As of November 20, 2013, this booklet applies to federal savings associations (FSA) except for the sections on "Credit Practices Rule," "Interest on Loans," and "Interstate Deposits."*

Comptroller of the Currency
Administrator of National Banks

Other Consumer Protection Laws and Regulations

Comptroller's Handbook

August 2009

*If statutes, regulations, or other OCC guidance is referenced herein, please consult those sources to determine applicability to FSAs. If you have questions about how to apply this guidance, please contact your OCC supervisory office.

CCE

Consumer Compliance Examination

Other Consumer Protection Laws and Regulations

Contents

Other Consumer Protection Laws and Regulations

Introduction

This booklet provides background information and optional expanded examination procedures for the consumer protection topics listed below.

Examiners will select which of these procedures are necessary, if any, after first completing a compliance core assessment as outlined in the OCC's "Large Bank Supervision" and "Community Bank Supervision" *Comptroller's Handbook* booklets.

Consumer protection topics:

- Interest on Loans
- Branch Closings
- Fair Debt Collection Practices Act
- Credit Practices Rule
- Consumer Leasing Act
- Homeowners Protection Act
- Right to Financial Privacy Act
- Disclosure and Reporting of Community Reinvestment Act–Related Agreements
- Prohibition against Use of Interstate Branches Primarily for Deposit Production
- Children's Online Privacy Protection Act
- Controlling the Assault of Non-Solicited Pornography and Marketing Act
- Telephone Consumer Protection Act and Junk Fax Prevention Act
- Limitations on Terms of Consumer Credit Extended to Servicemembers and Dependents

Background and Summary

Title 12 USC 85 regulates the maximum rate of interest that national banks may charge on most types of loans. Banks that charge a higher rate violate the law and may trigger the penalties for usury described in 12 USC 86.

General Rule

Section 85 authorizes national banks to charge interest on loans at the rates allowed by the states in which the bank is located. A national bank is considered to be located in states in which it has either its main office or a branch. If state law permits state lenders to make loans without interest rate limitations, then national banks may make the same types of loans without interest rate limitations.

Additions to the General Rule

Section 85 also provides that on all loans, national banks may charge 1 percent more than the discount rate on 90-day commercial paper in effect at the Federal Reserve bank in the district in which the bank is located. For example, if the discount rate is 7 percent, national banks may charge 8 percent, discounted in advance, without regard to state usury laws.[1]

Definition of Interest

Section 85 applies state limits not only on the numerical periodic rate of interest that is charged on a loan, but also on other charges that are considered to be part of interest for purposes of section 85. Under 12 CFR 7.4001, these include late fees, over limit fees, annual fees, cash advance

[1] Section 85 also provides that when no rate is set by the state (other than when state lenders may make loans without interest rate limitations as described above) a national bank may not charge more than 1 percent more than the discount rate on 90-day commercial paper in effect at the Federal Reserve bank in the district in which the bank is located, or 7 percent, whichever is greater. However, this law generally will not apply, because courts have found that this provision does not apply if the state law merely states that the parties can agree on the interest rate or when a state law providing a maximum interest rate is nonexistent.

fees, and membership fees (*Smiley* v. *Citibank,* 517 U.S. 735 (1996)). In addition, the OCC has determined that certain other fees are included in interest, such as account opening fees and prepayment fees (OCC Interpretive Letter Nos. 803 and 744, issued in OCC *Interpretations and Actions* in October 1997 and October 1996, respectively). State law restrictions on how interest is calculated also apply to national banks. For instance, state laws governing compounding of interest on loans apply to national banks as a result of section 85.

Most Favored Lender Status

Under section 85, a national bank may charge the maximum rate of interest permitted by state law for any state-chartered or state-licensed lending institution. A national bank that charges a higher interest rate on a specified class of loans, as allowed by state law, is subject to the provisions relative to that class of loans that are material to the determination of the interest rate. For example, when a state law allows finance companies to charge 20 percent on certain loans, but limits state banks to 16 percent, national banks may charge 20 percent. However, national banks would be limited to charging the higher rate only on the same size and type of loans that finance companies are allowed to make. For example, if state law allowed 20 percent on the first $500 on open-end credit accounts and 18 percent thereafter, a national bank lending $800 could charge no more than 20 percent for the first $500 and no more than 18 percent on the remaining $300.

Exportation of Interest Rates

Title 12 USC 85 permits national banks to charge interest rates as permitted by a state in which the bank is located. For an intrastate bank, that is the state where its main office is located. For an interstate bank, that also generally will be the state in which the bank has its main office though, in some circumstances, an interstate national bank may be required, or may have the authority, to charge rates permitted by a state in which one or more of its branches is located.[2] (OCC Interpretive Letter Nos. 822 and 782, issued in OCC *Interpretations and Actions* in March 1998 and June 1997, respectively). This is referred to as interest rate exportation. For example, banks frequently issue credit cards to consumers who live in a state other than where the bank is located. In these situations, a consumer living in a state that limits annual

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[2] Additional interest rate authority applies to national banks with a main office in Arkansas (12 USC 1831u(f)).

credit card account fees to 18 percent can be obligated, under 12 USC 85, to pay 24 percent annually if the bank is located in a state that permits such a rate (*Marquette National Bank of Minneapolis* v. *First of Omaha Service Corp.;* 439 U.S. 299 (1978); *Smiley).*

Preemption of State Usury Laws

Title 12 USC 1735f-7a and its implementing regulation, "Preemption of State Usury Laws," (12 CFR Part 590), permit the preemption of state laws expressly limiting the rate or amount of interest, discount points, finance charges, or other charges that may be levied on any federally related loan (as defined in 12 CFR 590.2) made after March 31, 1980, and secured by a first lien on one of the following:

- Residential real property.
- Stock in a residential cooperative housing corporation when the loan is used to finance the acquisition of such stock.
- A residential manufactured home. However, banks must comply with the consumer protection rules contained in section 590.4 to be granted the preemption on residential manufactured homes.

Under section 1735f-7a, states were given a limited period of time between 1980 and 1983 to opt out of the preemptions for loans made in that state. Moreover, even beyond that time period, states also may have retained some authority to impose limits on discount fees or other charges. By their terms, nothing in 12 USC 1735f-7a or 12 CFR Part 590 preempts state laws limiting prepayment fees, late charges, or other provisions designed to protect borrowers. While Office of Thrift Supervision regulations implement 12 USC 1735f-7a, compliance by national banks and federal branches and agencies of foreign banks is enforced by the OCC.

Title 12 USC 1735f-7 preempts preexisting state law limits on interest, discount points, or other charges that may be imposed on loans secured by one- to four-family dwellings and insured or guaranteed under subchapter I or II of the National Housing Act. However, the states may override this provision and impose limits on interest, discount points, or other charges.

References

Laws

12 USC 85, Rate of interest on loans, discounts and purchases

12 USC 86, Usurious interest; penalty for taking; limitations

12 USC 1735f-7, Exemption from state usury laws; applicability

12 USC 1735f-7a, State constitution or laws limiting mortgage interest, discounts points, and finance or other charges; exemptions for obligations made after March 31, 1980

Regulations

12 CFR 7.4001, Charging interest at rates permitted competing institutions; charging interest to corporate borrowers

12 CFR Part 590, Preemption of state usury laws

OCC Interpretive Letters

Number 744, Issued in OCC *Interpretations and Actions,* October 1996

Number 782, Issued in OCC *Interpretations and Actions,* June 1997

Number 803, Issued in OCC *Interpretations and Actions,* October 1997

Number 822, Issued in OCC *Interpretations and Actions,* March 1998

Background and Summary

Section 42 of the Federal Deposit Insurance Act (FDI Act) (12 USC 1831r-1) imposes notice requirements on insured depository institutions that intend to close branches.

The law requires an insured depository institution to submit a notice of any proposed branch closing to the appropriate federal banking agency no later than 90 days before the proposed closing date. The required notice must include a detailed statement of the reasons to close the branch and statistical or other information to support those reasons.

The law also requires an insured depository institution to notify its customers of the proposed closing. The institution must mail a notice to the customers of the branch proposed to be closed at least 90 days before the proposed closing. The institution also must post a notice to customers in a conspicuous manner on the premises of the branch proposed to be closed at least 30 days before the proposed closing. Additionally, the law requires each institution to adopt policies for closings of the institution's branches. Finally, there are additional requirements for interstate banks that propose to close any branch in a low- or moderate-income area.

Joint Policy Statement on Branch Closings

Purpose

This policy statement provides guidance to each insured depository institution concerning requirements that an institution provide prior notice of any branch closing and establish internal policies for branch closings.[3]

[3] An "insured depository institution" means any bank or savings association, as defined in section 3 of the FDI Act (12 USC 1813), the deposits of which are insured by the Federal Deposit Insurance Corporation.

Background

The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102-242, 105 Stat. 2236) was enacted on December 19, 1991. Section 228 of the FDICIA added a new section 42 to the Federal Deposit Insurance Act (FDI Act) (12 USC 1831r-1) that imposes notice requirements on insured depository institutions that intend to close branches. Section 42 was amended on September 29, 1994, by section 106 of the Riegle–Neal Interstate Banking and Branching Efficiency Act of 1994 (Pub. L. 103-328, 108 Stat. 2338), and on September 30, 1996, by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104-208, 110 Stat. 3009).

The law requires an insured depository institution to submit a notice of any proposed branch closing to the appropriate federal banking agency no later than 90 days prior to the date of the proposed branch closing. The required notice must include a detailed statement of the reasons for the decision to close the branch and statistical or other information in support of such reasons.

The law also requires an insured depository institution to notify its customers of the proposed closing. The institution must mail the notice to the customers of the branch proposed to be closed at least 90 days prior to the proposed closing. The institution also must post a notice to customers in a conspicuous manner on the premises of the branch proposed to be closed at least 30 days prior to the proposed closing.

An interstate bank (defined in section 42 as a bank that maintains branches in more than one state) proposing to close a branch located in a low- or moderate-income area is required to include in its notice to customers the mailing address of the appropriate federal banking agency and a statement that comments on the closing may be mailed to the agency.[4] In those cases, a person from the affected area may submit a written request relating to the proposed closing to the agency, stating specific reasons for the request and including a discussion of the adverse effect the closing may have on the availability of banking services in the affected area. If the agency determines that the request is nonfrivolous, then the agency shall convene a meeting of appropriate individuals, organizations, depository institutions, and agency representatives, as determined by the agency at its discretion, to explore the

[4] Under section 42, this requirement does not apply when a savings association closes a branch.

feasibility of obtaining adequate alternative facilities and services for the affected area following the closing of the branch.

Finally, the law requires each institution to adopt policies regarding closings of branches of the institution.

Applicability

Section 42 of the FDI Act applies to the closing of a "branch" by an insured depository institution.[5] The agencies consider a "branch" for purposes of section 42 to be a traditional brick-and-mortar branch, or any similar banking facility other than a main office, at which deposits are received, checks paid, or money lent. Notice pursuant to section 42 would not be required for the closing of non-branch facilities, such as an automated teller machine (ATM), remote service facility, or loan production office, or of a temporary branch.[6] The law also does not apply to mergers, consolidations, or other acquisitions, including branch sales, that do not result in any branch closings. Institutions that are in doubt about the coverage of a particular closing should consult the appropriate federal banking agency.

Mergers

An institution must file a branch closing notice whenever it closes a branch, including when the closing occurs in the context of a merger, consolidation, or other form of acquisition.[7] Branch closings that occur in the context of transactions subject to the Bank Merger Act (12 USC 1828) require a branch closing notice, even if the transaction received expedited treatment under that act. The responsibility for filing the notice lies with the acquiring or resulting institution, but either party to such a transaction may give the notice. Thus, for example, the purchaser may give the notice prior to consummation of the transaction when the purchaser intends to close a branch following consummation, or the seller may give the notice because it intends to close a

[5] Insured branches of foreign banks are not considered “branches” for purposes of section 42, because they are subject to separate liquidation procedures as specified in 12 CFR 28.22 (federal branches of foreign banks) and 12 CFR 211.25(f) (state branches of foreign banks).

[6] Consistent with the agencies’ original interpretation, the 1996 amendment expressly stated that section 42 of the FDI Act “shall not apply with respect to automated teller machines.” (Pub. L. 104-208, 110 Stat. 3009.)

[7] See the “Other” section for certain branches closed in connection with emergency acquisitions, FDIC assistance, or subsequently transferred back to the FDIC.

branch at or prior to consummation. In the latter example, if the transaction were to close ahead of schedule, the purchaser, if authorized by the appropriate federal banking agency, could operate the branch to complete compliance with the 90-day requirement without the need for an additional notice.

Relocations and Consolidations

The law does not apply when a branch is relocated or consolidated with one or more other branches, if the relocation or consolidation occurs within the immediate neighborhood and does not substantially affect the nature of the business or customers served. For purposes of this policy statement, a branch relocation is a movement within the same immediate neighborhood that does not substantially affect the nature of the business or customers served. Generally, relocations will be found to have occurred only when short distances are involved: for example, moves across the street, around the corner, or a block or two away. Moves of less than 1,000 feet will generally be considered to be relocations. In less densely populated areas or where neighborhoods extend farther, and a long move would not significantly affect the nature of the business or the customers served by the branch, a relocation may occur over substantially longer distances.[8] Institutions that are in doubt about whether a relocation or a closing has occurred should consult the appropriate federal banking agency.

Consolidations of branches are considered relocations for purposes of this policy statement, if the branches are located within the same neighborhood and the nature of the business or customers served is not affected. Thus, for example, a consolidation of two branches on the same block following a merger would not constitute a branch closing. The same guidelines apply to consolidations as to relocations.

[8] OCC and Office of Thrift Supervision regulations define short-distance relocations. See 12 CFR 5.3(l) (national banks) and 12 CFR 545.95(c) (thrifts).

