consumer for a closed-end credit transaction secured by real property on or after October 3, 2015. Creditors will still be required to use the GFE, HUD-1, and Truth-in-Lending forms for **applications** received prior to October 3, 2015. Creditors are not allowed to provide the new integrated disclosures for applications prior to October 3, 2015.

TILA-RESPA rule includes some new restrictions on certain activity prior to a consumer's receipt of the **Loan Estimate**. These restrictions take effect on the calendar date October 3, 2015, regardless of whether an application has been received on that date.

II. Special Information Booklet

Banks are required to provide the special information booklet by delivering it or placing it in the mail to the applicant within three business days after the application is received. It is not required to be given for refinancing transactions, closed end subordinate lien mortgage loans, reverse mortgage transactions, or for any other federally related mortgage loan not intended for the purchase of a 1-4 family residential property. If a bank denies the borrower's application for credit before the end of the three-business-day period, then the bank does not have to provide the booklet. On January 14, 2014, the CFPB issued a revised Settlement Costs Booklet entitled "Shopping for Your Home Loan". To obtain a PDF version of the new booklet, go to:http://files.consumerfinance.gov/f/201401_cfpb_booklet_settlement.pdf

For an open-ended credit plan, the bank should provide the brochure entitled "What You Should Know About Home Equity Lines of Credit" instead. To obtain a PDF version of the booklet, go to: http://files.consumerfinance.gov/f/201401_cfpb_booklet_heloc.pdf

III. Good Faith Estimate

The Good Faith Estimate is not required for TRID loans. For reverse mortgages (and any other applicable loan), banks are required to provide a good faith estimate of the amount or range of charges for the specific settlement services the borrower is likely to incur in connection with the settlement, within 3 business days of receiving the application. If the bank denies the application before the end of the three business day period, the bank does not need to provide the denied borrower with a good faith estimate.

As of January 1, 2010, RESPA defines "application" as the submission of a borrower's financial information in anticipation of a credit decision relating to a federal related mortgage loan, which shall include the following:

- Borrower's name;
- Borrower's monthly income;
- Borrower's social security number;
- Property address;
- Estimate of value of property;
- Loan amount;

There are certain situations in which the bank may issue a GFE without all of the above or use a worksheet for preapprovals. Refer to the FAQs for more details.

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RESPA revisions regarding the GFE that became effective on January 1, 2010, include the following:

- The new GFE form as found in Appendix C must be used. This can be found at: http://www.fdic.gov/regulations/laws/rules/6500-2525.html#fdic6500resappendixc
- The lender is not permitted to charge, as a condition for providing a GFE, a fee for an appraisal, inspection or other similar settlement service, but can at its option charge a fee for the cost of a credit report.
- Additional fees can be charged after the applicant receives the GFE which is considered to be 3 calendar days (excluding Sundays and public holidays) after it is mailed to the applicant.
- Lender may collect at any time any additional information in addition to the required application information, but cannot require as a condition for providing the GFE any supplemental documentation to verify the information on the application.
- Except for fees related to the interest rate, the estimate of charges must be available for at least 10 business days from the GFE was provided. (Under "Important Dates, line 2, on page 1 of the GFE, the date given for the availability of settlement charges must be at least 10 business days after the date of the GFE.)
- The actual charges at settlement may not exceed the amounts included on the GFE for: origination charge; credit or charge for the interest rate chosen while the rate is locked; adjusted origination charge while the interest rate is locked; and transfer taxes.
- The sum of charges at settlement for the following services may not be greater than 10 percent above the sum of the amounts included on the GFE: lender required settlement services when the lender selects the 3rd party settlement service provider; lender-required services, title services and required title insurance, and owner's title insurance when the borrower uses a settlement provider identified by the loan originator; and government recording charges.
- For home purchase loans only, the charge for basic owner's title insurance must be shown in Block 5 of the GFE.
- The GRMA fee should be included in Block 7 –Recording fees.
- Escrows for homeowners/hazard insurance, property taxes, and flood insurance should be shown in Block 9 of the GFE. Escrow account information must also be shown in the Escrow Account Information box in the Summary of Your Loan section on the GFE. As of April 1, 2010, escrow accounts are required for first mortgage loans that meet the definition of a higher priced mortgage loan based on rate spread.
- Premiums for homeowners/hazard insurance and flood insurance that the borrower is required to pay at or before closing are to shown in Block 11 of the GFE. For refinance loans, the bank can show a "0" in Block 11.
- There are no fees shown as "POC" on the GFE. All fees typically paid by the borrower are shown.
- In Block 1 of the GFE you combine the total broker compensation plus the lender fees, in Block 2 you would subtract the amounts paid to the broker such as the Yield Spread Premium (YSP), as a credit for the interest rate chosen.
- If you anticipate that a fee will be charged for verifying employment and/or deposits, an estimate of the fees go in Block 3.
- The loan originator is bound, within the tolerances described above, to the charges on the GFE unless a new GFE is provided before settlement.
- The loan originator must provide the applicant with a revised GFE within 3 business days of finding out the "change in circumstances" which resulted in the change of charges, such as, borrower's eligibility, borrower-requested changes, etc.

- If a borrower does not express an intent to continue with an application within 10 business days after the GFE is provided, or by the longer time designated by the loan originator, the loan originator is no longer bound by the GFE.
- For new home purchases where the closing may occur more than 60 calendar days from the time of the GFE, the loan originator may provide a disclosure stating that any time up until 60 calendar days prior to closing a revised GFE may be issued.
- The GFE is not a loan commitment and a bank is not required to provide a GFE if the lender does not have a loan product for which the borrower is eligible.
- A lender that violates the above requirements is in violation of Section 5 of RESPA.
- If any charges at settlement exceed the charges on the GFE, by more than the permitted tolerances, the lender may cure the tolerance violation by reimbursing the borrower the amount by which the tolerance was exceeded within 30 days after settlement.
- Refer to Section 3500.2 for the revised or additional definitions for application, GFE, mortgage broker, balloon payment, changed circumstances, origination services, loan originator, prepayment penalty, third party, title service, and tolerance.
- The most recent RESPA FAQs which assist in preparing the GFE and HUD-1 were published April 2, 2010, and can be found at: http://www.hud.gov/offices/hsg/ramh/res/resparulefaqs422010.pdf. A pdf version can also be found in the policies.

  Note: In the July 11, 2011 Federal Register, the Department of Housing and Urban Development (HUD) published a final rule ("July 2011 rule") that makes technical corrections and clarifying amendments to HUD's Regulation X final rule that became effective on January 1, 2010 ("January 2010 rule"). The effective date of the July 2011 rule is August 10, 2011.

In regard to the GFE and HUD-1/1A, the July 2011 rule makes changes summarized as follows:

1. Added the requirement that additional fees may not be charged until after the applicant has indicated an intention to proceed with the loan.
2. It amends the Appendix A Instructions for Page 3 of the HUD-1 to provide that the estimated charge disclosed on the GFE for a settlement service that is not provided must not be included in the comparison chart on Page 3 of the HUD-1. A good example of this is the Owner's Title Insurance which must be shown on the GFE for purchase loans, but if the owner's title insurance is not purchased, it would not go in the comparison table on page 3 of the HUD-1.

IV. LIST OF PROVIDERS

If the bank allows the borrower to choose its own provider for a settlement service (services found in blocks 4, 5, & 6) then the bank must provide the borrower with a list of providers that perform that service on a separate sheet of paper. If the borrower uses one on the list, then the bank is subject to the 10% tolerance. If the borrower uses one not on the list, then the bank is not subject to any tolerance. Lenders are subject to the above, even when the GFE and "written list" of settlement service providers is provided by a mortgage broker.

V. HUD-1 OR HUD-1A SETTLEMENT STATEMENTS

This section does not apply to loans subject to TRID. For non-TRID loans, such as, reverse mortgages, the bank or settlement agent shall complete the HUD-1 in accordance with the instructions set forth in Appendix A of RESPA. Use of the HUD-1A form is an optional form that can be used when there is not a seller and as otherwise appropriate. (Use of the HUD-1A form is not appropriate, for example, if there is a credit given by a loan originator or other party since there is not a place to show the credit on the HUD-1A form.)

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The revised version of the HUD-1 and HUD-1A can found at: http://www.fdic.gov/regulations/laws/rules/6500-2525.html#fdic6500resappendixa. It should be used for all loans closed after January 1, 2010.

Effective January 1, 2010, the following requirements regarding the HUD-1 or HUD-1A apply:

- For seller paid fees shown on the GFE, the fee remains in the borrower's column on the HUD-1 and a credit from the seller to the borrower to offset the charge should be listed on the first page of the HUD-1 in Lines 204-209 and Lines 506-509, respectively.
- If the loan is a "no-cost" loan where "no-cost" only refers to the loan originator's fees, a credit equal to amount shown in Line 801 on the HUD-1 must be given in Line 802, so that the adjust4ed origination charge in Line 803 equals zero.
- In the case of "no-cost" loans where "no-cost" encompasses some or all third party fees and the origination charge, a credit should be listed in Line 802 to offset all fees encompassed in the "no-cost" loan, resulting in a negative number for the adjusted origination charge on Line 803 of the HUD-1.
- If a borrower pays some of the origination charges prior to closing, the fee is shown in the borrower's column, with an offsetting credit in that amount shown in lines 204-209 on page 1 of the HUD-1. Lines 801, 802, and 803 may no longer be shown as "POC" on the HUD-1.
- The most recent RESPA FAQs which assist in preparing the GFE and HUD-1 were published April 2, 2010, and can be found at: http://www.hud.gov/offices/hsg/ramh/res/resparulefaqs422010.pdf. A pdf version can also be found in the policies. Banks should refer to the FAQs and Appendix A for complete instructions on how to prepare the HUD-1. Banks should also refer the information under the GFE section of this policy for an update effective 8/10/11 regarding fees to be shown on page 3 of the HUD-1 in the comparison table.

The bank or settlement agent should still allow the borrower to see the HUD-1 or HUD-1A on the business day prior to settlement and the bank should maintain the HUD-1 or HUD-1A for 5 years as was the case prior to January 1, 2010.

Effective January 16, 2009, average charges for certain charges can be shown on the HUD-1 if specific rules about calculating these average charges are followed. The regulation states that the amount stated on the HUD-1 or HUD-1A for any itemized service cannot exceed the amount actually received by the settlement service provider for that itemized service, unless the charge is an average charge in accordance to the following rules:

- The average charge for the settlement service shall be no more than the average amount paid for a settlement service by one settlement service provider to another settlement service provider on behalf of borrowers and sellers for a particular class of transactions involving federally related mortgage loans.
- The total amounts paid by borrowers and sellers for a settlement service based on the use of an average charge may not exceed the total amounts paid to the providers of that service for that particular class of transactions.
- A settlement service provider shall define the particular class of transactions for purposes of calculating the average charge as all transactions involving a federally related mortgage for: a period of time of not less than 30 days and not more than 6 months; a geographic area; and a type of loan as determined by the service provider.
- The settlement service provider must recalculate the average charge at least every six months, and must use the same average charge for every transaction within the class.

- An average charge may not be used if the charge is based on the loan amount or property value, such as, transfer taxes, daily interest charges, reserves or escrow, and all insurance (e.g. mortgage insurance, title insurance, and hazard insurance).
- The settlement service provider making use of an average charge must maintain all documents used to calculate the average charge for at least three years after any settlement with an average charge.

VI. Mortgage Servicing Transfer Disclosure

The servicing disclosure statement is included on the Loan Estimate for TRID loans. For other applicable loans, banks are required to provide a MSTD to each person who applies for a consumer, closed-end, first mortgage loan, including refinancing transactions. The bank must deliver or mail the disclosure within 3 business days from receipt of the application. If the application is denied within 3 days, then no disclosure has to be provided. If co-applicants live at the same address, then only one-disclosure needs to be delivered to that address. If the co-applicants live at separate addresses, then a disclosure needs to be delivered to each address.

The MSTD was revised and effective January 16, 2009, is required to contain information regarding whether the lender will service, will not service, or may service the loan. The following is a sample of the disclosure.

SERVICING DISCLOSURE STATEMENT SAMPLE

[Date]

SERVICING DISCLOSURE STATEMENT NOTICE TO FIRST LIEN MORTGAGE LOAN APPLICANTS: THE RIGHT TO COLLECT YOUR MORTGAGE LOAN PAYMENTS MAY BE TRANSFERRED

You are applying for a mortgage loan covered by the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2601 et seq.). RESPA gives you certain rights under Federal law. This statement describes whether the servicing for this loan may be transferred to a different loan servicer. ‘‘Servicing’’ refers to collecting your principal, interest, and escrow payments, if any, as well as sending any monthly or annual statements, tracking account balances, and handling other aspects of your loan. You will be given advance notice before a transfer occurs.

Servicing Transfer Information
[We may assign, sell, or transfer the servicing of your loan while the loan is outstanding.] [or] [We do not service mortgage loans of the type for which you applied. We intend to assign, sell, or transfer the servicing of your mortgage loan before the first payment is due.] [or] [The loan for which you have applied will be serviced at this financial institution and we do not intend to sell, transfer, or assign the servicing of the loan.]

[INSTRUCTIONS TO PREPARER: Insert the date and select the appropriate language under ‘‘Servicing Transfer Information.’’ The model format may be annotated with further information that clarifies or enhances the model language.]

VII. Notice of Transfer of Loan Servicing(aka Hello/Goodbye Letter)

Each transferor servicer and transferee servicer of any mortgage servicing loan shall deliver to the borrower a written Notice of Transfer if the servicing of the loan is transferred. The transferor servicer shall deliver the Notice of Transfer to the borrower not less than 15 days before the effective date of the transfer of the servicing of the mortgage servicing loan and the transferee servicer shall deliver the Notice of Transfer to the borrower not more than 15 days after the effective date of the transfer. The transferor and transferee servicers may combine their

notices into one notice, which shall be delivered to the borrower not less than 15 days before the effective date of the transfer of the servicing of the mortgage servicing loan.

The Notice of Transfer should include the following information:

1. The effective date of the transfer of servicing;
2. The name, consumer inquiry addresses (including, at the option of the servicer, a separate address where qualified written requests must be sent), and a toll-free or collect-call telephone number for an employee or department of the transferee servicer;
3. A toll-free or collect-call telephone number for an employee or department of the transferor servicer that can be contacted by the borrower for answers to servicing transfer inquiries;
4. The date on which the transferor servicer will cease to accept payments relating to the loan and the date on which the transferee servicer will begin to accept such payments. These dates shall either be the same or consecutive days;
5. Information concerning any effect the transfer may have on the terms or the continued availability of mortgage life or disability insurance, or any other type of optional insurance, and any action the borrower must take to maintain coverage;
6. A statement that the transfer of servicing does not affect any other term or condition of the mortgage documents, other than terms directly related to the servicing of the loan; and
7. A statement of the borrower's rights in connection with complaint resolution, including the information set forth in paragraph (e) of this section.

VIII. AFFILIATED BUSINESS ARRANGEMENT DISCLOSURE

An “affiliated business arrangement” exists if the Bank has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1% in a provider of settlement services, and is in a position to directly or indirectly refer business to that provider.

The Bank may not require the borrower to use the services of such a provider, with the exception of an attorney, credit reporting agency, or real estate appraiser. In addition, the Bank must disclose in writing the nature of the relationship (explaining the ownership and financial interest) between the provider and the Bank, and the estimated range of charges generally made by the provider. This disclosure must be provided at the time the service provider is chosen by the borrower or by the Bank for the particular mortgage loan.

IX. KICKBACKS AND UNEARNED FEES

No Referral Fees [Section 8(a) of RESPA]: No person shall give and no person shall accept any fee, kickback, or other thing of value (see definition below) pursuant to any agreement or understanding, oral or otherwise, that business incident to or part of a settlement service involving a federally-related mortgage loan shall be referred to any person.

A referral of a settlement service is not a compensable service, except as set forth below. A business entity (whether or not in an affiliate relationship) may not pay any other business entity or the employees of any other business entity for the referral of settlement service business.

No Splitting of Charges Except for Actual Services Performed [Section 8(b) of RESPA]: No person may give and no person may accept any portion, split, or percentage of any charge made or received for the rendering of a settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed.

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A charge by a person* for which no or nominal services are performed or for which duplicative fees are charged is an unearned fee and violates RESPA. The source of the payment does not determine whether or not a fee is compensable.

**Note that on May 24, 2012, the Supreme Court decided the case of Freeman et al. v. Quicken Loans, Inc. and the decision was that a fee collected by a single settlement service provider cannot be considered a violation of Section 8(b) of RESPA since there must be a "portion, split, or percentage" of the fee given to another party.*

"Thing of Value" Definition: The term "payment" is used synonymously with the giving or receiving of any "thing of value" and does not require transfer of money. This term is broadly defined in RESPA. It includes (without limitation) the following: Monies, Things, Discounts, Salaries, Commissions, Fees, Duplicate payments of a charge, Stock, Dividends, Distribution or partnership profits, Franchise Royalties, Credits representing monies that may be paid at a future date, The opportunity to participate in money-making programs, Retained or increased earnings, Increased equity in a parent or subsidiary entity, Special bank deposits or accounts, Special or unusual banking terms, Services of all types at special or free rates, Sales or rentals at special prices or rates, Lease or rental payments based in whole or in part on amount of business referred, Trips and payments of another person's expenses, Reduction in credit against an existing obligation.

Exemptions for Fees/Salaries/Compensation/Other Payments: The following payments are permitted:

1. Payment to an attorney for services actually rendered.
2. A payment by a title company to its duly appointed agent for services actually performed.
3. A payment by a lender to its duly appointed agent or contractor for services actually performed in the origination, processing, or funding of a loan.
4. A payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed.
5. A payment pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and real estate brokers.
6. Normal promotional and educational activities.
7. A payment by an employer to its own bona fide employee for generating business for that employer.
8. A payment by an employer to its bona fide employee for the referral of settlement service business to a settlement service provider that has an affiliate relationship with the employer or in which the employer has a direct or beneficial ownership interest of more than 1.00%, if the following conditions are met:
    a. The employee does not perform settlement services in any transaction; and,
    b. Before the referral, the employee provides to the person being referred a written disclosure.

Mortgage Broker Fees: A mortgage broker may not be compensated simply for the referral of a mortgage loan, but may be compensated for the fair value of services it actually performed and goods it actually provided. Sufficient services must be performed and/or sufficient goods must be provided to permit payment of compensation, and the amount of the total compensation paid to the mortgage broker must be reasonable in relation to compensable transactions within the same market. HUD has issued an "unofficial interpretation" which indicates that sufficient work to justify compensation would be performed if the mortgage broker (1) took the application, (2) performed at least 5 additional services listed below, and (3) the fee was reasonably related to the market value of the services that were performed.

1. Taking information from the prospective borrower and filling out the application.
2. "Pre-qualifying" the prospective borrower by analyzing his debt and income levels and determining the

maximum mortgage amount that he can afford.

3. Educating the prospective borrower about the home buying and financing process, advising about the different types of loan products available, and demonstrating how closing costs and monthly payments would vary under each product.
4. Collecting financial information and other related documents (i.e. tax returns, bank statements) that are part of the application process.
5. Initiating and ordering verification of employment and verification of deposits.
6. Initiating and ordering requests for mortgage and other loan verifications.
7. Initiating and ordering appraisals.
8. Initiating and ordering inspections or engineering reports.
9. Providing required RESPA and TILA disclosures to the borrower.
10. Assisting the prospective borrower in understanding and clearing credit problems.
11. Maintaining regular contact with the borrower, realtors, and lender between application and closing to apprise them of the status of the application and to gather any additional information as needed.
12. Ordering legal documents.
13. Determining whether the property is located in a flood zone or ordering such service.
14. Participating in the loan closing.

X. PENALTIES

Criminal Penalties: Any person who violates this provision of RESPA may be fined up to $10,000, imprisoned for up to 1 year, or both.

Civil Penalties: Any person who violates the prohibitions or limitations of this section of RESPA will be individually and/or jointly liable to the person(s) charged for the settlement service involved in the violations in an amount equal to 3 times the amount of any charge paid for such settlement service.

XI. ESCROWS

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.

Initial Escrow Account Statement

If the bank escrows for certain expenses, such as, taxes and insurance, it must provide an initial escrow statement at settlement, or within 45 calendar days of settlement. The initial escrow account statement shall include the amount of the borrower's monthly mortgage payment and the portion of the monthly payment going into the escrow account and shall itemize the estimated taxes, insurance premiums, and other charges that the servicer reasonably anticipates to be paid from the escrow account during the escrow account computation year and the anticipated disbursement dates of those charges. The initial escrow account statement should indicate the amount that the service selects as a cushion and include a trial running balance for the account.

Annual Escrow Account Statements

For each escrow account, a servicer should send an annual escrow account statement to the borrower within 30 days of the completion of the escrow account computation year. The servicer should also submit to the borrower the previous year's projection or initial escrow account statement.

Notice of Shortage or Deficiency in Escrow Account

The servicer shall notify the borrower at least once during the escrow account computation year if there is a shortage or deficiency in the escrow account. The notice may be part of the annual escrow account statement or it may be a separate document.

Timely Escrow Payments and Treatment of Escrow Account Balances
The bank will pay taxes, insurance premiums, and other charges for the mortgaged property, from the escrow account on or before the deadline to avoid any penalties.

Within 20 days (excluding legal public holidays, Saturdays, and Sundays) of a borrower's payment of a mortgage loan in full, the bank will return to the borrower any amounts remaining in an escrow account that is within the bank's control.

However, if the borrower agrees, the bank may credit any amounts remaining in an escrow account within the bank's control to an escrow account for a new mortgage loan as of the date of the settlement of the new mortgage loan if the new mortgage loan is:

1. The same lender to whom the prior mortgage loan was initially payable;
2. Is the owner or assignee of the prior mortgage loan; or
3. Uses the same servicer that serviced the prior mortgage loan to service the new mortgage loan.