Other

Changes of services at a branch are not considered a branch closing, provided that the remaining facility constitutes a branch (as defined).[9]

Section 42 also does not apply when a branch ceases operation, but is not closed by an institution. Thus, the law does not apply to:

- A temporary interruption of service caused by an event beyond the institution's control (e.g., a natural catastrophe), if the insured depository institution plans to restore branching services at the site in a timely manner.[10]
- Transferring back to the Federal Deposit Insurance Corporation (FDIC), pursuant to the terms of an acquisition agreement, a branch of a failed bank or savings association operated on an interim basis in connection with the acquisition of all or part of a failed bank or savings association, as long as the transfer occurs within the option period or within an occupancy period, not to exceed 180 days, provided in the agreement.
- A branch that is closed in connection with an emergency acquisition under sections 11(n), 13(f), or 13(k) of the FDI Act, or any assistance provided by the FDIC under section 13(c) of the FDI Act (12 USC 1821(n), 1823(f) and (k), and 1823(c)).

Notice of Branch Closing to the Agency

The law requires an insured depository institution to give notice of any proposed branch closing to the appropriate federal banking agency no later than 90 days prior to the date of the proposed branch closing. The required notice must include:

- Identification of the branch to be closed.
- The proposed date of closing.
- A detailed statement of the reasons for the decision to close the branch.

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[9] The agencies note that when, after a reduction in services, the resulting facility no longer qualifies as a branch, section 42 would apply. Thus, a notice of a branch closing would be required if an institution were to replace a traditional brick-and-mortar branch with an ATM.

[10] Section 42 would apply, however, if the institution did not reopen the branch following the incident. Although prior notice would not be possible in such a case, the institution should notify the customers of the branch and the appropriate federal banking agency in the manner specified by section 42 to the extent possible and as soon as possible after the decision to close the branch has been made.

- Statistical or other information in support of such reasons consistent with the institution's written policy for branch closings.

If an institution believes certain information included in the notice is confidential in nature, the institution should prepare such information separately and request confidential treatment. The agency will decide whether to treat such information confidentially under the Freedom of Information Act (FOIA) (5 USC 552).

If a notice provided to a state supervisory agency pursuant to state law contains the information outlined above, the institution may provide a copy of that notice to the appropriate federal banking agency in satisfaction of section 42, provided that the notice is filed at least 90 days prior to the date of the branch closing.

Notice of Branch Closing to Customers

Customer Allocation

The law requires an insured depository institution that proposes to close a branch to provide notice of the proposed closing to the customers of the branch. A customer of a branch is a patron of an institution who has been identified with a particular branch by such institution through use, in good faith, of a reasonable method for allocating customers to specific branches. An institution that allocates customers based on where a customer opened his or her deposit or loan account will be presumed to have reasonably identified each customer of a branch. The agencies recognize that use of this means of allocation, and perhaps other means, may result in certain facilities (which technically constitute branches) not being assigned any customers, but they believe that this result is permissible as long as the means of allocation is reasonable. If such a branch is closed, then notification to the appropriate agency and posting of a notice on the branch premises will suffice. Finally, an institution need not change its recordkeeping system in order to make a reasonable determination of who is a customer of a branch.

Timing

Under section 42, an institution must include a customer notice at least 90 days in advance of the proposed closing in at least one of the regular account statements mailed to customers, or in a separate mailing. If the branch closing occurs after the proposed date of closing, no additional notice is required to be mailed to customers (or provided to the appropriate federal banking agency) if the institution acted in good faith in projecting the date for closing and in subsequently delaying the closing.

Content

The mailed customer notice should state the location of the branch to be closed and the proposed date of closing, and either identify where customers may obtain service following the closing date or provide a telephone number for customers to call to determine such alternative sites. If a notice of branch closing provided to customers pursuant to state law contains this information, then a separate notice need not be sent, provided that the notice is sent at least 90 days prior to the closing.

Low- or Moderate-Income Areas Served by Interstate Banks

If the institution is a bank that maintains branches in more than one state and the branch to be closed is located in a low- or moderate-income area,[11] the notice shall contain the mailing address of the appropriate federal banking agency, and a statement that comments on the proposed branch closing may be mailed to that agency. The notice should also state that the agency does not have the authority to approve or prevent the branch closing. If the agency receives a written request by a person from the area in which the branch is located, relating to the proposed closing and stating specific reasons for the request, including a discussion of the adverse effect of such closing on the availability of banking services in the affected area, and if the agency concludes that the request is nonfrivolous, then the agency shall convene a meeting of agency representatives, other interested depository institution regulatory agencies, community leaders, and other appropriate individuals, organizations, and depository institutions, as determined by the agency at its discretion. The purpose of the meeting shall be to explore the feasibility of obtaining adequate alternative facilities and services for the affected area, including the establishment of a new branch by another depository institution, the chartering of a new depository institution, or the establishment of a community development credit union, following the closing of the

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[11] The term "low- or moderate-income area" means a census tract for which the median family income is (1) less than 80 percent of the median family income for the metropolitan statistical area (as designated by the Director of the Office of Management and Budget) in which the census tract is located or (2) in the case of a census tract that is not located in a metropolitan statistical area, less than 80 percent of the median family income for the state in which the census tract is located, as determined without taking into account family income in metropolitan statistical areas in such state (12 USC 1831r-1(d)(4)).

branch. In the case of an institution that will become an interstate bank prior to the closure of a branch in a low- or moderate-income area, such information must be included in the notice, unless the closure will occur immediately upon consummation of the transaction that causes the institution to become interstate. No action by the appropriate federal banking agency under this provision shall affect the authority of an interstate bank to close a branch (including the timing of such closing) if the requirements of sections 42(a) and 42(b) of the FDI Act (regarding notice to the appropriate federal banking agency and notice to the institution's customers) have been met by such bank with respect to the branch being closed.

On-Site Notice

Under section 42, an institution also must post notice to branch customers in a conspicuous manner on the branch premises at least 30 days prior to the proposed closing. This notice should state the proposed date of closing and identify where customers may obtain service following that date or provide a telephone number for customers to call to locate such alternative sites. An institution may revise the notice to extend the projected date of closing without triggering a new 30-day notice period.

Contingent Notices

In some situations, an institution, at its discretion and to expedite transactions, may mail and post notices to customers of a proposed branch closing that is contingent upon an event. For example, in the case of a proposed merger or acquisition, an institution may notify customers of its intent to close a branch upon approval by the appropriate federal banking agency of the proposed merger or acquisition.

Policies for Branch Closings

The law requires all insured depository institutions to adopt policies for branch closings. Each institution with one or more branches must adopt such a policy. If an institution currently has no branches, it must adopt a policy for branch closings when it establishes its first branch. The policy should be in writing and meet the size and needs of the institution.

Each branch closing policy adopted pursuant to section 42 should include factors for determining which branch to close and which customers to notify, and procedures for providing the notices required by the statute.

Compliance

The federal banking agencies will examine for compliance with section 42 of the FDI Act in accordance with each agency's compliance examination procedures, to determine whether the institution has adopted a branch closing policy and whether the institution provided the required notices when it closed a branch. If an institution fails to comply with section 42, the appropriate federal banking agency may make adverse findings in the compliance evaluation or take appropriate enforcement action.

References

Laws

12 USC 1831r-1, Notice of branch closure

Background and Summary

The Fair Debt Collection Practices Act (FDCPA) (15 USC 1692), which became effective March 20, 1978, was designed to eliminate abusive debt collection practices. The law also ensures that reputable debt collectors are not competitively disadvantaged and encourages consistent state action to protect consumers from abuses in debt collection.

Covered Debt

The FDCPA applies only to the collection of debt incurred by a consumer primarily for personal, family, or household purposes. It does not apply to the collection of corporate debt or to debt owed for business or agricultural purposes (15 USC 1692a(5)).

Covered Debt Collectors

Under the FDCPA, a "debt collector" is defined as any person who regularly collects, or attempts to collect, consumer debts for another person or institution, or uses a name other than its own when collecting its consumer debts (15 USC 1692a(6)).

That definition would include, for example, a bank that regularly collects debts for an unrelated institution. This includes reciprocal service arrangements in which one institution solicits the help of another in collecting a defaulted debt from a customer who has moved.

Debt Collectors Not Covered

A bank is not a debt collector under the FDCPA when it collects:

- Another's debts only in isolated instances (15 USC 1692a(6)).
- Its own debts under its own name (15 USC 1692a(6)).
- Debts it originated and sold, but continues to service (e.g., mortgage and student loans) (15 USC 1692a(6)(F)(ii)).
- Debts that were not in default when obtained by the bank (15 USC 1692a(6)(F)(iii)).
- Debts that were obtained as security for a commercial credit transaction involving the bank (e.g., accounts receivable financing) (15 USC 1692a(6)(F)(iv)).
- Debts incidental to a bona fide fiduciary relationship or escrow arrangement (e.g., a debt held in the bank's trust department or mortgage loan escrow for taxes and insurance) (15 USC 1692a(6)(F)(i)).
- Debts collected for other institutions to which it is related by common ownership or corporate control, if the bank collects these debts only for those institutions and the principal business of the bank is not debt collection (15 USC 1692a(6)(B)).

Debt collectors who are *not* covered include:

- Bank officers or employees who collect debts owed to that bank in its name (15 USC 1692a(6)(A)).
- Legal process servers in connection with the judicial enforcement of a debt ((15 USC 1692a(6)(D)).
- Although a bank is not a debt collector for purposes of the FDCPA in the above-noted circumstances, a bank should keep in mind the standards of the FDCPA so as to avoid allegations that it is engaging in unfair or deceptive acts or practices within the meaning of section 5 of the Federal Trade Commission Act (12 USC 45), as enforced by the OCC through 12 USC 1818.

Communications for Debt Collection

For communications with a consumer or third party about the collection of a debt, the term "consumer" is defined to include the borrower's spouse, parent (if the borrower is a minor), guardian, executor, or administrator (15 USC 1692c(d)).

Communicating With the Consumer

A debt collector may not communicate with the consumer at any unusual time (generally before 8 a.m. or after 9 p.m. in the consumer's time zone) or at any place inconvenient to the consumer, unless the consumer or a court of competent jurisdiction has given prior permission to do so (15 USC 1692c(a)(1)).

A debt collector may not contact the consumer at his or her place of employment if the collector has reason to know the employer prohibits such communications (15 USC 1692c(a)(3)).

If the debt collector knows the consumer has retained an attorney to handle the debt, and can easily ascertain the attorney's name and address, all contacts must be with that attorney, unless the attorney is unresponsive or consents to direct communication with the consumer (15 USC 1692c(a)(2)).

Ceasing Communication With the Consumer

When a consumer refuses, in writing, to pay a debt or requests that the debt collector cease further communication, the collector must do so, except to advise the consumer that either:

- The collection effort is being stopped or
- Certain specified remedies ordinarily invoked may be pursued or, if appropriate, that a specific remedy will be pursued (15 USC 1692c(c)).

Mailed notices from the consumer are official when they are received by the debt collector.

Communicating With Third Parties

Unless the consumer or a court of competent jurisdiction provides otherwise, a debt collector may contact only the following parties when trying to collect a debt:

- The consumer.
- The consumer's attorney.
- A consumer reporting agency (if permitted by law).
- The creditor.
- The creditor's attorney.
- The debt collector's attorney (15 USC 1692c(b)).

A debt collector who is unable to locate a consumer may ask a third party for the consumer's home address, telephone number, and place of employment (location information). The debt collector must give his or her name and state that he or she is confirming or correcting location information about the consumer. Unless specifically asked, the debt collector may not name the collection firm or agency. Even if asked, the debt collector may not reveal that the consumer owes any debt (15 USC 1692b(1) and (2)).

No third party may be contacted more than once unless the collector believes that the information from the first contact was wrong or incomplete and that the third party has since received better information, or unless the third party specifically requests additional contact (15 USC 1692b(3)).

A debt collector may not contact any third party by postcard. Contact by letter or telegram is allowed only if the envelope or content of the communication does not indicate the nature of the collector's business (15 USC 1692b(4) and (5)).

A debt collector may not communicate with third parties regarding location information about the consumer after the debt collector learns that the consumer is represented by an attorney (15 USC 1692b(6))).

Validation of Debts

The debt collector must provide the consumer with certain basic information. Within five days of a debt collector's initial communication with a consumer, he or she must send the consumer a written notice containing:

- The amount of the debt.
- The name of the creditor to whom the debt is owed.
- Notice that the consumer has 30 days to dispute the debt, or any portion thereof, before the debt collector will assume the debt to be valid.
- Notice that upon such written dispute, the debt collector will send the consumer a verification of the debt or a copy of any judgment.
- Notice that, if within the 30-day period the consumer makes a written request for the name and address of the original creditor, if it is different from the current creditor, the debt collector will provide that information (15 USC 1692g(a)).

If within the 30-day period the consumer disputes in writing any portion of the debt or requests the name and address of the original creditor, the collector must stop all collection efforts until he or she mails to the consumer a copy of a judgment or verification of the debt, or the name and address of the original creditor (15 USC 1692g(b)).

Prohibited Practices

Harassment or Abusive Practices

A debt collector, in collecting a debt, may not harass, oppress, or abuse any person. Specifically, a debt collector may not (15 USC 1692d):

- Use or threaten to use violence or other criminal means to harm the physical person, reputation, or property of any person.
- Use obscene, profane, or other language that abuses the hearer or reader.
- Publish a list of consumers who allegedly refuse to pay their debts (except to a consumer reporting agency or to a legitimate user of consumer reports, as respectively defined under 15 USC 1681a(f) or 1681b(3) (sections 603(f) and 604(a)(3) of the Fair Credit Reporting Act)).
- Advertise a debt for sale to coerce payment.
- Annoy, abuse, or harass persons by repeatedly calling their telephone numbers and engaging the person in telephone conversations.
- Make telephone calls without properly identifying himself or herself, except as allowed to obtain location information about the consumer from third parties.