XII. Record Retention

The loan department shall retain a copy of the mortgage servicing disclosure, good faith estimate, HUD-1 form, and related documents for **5 years** after the date of settlement.

XIII. ESIGN Applicability

Effective January 16, 2009, the rule adds ESIGN as applicable to RESPA for electronic delivery of disclosures.

XIV. **New Force Placement of Hazard Insurance Notice *

(Effective January 10, 2014)**
[Hazard insurance means insurance on the property securing a mortgage loan that protects the property against loss caused by fire, wind, flood, earthquake, theft, falling objects, freezing, and other similar hazards for which the owner or assignee of such loan requires insurance.]

The term ''force-placed insurance'' means hazard insurance obtained by a servicer on behalf of the owner or assignee of a mortgage loan that insures the property
securing such loan.

The following insurance does not constitute ''forceplaced insurance'' under this new disclosure rule:

- Hazard insurance required by the Flood Disaster Protection Act of 1973.
- Hazard insurance obtained by a borrower but renewed by the borrower's servicer.
- Hazard insurance obtained by a borrower but renewed by the borrower's servicer at its discretion, if the borrower agrees.

A servicer may not assess on a borrower a premium charge or fee related to force-placed insurance unless the servicer has a reasonable basis to believe that the
borrower has failed to comply with the mortgage loan contract's requirement to
maintain hazard insurance.

Before a servicer assesses on a borrower any premium charge or fee related to force-placed insurance, the servicer must:

1. Deliver to a borrower or place in the mail a written notice containing the information required at least 45 days before a servicer assesses on a borrower such charge or fee;
2. Deliver to the borrower or place in the mail a written notice a second written (reminder) notice no earlier than 30 days after the initial notice and at least 15 days before charging the borrower for force-placed insurance coverage if the servicer has not received evidence of hazard insurance coverage that complies with the loan contract.

The initial notice required to be delivered to the consumer regarding force-placed hazard insurance shall set forth the following information:

- The date of the notice;
- The servicer's name and mailing address;
- The borrower's name and mailing address;
- A statement that requests the borrower to provide hazard insurance information for the borrower's property (in bold font) and identifies the property by its physical address;
- A statement that the borrower's hazard insurance is expiring or has expired, as applicable, and that the servicer does not have evidence that the borrower has hazard insurance coverage past the expiration date, and that, if applicable, identifies the type of hazard insurance for which the servicer lacks evidence of coverage;
- A statement that hazard insurance is required on the borrower's property, and that the servicer has purchased or will purchase, as applicable, such insurance at the borrower's expense (in bold font);
- A statement requesting the borrower to 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, a statement that the requested information must be in writing;
- A statement that the insurance the servicer has purchased or purchases:
    - May cost significantly more than hazard insurance purchased by the borrower (in bold font); and
    - May not provide as much coverage as hazard insurance purchased by the borrower (in bold font);
- The servicer's telephone number for borrower inquiries; and
- If applicable, a statement advising the borrower to review additional information provided in the same transmittal.

If the servicer receives no hazard insurance after delivering the initial notice, the reminder notice must include the information contained in the initial notice along with the following information:

- A statement that the notice is the second and final notice (in bold font);
- The cost of the force-placed insurance, or, if the cost is unknown, a reasonable estimate (identified as such) stated as an annual premium (in bold font).

Before each anniversary of a servicer purchasing force-placed insurance on a borrower's property, the servicer shall deliver to the borrower or place in the mail the written renewal notice as described above. A servicer is not required to provide the written notice more than once a year.

The renewal notice shall set forth the following information:

- The date of the notice;
- The servicer's name and mailing address;
- The borrower's name and mailing address;
- A statement that requests the borrower to provide hazard insurance information for the borrower's property (in bold font) and identifies the property by its physical address;
- A statement that the servicer previously purchased insurance, charged to the consumer, because the servicer did not have evidence that the consumer had required hazard insurance on the property;
- A statement that the insurance the servicer purchased previously has expired or is expiring and because hazard insurance is required the servicer intends to maintain insurance by renewing or replacing the insurance it previously purchased (in bold font);
- A statement that if the borrower purchases hazard insurance to 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, a statement that the requested information must be in writing;
- A statement that the insurance the servicer has purchased or purchases:
    - May cost significantly more than hazard insurance purchased by the borrower; and
    - May not provide as much coverage as hazard insurance purchased by the borrower;
- The servicer's telephone number for borrower inquiries;
- If applicable, a statement advising the borrower to review additional information provided in the same transmittal.
- If applicable, a statement advising the borrower to review additional information provided in the same transmittal.
- The cost of the force-placed insurance, or, if the cost is unknown, a reasonable estimate (identified as such) stated as an annual premium (in bold font).

If a servicer mails a written notice required by the force-placed hazard insurance rules, the servicer must use a class of mail not less than first-class mail.

Within 15 days of receiving, from the borrower or otherwise, evidence demonstrating that the borrower has had in place hazard insurance coverage that complies with the loan contract's requirements to maintain hazard insurance, a servicer must:

1. Cancel the force-placed insurance the servicer purchased to insure the borrower's property; and
2. Refund to such borrower all forceplaced insurance premium charges and related fees paid by such borrower for any period of overlapping insurance coverage and remove from the borrower's account all force-placed insurance charges and related fees for such period that the servicer has assessed to the borrower.

Except for charges subject to State regulation as the business of insurance and charges authorized by the Flood Disaster Protection Act of 1973, all charges related to force-placed insurance assessed to a borrower by or through the servicer must be bona fide and reasonable. A bona fide and reasonable charge is a charge for a service actually performed that bears a reasonable relationship to the servicer's cost of providing the service, and is not otherwise prohibited by applicable law.

If permitted by regulation under section 102(e) of the Flood Disaster Protection Act of 1973, a servicer subject to the requirements of force-placed hazard insurance rule may deliver to the borrower or place in the mail any notice required by this rule and the notice required by section 102(e) of the Flood Disaster Protection Act of 1973 on separate pieces of paper in the same transmittal.

****The 2016 Mortgage Servicing Rule amends the force-placed insurance disclosures and model forms to account for situations when insurance is being force placed because the borrower has insufficient, rather than expired hazard insurance on the property. Additionally, the Rule gives servicers the option of including the borrower's mortgage loan account number on the force-placed insurance notices.**

XV. Error Resolution Procedures

The servicer must comply with this section if a servicer receives a written notice from the borrower about an error on their account that includes the name of the borrower, information that enables the servicer to identify the borrower's mortgage loan account, and the error the borrower believes has occurred.

An error is considered to be the following:

1. Failure to accept a payment that conforms to the servicer's written requirements.
2. Failure to apply an accepted payment to principal, interest, escrow, or other charges under the terms of the mortgage loan and applicable law.
3. Failure to credit a payment to a borrower's mortgage loan account as of the date of receipt in violation of the requirements in Regulation Z (1026.36(c)).
4. Failure to pay taxes, insurance premiums, or other charges, in a timely manner as required or to refund an escrow account balance as required the regulation.
5. Imposition of a fee or charge that the servicer for which the bank has no reasonable basis to charge the borrower.
6. Failure to provide an accurate payoff balance amount upon a borrower's request.
7. Failure to provide accurate information to a borrower regarding loss mitigation options and foreclosure.
8. Failure to transfer accurately and timely information relating to the servicing of a borrower's mortgage loan account to a transferee servicer.
9. Making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless the loan is more than 120 days delinquent.
10. Moving for foreclosure judgment or order of sale, or conducting a foreclosure sale if the borrower is performing according to the terms of a loss mitigation option.
11. Any other error relating to the servicing of a borrower's mortgage loan.

While a notice on a payment coupon or other payment form is not required to be treated as a notice of error by the regulation, any alleged error by the customer should be treated as such. A qualified written request alleging an error will be handled in the same manner as any other alleged error.

If a specific address is to be used for error notifications, the bank will notify the borrower of the address and any changes to the address. This notice may be provided in writing and placed on the bank's web site, if applicable.

If an error is corrected and the borrower notified of the correction in writing within five days (excluding legal public holidays, Saturdays, and Sundays) of receiving the notice of error no further action is necessary. However, if the error is not corrected within this time period, a receipt of acknowledgement will be provided within five days (excluding legal public holidays, Saturdays, and Sundays) of receiving an error notice from a borrower.

Bank personnel will respond to any alleged error as follows:

1. Correcting the error or errors identified by the borrower and providing the borrower with:
   a. A written notification of the correction;
   b. Effective date of the correction, and
   c. Contact information, including a telephone number, for further assistance.

2. Conducting a reasonable investigation and providing the borrower with a written notification that includes:
   a. A statement that the servicer has determined that no error occurred;
   b. Statement of the reason or reasons for this determination;
   c. The borrower's right to request documents relied upon by the servicer in reaching its determination;
   d. How the borrower can request such documents, and
   e. Contact information, including a telephone number, for further assistance.

Upon request from the borrower, copies of documents supporting the determination that no error occurred will be provided within 15 days (excluding legal public holidays, Saturdays, and Sundays) of the borrower's request. If any documents are withheld because they are confidential, proprietary or privileged information, the servicer must notify the borrower of its determination in writing within 15 days (excluding legal public holidays, Saturdays, and Sundays).

3. If the servicer determines upon investigation that a different or additional error(s) occurred, these error(s) will be corrected and the borrower will be provided with:
   a. Written notification that describes the errors the servicer identified;
   b. The action taken to correct the errors;
   c. Effective date of the correction, and
   d. Contact information, including a telephone number, for further assistance.

When investigating an alleged error, additional supporting documentation may be requested from the borrower, but the bank may not:

1. Require a borrower to provide such information as a condition of investigating an asserted error; or
2. Determine that no error occurred because the borrower failed to provide any requested information without conducting a reasonable investigation.

In general, all errors must be resolved not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the applicable notice of error. This time period may be extended an additional 15 days (excluding legal public holidays, Saturdays, and Sundays), if the bank notifies the borrower of the extension and the reason for the extension.

However, specific time periods that may not be extended apply to the following:

1. If the error relates to an inaccurate payoff balance, the servicer must respond to the error within 7 days (excluding legal public holidays, Saturdays, and Sundays) after receiving notice.
2. Any error related to items 9 and 10 above must be resolved prior to the date of foreclosure or within 30 days (excluding legal public holidays, Saturdays, and Sundays) after receipt of the error, whichever is earlier. However, if the servicer receives the notice of an error 7 or fewer days before a foreclosure sale

the time periods do not apply. Bank personnel will make a good faith attempt to respond to the borrower, orally or in writing, and either correct the error or state the reason the servicer has determined that no error has occurred.

The bank is not required to comply with above requirements if the bank reasonably determines that any of the following apply:

1. The asserted error is substantially the same as an error previously asserted by the borrower for which the bank has previously complied with the above requirements and the borrower has not provided any new and material information to support the error.
2. The notice of error is in such a format that bank personnel cannot reasonably determine from the notice of error the specific error that the borrower asserts has occurred on a borrower's account.
3. A notice of error is delivered to the bank more than one year after:
    a. Servicing for the mortgage loan that is the subject of the asserted error was transferred from the servicer receiving the notice of error to a transferee servicer; or
    b. The mortgage loan balance was paid in full.

If the bank is not required to comply with the error notification procedures because one of the above conditions, bank personnel will notify the borrower of its determination in writing not later than five days (excluding legal public holidays, Saturdays, and Sundays) after making such determination. The notice will identify the reason the bank does not need to comply with the error notification requirements.

Actions Prohibited

1. No fee will be charged and the borrower will not be required to make any payment that may be owed on borrower's account, as a condition of responding to a notice of error.
2. After receipt of a notice of error, no adverse information will be given to any consumer reporting agency regarding any payment subject to the error notice for 60 days.

However, except with respect to an assertion of error under items 9 or (10) above, the bank may pursue any remedy it has under applicable law, including initiating foreclosure or proceeding with a foreclosure sale.

XVI. REQUESTS FOR INFORMATION

If an information request is completed and the borrower notified in writing within five days (excluding legal public holidays, Saturdays, and Sundays) of receiving the request no further action is necessary. However, if the information request is not completed within five days (excluding legal public holidays, Saturdays, and Sundays) of a servicer receiving an information request from a borrower, the servicer shall provide to the borrower a written response acknowledging receipt of the information request.

A valid information request is any written request, including a qualified written request, for information from a borrower that includes the name of the borrower, information that enables the servicer to identify the borrower's mortgage loan account, and states the information the borrower is requesting with respect to the borrower's mortgage loan.

While a notice on a payment coupon or other payment form is not required to be treated as an information request by the regulation, any request by the customer should be treated as such.

If a specific address is to be used for information requests, the bank will notify the borrower of the address and any changes to the address. This notice may be provided in writing and placed on the bank's web site, if

applicable.

Information requests will be responded to in the following manner:

1. Providing the borrower with the requested information and contact information, including a telephone number, for further assistance in writing; or
2. Conducting a reasonable search for the requested information and providing the borrower with a written notification that the bank has determined that the requested information is not available stating the reason why the information is not available and provides contact information, including a telephone number, for further assistance.

All information requests must be resolved not later than 10 days (excluding legal public holidays, Saturdays, and Sundays) after the bank receives an information request for the identity of, and address or other relevant contact information for, the owner or assignee of a mortgage loan. No extensions of this time period are permitted.
All other requests for information must be resolved not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after the bank receives the information request. This time period may be extended an additional 15 days (excluding legal public holidays, Saturdays, and Sundays), if the bank notifies the borrower of the extension and the reason for the extension.

The bank is not required to comply with above requirements if the bank reasonably determines that any of the following apply:

1. The information request is substantially the same as a previous request by the borrower for which the bank has previously complied with the above requirements.
2. The information requested is confidential, proprietary or privileged.
3. The information requested is not directly related to the borrower's mortgage loan account.
4. The information request is overbroad or unduly burdensome.
5. A notice of error is delivered to the bank more than one year after:
    a. Servicing for the mortgage loan that is the subject of the information request was transferred from the servicer receiving the notice of error to a transferee servicer; or
    b. The mortgage loan balance was paid in full.

If the bank is not required to comply with the notification procedures because one of the above conditions, bank personnel will notify the borrower of its determination in writing not later than five days (excluding legal public holidays, Saturdays, and Sundays) after making such determination. The notice will identify the reason the bank does not need to comply with the notification requirements.

No fee will be charged and the borrower will not be required to make any payment that may be owed on borrower's account, as a condition of responding to an information request.

However, the bank may charge a fee for providing a beneficiary notice under applicable State law, if such a fee is not otherwise prohibited by applicable law. In addition, the bank may still furnish adverse information to any consumer reporting agency or pursue any of its remedies, including initiating foreclosure or proceeding with a foreclosure sale, allowed by the underlying mortgage loan instruments, during the time period that response to an information request notice is outstanding.

**** The 2016 Mortgage Servicing Rule clarifies how servicers must respond to requests for ownership information when Fannie Mae or Freddie Mac is the owner of the loan or the trustee of the securitization trust in which the loan is held. If the request for information does not expressly request the name or**

number of the Fannie or Freddie trust or pool, the service complies by providing the name and contact information for Fannie Mae or Freddie Mac, as applicable. If the request does expressly request the name or the number of the Fannie or Freddie pool or trust, the servicer must provide the name of the trust, the trustee's name, address, and appropriate contact information.

XVII. LOSS MITIGATION PROCEDURES

The bank will not give the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless a borrower's mortgage loan obligation is more than 120 days delinquent. Regulation X and the 2016 Mortgage Servicing Rule provides for an exception if the Bank wishes to join either a superior or subordinate lienholder's foreclosure action, even if the borrower is not more than 120 days delinquent.

Furthermore, the 2016 Mortgage Servicing Rule includes a definition for delinquency: 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, and continue to be delinquent until such time as no periodic payment is due and unpaid.

If a borrower is performing under the terms of an agreement on a loss mitigation option, the bank will not:

1. Make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process; and
2. Will not move for foreclosure judgment or order of sale, or conduct a foreclosure sale.
3. Periodic payments made pursuant to a temporary loss mitigation program must be credited according to the loan contract and if appropriate credited as partial payments. If a permanent loan modification has been executed, payments must be credited under those terms.

XVIII. LIST OF HOMEOWNERSHIP COUNSELING ORGANIZATIONS

Within three business days after receipt of an application, or information sufficient to complete an application, bank personnel will provide the loan applicant with a current (within 30 days prior to the application date) a written list of homeownership counseling organizations of relevant counseling services in the loan applicant's location. The list will be obtained from:

1. The web site maintained by the Bureau for lenders to use in complying with the requirements of this section; or
2. Data made available by the Bureau or HUD for lenders.

The list of homeownership counseling organizations may be provided to any loan applicant listed on the application.

If the application was received from a mortgage broker and the list was previously provided, bank personnel are not required to provide an additional list. However, the list provided must be reviewed to verify it complies with the requirements of the regulation. If the list does not meet the requirements of the regulation, a new list must be provided.

If the list is not provided to the applicant in person, the list will be mailed or provided electronically within three business days of the application date. Should the list be provided electronically, bank personnel must ensure that the applicant has completed the proper E-Sign disclosures for receipt of electronic documents.

Home Equity Lines of Credit

This section of RESPA also applies to home equity lines of credit. The homeownership counseling list is to be provided at the time of application or placed in the mail or provided electronically within three business days if the application was not made in person.

Exemptions

The list need not be provided as follows:

1. Within three business days of the application date the application is denied or the loan applicant withdraws the application.
2. Reverse mortgage transactions.
3. Timeshare plans.

General Disclosure Requirements – 12 CFR 1024.32(c) (*Effective April 19, 2018*)

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.
6. "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.

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.

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).

**** 2016 Mortgage Servicing Rule policy updates are for small servicers. To qualify for the small servicer exemption, a servicer must, together with any affiliates, service 5,000 or fewer mortgage loans for with the servicer or an affiliate is the creditor or assignee. If the Bank does not qualify for the small servicer exemption, the Rule includes additional requirements no included in this Policy.**

RIGHT TO FINANCIAL PRIVACY ACT 1/19

Introduction

This act provides that financial institution customers have a right to expect that their financial activities will have a reasonable amount of privacy from federal government scrutiny. It establishes procedures and exemptions concerning the release of financial records and imposes limitations and requirements prior to the release of such information to the government. The act does not apply to corporations or partnerships of six or more individuals.

I. REGULATORY REQUIREMENTS

The Right to Financial Privacy Act (RFPA) sets forth specific requirements to be met by the Bank and the inquiring federal government agency prior to gaining access to a customer's financial information.

Under the RFPA, a bank customer is defined as an individual or partnership (five individuals or less) that has used, or is using, any bank service.

Banks are not permitted to provide access to or copies of information contained in a customer's financial records to any **federal** government agency, except when the agency seeking the information has certified, in writing, that it has complied with the provisions of the RFPA.

A federal agency may obtain access to a customer's financial records through the following methods:

- A signed and dated customer authorization;

  The RFPA sets out the following items that the customer authorization must contain:

  a. A specific time period that the authorization is effective, not to exceed three months.
  b. A statement that the customer may revoke the authorization at any time before the records are disclosed.
  c. An identification of the specific records authorized to be disclosed.
  d. The specific purpose for which and the government authority to which the records may be disclosed.
  e. A statement that the customer understands his rights under the RFPA.

- An administrative subpoena, judicial subpoena, or summons;

  a. Generally, the government agency must obtain a judicial subpoena (or if it has the authority, issue an administrative subpoena) and serve it on the bank's customer a specific number of days prior to obtaining the information from the bank. The subpoena must be accompanied by a notice to the customer that he or she has the right to contest the subpoena and how to do so.
  b. When the time set out in the notice has run and the customer has not filed a motion to quash the subpoena, the government authority **must** give the bank a written certification that it has complied with the provisions of RFPA. The bank is authorized to **rely** on the government certification and produce the records.
  c. If the customer does file a motion to quash the subpoena, the government must wait and abide by the court's order.

- A search warrant;

  a. If a government authority obtains a search warrant pursuant to the Federal Rules of Criminal Procedure, it may obtain a customer's records from the bank upon presentation of the search warrant to the bank.
  b. The government authority obtaining the warrant **must** give the bank a certificate that it has complied with the provisions of RFPA.

- A formal written request by the agency.
  a. If no subpoena authority is available to the government and certain other requirements are met, the government may serve on or mail to a bank customer notice that after a specified time period, the government agency will obtain the customer's financial records from the bank. The notice must be accompanied with a description of the steps the customer may take to protest the disclosure.
  b. If, after the time specified has run, no protest has been filed, the bank must obtain a written certification from the government authority that it has complied with the provisions of RFPA and the bank may then turn over the records.
  c. If a protest has been filed, the government must await and abide by the court's order.

II. NOTIFICATION AND DISCLOSURE TO CUSTOMER

RFPA places **no** obligation on a bank to advise its customers that a government authority is seeking access to account information. The obligation of notice, when it exists, is on the part of the government, and the government must certify to that bank that it has complied.

In most instances, there is no prohibition on the bank notifying the customer. However, in the following instances there is a prohibition.

- If a court orders that the bank not notify the customer;
- If the information was given to the FBI for counter-intelligence purposes; or
- If the information was given pursuant to a grand jury subpoena in connection with an investigation relating to a possible crime against any financial institution or supervisory agency or a conspiracy to commit such a crime.

III. EXEMPTIONS FROM RFPA

RFPA does not preclude the following:

- A financial institution providing the government-prescribed information of a customer believed engaged in criminal activity.
- Disclosing information incident to perfecting security interest or enforcing a debt.
- Disclosing information in processing a government or government-guaranteed loan, or administering or servicing such a loan.