False or Misleading Representations

A debt collector, in collecting a debt, may not use any false, deceptive, or misleading representation. Specifically, a debt collector may not (15 USC 1692e):

- Falsely represent or imply that he or she is vouched for, bonded by, or affiliated with the United States or any state, including the use of any badge, uniform, or similar identification.
- Falsely represent the character, amount, or legal status of the debt, or of any services rendered, or compensation he or she may receive for collecting the debt.
- Falsely represent or imply that he or she is an attorney or that communications are from an attorney.
- Threaten to take any action that cannot be legally taken or that is not intended to be taken.
- Falsely represent or imply that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person, unless such action is lawful and intended by the debt collector or creditor.
- Falsely represent or imply that the sale, referral, or other transfer of the debt will cause the consumer to lose a claim or a defense to payment, or become subject to any practice prohibited by the FDCPA.
- Falsely represent or imply that the consumer committed a crime or other conduct to disgrace the consumer.
- Communicate, or threaten to communicate, false credit information or information that is, or should be, known to be false, including not identifying disputed debts as such.
- Use or distribute written communications that resemble or are falsely represented to be documents authorized, issued, or approved by any court, official, or agency of the United States or any state or that create a false impression of their source, authorization, or approval.
- Use any false representation or deceptive means to collect or attempt to collect a debt or to obtain information about a consumer.
- Fail to disclose clearly, except as allowed in acquiring location information, that he or she is attempting to collect a debt and that information obtained will be used for that purpose.
- Falsely represent or imply that accounts have been sold to innocent purchasers.
- Falsely represent or imply that documents are legal process.

- Use any name other than the true name of the debt collector's business, company, or organization.
- Falsely represent or imply that documents are not legal process or do not require action by the consumer.
- Falsely represent that he or she operates or is employed by a consumer reporting agency.

Unfair Practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect a debt. Specifically, a debt collector may not (15 USC 1692f):

- Collect any amount, including any interest, fee, charge, or expense incidental to the principal obligation, unless it was authorized by the original debt agreement or is otherwise permitted by law.
- Accept a check or other instrument postdated by more than five days, unless he or she notifies the consumer, in writing, of any intention to deposit the check or instrument. That notice must be made not more than 10 or less than three business days before the date of deposit.
- Solicit a postdated check or other postdated payment instrument to use as a threat or to institute criminal prosecution.
- Deposit or threaten to deposit a postdated check or other postdated payment instrument before the date on the check or instrument.
- Cause communication charges, such as those for collect telephone calls and telegrams, to be incurred by any person by concealing the true purpose of the communication.
- Take action to or threaten to repossess or disable property when the creditor has no enforceable right to the property or does not intend to do so, or if, by law, the property cannot be taken, repossessed, or disabled.
- Use a postcard to contact a consumer about a debt.
- Use any name or symbol, other than a debt collector's address, on any envelope when communicating with a consumer that indicates the nature of the debt collector's business.

Multiple Debts

If a consumer owes multiple debts that are being collected by the same debt collector, payments must be applied according to the consumer's instructions. No payment may be applied to a disputed debt (15 USC 1692h).

Legal Actions by Debt Collectors

A debt collector may file a lawsuit to enforce a security interest in real property only in the judicial district in which the real property is located. Other legal actions may be brought only in the judicial district in which the consumer lives or in which the consumer signed the original contract creating the debt (15 USC 1692i).

Furnishing Certain Deceptive Forms

No one may design, compile, and furnish any form knowing that it would be used to create a belief by the consumer that someone other than the creditor (e.g., a debt collector) is participating in the collection of a debt. Any person who designs, compiles, and furnishes such a form is subject to civil liability (15 USC 1692j and k).

Civil Liability

A debt collector who fails to comply with any provision of the FDCPA is liable for (15 USC 1692k):

- Any actual damages sustained as a result of that failure.
- Any additional damages as allowed by the court:
  - In an individual action, up to $1,000.
  - In a class action, up to $1,000 for each named plaintiff and an award to be divided among all other members of the class of an amount up to $500,000 or 1 percent of the debt collector's net worth, whichever is less.
- Costs and a reasonable attorney's fee in any such action.

In determining the amount of liability, the court must consider the nature, frequency, and persistence of the violations and the extent to which they were intentional. In a class action, the court also must weigh the resources of the debt collector and the number of persons adversely affected.

Defenses

A debt collector is not liable for a violation if a preponderance of the evidence shows it was not intentional and was the result of a bona fide error that arose despite procedures reasonably designed to avoid it. The collector also is not liable if he or she, in good faith, relied on an advisory opinion of the Federal Trade Commission (FTC), even if the ruling is later amended, rescinded, or determined by a court or other authority to be invalid for any reason.

Jurisdiction and Statute of Limitations

Actions against debt collectors for FDCPA violations may be brought in any appropriate U.S. district court or other court of competent jurisdiction. The consumer has one year from the date on which the violation occurred to bring such an action.

Administrative Enforcement

The OCC is charged with enforcing the FDCPA for national banks and federal branches and agencies. Neither the FTC nor the OCC may issue regulations governing the collection of consumer debts by debt collectors (15 USC 1692l).

Relationship to State Law

The FDCPA preempts state law only to the extent that state law is inconsistent with the FDCPA. A state law that is more protective of the consumer is not considered inconsistent with the FDCPA (15 USC 1692n).

Exemption for State Regulation

The FTC by regulation may exempt certain classes of debt collection practices from the FDCPA requirements, if the FTC has determined that state laws impose substantially similar requirements and that adequate provision for enforcement exists (15 USC 1692o).

Fair Debt Collection Practices Act: Regulatory Interpretations—Questions and Answers

Coverage

1. *When is a bank a debt collector?*

Generally, a bank that regularly participates in any arrangement, including reciprocal service agreements, with another person to collect defaulted consumer debts for that person, is a debt collector for those debts only. In addition, if a bank uses a name other than its own in collecting its own consumer debts, it is a debt collector for such debts as well.

2. *When is a debt in default?*

The act does not define when a debt is in default. In determining whether a debt is in default, the following factors, among others, are considered:

- The creditor's customary policies and practices.
- Terms of the contract.
- Determinations by the originator.
- State law.

3. *May a bank ever regularly collect for another person without becoming a debt collector?*

Yes. If the bank is related to the other institution by common ownership or corporate control, it may collect consumer debts for that institution without becoming a debt collector, provided that it collects debts only for related institutions and debt collection is not the bank's principal business. However, if it regularly collects defaulted debts for nonaffiliates, it also becomes a debt collector for regularly collected, defaulted affiliate debts.

4. *Is a bank a debt collector if it collects a consumer debt in an isolated instance for a non-related person?*

No. A bank that collects in an isolated instance for a nonaffiliate is not covered. The bank must collect for others in the regular course of business before it becomes a debt collector.

5. *When does a bank regularly collect debts due another?*

The act does not define what constitutes collecting debts "regularly." For examination purposes, the following factors should be considered in determining if the bank regularly collects third-party debts:

- Whether the bank has entered into a formal agreement with another person to collect third-party debts, such as the American Bankers Association's reciprocal service agreement program.
- Whether the bank has established procedures for collection of third-party debts.
- The ratio of third-party defaulted debts collected during the past 12 months to all defaulted debts collected.
- The amount of time the bank spends in third-party debt collection.

6. *Are banks that service mortgages or student loans generally debt collectors?*

No. Banks are not debt collectors if they service debts that they originated or debts that were not in default when obtained by the bank. However, if a bank services a loan portfolio, it is a debt collector for those loans in the portfolio that it did not originate and that were in default when obtained.

7. *Are bank trust departments debt collectors?*

No. The activities of trust departments are bona fide fiduciary activities exempt from the FDCPA.

8. *Are banks debt collectors if they collect consumer debts held as security for an extension of commercial credit?*

No. This activity is specifically exempted.

9. *Are employees or officers of banks considered debt collectors?*

No. They are not debt collectors as long as they collect the bank's debts in its name.

Third-Party Communication When Bank Is Acting as a Debt Collector

10. *May a bank communicate with persons other than the consumer to determine his or her location?*

Yes. However, the communication must be limited to location information; that is, a consumer's place of residence, phone number, or place of employment. The bank may not identify itself as a debt collector and nothing may be said about debt collection. If the bank knows that the consumer is represented by an attorney, the bank may not communicate with any other person, even about location information.

11. *May a bank discuss the debt with anyone other than the consumer?*

Yes. However, the bank may contact only:

- Its attorney.
- The consumer's attorney.
- The creditor or creditor's attorney.
- Consumer reporting agencies.
- The consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.
- Any other person obligated to pay the debt.

Prohibited Activities When Bank Is Acting as a Debt Collector

12. *In general, what means of debt collection are banks prohibited from using?*

The bank cannot threaten violence or harm, swear, publish the consumer's name as a person who allegedly refuses to pay debts; advertise the sale of the debt to coerce payment; make excessive telephone calls; or fail to disclose the bank's identity on the telephone.

Any other action that would harass, oppress, or abuse anyone is prohibited. The bank also cannot make false representation about itself, the debt, or its rights or those of the consumer.

13. *May a bank contact a consumer at his or her place of employment?*

The bank may not contact a consumer at his or her place of employment if it is against the consumer's wishes or if the bank knows or should know that the employer forbids such contacts.

14. *May a bank contact a consumer who is represented by an attorney concerning the debt?*

No. However, the bank may contact the consumer to obtain the name and address of the attorney, or if the attorney permits the contact or fails to respond within a reasonable time.

15. *May the bank be made to stop communicating with the consumer about the debt?*

Yes. If the consumer notifies the bank in writing that the consumer refuses to pay the debt or merely does not want any further contact with the bank, the bank must cease communication with the consumer. However, at that point the bank may still notify the consumer of its possible further actions.

16. *May the bank collect an amount in excess of that authorized by the contract or permitted by state law?*

No.

17. *May the bank accept postdated instruments?*

Yes. However, the act provides specific rules for accepting those instruments (see 15 USC 1692f(2) through (4)).

18. *May a postcard be used in collection efforts?*

No.

19. *May the bank threaten to repossess property?*

Yes, but only when there is a present right and intention to take possession of the property.

20. *May the bank use an envelope that contains any language or symbol indicating debt collection when communicating with a consumer?*

No.

Requirements When Bank Is Acting as a Debt Collector

21. *What must the bank do when contacting a consumer for the first time?*

Within five days of its initial communication with the consumer, unless the consumer pays the debt in that time, the debt collector must send the consumer a written notice containing:

- The amount of the debt.
- The name of the creditor.
- A statement that, unless the consumer disputes the validity of the debt within 30 days, the debt collector will assume the debt to be valid.
- A statement that, if the consumer disputes the debt in writing within 30 days, the debt collector will obtain and mail the consumer verification of the debt.
- A statement that, upon the consumer's written request within the 30-day period, the debt collector will provide the name and address of the original creditor, if different from the current creditor.

22. *If the consumer disputes the debt or requests the name and address of the original creditor, may the bank continue collection efforts?*

No. However, the bank may continue collection efforts after it provides the consumer with a copy of the written verification of the debt or the name and address of the original creditor.

Consequences of Noncompliance

23. *What are the potential consequences of noncompliance with the act?*

In civil actions, individual consumers may recover actual damages, court costs, attorney's fees, and additional damages up to $1,000. Class action recoveries include those mentioned in the previous sentence for named plaintiffs and additional damages up to the lesser of $500,000 or 1 percent of the bank's net worth.

Administrative enforcement of the FDCPA for banks may involve actions under section 8 of the FDI Act, including cease and desist orders requiring that actions be taken to remedy conditions resulting from violations.

References

Laws

15 USC 1692, Fair Debt Collection Practices Act

Background and Summary

On March 1, 1984, the FTC adopted its Credit Practices Rule, effective March 1, 1985, pursuant to the authority granted the FTC under the Federal Trade Commission Act (FTC Act), 15 USC 57a(a)(1)(B) and 15 USC 45(a)(1). Under the FTC Act, the FTC is authorized to promulgate rules that define and prevent "unfair or deceptive acts or practices" in or affecting commerce with respect to extensions of credit to consumers. Section 18(f) of the FTC Act, 15 USC 57a(f), provides that, whenever the FTC promulgates a rule prohibiting practices deemed unfair or deceptive, the Board of Governors of the Federal Reserve System (Board) must adopt a substantially similar rule, with some exceptions, prohibiting such practices by banks.

In April 1985, the Board adopted its credit practices rule, thereby amending Regulation AA, "Unfair or Deceptive Acts or Practices" (12 CFR 227). The Board modified certain provisions of the FTC's rule to take into account the needs and characteristics of the banking industry. The effective date of the Board's rule was January 1, 1986.

The rule applies to all consumer credit contracts, except those for the purchase of real estate. It prohibits banks from using certain remedies to enforce consumer credit obligations. Under the rule, banks may not include those remedies in their consumer credit contracts, and, if banks purchase contracts that contain a prohibited provision(s), they may not enforce the provision(s).

Prohibited provisions are:

- A confession-of-judgment clause (also known as a cognovit or warrant of attorney), which permits a creditor to obtain a judgment based on the borrower's agreement in advance that, in the event of a suit on the obligation, the borrower waives the right to notice and the opportunity to be heard.
- A waiver of exemption, in which the consumer relinquishes a statutory right protecting his or her home and other necessities from seizure to

satisfy a judgment, unless the waiver applies solely to property that serves as security for the obligation.

- An assignment of future wages that gives the bank the right to receive the consumer's wages or earnings directly from the consumer's employer, unless the assignment constitutes a payroll deduction plan or other preauthorized payment plan or is revocable by the consumer.
- The taking of nonpossessory security interests in household goods, unless such goods are purchased with the credit extended by the bank.

The rule also prohibits a practice known as "pyramiding late charges." Under the pyramiding provision, a bank may not assess delinquency charges when the delinquency is attributable only to late charges assessed on earlier installments and the current payment is otherwise timely and a full payment for the applicable period.

The bank also is prohibited from misrepresenting a cosigner's liability and is required to give a cosigner, before becoming obligated in a consumer credit transaction, a disclosure notice that explains the nature of the cosigner's obligations and liabilities under the contract.