RFPA does not apply to the following:

- Financial records not identified with a particular customer.
- Examinations by supervisory agencies.
- Information required to be reported under federal law.
- Information sought under the federal rules of civil procedure in connection with litigation to which the government and the customer are parties.
- Providing only a customer's name, address, account number, and type of account in certain situations.
- In proceedings involved in the investigation of government loans or government-loan guaranties.
- Grand-jury subpoenas (except as it relates to nondisclosure to customer).
- Under certain circumstances, the General Accounting Office, the FBI, the Social Security Administration, and the Railroad Retirement Board may be exempt.

IV. BANK'S OBLIGATION

When a bank receives a subpoena, etc., it is obligated to proceed to assemble the records requested and not release them until certification in writing has been received from the agency and at least 14 days have passed since the notification was received.

If notice is received that the consumer has moved to quash a subpoena or summons, the bank gathers, but does not release the records until the motion has been heard and a decision made. .

Generally, the government is obligated to reimburse the bank for its costs in assembling, processing, and transporting the information requested.

The bank is obligated to maintain records of all customer information provided to a government authority and the name of the authority. The customer has the right to review the record except where the bank is required not to disclose the information.

V. SUBPOENAS IN NONGOVERNMENTAL MATTERS

A bank is frequently subpoenaed to produce customer records incident to private litigation, which may be a lawsuit against the bank, a lawsuit involving a bank customer, or a lawsuit unrelated to the bank or a customer. The discovery sought may involve only the production of documents, but can also include the sworn testimony of bank officer or employee. Most states have laws that prohibit a bank making a public disclosure of customer records, and in some instances federal law prescribes public disclosure of certain internal records (such as regulatory examination results) of the bank not necessarily related to a particular customer.

Because of the potential liability inherent in responding inappropriately, whenever a bank or bank officer is served with a subpoena in a private lawsuit, it should immediately contact counsel. Counsel may file a motion for a protective order, request an in-camera inspection of the documents by the court, or take other steps to shield the bank from liability.

SAFE ACT 1/19

Introduction

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("SAFE Act") mandates a nationwide licensing and registration system for mortgage loan originators. Under this Act individuals who are employed by a regulated financial institution are specifically prohibited from engaging in the business of residential mortgage loan origination without first:

1. Obtaining and annually maintaining registration as a registered mortgage loan originator with a unique identifier, and
2. Maintaining adequate policies and practices which will ensure that all employees acting in the capacity of Mortgage Loan Originators register in the Nationwide Mortgage Licensing System and update their registration annually during the annual renewal period in November and December of each year.

The Bank will appoint an employee who does not act as a mortgage loan originator as a SAFE Act Officer. The SAFE Act Officer will be responsible for ensuring that the Bank's SAFE Act policy is followed.

I. MORTGAGE LOAN ORIGINATOR

A mortgage loan originator is defined as an individual who takes a residential mortgage loan application and offers or negotiates terms of a residential mortgage loan for compensation or gain. This definition does not include any individual who has never been registered or licensed through the Registry as a mortgage loan originator if during the past 12 months the employee acted as a mortgage loan originator for 5 or fewer residential mortgage loans. Should an individual exceed this limitation, the individual must register prior to engaging in any mortgage loan origination activity.

Individuals who perform the following tasks are not considered to be mortgage loan originators:

1. An individual who performs purely administrative or clerical tasks on behalf of an individual who is a mortgage loan originator;
2. An individual who only performs real estate brokerage activities 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 mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator, and meets the definition of mortgage loan originator; or
3. An individual or entity solely involved in extensions of credit related to timeshare plans.

II. REGISTRATION OF MORTGAGE LOAN ORIGINATORS

All employees who act as a mortgage loan originator will register with the Registry and obtain a unique identifier as required by the Act. The initial registration is to be completed within 180 days of public notice that the Registry is accepting registrations. This date is July 29, 2011. Subsequent to the initial registration, each mortgage loan originator will renew their registration annually between November 1 and December 31 of each calendar year. Any employee who is not registered as mortgage loan originator may not conduct the activities under Item 1 above unless specifically permitted.

The Regulatory Relief Act of 2018 amended the regulation to allow for a 120 day temporary transition period for bank MLO's moving to a non-bank lender or for MLO's work for a non-bank lender moving to another state. The law requires individual states to implement transitional authority by November 24, 2019.

III. IDENTIFICATION AND REGISTRATION

The SAFE Act Officer or his/her designee will identify which employees meet the definition of a mortgage loan originator. Each identified person will be notified of their designation as a mortgage loan originator, be provided training as to the requirements of the SAFE Act, and the registration requirements. Employees designated as mortgage loan originators will be required to submit the following information to the Registry.

Identifying information, including the employee's:

A. Name and any other names used;
B. Home address and contact information;
C. Principal business location address and business contact information;
D. Social security number;
E. Gender; and
F. Date and place of birth.

In addition the following information will be provided:

1. Financial services-related employment history for the 10 years prior to the date of registration or renewal, including the date the employee became an employee of the bank;
2. Convictions of any criminal offense involving dishonesty, breach of trust, or money laundering against the employee or organizations controlled by the employee, or agreements to enter into a pretrial diversion or similar program in connection with the prosecution for such offense(s);
3. Civil judicial actions against the employee in connection with financial services-related activities, dismissals with settlements, or judicial findings that the employee violated financial services-related statutes or regulations, except for actions dismissed without a settlement agreement;
4. Actions or orders by a State or Federal regulatory agency or foreign financial regulatory authority as outlined in the Act;
5. Revocation or suspension of the employee's authorization to act as an attorney, accountant, or State or Federal contractor;
6. Customer-initiated financial services-related arbitration or civil action against the employee as outlined in the Act; and
7. Fingerprints of the employee, in digital form if practicable, and any appropriate identifying information as outlined in the Act.

IV. MONITORING PROCEDURES

The SAFE Act Officer or his/her designee will confirm the accuracy and adequacy of all employee registrations including updates and renewals by comparing the submitted information with bank records for the employee. Included in the bank's information will be employee criminal background reports as outlined in the Act.

The date of registration and next renewal date will be tracked by designated bank personnel to ensure that all employees meeting the definition of a mortgage loan originator meet the requirements of the Act and the information submitted is adequate.

Should any employee who acts as a mortgage loan originator, not comply with the registration requirements of the Act, the employee will not be permitted to conduct the activities of a mortgage loan originator until the employee meets the requirements to the satisfaction of bank management. Additional appropriate action will be taken with any employee found to have negative information as a result of the criminal background check.

Continued noncompliance with the requirements of the Act or information obtained from the background check may be cause for termination.

Should the bank elect to use a third party for mortgage loan originations, bank management will ensure that the third party has complied with requirements of the SAFE Act including registration and the establishment of appropriate policies and procedures.

At least annually, the SAFE Act Officer will have a bank person not associated with the mortgage loan process or an outside third party conduct an independent assessment of the bank's compliance with the requirements of the Act.

V. UNIQUE IDENTIFIER UNIQUE IDENTIFIER

The bank will ensure that all mortgage loan originators provide to the consumer the mortgage loan originator's unique identifier:

1. Upon request
2. Before acting as a mortgage loan originator; and
3. Through any initial written communication, whether on paper or electronically.

SERVICEMEMBERS (Service Members Civil Relief Act; John Warner National Defense Authorization Act; Military Powers of Attorney) 1/19

Introduction

Congress passed the SCRA to protect people in the U.S. armed forces and their dependents who are actively serving.

Coverage

The SCRA applies to any individual who is in the military including:

- Active duty U.S. Marines, Air Force, Coast Guard, U.S. Army and Navy members.
- National Guard members are also covered if called to federal active duty for a period of more than 30 consecutive days.
- A commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration in active service.
- Period of coverage also includes any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.
- A citizen of the U.S. who is serving with the forces of a nation with which the U.S. is allied in the prosecution of a war or military action, if that service is similar to the “military service” as defined in the SCRA.

Additionally, SCRA provisions provide early protection under some provisions (Title I, II, III) of the SCRA for:

- Reserve units called to active duty beginning on the date the order is received until the date the member reports for service (Titles I, II, & III)
- Individuals about to be inducted into the military service full-time from the date they receive the order for induction until the date they report from induction (or the date the induction order is revoked.)

In addition to the servicemembers, the following are also protected:

- Co-borrrowers and guarantors on loans with service members as well as loans on which the servicemember is a guarantor.
- Dependents of servicemembers which consist of: spouse, child, individual for which the servicemember provides ½ of support for 180 days immediately proceeding an application for relief under the SCRA.

WAIVER OF RIGHTS

A servicemember can waive the rights and protections provided by the SCRA if in writing for the following:

- The modification, termination, or cancellation of a contract, lease or bailment; or an obligation secured by a mortgage, trust, deed, lien, or other security in the nature of a mortgage.
- A repossession, retention, foreclosure, sale, forfeiture, or taking possession of property that is security for any obligation or was purchased, or received under a contract, lease, or bailment.

EXERCISING SCRA RIGHTS NOT TO AFFECT CERTAIN FUTURE TRANSACTIONS

The exercising of rights under the SCRA cannot be used as the basis for negative credit reporting, denying credit, or changing the terms of credit. Other factors used by lenders (i.e. late payments, etc.) can still be taken into account or used as the basis for such decisions. Further details are found later in this policy.

SERVICEMEMBERS (Service Members Civil Relief Act; John Warner National Defense Authorization Act; Military Powers of Attorney) 1/19

FINE AND PENALTIES ON CONTRACTS

The SCRA limits the ability of parties to impose fines and penalties under a contract with a servicemember according to the following:

- When the obligations of a servicemember under a contract (such as a loan agreement) are stayed under the SCRA, no fine or penalty can be imposed for failure to comply with the contract during the term of the stay.
- When no stay exists and a contract calls for fines or penalties for nonperformance, a court can waive the fines or penalties if the person was in the military service when the penalty was incurred and his or her ability to pay or perform was materially impaired.

PROTECTION – THE 6% RATE CAP

One of the principal provisions is a forgiveness of all interest in excess of six percent on loans made prior to the start of the person's active military service. This interest-rate limitation applies during the person's term of active service; and for mortgages, trust deeds, or other security in the nature of a mortgage, the interest rate reduction also extends for one year after the end of the servicemember's military service, effective July 30, 2008. There is a provision for a court to adjust the rate upward if circumstances warrant. This rate protection applies only to contracts entered into before the person starts his or her active military service. Contracts entered into once that service has begun are not covered. The periodic payment would also need to be reduced by the amount of the interest forgiveness. In addition, late charges and other fees would need to be waived.

- **Timing of requests for relief and documentation**

  The lender has no obligation to seek out borrowers who might be entitled to a reduction in their loan rates. It is the obligation of the servicemember to make a written request for relief to the creditor. The servicemember shall provide to the creditor written notice and a copy of the military orders calling the servicemember to military service and any orders further extending military service. The servicemember can notify the lender "not later than 180 days after the date of the servicemember's termination or release from military service."

- **Definition of Interest**

  "Interest" for purposes of the 6 percent rate cap includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability. As such, when the interest rate is adjusted down to 6%, the bank must also waive any other fees or charges, including late fees, which might be imposed in connection with the credit plan and which might be deemed "interest" under these rules.

- ***Action by Lender***

  Upon receiving the notice and copy of orders, the lender must reduce the interest rate on the loan effective as of the date on which the servicemember is called to military service. This means that if the lender receives notice after the individual has entered military service, the lender must go back and refund any interest and fees imposed that exceeded six percent, since the date military service began.

  The lender can avoid lowering the interest rate on loans to servicemembers only by showing that the ability of the servicemember to pay the loan is not "materially affected" by military service. The burden of showing this is on the lender.

SERVICEMEMBERS (Service Members Civil Relief Act; John Warner National Defense Authorization Act; Military Powers of Attorney) 1/19

SECURED DEBT PROTECTIONS

The act contains special rules regarding debts secured by a mortgage, trust deed, or similar security interest in real or personal property owned by a servicemember.

On August 6, 2012, the President signed the Honoring America's Veterans and Caring for Camp Lejeune Families Act H.R. 1627. The act provides a number of protections to military veterans notably an extension of SCRA foreclosure protection and a temporary increase in VA loan limits.

- **Effective 180 days after the enactment of this act, Section 533 of SCRA, foreclosure protection is amended to expand the period of relief from sale, foreclosure or seizure of property from the period of military service plus 9 months to the period of military service plus 12 months.**
- **A court may, on its own motion, and shall, upon application by a servicemember whose ability to comply with the obligation is materially affected by military service, stay the proceedings or adjust the obligation to preserve the interests of all parties at any time during the period of military service or within one year thereafter.**

The amendments were set to expire on December 31, 2014. The amendments have been extended multiple times and are now set to expire on December 31, 2019.

Beginning January 1, 2020, there will be a period of 90 days after the end of the servicemember's military service during which a foreclosure, sale, or seizure of the servicemember's property based on a breach of a mortgage, trust deed, or other security, without a court order or waiver, will not be valid. During this period, a court may also stay proceedings enforcing such obligations.

As with the interest rate protections, these prohibitions apply only to obligations that originated prior to the servicemember's military service, and for which the servicemember is still obligated.

OTHER PROVISIONS AND PROTECTIONS

The fact that a servicemember applies for or is granted temporary relief from his or her obligations and liabilities pursuant to the act may not in itself be the basis for any of the following:

- A determination by a lender or other person that the servicemember is unable to pay the obligation or liability in accordance with its terms;
- A creditor's denial or revocation of credit, change in the terms of an existing credit arrangement, or refusal to grant credit in substantially the amount or on substantially the terms requested;
- An adverse report related to the creditworthiness of the servicemember by or to a credit bureau;
- An annotation in the servicemember's record by a creditor or credit bureau identifying the servicemember as a member of the National Guard or a reserve component;
- A refusal by an insurer to insure the servicemember; or
- A change in the terms offered or conditions required for the issuance of insurance.

Servicemembers called to active duty and/or deployed to new duty stations for a period of 180 days or more have the ability to terminate their automobile lease without incurring early termination penalties if they provide written notice and other required documentation to the lessor. The servicemember must return the vehicle within 15 days after the date of the written notice.

SERVICEMEMBERS (Service Members Civil Relief Act; John Warner National Defense Authorization Act; Military Powers of Attorney) 1/19

Termination is permitted of pre-service "residential, professional, agricultural or similar" leases occupied or intended to be occupied by a servicemember or a dependent as well as those leases executed during military service where the servicemember subsequently receives orders for a PCS or deployment for a period of 90 days or more.

A landlord may not evict a servicemember or the dependent of a servicemember from premises that are occupied or intended to be occupied as a primary residence during a period of military service except by court order.

If a life insurance policy on the life of a servicemember is assigned before military service to secure the payment of an obligation, the assignee of the policy may not exercise, during the period of the servicemember's military service or within one year thereafter, any right or option obtained under the assignment, absent compliance with a court order or other specified requirement.

DELINQUENT SERVICEMEMBER'S NOTICE UNDER HUD

This notice and its protection applies to servicemembers and their dependents. The servicemember does not have to be on the loan for his or her dependents to receive benefits under this notice. The notice must be sent to delinquent borrowers of residential mortgage loans within 45 days after the missed due date of a mortgage loan payment. Since the bank may not know if someone could be a dependent of a servicemember, the notice should go to all dwelling secured borrowers so that a lender can reach dependents too.

While the requirement for the notice is for residential mortgage loans only, HUD's definition of a residential mortgage loan is not clear, as such, it should be provided for loans secured by any lien on a principal dwelling whether the debt is business or consumer debt. The notice itself explains servicemember rights under the SCRA and contains a toll-free telephone number. The lender must give this notice before it forecloses; otherwise, the foreclosure could be delayed, or dismissed for failure to give the notice.

JOHN WARNER NATIONAL DEFENSE AUTHORIZATION ACT

This Act's protections, which became effective on October 1, 2007, apply to consumer credit (which excludes any type of open-end credit) that a service member obtains while serving on active duty.

Covered member *means a member of the armed forces who is (a) on active duty under a call or order that does not specify a period of 30 days or less; or (b) on active Guard and Reserve Duty.*

Dependent *means (a) the member's spouse; (b) the members' child; (c) an individual the member provides more than ½ the individual's support for 180 days immediately preceding an extension of consumer credit covered by this section.*

Covered loans are consumer credit products consisting only of payday loans, motor vehicle loans (not including purchase loans), and tax anticipation loans.

Payday Loans (at stores or made via the Internet or telephone/fax)

- Loans up to $2,000 (one or more loans)
- Closed-end (single advance of credit over fixed term)
- Term of 91 days or lesso Based on check held for future deposit or electronic access to account for future payment

Vehicle Title Loans

- Term of 181 days or less
- Closed-end, Secured by title to a registered motor vehicle owned by a covered borrower (except to buy the car)

Tax Refund Anticipation Loans

- Closed-end credit
- Tax refund goes to creditor to repay loan

<u>Limitations of terms of consumer credit extended to members and dependents:</u>

1. Interest – If the bank extends consumer credit to a covered member of the armed forces or a dependent of such a member, the bank shall not require the member or dependent to pay interest with respect to the extension of such credit, except as—
   a. Agreed to under the terms of the credit agreement or promissory note;
   b. Authorized by applicable State or Federal law; and
   c. Not specifically prohibited by this section.

2. Annual Percentage Rate – the bank also may not impose an annual percentage rate greater than 36 percent with respect to the consumer credit extended to a covered member or a dependent of a covered member.

3. Mandatory Loan Disclosures – For consumer credit to a covered member or dependent, the bank shall provide to the member or dependent the following information orally and in writing before the issuance of the credit:
   a. A statement of the APR applicable to the extension of credit.
   b. Any disclosures required under the Truth in Lending Act.
   c. A clear description of the payment obligations of the member or dependent.

4. Other Limitations- It is also prohibited for the bank to extend consumer credit to a covered member or a dependent of such a member with respect to which—
   a. The bank rolls over, renews, refinances, or consolidates any consumer credit extended to the borrower by the same bank with the proceeds of other credit extended to the same covered member or dependent;
   b. The borrower is required to waive the borrower's right to legal recourse under any otherwise applicable provision of State or Federal Law, including any provision of the SCRA;
   c. The bank requires the borrower to submit to arbitration or imposes onerous legal notice provisions in the case of a dispute;
   d. The bank demands unreasonable notice from the borrower as a condition for legal action;
   e. The bank uses a check or other method of access to a deposit, savings, or other financial account maintained by the borrower, or the title of a vehicle as security for the obligation;
   f. The bank requires as a condition for the extension of credit that the borrower establish an allotment to repay an obligation; or
   g. The borrower is prohibited from prepaying the loan or is charged a penalty or fee for prepaying all or part of the loan.

Penalties

A lender who knowingly violates the section above shall be fined as provided in title 18, or imprisoned for not more than one year, or both.

Contract Void

Any credit agreement, promissory note, or other contract prohibited under this section is void from the inception of such contract.

MILITARY POWERS OF ATTORNEY

Section 1044b of Title 10 of the United States Code states that any military power of attorney is exempt from state law requirements and will have the same legal effect as a power of attorney prepared and executed under the laws of any State, the District of Columbia, the Commonwealth of Puerto Rico, and any possession of the United States.

This bank will accept any military power of attorney as if it was a state power of attorney subject to the following:

1. The power of attorney has been notarized in accordance with USC 10 1044a, which lists the persons empowered to provide notary services for military personnel, or has been notarized in accordance with State law.

2. Includes a statement that the military power of attorney is exempt from any form, substance, formality, or recording required under state law and that the power of attorney has the same legal effect as one prepared under State law.

   Should the statement be missing from the power of attorney, the power of attorney is still considered to be have the same legal effect as a power of attorney that includes the statement (10 USC 1044b(c)(2)).

SOCIAL MEDIA POLICY 1/19

Introduction

The FFIEC has proposed guidance to address the applicability of federal consumer protection and compliance laws, regulations, and policies to activities conducted via social media by banks, savings associations, and credit unions, as well as by nonbank entities supervised by the Consumer Financial Protection Bureau (CFPB) (collectively, financial institutions). The six members of the FFIEC are the Office of the Comptroller of the Currency (OCC); the Board of Governors of the Federal Reserve System (Board); the Federal Deposit Insurance Corporation (FDIC); the National Credit Union Administration (NCUA); and the CFPB (collectively, the Agencies). The Agencies expect that all financial institutions they supervise will effectively assess and manage risks associated with activities conducted via social media. Supervised institutions will be expected to use the guidance in their efforts to ensure that their risk management practices adequately address the consumer compliance and legal risks, as well as related risks, such as reputation and operational risks, raised by activities conducted via social media.

Definitions

Social media is generally defined to be a form of interactive online communication in which users can generate and share content through text, images, audio, and/or video. Social media can take many forms, including, but not limited to, micro-blogging sites (e.g., Facebook, Google Plus, MySpace, and Twitter); forums, blogs, customer review Web sites and bulletin boards (e.g., Yelp); photo and video sites (e.g., Flickr and YouTube); sites that enable professional networking (e.g., LinkedIn); virtual worlds (e.g., Second Life); and social games (e.g., FarmVille and CityVille). Social media can be distinguished from other online media in that the communication tends to be more interactive.

Purpose and Use

This financial institution will define its social media posture in terms of its business purpose and strategic use of social media in achieving this purpose. To this end, the Board of Directors will regularly, or at least annually, review and approve the business purpose(s) identified with this financial institution's use of social media. This review and approval will articulate the use(s) to be employed in terms of the financial institution's overall strategic business plan. This approach will be broadly based to entail more than mere advertisement plans, and will require a risk management methodology aimed at assessing and mitigating associated risk areas involved with the institution's social media exposure.

Risk Management Expectations

This financial institution will have a risk management program that allows it to identify, measure, monitor, and control the risks related to social media. The size and complexity of the risk management program will be commensurate with the breadth of this financial institution's involvement in this medium as detailed under the **Purpose and Use** details of this policy noted above.