Enforcement

The Board's rule applies to national banks and their operating subsidiaries, federal branches, and federal agencies of foreign banks and banks operating under the code of laws for the District of Columbia. The OCC has enforcement authority for those banks.

State Exemptions

The rule provides that states may apply to the Board to be exempted from the rule's requirements when the state law provides a level of protection substantially equivalent to, or greater than, that afforded by the rule.

Credit Practices Rule: Staff Guidelines—Questions and Answers

The staff guidelines on the Credit Practices Rule—subpart B of Regulation AA—are in a question-and-answer format. The numbered questions are labeled by hyphenated numbers. The first part of the number indicates the regulatory section; the second part, the sequential order of a particular question within that section. For example, 13(d)-1 indicates the first question in section 227.13(d). Headings from the rule are included to make it easier for users to locate sections.

Section 227.11—Authority, Purpose, and Scope

1. *11(c)-1: "Penalties for noncompliance." What are the penalties for noncompliance with the rule?*

Administrative enforcement of the rule for banks may involve actions under section 8 of the Federal Deposit Insurance Act (12 USC 1818), including cease and desist orders requiring that actions be taken to remedy violations. If the terms of an order are violated, the federal supervisory agency may impose penalties of up to $1,000 per day for each day that the bank is in violation of the order.

2. *11(c)-2: Industrial loan companies. Are industrial loan companies subject to the Federal Reserve Board's (Board's) rule?*

Industrial loan companies that are insured by the Federal Deposit Insurance Corporation are covered by the Board's rule.

Section 227.12—Definitions

12(a) Consumer

3. *12(a)-1: Type of transaction covered. What type of transaction is covered by the rule?*

The rule covers credit obligations of consumers to acquire goods, services, or money primarily for personal, family, or household use. The rule does not apply to loans made for the purchase of real property.

4. *12(a)-2: Business versus consumer purpose. How can a bank determine whether credit extensions are for business purposes and, therefore, not covered by the rule?*

While there is no precise test for what constitutes business-purpose credit—as opposed to credit primarily for personal, family, or household purposes—banks may consider the factors described in the official staff commentary to Regulation Z (Truth in Lending, 12 CFR 226) on this issue. The factors include:

- The relationship of the borrower's primary occupation to the acquisition. The more closely related, the more likely it is to be business purpose.
- The degree to which the borrower will personally manage the acquisition. The more personal involvement there is, the more likely it is to be business purpose.
- The ratio of income from the acquisition to the total income of the borrower. The higher the ratio, the more likely it is to be business purpose.
- The size of the transaction. The larger the transaction, the more likely it is to be business purpose.
- The borrower's statement of purpose for the loan.

Examples of business-purpose credit include:

- A loan to expand a business, even if it is secured by the borrower's residence or personal property.
- A loan to improve a principal residence by putting in a business office.
- A business account used occasionally for consumer purposes.

Examples of consumer-purpose credit include:

- Credit extensions by a company to its employees or agents if the loans are used for personal purposes.
- A loan secured by a mechanic's tools to pay a child's tuition.
- A personal account used occasionally for business purposes.

5. *12(a)-3: Agricultural-purpose loans. What about loans made for agricultural purposes? Are they covered by the rule?*

A loan made for an "agricultural purpose"—as that term is defined in the official staff commentary to Regulation Z—would not be a loan made primarily for personal, family, or household use and, therefore, would not be subject to the rule. An agricultural-purpose loan would include a loan for the planting, propagating, nurturing, harvesting, catching, storing, exhibiting, marketing, transporting, processing, or manufacturing of food, beverages (including alcoholic beverages), flowers, trees, livestock, poultry, bees, wildlife, fish, or shellfish by a natural person engaged in farming, fishing, or growing crops, flowers, trees, livestock, poultry, bees, or wildlife.

6. *12(a)-4: Real property loan—not secured by property purchased. Does the rule apply when a consumer obtains a loan to purchase real property but secures the loan with some other collateral, such as a savings account or other real property?*

No, the rule would not apply, since the purpose of the loan is to purchase real property.

7. *12(a)-5: Home-improvement loans. What happens when a bank makes a home-improvement loan to a consumer and secures it with the consumer's home? Is the transaction subject to the rule?*

Yes, the transaction is subject to the rule since the purchase of real property is not the purpose of the loan.

8. *12(a)-6: Mobile home and houseboat purchases. Is a purchase of a mobile home or houseboat exempt from the rule as a purchase of real property?*

The issue of whether purchases of mobile homes or houseboats are covered by the rule depends on how these dwellings are treated under state law. If the applicable state law considers them real property, as opposed to personal property, then transactions for their purchase would be exempt from the rule.

9. *12(a)-7: Construction loans. Are construction loans and loans made to provide permanent financing exempt from the rule as purchases of real property?*

Yes, construction loans and loans made to provide permanent financing are considered loans for the purchase of real property and, therefore, are not subject to the rule.

10. *12(a)-8: Assumptions. A bank makes a loan for the purchase of real property. The loan is assumed by a new purchaser. Would the assumption be considered a transaction "for the purchase of real property," and, therefore, not covered by the rule?*

Yes, an assumption of a loan made for the purchase of real property is considered a transaction "for the purchase of real property" and is not covered by the rule.

11. *12(a)-9: Refinancing of real property loans. What happens if a bank refinances a loan that had been made to purchase real property and, therefore, was exempt from the rule? Is the new loan still exempt from the rule?*

The new loan will be exempt from the rule as long as the primary purpose of the new loan is in fact the refinancing of the original debt (for example, in order to take advantage of lower interest rates). The amount outstanding on the original loan—which is now being refinanced—must represent substantially the entire amount of the new loan; any additional credit extended as part of the new loan must be incidental to the primary purpose of refinancing.

12. *12(a)-10: Lease transactions. Are consumer lease transactions covered by the rule?*

The rule covers only consumer credit obligations. A lease transaction would be covered by the rule only if the transaction is a credit sale as defined in Regulation Z.

13. *12(a)-11: Trusts. Are extensions of credit made to a consumer through a trust covered by the rule?*

Yes, such extensions of credit are covered by the rule, unless the credit is being extended through a nonprofit trust (since the rule does not apply to nonprofit organizations).

12(b) Cosigner

14. 12(b)-1: Cosigner—basic definition. Who is a cosigner under the rule?

Any natural person who assumes liability for the obligation of a consumer (including, for example, a surety, guarantor, or other accommodation party), and who does so without receiving goods, services, or money in return for the obligation, or, in the case of open-end credit, without receiving the contractual right to obtain extensions of credit on the account, would be considered a cosigner for purposes of the rule.

15. 12(b)-1a: Business entities as cosigners. If a partnership or a corporation cosigns a consumer credit obligation, is such an entity a cosigner for purposes of the rule? Must the bank provide a cosigner notice?

No, the rule applies only to natural persons who are cosigners. Consequently, the rule does not require a bank to provide a cosigner notice when a partnership, corporation, or other business entity serves as a cosigner on a consumer credit obligation.

16. 12(b)-1b: Dealer guarantee. When a bank and an automobile dealer, for example, enter into an agreement whereby the bank purchases a consumer credit obligation from the dealer and the dealer guarantees the obligation, must the bank provide a cosigner notice to the dealer?

No, the rule is not intended to apply in such recourse agreement situations when the bank is purchasing dealer paper.

17. 12(b)-2: Person's signature requested as a condition for credit or as a condition for forbearance. If a bank requests a person's signature as a condition to granting credit to another individual, or as a condition for forbearance on collection of a consumer's obligation that is in default, is that person a cosigner?

Yes, if such a person is asked to sign as a condition for granting credit to another individual, or as a condition for forbearance on collection of an obligation that is in default, such a person would be a cosigner, provided that the person assumes liability for a consumer's obligation without receiving goods, services, or money in return. If the person who is asked to sign the credit obligation (for example, for the purchase of an automobile, or for an open-end credit card account) decides that he or she wishes to be reflected on the title to the automobile being purchased, or to have access to the credit card line, that person is not a cosigner for purposes of the rule.

18. *12(b)-3: Joint applicants. What happens when two people visit a bank to apply for a loan and appear to be applying jointly? Can the bank assume that they are applying as joint applicants, or does the rule require the bank to determine if both of the applicants will actually be "receiving goods, services, or money in return for the obligation"?*

When two people visit a bank to apply for a loan and appear to be applying jointly, the rule does not require a bank to conduct a detailed inquiry into the extent to which both persons are "receiving goods, services, or money in return for the obligation." In the great majority of situations, individuals applying together will be coborrowers and will not be covered by the rule. The cosigner provision would not apply, for example:

- If two people apply together for a loan to purchase items for their shared use or to be owned jointly.
- If two people apply jointly for a credit card account and both have the contractual right to draw on the account, even if one of the applicants eventually chooses not to use the account.
- The cosigner provision would apply, for example, if a consumer applies for a loan with a friend or relative and during the application process it becomes apparent to the loan officer that the purpose of the loan is such that the friend or relative will not receive any benefit from the loan and that the friend or relative is applying with the consumer solely to aid the consumer in obtaining credit (for example, when the proceeds of the loan are to be used to pay the consumer's dental expenses, or to buy furniture for the consumer's home or apartment).

19. *12(b)-4: Signature to perfect security interest—relationship to Regulation B. The rule does not consider a spouse, whose signature is required on a credit obligation to perfect a security interest pursuant to state law, to be a cosigner. Does this affect a creditor's obligation under the signature rules of Regulation B (Equal Credit Opportunity, 12 CFR 202), which limit the circumstances in which a creditor may require a cosigner?*

No, the rule in no way permits a creditor to obtain the signature of a nonapplicant spouse, or any person, in violation of Regulation B. The rule merely addresses whether a bank must give a cosigner notice when a person's signature is required on the credit obligation in order to perfect a security interest; whether a bank is in fact permitted to obtain such a signature, however, is controlled by Regulation B.

20. *12(b)-5: Hypothecating security. Is a person who hypothecates security for another's obligation a cosigner?*

No. A person who merely offers security for a loan, and, in so doing, signs a security agreement—but not the note, contract, or other document that would render the cosigner liable on the underlying obligation—is not a cosigner under the rule.

12(d) Household Goods

21. *12(d)-1: Basic definition of household goods. What is included in the term "household goods"?*

"Household goods" includes clothing, furniture, appliances, linens, china, crockery, kitchenware, and personal effects of the consumer and the consumer's dependents. The term does not include works of art, electronic entertainment equipment (other than one television and one radio), items acquired as antiques, and jewelry (except wedding rings).

22. *12(d)-2: Duplicates of household goods. Can duplicate items of household goods be used to secure a consumer credit obligation?*

The definition of "household goods" includes one television and one radio, but it does not similarly limit furniture or any of the other items included in the definition. Consequently, duplicates of any items included in the definition—other than duplicates of a television or a radio—are covered by the prohibition.

23. *12(d)-3: Personal effects. What are "personal effects" for purposes of the "household goods" definition?*

The term "personal effects" is to be narrowly construed and is limited to those items that an individual would ordinarily carry about on his or her person and possessions of a uniquely personal nature. This includes items such as personal papers, family photographs, or a family Bible. It does not include musical instruments, typewriters, firearms, bicycles, snowmobiles, cameras and camera equipment, sporting goods, and stamp and coin collections.

24. *12(d)-4: Appliances as fixtures. What happens when appliances are considered "fixtures" under state law? Do they still come within the "household goods" definition?*

No. Under some state laws, appliances are considered fixtures, and, as such, they become part of the realty. A bank that takes a security interest in realty in such cases would not violate the rule's prohibition against taking a security interest in household goods.

12(e) Obligation

25. *12(e)-1: Transactions over $25,000. Is a credit transaction exceeding $25,000 excluded from the rule's requirements?*

Unlike Regulation Z, the Credit Practices Rule does not have any dollar amount cutoff for determining if a transaction is covered by the rule. However, the dollar amount of the transaction is one of the factors that can be considered in determining whether a transaction is for a business or consumer purpose (see question 4 (12(a)-2)).

Section 227.13—Unfair Credit Contract Provisions

26. *13-1: Retroactive effect—bank's own contract. If a bank entered into a contract with a consumer prior to the effective date of the rule, and that contract contained a provision ultimately prohibited by the rule, may the bank enforce the provision?*

Yes, the rule is not intended to have retroactive effect (see, however, question 82 (15-8)).

27. *13-2: Retroactive effect—purchased paper written before effective date of rule. What happens if, after January 1, 1986, a bank buys paper from a third party that was written prior to the rule's effective date that contains a provision ultimately prohibited by the rule? May the bank enforce the provision?*

Yes, the bank could enforce the provision since, at the time the paper was written, the provision was not prohibited.

28. *13-3: Refinancing and renewals—original credit obligation entered into prior to effective date of rule. Assume that a bank entered into a credit*

obligation prior to the effective date of the rule and that the credit obligation contained a provision ultimately prohibited by the rule. Assume further that the credit obligation is refinanced after the effective date of the rule. May the refinanced obligation contain the prohibited provision, or is the refinancing subject to the rule? Does the same hold true for renewals of the original credit obligation?

A refinancing or renewal entered into after the effective date of the rule is subject to the rule and, therefore, may not contain a contract provision prohibited by the rule.

29. *13-4: Open-end account—future advances made under the plan. If a bank entered into an open-end credit obligation with a consumer prior to the effective date of the rule and that agreement contained contract provisions ultimately prohibited by the rule, may the bank enforce those contract provisions as to future advances made under the plan after January 1, 1986?*

Yes, contract provisions ultimately prohibited by the rule can be enforced in such a situation since the advances are being made as part of an open-end agreement that was entered into before the effective date of the rule, and the rule is not intended to have a retroactive effect. (See, however, question 82 (15-8).)

30. *13-5: Prohibited provisions in cosigner agreement. May a bank include any of the provisions prohibited by the rule in the documents obligating a cosigner on a consumer credit obligation (for example, in a guaranty agreement)?*

A bank may not include any of the prohibited provisions in the documents obligating a cosigner. The agreement between the bank and the cosigner, even if executed separately, is part of the consumer credit obligation and is therefore subject to the rule's prohibitions.