This financial institution's risk management program will be designed with participation from specialists in compliance, technology, information security, legal, human resources, and marketing. If this financial institution should prospectively choose not to use social media, it should still be prepared to address the potential for negative comments or complaints that may arise within the many social media platforms described in the **Definitions** section of this policy above and provide guidance for employee use of social media.

This financial institution's risk management program will include the following components:

- A governance structure with clear roles and responsibilities whereby the board of directors or senior management direct how using social media contributes to the strategic goals of the institution and establishes controls and ongoing assessment of risk in social media activities;
- Policies and procedures (either stand-alone or incorporated into other policies and procedures) regarding the use and monitoring of social media and compliance with all applicable consumer

protection laws, regulations, and guidance. Further, policies and procedures should incorporate methodologies to address risks from online postings, edits, replies, and retention;

- A due diligence process for selecting and managing third-party service provider relationships in connection with social media;
- An employee training program that incorporates this institution's policies and procedures for official, work-related use of social media, and potentially for other uses of social media, including defining impermissible activities;
- An oversight process for monitoring information posted to proprietary social media sites administered by this financial institution or a contracted third party;
- Audit and compliance functions to ensure ongoing compliance with internal policies and all applicable laws, regulations, and guidance; and
- Parameters for providing appropriate reporting to this financial institution's board of directors or senior management that enable periodic evaluation of the effectiveness of the social media program and whether the program is achieving its stated objectives.

Risk Areas

Due to the form of customer interaction entailed with social media that tends to be informal and that occurs in a less secure environment, risk areas can include impacts to this financial institution's risk profile, including risk of harm to consumers, compliance and legal risks, operational risks, and reputation risks. Increased risk can arise from poor due diligence, oversight, or control on the part of this financial institution.

Compliance and Legal Risks

Compliance and legal risk arise from the potential for violations of, or nonconformance with, laws, rules, regulations, prescribed practices, internal policies and procedures, or ethical standards. These risks also arise in situations in which this financial institution's policies and procedures governing certain products or activities may not have kept pace with changes in the marketplace. This is particularly pertinent to an emerging medium like social media.

To the extent that this financial institution uses social media to engage in lending, deposit services, or payment activities, it must comply with applicable laws and regulations as when it engages in these activities through other media. The following list of laws and regulations is subject to regular and at least annual review by the Board of Directors and senior management in conjunction with ongoing risk management assessment for this financial institution's use of social media.

<u>Deposit and Lending Products</u>
This financial institution will use social media to market products and originate new accounts. When used to do either, this financial institution will take steps to ensure that advertising, account origination, and document retention are performed in compliance with applicable consumer protection and compliance laws and regulations, as listed below:

- Truth in Savings Act/Regulation DD
- Fair Lending Laws: Equal Credit Opportunity Act/Regulation B and Fair Housing Act
- Truth in Lending Act/Regulation Z
- Real Estate Settlement Procedures Act
- Fair Debt Collection Practices Act
- Unfair, Deceptive, or Abusive Acts or Practices. Section 5 of the Federal Trade Commission (FTC) Act
- Sections 1031 and 1036 of the Dodd-Frank Wall Street Reform and Consumer Protection Act
- Deposit Insurance

<u>Payment Systems</u>
Where social media is employed to facilitate a consumer's use of payment systems, this financial institution will observe the laws, regulations, and industry rules regarding payments that may apply, including those providing disclosure and other rights to consumers. This financial institution will continue to be aware of the existing laws, regulations, guidance, and industry rules that apply to payment systems and evaluate which will apply.

These will include the following:

- Electronic Fund Transfer Act/Regulation E
- Article 4 of the Uniform Commercial Code of the relevant state
- Expedited Funds Availability Act/Regulation CC

<u>Bank Secrecy Act/Anti-Money Laundering Programs (BSA/AML)</u>
This financial institution will maintain its compliance program to include appropriate internal controls to ensure effective risk management and compliance with recordkeeping and reporting requirements under the BSA. Internal controls include this financial institution's policies, procedures, and processes designed to limit and control risks and to achieve compliance with the BSA. The level of sophistication of the internal controls will be maintained commensurate with the size, structure, risks, and complexity of this financial institution.

<u>Community Reinvestment Act</u>
This financial institution will ensure their policies and procedures addressing public comments will also include appropriate monitoring of social media sites run by or on behalf of the institution

<u>Privacy</u>
Where through social media this financial institution collects, or otherwise has access to, information from or about consumers, this financial institution will take into consideration the following laws and regulations regarding the privacy of consumer information:

- Gramm-Leach-Bliley Act Privacy Rules and Data Security Guidelines
- CAN–SPAM Act and Telephone Consumer Protection Act
- Children's Online Privacy Protection Act (COPPA) and the Federal Trade Commission's implementing regulation
- Fair Credit Reporting Act (FCRA)

Reputation Risk

Reputation risk is the risk arising from negative public opinion. Activities that result in dissatisfied consumers and/or negative publicity could harm the reputation and standing of this financial institution, even if this financial institution has not violated any law.

This financial institution is engaged in social media activities and will be sensitive to, and properly manage, the reputation risks that arise from those activities related to the following areas including:

<u>Fraud and Brand Identity</u>
This financial institution will always consider the use of social media monitoring tools and techniques to identify heightened risk, and respond appropriately. This financial institution will maintain appropriate policies in place to monitor and address in a timely manner the fraudulent use of this financial institution's brand, such as through phishing or spoofing attacks.

<u>Third Party Concerns</u>
This financial institution will regularly monitor the information it places on social media sites. This monitoring is the direct responsibility of this financial institution, even when such functions may be delegated to third parties. This financial institution will maintain its ability to control content on a site owned or administered by a third party

and to retain the ability to change policies regarding information provided through the site which may vary depending on the specific site and the contractual arrangement with the third party.

Privacy Concerns
This financial institution will consider the potential reaction by the public to any use of consumer information via social media. This financial institution will maintain procedures to address risks from occurrences such as members of the public posting confidential or sensitive information—for example, account numbers—on this financial institution's social media page or site.

Consumer Complaints and Inquiries
Social media can expose this financial institution to reputation risks that may occur when users post critical or inaccurate statements. Compliance risk can also arise when a customer uses social media in an effort to initiate a dispute, such as an error dispute under Regulation E, a billing error under Regulation Z, or a direct dispute about information furnished to a consumer reporting agency under the FCRA. This financial institution will maintain monitoring to address the potential for these statements or complaints to require further investigation.

This financial institution will determine whether, and how, to respond to communications disparaging the financial institution on other parties' social media sites. To properly control these risks, this financial institution will consider the feasibility of monitoring question and complaint forums on social media sites to ensure that such inquiries, complaints, or comments are addressed in a timely and appropriate manner.

Employees' Use of Social Media Sites
This financial institution will be aware that employees' communications via social media—even through employees' own personal social media accounts - may be viewed by the public as reflecting the financial institution's official policies or may otherwise reflect poorly on the financial institution, depending on the form and content of the communications. Employee communications can also subject this financial institution to compliance risk as well as reputation risk. This financial institution will establish appropriate policies to address employee participation in social media that implicates this financial institution.

Operational Risk

Operational risk is the risk of loss resulting from inadequate or failed processes, people, or systems. The root cause can be either internal or external events. Operational risk includes the risks posed by this financial institution's use of information technology (IT), which encompasses social media. This financial institution will be mindful of the identification, monitoring, and management of IT-related risks as they are addressed in the *FFIEC Information Technology Examination Handbook.* This financial institution's operational risk management processes will encompass the booklets ''Outsourcing Technology Services'' and ''Information Security'' when using social media, and include social media in existing risk assessment and management programs.

This financial institution will ensure that the controls it implements to protect its systems and safeguard customer information from malicious software adequately address social media usage. This financial institution's incident response protocol regarding a security event, such as a data breach or account takeover will include social media, as appropriate.

UNFAIR, DECEPTIVE, ABUSIVE ACTS OR PRACTICES 1-19

Introduction

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. The Act also provides the Consumer Financial Protection Bureau (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. In addition, CFPB has supervisory authority for detecting and assessing risks to consumers and to markets for consumer financial products and services.

The bank is committed to ensuring that its marketing efforts, debt collection practices, deposit products, and lending activities do not contain features/processes that have the potential to harm consumers. It will also ensure that if it creates products that combine features and terms that they are not 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.

I. UNFAIR ACTS OR PRACTICES

STANDARD FOR UNFAIRNESS

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.

   Substantial injury usually involves monetary harm, such as, when costs or fees are paid by consumers as a result of an unfair practice. An act or practice that causes a small amount of harm to a large number of people may be deemed to cause substantial injury. Actual injury is not required in every case, as a significant risk of injury is also sufficient. However, trivial or merely speculative damages 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. However, in certain circumstances, such as unreasonable debt collection harassment, emotional impacts may amount to or contribute to substantial injury.

2. The injury is **not reasonably avoidable** by consumers.

   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. If material information about a product, such as pricing, is modified or withheld until after the consumer has committed to purchasing the product, then the consumer cannot reasonably avoid the injury. 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. 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. Furthermore, the actions that a consumer is expected to take to avoid injury must be reasonable taking into consideration the cost or effort needed to detect the potential injury.

3. The injury is **not outweighed by countervailing benefits** to consumers or to competition.

   To be unfair, the act or practice must be injurious in its net effects - that is, the injury must not be outweighed by any offsetting consumer or competitive benefits that 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 OF UNFAIR ACTS OR PRACTICES

The examples described below and throughout this policy stem from federal enforcement actions and were described in the UDAAP chapter of the CFPB Consumer Manual. The following examples, provide insight into practices that have been alleged to be unfair by other regulators and may inform CFPB's determinations.

1. **Refusing to release lien after consumer makes final payment on a mortgage.**

   The FTC brought an enforcement action against a mortgage company based on allegations, described below, that repeatedly failed to release liens after consumers fully paid the amount due on their mortgages.

   a. Substantial injury: Consumer's 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.
   b. 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.
   c. 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.

2. **Dishonoring credit card convenience checks without notice**.

   The OTS and 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.

   a. Substantial injury: Customers paid returned-check fees and may have experienced a negative impact on credit history.
   b. 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.
   c. 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.

3. Processing payments for companies engaged in fraudulent activities.

The 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 and 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.

a. Substantial injury: Consumers lost money from fraudulent checks created remotely and drawn against their accounts.
b. 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.
c. Not reasonably avoidable: Consumers could not avoid the harm because the harm resulted principally from transactions to which the consumers had not consented.

II. DECEPTIVE ACTS OR PRACTICES

MEANING OF DECEPTIVE ACT

A representation, omission, act or practice is deceptive when:

1. The representation, omission, act, or practice **misleads or is likely to mislead** the consumer.

Deception is not limited to situations in which a consumer has already been misled but also if it is *likely that they will be misled*. 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 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:

- Is the statement prominent enough for the consumer to notice?
- Is the information presented in an easy-to-understand format that does not contradict other information in the package and at a time when the consumer's attention is not distracted elsewhere?

- Is the placement of the information in a location where consumers can be expected to look or hear?
- Finally, is the information in close proximity to the claim it qualifies?