13(a) Confession of Judgment

31. *13(a)-1: Basic definition; coverage. What is a confession-of-judgment provision?*

A confession of judgment is a contract clause in which the debtor consents in advance to allow the creditor to obtain a judgment against the debtor without giving the debtor prior notice or an opportunity for the debtor to be heard in court. Such provisions are sometimes referred to as “cognovit” provisions. The Board’s rule prohibits confessions of judgment that involve anticipatory waivers of procedural due process in the context of consumer credit obligations. It does not prohibit a debtor from acknowledging liability, or from otherwise entering into a negotiated settlement, after a legal action has been instituted.

The confession-of-judgment provision also does not affect a power of attorney in a mortgage loan obligation or deed of trust for purposes of foreclosure; nor does the provision affect a power of attorney given to expedite the transfer of pledged securities or the disposal of repossessed collateral, or to allow the prompt cancellation of insurance in an insurance-premium finance contract.

32. *13(a)-2: Language limiting confession-of-judgment provision. If a bank uses multipurpose credit contracts, may the bank include a confession-of-judgment clause with qualifying language indicating that the clause is not applicable in a consumer-purpose loan, such as, “You confess judgment to the extent the law allows,” or “This clause applies only in business-purpose loans”?*

No. Given the public-policy purpose of the rule, a bank may not have a confession-of-judgment clause in a consumer credit contract, even with limiting language. Therefore, when a multipurpose form is used for a consumer-purpose loan, the bank must cross out, blacken in, or otherwise indicate clearly the removal of the prohibited clause from the loan document.

13(b) Waiver of Exemption

33. *13(b)-1: Basic definition. What is a waiver-of-exemption clause?*

A waiver-of-exemption clause is a contract provision under which the debtor agrees to waive a property exemption provided by state law. Generally, state-property exemptions protect the debtor’s home and other necessary items, such as furniture and clothing, from attachment or execution in order to satisfy the judgment debt. Under the rule, a waiver is permitted if it applies solely to property that was given as security in connection with the consumer credit obligation.

34. *13(b)-2: Non-purchase-money transactions. Does a waiver of a state homestead exemption for a non-purchase-money security interest (such as a second trust or a home equity line of credit) violate the rule, if the waiver only applies to the property that is subject to the security interest?*

No, the waiver of homestead exemption provision in the rule is not violated in the non-purchase-money security interest situation, as long as the waiver applies only to the property that is in fact securing the transaction.

35. *13(b)-3: Language of contract provision limiting applicability of waiver. If a bank's consumer credit contracts contain a clause that states "I waive my state property exemption to the extent the law allows," would such a clause be permitted under the rule?*

No, in spite of the limiting language "to the extent the law allows," the clause is an overly broad waiver and, therefore, would be prohibited by the rule. A clause in a consumer credit contract providing that the consumer waives an exemption "as to property that secures this loan," for example, would be a permissible waiver-of-exemption provision under the rule.

13(c) Assignment of Wages

36. *13(c)-1: Basic definition. What is an assignment-of-wages clause?*

Under an assignment-of-wages clause, the debtor assigns future wages to the creditor in the event of default. Unlike a garnishment, a court judgment is not required. Typically, once a debtor defaults, the creditor presents the assignment of wages to the debtor's employer, who then pays the agreed portion of the employee's wages directly to the creditor.

37. *13(c)-2: Exceptions. Are there any exceptions to the assignment-of-wages prohibition?*

Yes, the following types of wage assignments are permitted under the rule:

- Assignments that are revocable at the will of the debtor.
- Payroll deduction plans regardless of revocability.
- Revocable, preauthorized-payment plans (governed by the Electronic Fund Transfer Act, 15 USC 1693 *et seq.)* for electronic fund transfers to accounts from wages.

- Assignments of wages already earned at the time of the assignment.

38. *13(c)-3: Retroactivity. Does the rule's prohibition against wage assignments apply to a loan agreement entered into by the bank prior to the effective date of the rule?*

No. The rule does not invalidate or prevent enforcement of any wage assignments that were executed before January 1, 1986, the effective date of the rule, even though such wage assignments may cover wages payable or earned after the effective date.

39. *13(c)-4: Payment plans entered into after transaction begins. What happens if, sometime after entering into a credit transaction, a consumer decides that he or she would like to make payments by payroll deduction or by having the payments deducted from wages and electronically transferred to the bank as payment on an account? Would this be considered a prohibited wage assignment under the rule?*

While most consumers authorize payroll deduction plans and preauthorized-payment plans at the commencement of the credit obligation (as is contemplated by the rule), a consumer's enrollment in a payroll deduction plan or preauthorized-payment plan after the obligation has begun is permissible under the rule, as long as it is done voluntarily by the consumer and at the consumer's request.

40. *13(c)-5: Offer of a commission as security. Is the rule's prohibition against a bank's taking an assignment of a consumer's future wages violated if a bank takes as security for a loan a consumer's commission (for example, a real estate agent's commission) that has been earned but not yet received by the consumer?*

No, this would not be a prohibited wage assignment since the consumer's commission has already been earned at the time of the assignment; the fact that it has not yet been received by the consumer does not affect its treatment under the rule.

13(d) Security Interest in Household Goods

41. *13(d)-1: Definition of type of security interest prohibited. What type of security interest is prohibited by the Board's rule?*

The Board's rule specifically prohibits banks from taking nonpossessory security interests—other than purchase-money security interests—in items defined as household goods. The purpose of the rule is to prevent consumers from losing basic necessities, which usually have little resale value to the creditor. The Board's rule does not prohibit a security interest in real property, a security interest in items not defined as household goods, or a possessory security interest (for example, a pawn or pledge) in a consumer's household goods.

42. *13(d)-2: Voluntary offerings of household goods. What happens if a consumer voluntarily offers household goods as collateral on a non-purchase-money loan? Is the bank allowed to accept them?*

No. The bank is prohibited from accepting household goods as collateral even if offered voluntarily.

43. *13(d)-3: Refinancing—original loan purchase money. Assume that a bank entered into a loan transaction with the consumer—either before or after the effective date of the rule—that involved the taking of a purchase-money security interest in household goods. Assume further that the loan is refinanced. May the bank retain its security interest in the household goods? Does it make a difference if the new loan is for a larger amount? What if the loan is refinanced more than once?*

The bank may retain its security interest in household goods even if the new transaction is for a larger amount, and without regard to how many times the loan is refinanced.

44. *13(d)-3a: Refinancing (new creditor)—original loan purchase money. On the same facts as those detailed in question 43 (13(d)-3), assume that the consumer refinances the loan with a different bank. May that bank acquire the security interest of the purchase-money lender in household goods without violating the rule?*

Yes, the bank may acquire the security interest of the purchase-money lender without violating the rule.

45. *13(d)-4: Cross-collateral and future-advances clauses. Does the rule prohibit a cross-collateral or future-advances clause in a security agreement for household goods that provides that the household goods would serve as security for other loans—both current and future—that the bank makes to the debtor?*

A cross-collateral or future-advances clause would violate the rule's prohibition on taking a security interest in household goods where the clause is so broad in its applicability that it goes beyond loans that are refinancings or consolidations of the original loan (which contained the purchase-money security interest in household goods) and extends to other loans—whether current or future—that the bank makes to the debtor.

46. *13(d)-5: Refinancings—releasing a portion of security interest. When a bank has entered into a purchase-money loan transaction secured by household goods and then advances additional funds to the consumer in subsequent refinancings of that transaction, is the bank required to release a proportionate amount of the security interest in the household goods, as the original loan amount decreases?*

The rule does not require a proportionate reduction of the security interest as the original loan amount decreases; such may be required, however, by state law.

47. *13(d)-6: Bill-consolidation loans. May Bank A, in making a bill-consolidation loan, secure its loan with Bank B with the security interest in household goods taken in the original credit transaction (which was a purchase-money credit transaction) and which will be paid in full by the bill-consolidation loan?*

Yes, no distinction is made under the rule between a consolidation loan made by a creditor who already holds the purchase-money security interest and a consolidation loan made by a different creditor.

48. *13(d)-7: Refinancing by sales contract versus direct loan. May a purchase-money security interest in household goods that is acquired by a sales contract be retained, if that sales contract is consolidated or refinanced by a direct loan instead of another sales contract?*

Yes, a bank may retain the security interest in the household goods even though the sales contract is consolidated or refinanced by a direct loan.

49. *13(d)-8: Documentation of purchase-money loan. How is the purchase-money nature of a loan to be documented?*

The rule contains no specific documentation requirements. For purposes of evidencing compliance, however, the creditor may, for example, place a note or statement in the loan file attesting to the purchase-money nature of a loan; include a check-box in the contract that would indicate whether the transaction was a purchase-money loan; or reserve a place in the contract for indicating the purpose for which the proceeds will be used.

50. *13(d)-9: Appliances as fixtures. When a bank takes a security interest in realty and, under state law, fixtures are part of the realty, does the bank violate the prohibition against taking a security interest in household goods?*

No (see question 24 (12(d)-4)).

51. *13(d)-10: Security interest in substituted household goods. Does a bank violate the rule by retaining a security interest in household goods that have been substituted by the consumer for household goods in which the bank originally had a permissible purchase-money security interest?*

A security interest in substituted household goods would violate the rule's prohibition on taking a non-purchase-money security interest in household goods, unless the goods were substituted pursuant to a warranty; as such, the goods would be considered part of the original purchase-money transaction for purposes of the rule.

Section 227.14—Unfair or Deceptive Practices Involving Cosigners

52. *14-1: State-required cosigner notice. If a state law also requires that a notice be given to a cosigner, how should a bank handle the dual requirement? Can the state-required notice substitute for the federal notice?*

No, a state notice cannot be substituted for the federal notice, unless a state has obtained an exemption from the federal cosigner provision as provided for in section 227.16 of the rule. In those instances in which state law requires that a notice be given to cosigners, the bank may give both notices. The bank could, for example, include both notices in the documents evidencing the credit obligation or on a separate document, unless such would be prohibited by state law, (See question 62 (14(b)-7) on how to handle language in the federal notice that is inconsistent with state law provisions.)

53. 14-2: Record retention. Must a bank retain a copy of the cosigner notice it gives its customers?

As a general matter, the rule does not contain any record-retention requirements. A bank should be able, however, to demonstrate that it has procedures in place that ensure that the cosigner notice is provided as required by the rule. (See question 64 (14(b)-9), which discusses the inclusion of acknowledgment statements and signature lines on the cosigner notice.)

14(a) Prohibited Practices

54. 14(a)-1: Retroactivity of cosigner provision. If a bank has entered into a loan transaction prior to January 1, 1986, in which a cosigner was involved, but at which time the cosigner notice was not required, can the bank attempt to collect against the cosigner after January 1, 1986, should the debtor default?

Yes, the bank can attempt to collect from the cosigner, since the rule does not apply retroactively to obligations entered into before the rule's effective date.

55. 14(a)-2: Purchase of third-party paper. What happens if a bank, after January 1, 1986, purchases an obligation in which a cosigner notice should have been given under the rule, but was not? Would a bank's purchase of the obligation violate the rule? Would the bank's attempt to collect from the cosigner in such a situation violate the rule?

A bank that purchases an obligation in which the cosigner notice was not given would not be considered to have obligated the cosigner in violation of the rule. The purchasing bank would violate the rule in such a case, however, if it attempts to collect the debt from the cosigner.

14(b) Disclosure Requirement

56. *14(b)-1: Timing of cosigner notice. At what point in the transaction must the cosigner notice be given?*

The cosigner notice must be given to the cosigner before the cosigner becomes obligated on the transaction. This means that the cosigner should receive the notice prior to the event that makes the cosigner liable. In the case of open-end credit, the cosigner should receive the notice before becoming obligated for any fees or transactions on the account.

57. *14(b)-2: Oral versus written notice. May the cosigner notice be given orally to a cosigner?*

No, the cosigner notice must be in writing.

58. *14(b)-3: Form of cosigner notice. Does the cosigner notice have to be given in a form that the cosigner can keep?*

No, the rule does not require that the cosigner notice be in a form that the cosigner can keep.

59. *14(b)-4: Acknowledgment of receipt. Must the cosigner notice be signed by the cosigner?*

The rule does not require that the cosigner sign the cosigner notice or otherwise acknowledge its receipt. (See, however, question 64 (14(b)-9) on permissible additions to the cosigner notice.)

60. *14(b)-5: Type size, format requirements. Does the cosigner notice have to be in a particular type size or format?*

No, the rule does not specify a particular type size, style, or format. The rule does require, however, that the notice be clear and conspicuous.

61. *14(b)-6: Clear and conspicuous. What is meant by the rule's requirement that the cosigner notice be "clear and conspicuous"?*

A cosigner notice is clear and conspicuous if it is noticeable, readable, and understandable. In those instances in which the notice is included in the body of the documents evidencing the obligation, special attention should be given to ensure that the cosigner notice is prominent or distinctive—that is, to ensure that it is noticeable and readable. Any modifications or additions to the notice should not jeopardize its clarity.

62. *14(b)-7: Modifying the cosigner notice; inconsistency with state law provisions. Must a bank give a cosigner notice that is identical to that set forth in the rule, or can it modify the notice? What if language in the federal notice is inconsistent with state law provisions?*

Under the rule, a bank must give a cosigner notice that is substantially similar to the one set forth in the rule; the notice does not have to be identical. Language in the notice may be deleted or modified to take into account the rights and responsibilities of cosigners under applicable state law. Language may be deleted or modified if it is inapplicable or if it inaccurately reflects the agreement with the cosigner. For example, the federal cosigner notice states that a bank can collect from a cosigner without first collecting from the borrower. It also states that a bank can garnish a cosigner's wages. If either of these statements is inaccurate under state law, then the inaccurate language may be deleted or modified. In addition, minor editorial changes can be made to the notice, such as changing the word "borrower" to "accountholder" or the word "debt" to "account," as appropriate.

63. *14(b)-8: Guarantee language in cosigner notice. The cosigner notice in the rule states, "You are being asked to guarantee this debt." If a bank does not consider the cosigner a guarantor, may the bank modify the notice?*

The word "guarantee" is used in the cosigner notice in its generic or colloquial sense merely as a way to describe the fact that the cosigner has an obligation to repay the debt. The underlying contract—not the notice—is what defines or determines a cosigner's liability. However, if use of the term conflicts with or causes confusion under state law, language such as "You are being asked to become liable on this debt" can be substituted.

64. *14(b)-9: Additional information included on notice. If the cosigner notice is given on a separate document, may a bank place additional information on the document? May the bank print the notice on its letterhead?*

Yes, a bank may print the notice on its letterhead. The bank may also include additional information on the document such as:

- The date of the transaction.
- The loan amount.
- Name(s) and addresses.
- The account number and other information describing or identifying the debt in question.
- Acknowledgment of receipt language.
- A signature line.

As a general rule, any additional information should be concisely written so as not to detract from the notice's message. Moreover, care should be taken not to add unnecessary information to the notice.

65. *14(b)-10: Cosigner notice on credit application. May the cosigner notice be placed on a credit application form?*

Yes, the cosigner notice may be placed on a credit application form.

66. *14(b)-11: Documents of principal debtor versus those of cosigner. What happens if the document obligating the cosigner is separate from that obligating the principal debtor? May the cosigner notice be included in the document obligating the cosigner?*

Yes. When the cosigner is required to sign a separate document that obligates the cosigner, the cosigner notice may be included in that document.

67. *14(b)-12: Multiple cosigners. What happens if two or more cosigners are involved in a transaction? Must each one receive the cosigner notice?*

Yes, each cosigner must be given the cosigner notice. However, since there is no requirement in the regulation that the cosigner notice be given in a form that the cosigner can retain (see question 58 (14(b)-3)), each cosigner does not have to receive his or her own notice. One notice that serves to notify all cosigners is sufficient.

68. *14(b)-13: Continuing guaranties. When must a bank give the cosigner notice to a guarantor who has executed a guaranty for not only the original loan, but also for future loans of the primary debtor? Must a cosigner notice be given to the guarantor with each subsequent loan to the primary debtor?*

The cosigner notice should be provided before the guarantor becomes obligated on the guaranty—that is, at the time the guaranty is executed. The cosigner notice need not be given to the guarantor with each subsequent loan made to the primary debtor, since the cosigner is already obligated under the original contract to guarantee future indebtedness. However, since the guarantor is being asked to guarantee not only the original debt, but also the future debts of the primary obligor, the cosigner notice should be modified to accurately reflect the extent of the guaranty obligation. For example, the first sentence of the cosigner notice could read, "You are being asked to guarantee this debt, as well as all future debts of the borrower entered into with this bank through December 31, 1987."

69. *14(b)-13a: Continuing guaranties—open-end plan. If a cosigner executes a guaranty on an open-end credit plan (that is, one guaranteeing all advances made under the plan), does the bank have to modify the cosigner notice to indicate that all advances made under the plan are guaranteed?*

No, the bank is not required to modify the cosigner notice since the future advances are all being made as part of the same open-end credit plan.

70. *14(b)-14: Renewal or refinancing of credit obligation. What happens when a credit obligation involving a cosigner is renewed or refinanced?*

Must a bank give the cosigner another notice at the time of the renewal or refinancing?

If, under the terms of the original credit agreement, the cosigner is obligated for renewals or refinancings of the credit obligation, a bank would not be required to give another cosigner notice at the time of each renewal or refinancing.

71. *14(b)-15: Placement of cosigner notice above the signature line. When the cosigner notice is included in the documents evidencing the consumer credit obligation, does the notice have to be located above the place reserved for the cosigner's signature?*

The regulation does not specify the location of the cosigner notice when it is contained in the documents evidencing the consumer credit obligation. Since a bank must, however, provide the notice to the cosigner before the cosigner becomes obligated on the consumer credit transaction, placing the notice above the cosigner's signature line would seem wise.

72. *14(b)-16: Foreign language translation. May a foreign language translation of the cosigner notice be provided?*

Yes, a foreign language translation of the cosigner notice may be provided.

73. *14(b)-17: Contract in foreign language. What if the underlying contract is in a foreign language? Must the cosigner notice be in the same language?*

Yes, the cosigner notice should be provided in the same language as that used in the underlying contract.

Section 227.15—Unfair Late Charges

74. *15-1: Basic definition of unfair-late-charges prohibition. What does the rule prohibit with regard to the imposition of late charges?*

Under the rule banks are prohibited from levying or collecting 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 on its due date or within an applicable grace period.

75. *15-2: Skipped payments. What happens if a consumer misses or partially pays a monthly payment and fails to make up that payment month after month? May the bank assess a delinquency charge for each month that passes in which the consumer fails to make the missed or "skipped" payment or to pay the outstanding balance of the partial payment?*

Yes, the rule does not prohibit the bank from assessing a delinquency charge for each month that the skipped payment remains outstanding.

76. *15-3: Multiple late charges assessed on payment subsequently paid. Assume the following: A consumer's payments are $40 a month. The consumer makes his or her February payment in full, but makes it late. The bank assesses a $5 late charge. The consumer makes the March payment of $40 on time, but fails to pay the $5 late charge. The bank uses part of the March payment to pay off the outstanding late charge, and then considers the March payment deficient. May the bank then assess another late charge?*

No, the bank cannot assess another late charge since the March payment was made in full and on time.

77. *15-4: Subsequent payment made late. Assume the same facts as those detailed in question 76 (15-3), but that the consumer makes the March payment of $40 late. May the bank assess another late charge?*

Yes, the bank may assess another late charge since the consumer failed to make the March payment on time.

78. *15-5: Partial payment short more than amount of outstanding late fee. Assume the same facts as those detailed in question 76 (15-3), but that the consumer pays only $20 of the $40 March payment. May the bank assess another late charge?*

Yes, the bank may assess another late charge since the consumer failed to make the March payment in full.

79. *15-5a: Allocation of excessive payment. Assume that, beginning in January, a consumer's payment on an installment loan is $40 a month. The consumer pays only $35 of a $40 January payment and a late charge of $5 is imposed on the account. If the following month's payment is for $45, may the creditor use the extra $5 to pay off the late*

charge and impose another late charge since the previous month's payment is still deficient $5?

If a consumer's payment could bring the account current except for an outstanding late charge, no additional late charge may be imposed.

80. *15-6: Open-end credit plans. Does the rule's late-charges provision come into play in an open-end credit plan that involves a periodic statement that reflects a late charge upon its imposition, as well as a minimum payment amount that serves to inform the consumer of the full amount due to remain current on the account?*

No, in an open-end credit plan where the bank discloses late charges to the consumer as they are imposed and informs the consumer of the full amount that the consumer must pay for the applicable period in order to remain current on the account, the rule's provision on late charges does not come into play.

81. *15-7: Interest limitations. Does the rule prohibit a bank from imposing interest on an unpaid late fee?*

The rule does not address the issue of whether interest may be imposed on unpaid late fees.

82. *15-8: Retroactivity of unfair-late-charges prohibition. Does the unfair-late-charges prohibition reach obligations entered into prior to the rule's effective date?*

Yes. Unlike the other provisions in the rule, which do not affect obligations entered into prior to the rule's effective date, the unfair-late-charges prohibition applies to all outstanding consumer credit obligations regardless of when they were entered into.

Section 227.16—State Exemptions

83. *16-1: Applicability of exemption granted by another agency. If the FTC grants an exemption from a provision(s) of its rule, are banks, which are subject to the Board's rule, able to take advantage of that exemption or must the state apply to the Board for an exemption?*

Exemptions that are granted by the FTC apply only to those creditors that are covered by that agency's rule. The state agency would have to apply to the Board for an exemption for banks under the Board's rule.

16(a) General Rule

84. 16(a)-1: Who may request an exemption. May a private individual or a bank apply for an exemption?

No, neither private individuals nor banks may apply for an exemption from the rule's provisions. The rule provides that "an appropriate state agency" may apply for an exemption.

85. 16(a)-2: Criteria for exemption. When may a state agency apply for an exemption?

A state agency may apply for an exemption from the rule's provisions:

- When there is a state requirement or prohibition in effect that applies to any transaction(s) to which a provision of the rule applies; and
- When the state requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection allowed by the rule's provision.

16(b) Applications

86. 16(b)-1: Board guidelines on exemption applications. Does the Board have guidelines for applying for an exemption from the rule?

Yes, a state agency applying for an exemption should use the procedures set forth in appendix B to Regulation Z. These procedures indicate the following:

- Where an application should be filed
- What should be contained in the application
- What types of supporting documents should accompany the application
- What factors does the Board base its determination on
- What are the consequences of favorable and adverse Board determinations, and
- What procedures are involved in revoking an exemption.

87. 16(b)-2: Deadline for exemption application. Is there a time by which a state agency must submit its exemption application in order to receive consideration? Must it be submitted by the effective date of the rule?

There is no deadline for submitting an exemption application. Applications can be submitted any time before or after the effective date of the rule.

88. 16(b)-3: Exemptions granted. What states have been granted an exemption from the Board's rule?

The state of Wisconsin was granted an exemption from all provisions of the Board's rule effective November 20, 1986, for transactions of $25,000 or less. The state of New York was granted an exemption from the cosigner provisions of the Board's rule effective January 21, 1987, for transactions of $25,000 or less. In both Wisconsin and New York, transactions over $25,000 are subject to the Board's rule, but compliance with state law is deemed compliance with the federal law. The state of California was granted an exemption from the cosigner provisions of the Board's rule effective August 1, 1988. These exemptions do not apply to federally chartered institutions.

References

Laws

15 USC 57a(f), Unfair or deceptive acts or practices

Regulations

12 CFR 227, Unfair or deceptive acts or practices, subpart B

Background and Summary

For consumers, leasing is an alternative to buying either with cash or on credit. A lease is a contract between a lessor (the property owner) and a lessee (the property user) for the use of property subject to stated terms and limitations for a specified period and at a specified payment.

The Consumer Leasing Act (CLA) (15 USC 1667 *et seq.*) was passed in 1976 to ensure that meaningful and accurate disclosure of lease terms is provided to consumers before they enter into a contract. It applies to consumer leases of personal property. With this information, consumers can more easily compare one lease with another, as well as compare the cost of leasing with the cost of buying on credit or the opportunity cost of paying cash. In addition, the CLA puts limits on balloon payments sometimes due at the end of a lease, and regulates advertising.

Originally, the CLA was part of the Truth in Lending Act, and was implemented by Regulation Z. When Regulation Z was revised in 1981, Regulation M (12 CFR 213) was issued, and contained those provisions that govern consumer leases.

The Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 USC 7001 *et seq.*,) was enacted in 2000 and did not require implementing regulations. On November 9, 2007, amendments to Regulation M and the official staff commentary were issued to simplify the regulation and provide guidance on the electronic delivery of disclosures consistent with the E-Sign Act.[12]

Today, a relatively small number of banks engage in consumer leasing. The trend seems to be for leasing to be carried out through specialized bank subsidiaries, vehicle finance companies, other finance companies, or directly by retailers.

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[12] 72 Federal Register 63456, November 9, 2007. These amendments took effect December 10, 2007, with a mandatory compliance date of October 1, 2008.

Key Definitions

The definition of certain terms is necessary to understand the requirements imposed by the CLA. These terms include lease, lessee, lessor, consumer lease, realized value, residual value, open-end lease, closed-end lease, gross capitalized cost, capitalized cost reduction, and adjusted capitalized cost, in that order.

Lease: A contract between a lessor (the property owner) and a lessee (the property user) for the use of property subject to stated terms and limitations for a specified period and at a specified payment.

Lessee: A natural person who enters in to or is offered a consumer lease.

Lessor: A natural person or organization who regularly leases, offers to lease, or arranges for the lease of personal property under a consumer lease; a person who leases or offers to lease more than five times in the preceding or current calendar year meets this definition.

Consumer lease: A contract between a lessee and a lessor:

- For the use of personal property by an individual (natural person).
- To be used primarily for personal, family, or household purposes.
- For a period of more than four months (week-to-week and month-to-month leases do not meet this criterion, even though they may be extended beyond four months).
- With a total contractual cost of no more than $25,000.

Specifically *excluded* from coverage are leases that are:

- For business or agricultural purposes or made to an organization or government.
- For real property.
- For personal property, which are incidental to the lease of real property, subject to certain conditions.
- For credit sales, as defined in Regulation Z, 12 CFR 226.2(a)(16).

A lease meeting all of these criteria is covered by the CLA and the Federal Reserve Board's Regulation M. If any one of these criteria is not met—for example, if the leased property is used primarily for business purposes or if the total contractual cost exceeds $25,000—the CLA and Regulation M do not apply.

Consumer leases fall into one of two categories: closed-end and open-end. Since the information required to be disclosed to the consumer will vary with the kind of lease, it is important to note the difference between them. However, to properly understand the difference, realized value and residual value must first be defined.

Realized value: The price received by the lessor of the leased property at disposition, the highest offer for disposition of the leased property, or the fair market value of the leased property at the end of the lease term.

Residual value: The value of the leased property at the end of the lease, as estimated or assigned at consummation of the lease by the lessor.

Open-end lease: A lease in which the amount owed at the end of the lease term is based on the difference between the residual value of the leased property and its realized value. The consumer may pay all or part of the difference if the realized value is less than the residual value, or he or she may get a refund if the realized value is greater than the residual value at scheduled termination.

Closed-end lease: A lease other than an open-end lease. This type of lease allows the consumer to "walk away" at the end of the contract period, with no further payment obligation—unless the property has been damaged or has sustained abnormal wear and tear.

Gross capitalized cost: The amount agreed upon by the lessee and lessor as the value of the leased property, plus any items that are capitalized or amortized during the lease term. These items may include taxes, insurance, service agreements, and any outstanding prior credit or lease balance.