2. The consumer's **interpretation** of the representation, omission, act, or practice **is reasonable** under the circumstances.

   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, however, are not deceptive if the claims would not be taken seriously by a reasonable consumer.

3. The misleading representation, omission, act, or practice **is 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 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. 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 OF DECEPTIVE ACTS OR PRACTICES

1. **Inadequate disclosure of material lease terms in television advertising.**

   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 settlement 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.

a. 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.
b. 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.
c. 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.

2. Misrepresentation about loan terms.

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.

a. 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 nonamortizing 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.
b. Reasonable consumer perspective: It was reasonable for consumers to believe that they would obtain fixed-rate mortgages, based on the representations.
c. 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.

III. ABUSIVE ACTS OR PRACTICES

MEANING OF ABUSIVE ACT

The Dodd-Frank Act makes it unlawful for any covered person or service provider to engage in an “abusive act or practice.” Although abusive acts also may be unfair or deceptive, the bank is aware that the legal standards for abusive, unfair, and deceptive each are separate. 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 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.

IV. PROHIBITION OF UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR PRACTICES IN THE COLLECTION OF CONSUMER DEBTS

On July 10, 2013, the Consumer Financial Protection Bureau (CFPB) issued a bulletin to clarify the requirements that all covered persons or service providers are legally required to refrain from committing unfair, deceptive, or abusive acts or practices (collectively, UDAAPs) in the context of collecting consumer debts.

Original creditors and other covered persons and service providers under the Dodd-Frank Act involved in collecting debt related to any consumer financial product or service are subject to the prohibition against UDAAPs in the Dodd-Frank Act.

In addition to the prohibition of UDAAPs under the Dodd-Frank Act, the Fair Debt Collection Practices Act (FDCPA) also makes it illegal for a person defined as a “debt collector” from engaging in conduct “the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt,” to “use any false, deceptive, or misleading representation or means in connection with the collection of any debt,” or to “use any unfair or unconscionable means to collect or attempt to collect any debt.” The FDCPA generally applies to third-party debt collectors, such as collection agencies, debt purchasers, and attorneys who are regularly engaged in debt collection. All parties covered by the FDCPA must comply with any obligations they have under the FDCPA, in addition to any obligations to refrain from UDAAPs in violation of the Dodd-Frank Act. Although the FDCPA’s definition of “debt collector” does not include some persons who collect consumer debt, all covered persons and service providers must refrain from committing UDAAPs in violation of the Dodd-Frank Act.

Examples of Unfair, Deceptive and/or Abusive Acts or Practices related to the collection of debt listed in the bulletin:

- Collecting or assessing a debt and/or any additional amounts in connection with a debt (including interest, fees, and charges) not expressly authorized by the agreement creating the debt or permitted by law.
- Failing to post payments timely or properly or to credit a consumer’s account with payments that the consumer submitted on time and then charging late fees to that consumer.
- Taking possession of property without the legal right to do so.
- Revealing the consumer’s debt, without the consumer’s consent, to the consumer’s employer and/or co-workers.
- Falsely representing the character, amount, or legal status of the debt.
- Misrepresenting that a debt collection communication is from an attorney.
- Misrepresenting that a communication is from a government source or that the source of the communication is affiliated with the government.
- Misrepresenting whether information about a payment or nonpayment would be furnished to a credit reporting agency.
- Misrepresenting to consumers that their debts would be waived or forgiven if they accepted a settlement offer, when the company does not, in fact, forgive or waive the debt.
- Threatening any action that is not intended or the covered person or service provider does not have the authorization to pursue, including false threats of lawsuits, arrest, prosecution, or imprisonment for non-payment of a debt.

V. 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.

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.

VI. PROCEDURES FOR PREVENTING/DETECTING UNFAIR DECEPTIVE OR ABUSIVE ACTS

The bank has established policies and controls relating to employee and third-party conduct, which include:

- Providing initial and ongoing training to all department heads who then are responsible for overseeing activity in their respective areas to ensure that no unfair, deceptive or abusive acts occur or have the potential to occur;
- Conducting internal reviews of marketing materials, complaints received, loan and deposit products;
- Hiring a firm to conduct audits of UDAAP and other regulations;
- Establishing discipline policies and records of disciplinary actions;
- Reviewing third-party agreements and contractual performance standards;
- Establishing compensation programs that would not have the potential to incentivize overselling or misleading customers in order to increase production; and
- Reporting findings of training, reviews, and audits to the Board of Directors.

VII. OVERVIEW OF THE NOW REPEALED REGULATION AA

The Federal Reserve published a final rule to repeal its Regulation AA – Unfair or Deceptive Acts or Practices effective March 21, 2016. However, The CFPB and the federal banking agencies expect regulated entities to continue to abide by the prohibitions and requirements contained in the repealed regulation as indicated in their Interagency Guidance dated August 22, 2014. Also, the FRB's consumer complaint process is unchanged except for the fact that it is on the board's public website rather than in Regulation AA. As such, the prohibitions and requirements of the repealed regulation are detailed below.

CONSUMER COMPLAINTS:

Consumer Complaint is defined as an allegation by or on behalf of an individual, group of individuals, or other entity that a particular act or practice of a state member bank is unfair or deceptive, or in violation of a regulation issued by the Board pursuant to a federal statute, or in violation of any other act or regulation under which the bank must operate. Regulatory agencies are required to respond to complainants within 15 days. As such, they will require timely responses from the banks they supervise.

If consumers have a complaint, the complaint should be submitted in writing, if possible, and should include the following information:

1. A description of the act or practice that is thought to be unfair or deceptive, or in violation of existing law or regulation, including all relevant facts;
2. The name and address of the bank that is the subject of the complaint.
3. The name and address of the complainant.
4. Complaints should be mailed to the institution's regulator.

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Consumer complaints play a key role in the detection of unfair, deceptive, or abusive practices. 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, and maybe one indication of UDAAPs. As such, the bank will centralize its processing of complaints and review them as part of their internal monitoring and audits for UDAAP. Complaints lodged against subsidiaries, affiliates, and third parties regarding the products and services offered through the institution or using the institution's name will also be monitored.

CREDIT PRACTICES RULE:

Definition of Consumer Credit Obligation

For the purposes of Regulation AA, a consumer is "a natural person who seeks or acquires goods, services or money for family or household use other than for the purchase of real property." Loans to corporations and partnerships are not covered. Loans for the **purchase** of real estate are not covered; but real estate loans that are not for the purchase of real estate, such as home equity loans, are covered. The regulation has no definition of the word "purpose" to differentiate between a consumer and a business purpose for a credit. The commentary suggests using the factors listed in the commentary to Regulation Z, but remember, Regulation AA does not contain a loan amount cut-off as Regulation Z does.

Unfair Provisions In Consumer Credit Contracts

It is an unfair act or practice for a bank to enter into a **consumer** credit obligation that contains, or to enforce in a consumer credit obligation purchased by the bank, any of the following provisions:

1. **Confession of Judgment -** Clause in a contract in which the consumer consents in advance to allow the lender to obtain judgment against himself without the lender having to give notice or giving the borrower an opportunity to be heard in court.
2. **Waiver of Exemption -** Provision in which the consumer relinquishes the statutory right to protect his or her home, possessions, or wages from seizure to satisfy a judgment. The only exception is for property specifically given as security for the obligation.
3. **Assignment of Wages -** Provision which gives the institution the right to receive the consumer's wages or earnings directly from the consumer's employer. An assignment of wages can be a provision if:
    a. The assignment by its terms is revocable at the will of the debtor,
    b. The assignment is a payroll deduction plan or preauthorized-payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment, or
    c. The assignment applies only to wages or other earnings already earned at the time of the assignment.

    [Earnings is defined as compensation paid or payable to an individual or for the individuals account for personal services rendered or to be rendered by the individual, whether in wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension, retirement, or disability program.]

4. **Nonpossessory Security Interest in Household Goods -** This is permissible only when the household goods were purchased with the loan proceeds.

    Household Goods are defined as clothing, furniture, appliances, linens, china, crockery, kitchenware, and personal effects of the consumer and the consumer's dependents. The term "Household Goods" does not include works of art, electronic entertainment equipment other than one television and one radio, antiques (items over 100 yrs. of age) including such items that have been repaired or renovated

without changing their original form or character; and jewelry (other than wedding rings). Even if a consumer voluntarily offers household goods as collateral, banks cannot accept them. The customer cannot waive his rights under this regulation.

Cosigner Practices

Cosigner is defined as a natural person who assumes liability for the obligation of a consumer without receiving goods, services, or money in return for the obligation or, in the case of an open-end credit obligation, without receiving the contractual right to obtain extensions of credit under the account.

Cosigner is any person whose signature is requested as a condition to granting credit to a consumer, or as a condition for forbearance on collection of a consumer's obligation that is in default.

Cosigner does not include a spouse whose signature is required on a credit obligation to perfect a security interest pursuant a state law.

A person who meets the definition of "cosigner", will be determined to be a cosigner whether or not the person is designated as such on the loan. Guarantors are deemed to be “cosigners”.

Before a cosigner becomes obligated, the bank must inform the cosigner of the nature of the cosigner’s liability, and the bank may not misrepresent the nature or extent of the cosigner’s liability to anyone. The obligation on the part of the bank is both affirmative and prohibitive. It must inform the cosigner of the nature and extent of the liability, and it must not misrepresent the cosigner liability.

Prior to becoming obligated, a cosigner must be given the following notice in writing.

Notice to Cosigner

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn’t pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increases this amount.

The bank can collect this amount from you without first trying to collect from the borrower. The bank can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

This notice is not the contract that makes you liable for the debt.

I acknowledge receipt of a copy of this notice.

Date________________________ Cosigner_________________________________

The cosigner notice may be contained in another document, such as a credit application or a Guaranty form. The notice must be “clear and conspicuous”; if it is contained in another document, it should be highlighted in some manner.

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The debt must be a consumer credit obligation, which, according to the Regulation AA definition of “consumer,” excludes obligations for the **purchase** of real estate, but includes any other obligation secured by real estate.

Unfair Late Charges

In connection with collecting a debt arising out of an extension of credit to a consumer, it is an unfair act or practice for a bank to levy or collect any delinquency charge on a payment, when the only delinquency is attributable to late fees or delinquency charges assessed on earlier installments, and the payment is otherwise a full payment for the applicable period and is paid out on its due date or within an applicable grace period. (i.e. The bank cannot charge another late fee if the only thing owed from the previous month is the late fee.)

The rule does not prohibit imposing multiple late fees on a payment delinquent for more than one period (though some states have laws prohibiting this practice). The rule also does not address (and, therefore, does not prohibit) charging interest on late fees; though, again, many states have laws prohibiting this practice.

The rule does require that **all** payments on an obligation be applied to required payments **before** any amount is applied to accrued late fees. For example, assume that a loan has a required $60 monthly payment and that there is $10 in accrued, but unpaid, late fees. The borrower makes a $60 payment the next month. The entire payment must be applied to the regular payment required of $60 and no part of it may be applied to the past-due late fee, which would cause a shortage in the current payment and trigger an additional late fee.