Capitalized cost reduction: The total amount of any rebate, cash payment, net trade-in allowance, and noncash credit that reduces the gross capitalized cost.

Adjusted capitalized cost: The gross capitalized cost less the capitalized cost reduction and the amount used by the lessor in calculating the base periodic payment.

General Disclosure Requirements

Lessors are required by federal law to provide the consumer with leasing cost information and other disclosures in a format similar to the model disclosure forms found in Appendix A to the regulation. Certain pieces of this information must be kept together and must be segregated from other lease information. All of the information stated must be accurate, clear, and conspicuous, and provided in writing in a form that the consumer may keep.

The general disclosures required by 12 CFR 213 may be provided to the lessee in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act. The E-Sign Act does not mandate that institutions or consumers use or accept electronic records or signatures. It permits institutions to satisfy any statutory or regulatory requirements by providing the information electronically after obtaining the consumer's affirmative consent. But before consent can be given, consumers must be provided with the following information:

- Any right or option to have the information provided in paper or nonelectronic form.
- The right to withdraw the consent to receive information electronically and the consequences, including fees, of doing so.
- The scope of the consent (for example, whether the consent applies only to a particular transaction or to identified categories of records that may be provided during the course of the parties' relationship).
- The procedures to withdraw consent and to update information needed to contact the consumer electronically.
- The methods by which a consumer may obtain, upon request, a paper copy of an electronic record after consent has been given to receive the information electronically and whether any fee will be charged.

The consumer must consent electronically or confirm consent electronically in a manner that "reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent."

After the consent, if an institution changes the hardware or software requirements such that a consumer may be prevented from accessing and retaining information electronically, the institution must notify the consumer of the new requirements and must allow the consumer to withdraw consent without charge.

Disclosures are to be provided in the following circumstances (advertisement requirements are discussed in the advertising section):

- *Prior to or due at lease signing.* A dated disclosure must be given to the consumer before signing the lease and must contain all of the information detailed in Section 4 of the regulation.
- *Renegotiations and extensions.* New disclosures also must be provided when a consumer renegotiates, or extends a lease, subject to certain exceptions.
- *Multiple lessors/lessees.* In the event of multiple lessors, one lessor on behalf of all the lessors may make the required disclosures. If the lease involves more than one lessee, the required disclosures should be given to any lessee who is primarily liable.

Advertising

Advertisements concerning consumer leases must also comply with certain disclosure requirements. All advertisements must be accurate.

If an advertisement includes any reference to certain "trigger terms"—the amount of any payment, statement of a capitalized cost reduction (i.e., down payment), or other payment required prior to or at lease signing or delivery, or that no such payment is required—then the ad must also state the following:

- The transaction is for a lease.
- The total amount due prior to or at lease signing or delivery.
- The number, amounts, and due dates or periods of the scheduled payments.
- A statement of whether or not a security deposit is required.
- A statement that an extra charge may be imposed at the end of the lease term when the lessee's liability (if any) is based on the difference between the residual value of the leased property and its realized value at the end of the lease term (12 CFR 213.7(d)(2)).

An advertisement for an open-end lease also must include a statement that extra charges may be imposed at the end of the lease based on the difference between the residual value and the realized value at the end of the lease term.

If lessors give a percentage rate in an advertisement, the rate cannot be more prominent than any of the other required disclosures. They must also include a statement that "this percentage may not measure the overall cost of financing this lease." The lessor cannot use the term "annual percentage rate," "annual lease rate," or any equivalent term.

Some fees (license, registration, taxes, and inspection fees) may vary by state or locality. An advertisement may exclude these third-party fees from the disclosure of a periodic payment or total amount due at lease signing or delivery provided the ad states that these have been excluded. Otherwise, an advertisement may include these fees in the periodic payment or total amount due, provided it states that the fees are based on a particular state or locality and indicates that the fees may vary.

For an advertisement accessed by the consumer in electronic form, the required disclosures may be provided to the consumer in electronic form in the advertisement, without regard to the consumer consent or other provisions of the E-Sign Act. An electronic advertisement (such as an advertisement on an Internet Web site) that provides a table or schedule of the required disclosures is considered a single advertisement if the advertisement clearly refers the consumer to the location where the additional required information begins. For example, in an electronic advertisement, a term triggering additional disclosures may be accompanied by a link that directly connects the consumer to the additional disclosures.

Limits on Balloon Payments

To limit balloon payments that may be required of the consumer, certain sections of the regulation call for reasonable calculations and estimates. These provisions protect the consumer at early termination of a lease, at the end of the lease term, or in delinquency, default, or late payment status. The provisions limit the lessee's liability at the end of the lease term and set reasonableness standards for wear and use charges, early termination charges, and penalties or fees for delinquency.

Penalties and Liability

Criminal and civil liability provisions of the Truth in Lending Act also apply to the CLA. Actions alleging failure to disclose the required information, or otherwise comply with the CLA, must be brought within one year of the termination of the lease agreement.

Record Retention

Lessors are required to maintain evidence of compliance with the requirements imposed by Regulation M, other than the advertising requirements under section 7 of the regulation, for a period of not less than two years after the date the disclosures are required to be made or an action is required to be taken.

References

Laws

15 USC 1667 *et seq.*, Consumer Leasing Act

15 USC 7001 *et seq.*, Electronic Signatures in Global and National Commerce Act

Regulations

12 CFR 213, Consumer leasing

Background and Summary

The Homeowners Protection Act of 1998 (the act) was signed into law on July 29, 1998, and became effective on July 29, 1999. The act was amended on December 27, 2000, to provide technical corrections and clarification. The act, also known as the "PMI Cancellation Act," addresses homeowners' difficulties in canceling private mortgage insurance (PMI) coverage.[13] It establishes provisions for canceling and terminating PMI, establishes disclosure and notification requirements, and requires the return of unearned premiums.

PMI is insurance that protects lenders from the risk of default and foreclosure. PMI allows prospective buyers who cannot, or choose not to, provide significant down payments to obtain mortgage financing at affordable rates. It is used extensively to facilitate "high-ratio" loans (generally, loans in which the loan-to-value (LTV) ratio exceeds 80 percent). With PMI, the lender can recover costs associated with the resale of foreclosed property and accrued interest payments or fixed costs, such as taxes or insurance policies, paid prior to resale.

Excessive PMI coverage provides little extra protection for a lender and does not benefit the borrower. In some instances, homeowners have experienced problems in canceling PMI. At other times, lenders may have agreed to terminate coverage when the borrower's equity reached 20 percent, but the policies and procedures used for canceling or terminating PMI coverage varied widely among lenders. Prior to the act, homeowners had limited recourse when lenders refused to cancel their PMI coverage. Even homeowners in the few states that had laws pertaining to PMI cancellation or termination noted difficulties in canceling or terminating their PMI policies. The act now protects homeowners by prohibiting life-of-loan PMI coverage for borrower-paid PMI products and establishing uniform procedures for the cancellation and termination of PMI policies.

[13] The act does not apply to mortgage insurance made available under the National Housing Act, title 38 of the USC, or title V of the Housing Act of 1949. This includes mortgage insurance on loans made by the Federal Housing Administration and guarantees on mortgage loans made by the U.S. Department of Veterans Affairs.

Scope and Effective Date

The act applies primarily to "residential mortgage transactions," defined as mortgage loan transactions consummated on or after July 29, 1999, to finance the acquisition, initial construction, or refinancing[14] of a single-family dwelling that serves as a borrower's principal residence.[15] The act also includes provisions for annual written disclosures for "residential mortgages," defined as mortgages, loans, or other evidences of a security interest created for a single-family dwelling that is the principal residence of the borrower (12 USC 4901(14) and (15)). A condominium, townhouse, cooperative, or mobile home is considered to be a single-family dwelling covered by the act.

The act's requirements vary depending on whether a mortgage is one of the following:

- A "residential mortgage" or a "residential mortgage transaction."
- Defined as high risk (either by the lender in the case of non-conforming loans, or Fannie Mae and Freddie Mac in the case of conforming loans).
- Financed under a fixed or an adjustable rate.
- Covered by borrower-paid private mortgage insurance (BPMI) or lender-paid private mortgage insurance (LPMI).[16]

Cancellation and Termination of PMI for Non-High-Risk Residential Mortgage Transactions

Borrower Requested Cancellation

A borrower may initiate cancellation of PMI coverage by submitting a written request to the servicer. The servicer must take action to cancel PMI when the cancellation date occurs, which is when the principal balance of the loan reaches (based on actual payments), or is first scheduled to reach, 80 percent

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[14] For purposes of these procedures, "refinancing" means the refinancing of loans any portion of which was to provide financing for the acquisition or initial construction of a single-family dwelling that serves as a borrower's principal residence. *See* 15 USC 1601 *et seq.* and 12 CFR 226.20.

[15] For purposes of these procedures, junior mortgages that provide financing for the acquisition, initial construction, or refinancing of a single-family dwelling that serves as a borrower's principal residence are covered.

[16] All sections of these procedures and manual apply to BPMI. For LPMI, relevant sections begin under that heading and follow.

of the “original value,”[17] irrespective of the outstanding balance, based upon the initial amortization schedule (in the case of a fixed-rate loan) or amortization schedule then in effect (in the case of an adjustable-rate loan[18]), or any date thereafter that:

- The borrower submits a written cancellation request;
- The borrower has a good payment history;[19]
- The borrower is current; and[20]
- The borrower satisfies any requirement of the mortgage holder for: (i) evidence of a type established in advance that the value of the property has not declined below the original value; and (ii) certification that the borrower’s equity in the property is not subject to a subordinate lien (12 USC 4902(a)(4)).

Once PMI is canceled, the servicer may not require further PMI payments or premiums more than 30 days after the later of (i) the date on which the written request was received or (ii) the date on which the borrower satisfied the evidence and certification requirements of the mortgage holder described previously (12 USC 4902(e)(1)).

Automatic Termination

The act requires a servicer to terminate PMI automatically for residential mortgage transactions on the date that:

> The principal balance of the mortgage is first scheduled to reach 78 percent of the original value of the secured property (based solely on the initial amortization schedule in the case of a fixed-rate loan or on the

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[17] “Original value” is defined as the lesser of the sales price of the secured property as reflected in the purchase contract, or, the appraised value at the time of loan consummation. In the case of a refinancing, the term means the appraised value relied upon by the lender to approve the refinance transaction.

[18] The act includes as an adjustable-rate mortgage, a balloon loan that “contains a conditional right to refinance or modify the unamortized principal at the maturity date.” Therefore, if a balloon loan contains a conditional right to refinance, the initial disclosure for an adjustable-rate mortgage would be used even if the interest rate is fixed.

[19] A borrower has a good payment history if the borrower (1) has not made a payment that was 60 days or more past due within the first 12 months of the last two years prior to the later of the cancellation date, or the date that the borrower requests cancellation or (2) has not made a payment that was 30 days or more past due within the 12 months prior to the later of the cancellation date or the date that the borrower requests cancellation.

[20] The act does not define current.

amortization schedule then in effect in the case of an adjustable-rate loan, irrespective of the outstanding balance), if the borrower is current; or if the borrower is not current on that date, on the first day of the first month following the date that the borrower becomes current (12 USC 4902(b)).

If PMI is terminated, the servicer may not require further payments or premiums of PMI more than 30 days after the termination date, or the date following the termination date on which the borrower becomes current on the payments, whichever is sooner (12 USC 4902(e)(2)).

There is no provision in the automatic termination section of the act, as there is with the borrower-requested PMI cancellation section that protects the lender against declines in property value or subordinate liens. The automatic termination provisions make no reference to good payment history (as prescribed in the borrower-requested provisions), but state only that the borrower must be current on mortgage payments (12 USC 4902(b)).

Final Termination

If PMI coverage on a residential mortgage transaction was not canceled at the borrower's request or by the automatic termination provision, the servicer must terminate PMI coverage by the first day of the month immediately following the date that is the midpoint of the loan's amortization period if, on that date, the borrower is current on the payments required by the terms of the mortgage (12 USC 4902(c)). (If the borrower is not current on that date, PMI must be terminated when the borrower does become current.)

The midpoint of the amortization period is halfway through the period between the first day of the amortization period established at consummation and ending when the mortgage is scheduled to be amortized. The servicer may not require further payments or premiums of PMI more than 30 days after PMI is terminated (12 USC 4902(e)(3)).

Loan Modifications

If a borrower and mortgage holder agree to modify the terms and conditions of a loan pursuant to a residential mortgage transaction, the cancellation, termination, or final termination dates shall be recalculated to reflect the modification (12 USC 4902(d)).

Exclusions

The act's cancellation and termination provisions do not apply to residential mortgage transactions for which LPMI is required (12 USC 4905(b)).

Return of Unearned Premiums

The servicer must return all unearned PMI premiums to the borrower within 45 days after cancellation or termination of PMI coverage. Within 30 days after notification by the servicer of cancellation or termination of PMI coverage, a mortgage insurer must return to the servicer any amount of unearned premiums it is holding to permit the servicer to return such premiums to the borrower (12 USC 4902(f)).

Accrued Obligations for Premium Payments

The cancellation or termination of PMI does not affect the rights of any lender, servicer, or mortgage insurer to enforce any obligation of a borrower for payments of premiums that accrued before the cancellation or termination occurred (12 USC 4902 (h)).

Exceptions to Cancellation and Termination Provisions for High-Risk Residential Mortgage Transactions

The borrower-requested cancellation at 80 percent LTV and the automatic termination at 78 percent LTV requirements of the act do not apply to "high-risk" loans. However, high-risk loans are subject to final termination and are divided into two categories—conforming (Fannie Mae- and Freddie Mac-defined high-risk loans) and non-conforming (lender-defined high-risk loans) (12 USC 4902(g)(1)).

Conforming Loans (Fannie Mae– and Freddie Mac–Defined High-Risk Loans)

Conforming loans are those loans with an original principal balance not exceeding Freddie Mac's and Fannie Mae's conforming loan limits.[21] Fannie Mae and Freddie Mac are authorized under the act to establish a category of residential mortgage transactions that are not subject to the act's requirements for borrower-requested cancellation or automatic termination, because of the

[21] This limit was $417,000 for general and $625,500 for high-cost areas for 2009.

high risk associated with them.[22] They are, however, subject to the final termination provision of the act. As such, PMI on a conforming high-risk loan must be terminated by the first day of the month following the date that is the midpoint of the loan's initial amortization schedule (in the case of a fixed-rate loan) or amortization schedule then in effect (in the case of an adjustable-rate loan) if, on that date, the borrower is current on the loan. If the borrower is not current on that date, PMI should be terminated when the borrower does become current (12 USC 4902(g)(2)).

Nonconforming Loans (Lender-Defined High-Risk Loans)

Nonconforming loans are those residential mortgage transactions that have an original principal balance exceeding Freddie Mac's and Fannie Mae's conforming loan limits. Lender-defined high-risk loans are not subject to the act's requirements for borrower-requested cancellation or automatic termination. However, if a residential mortgage transaction is a lender-defined high-risk loan, PMI must be terminated on the date on which the principal balance of the mortgage, based solely on the initial amortization schedule (in the case of a fixed-rate loan) or the amortization schedule then in effect (in the case of an adjustable-rate loan) for that mortgage and, irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 77 percent of the original value of the property securing the loan.

As with conforming loans that are determined to be high risk by Freddie Mac and Fannie Mae, a residential mortgage transaction that is a lender-defined high-risk loan is subject to the final termination provision of the act.

Notices

The lender must provide written initial disclosures at consummation for all high-risk residential mortgage transactions (as defined by the lender or Fannie Mae or Freddie Mac), that in no case will PMI be required beyond the midpoint of the amortization period of the loan, if the loan is current. More specific notice as to the 77 percent LTV termination standards for lender defined high-risk loans is not required under the act.

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[22] Fannie Mae and Freddie Mac have not defined high-risk loans as of the date of this publication.

Basic Disclosure and Notice Requirements Applicable to Residential Mortgage Transactions and Residential Mortgages

The act requires the lender in a residential mortgage transaction to provide to the borrower, at the time of consummation, certain disclosures that describe the borrower's rights for PMI cancellation and termination. A borrower may not be charged for any disclosure required by the act. Initial disclosures vary, based upon whether the transaction is a fixed-rate mortgage, adjustable-rate mortgage, or high-risk loan. The act also requires that the borrower be provided with certain annual and other notices concerning PMI cancellation and termination. Residential mortgages are subject to certain annual disclosure requirements.

Initial Disclosures for Fixed-Rate Residential Mortgage Transactions

When PMI is required for non-high-risk fixed-rate mortgages, the lender must provide to the borrower at the time the transaction is consummated a written initial amortization schedule, and a written notice that discloses the following:

- The borrower's right to request cancellation of PMI, and, based solely on the initial amortization schedule, the date the loan balance is scheduled to reach 80 percent of the original value of the property.
- The borrower's right to request cancellation on an earlier date, if actual payments bring the loan balance to 80 percent of the original value of the property sooner than the date based on the initial amortization schedule.
- That PMI will terminate automatically when the LTV ratio reaches 78 percent of the original value of the property and the specific date that is projected to occur (based on the initial amortization schedule).
- Whether the exemptions to the cancellation and automatic termination provisions for high-risk mortgages provided for in the act apply to the borrower's loan (12 USC 4903(a)(1)(A)).

Initial Disclosures for Adjustable-Rate Residential Mortgage Transactions

When PMI is required for non-high-risk, adjustable-rate mortgages, the lender must provide to the borrower at the time the transaction is consummated a written notice that discloses:

- The borrower's right to request cancellation of PMI on (i) the date the loan balance is first scheduled to reach 80 percent of the original value of the property based on the amortization schedule then in effect or (ii) the date the balance actually reaches 80 percent of the original value of the property based on actual payments. The notice must also state that the servicer will notify the borrower when either (i) or (ii) occurs.
- That PMI will automatically terminate when the loan balance is first scheduled to reach 78 percent of the original value of the property based on the amortization schedule then in effect. The notice must also state that the borrower will be notified when PMI is terminated (or that termination will occur when the borrower becomes current on payments).
- That there are exemptions to the cancellation and automatic termination provisions for high-risk mortgages and whether such exemptions apply to the borrower's loan (12 USC 4903(a)(1)(B)).

Initial Disclosures for High-Risk Residential Mortgage Transactions

When PMI is required for high-risk residential mortgage transactions, the lender must provide to the borrower a written notice stating that PMI will not be required beyond the date that is the midpoint of the loan's amortization period if, on that date, the borrower is current on the payments as required by the terms of the loan. The lender must provide this notice at consummation. The lender need not provide disclosure of the termination at 77 percent LTV for lender-defined high-risk mortgages (12 USC 4903(a)(2)).

Annual Disclosures for Residential Mortgage Transactions

For all residential mortgage transactions, including high-risk mortgages for which PMI is required, the servicer must provide the borrower with an annual written statement that sets forth the rights of the borrower to PMI cancellation and termination and the address and telephone number that the borrower may use to contact the servicer to determine whether the borrower may cancel PMI (12 USC 4903(a)(3)).

Disclosures for Existing Residential Mortgages

When PMI was required for a residential mortgage consummated before July 29, 1999, the servicer must provide to the borrower an annual written statement that:

- States that PMI may be canceled with the consent of the lender or in accordance with state law.
- Provides the servicer's address and telephone number, so that the borrower may contact the servicer to determine whether the borrower may cancel PMI (12 USC 4903(b)).

Notification Upon Cancellation or Termination of PMI Relating to Residential Mortgage Transactions

General

The servicer must, no later than 30 days after PMI relating to a residential mortgage transaction is canceled or terminated, notify[23] the borrower in writing that:

- PMI has terminated and the borrower no longer has PMI.
- No further premiums, payments, or other fees are due or payable by the borrower in connection with PMI (12 USC 4904(a)).

Notice of Grounds and Timing

If a servicer determines that a borrower in a residential mortgage transaction does not qualify for PMI cancellation or automatic termination, the servicer must provide the borrower with a written notice of the grounds relied on for that determination. If an appraisal was used in making the determination, the servicer must give the appraisal results to the borrower. If a borrower does not qualify for cancellation, the notice must be provided no later than 30 days following the later of (i) the date the borrower's request for cancellation is received or (ii) the date on which the borrower satisfies any evidence and certification requirements of the mortgage holder. If the borrower does not meet the requirements for automatic termination, the notice must be provided no later than 30 days following the scheduled termination date (12 USC 4904(b)).

[23] For adjustable-rate mortgages, the initial notice to borrowers must state that the servicer will notify the borrower when the cancellation and automatic dates are reached (12 USC 4903(a)(1)(B)). Servicers should take care that the appropriate notices are made to borrowers when those dates are reached.

Disclosure Requirements for Lender-Paid Mortgage Insurance

Definitions

Borrower-paid mortgage insurance (BPMI): Means PMI is required for a residential mortgage transaction, the payments for which are made by the borrower.

Lender-paid mortgage insurance (LPMI): Means PMI is required for a residential mortgage transaction, the payments for which are made by a person other than the borrower.

Loan commitment: Means a prospective lender's written confirmation of its approval, including any applicable closing conditions, of the application of a prospective borrower for a residential mortgage loan (12 USC 4905(a)).

Initial Notice

In the case of LPMI required for a residential mortgage transaction, the act requires that the lender provide a written notice to the borrower no later than the date on which a loan commitment is made. The written notice must advise the borrower of the differences between LPMI and BPMI by notifying the borrower that LPMI:

- Differs from BPMI, because LPMI cannot be canceled by the borrower or automatically terminated as provided under the act.
- Usually results in a mortgage having a higher interest rate than it would in the case of BPMI.
- Terminates only when the mortgage is refinanced, (as that term is defined in Regulation Z, 12 CFR 226.20), paid off, or otherwise terminated.

The notice must also provide:

- A statement that LPMI and BPMI have both benefits and disadvantages.
- A generic analysis of the costs and benefits of a mortgage in the case of LPMI versus BPMI over a 10-year period, assuming prevailing interest and property appreciation rates.
- That LPMI may be tax-deductible for federal income taxes, if the borrower itemizes expenses for that purpose (12 USC 4905(c)(1)).

Notice at Termination Date

No later than 30 days after the termination date that would apply in the case of BPMI, the servicer shall provide to the borrower a written notice indicating that the borrower may wish to review financing options that could eliminate the requirement for LPMI for the mortgage (12 USC 4905(c)(2)).

Fees for Disclosures

As stated previously, no fee or other cost may be imposed on a borrower for the disclosures or notifications required to be given to a borrower by lenders or servicers under the act (12 USC 4906).

Civil Liability

Liability Dependent upon Type of Action

Servicers, lenders, and mortgage insurers that violate the act are liable to borrowers as follows:

- Individual Action
  In the case of individual borrowers:
  - Actual damages (including interest accruing on such damages).
  - Statutory damages not to exceed $2,000.
  - Costs of the action.
  - Reasonable attorney fees.
- Class Action
  In the case of a class action suit against a defendant that is subject to section 10 of the act, (i.e., regulated by the federal banking agencies, National Credit Union Administration (NCUA), or the Farm Credit Administration):
  - Such statutory damages as the court may allow up to the lesser of $500,000 or 1 percent of the liable party's net worth.
  - Costs of the action.
  - Reasonable attorney fees.

  In the case of a class action suit against a defendant that is not subject to section 10 of the act (i.e., not regulated by the federal banking agencies, NCUA, or the Farm Credit Administration):
  - Actual damages (including interest accruing on such damages).

- Statutory damages up to $1,000 per class member, but not to exceed the lesser of $500,000 or 1 percent of the liable party's gross revenues.
- Costs of the action.
- Reasonable attorney fees (12 USC 4907(a)).

Statute of Limitations

A borrower must bring an action under the act within two years after the borrower discovers the violation (12 USC 4907(b)).

Mortgage Servicer Liability Limitation

A servicer shall not be liable for its failure to comply with the requirements of the act if the servicer's failure to comply is caused by the mortgage insurer's or lender's failure to comply with the act (12 USC 4907(c)).

Enforcement

The act directs the federal banking agencies to enforce the act under 12 USC 1818 or any other authority conferred upon the agencies by law. Under the act, the agencies shall:

- Notify applicable lenders or servicers of any failure to comply with the act.
- Require the lender or servicer, as applicable, to correct the borrower's account to reflect the date on which PMI should have been canceled or terminated under the act.
- Require the lender or servicer, as applicable, to return unearned PMI premiums to a borrower who paid premiums after the date on which the borrower's obligation to pay PMI premiums ceased under the act (12 USC 4909).

References

Laws

12 USC 4901 *et seq.*, Homeowners Protection Act

Background and Summary

The Right to Financial Privacy Act of 1978 (12 USC 3401) became effective on March 10, 1979, and acknowledges 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:

- Specific procedures for government authorities to follow in seeking information about a customer's financial records.
- Limitations and duties on financial institutions before the release of information sought by government agencies.

The act generally requires that the customer receive:

- A written notice of the agency's intent to obtain financial records.
- An explanation of why the records are sought.
- A statement describing procedures to follow if the customer wishes to withhold such records or information. Under certain circumstances, the notice may be delayed or waived.

Before passage of the act, customers did not have a statutory right to challenge government's access to their financial records, or to know when those records were being provided to a government authority. In *United States* v. *Miller,* 425 U.S. 435 (1976), the Supreme Court held that bank customers did not have a constitutionally protected privacy interest under the Fourth Amendment for financial records kept by a bank. The Right to Financial Privacy Act was adopted principally in response to that decision.

Definition

Customer: Is defined by the act as any person or his or her representative who uses or is using any service of a bank. It also includes any person for whom the bank is acting, or has acted, as a fiduciary. However, a corporation or partnership of six or more persons does not constitute a customer (12 USC 3401(5)).

Requirements

To obtain access to the customer's financial records, the act requires, with certain exceptions, that the government authority obtain one of the following (12 USC 3402):

- An authorization, signed and dated by the customer, that identifies the records being sought, the reasons for the request, and the customer's rights under the act.
- An administrative subpoena or summons that meets the requirements of 12 USC 3405, which, among other things, requires a copy of the subpoena or summons to be served on the customer.
- A search warrant that meets the requirements of 12 USC 3406, which, among other things, requires a copy of the search warrant to be mailed to the customer.
- A judicial subpoena that meets the requirements of 12 USC 3407, which, among other things, requires a copy of the subpoena or summons to be served on the customer.
- A formal written request by a government agency that meets the requirements of 12 USC 3408, which, among other things, requires a copy of the subpoena or summons to be served on the customer and which limits the use of such a formal written request to situations where no administrative summons or subpoena authority is available.

If a bank receives an information request, it may not release the customer's records until the government authority seeking them certifies in writing that it has complied with the applicable provision of the act (12 USC 3403(b)).

The bank must maintain a record of all disclosures to a government authority pursuant to customer authorization. The record should include the date, the name of the government authority, and an identification of the records disclosed. Generally, the customer has a right to inspect that record (12 USC 3404(c)).

Although there are no specific record-retention requirements in the act, banks should retain copies of all administrative and judicial subpoenas, search warrants, and formal written requests by federal government agencies or departments along with the written certification required (12 USC 3403(b)).

Under the act, a bank must begin to assemble the required information upon receipt of the agency's summons or subpoena, or a judicial subpoena. It must be prepared to deliver the records upon receipt of the written certificate of compliance (12 USC 3411).

Exceptions to Notice and Certification Requirements

Under the act, a bank may:

- Notify law enforcement officials if it has information relevant to a violation of the law. This may include only the name or other identifying information concerning an individual, corporation, or account involved and the nature of any suspected illegal activity. This section also provides the bank with a safe harbor from litigation by the customer (12 USC 3403(c)).
- Submit copies of financial records to any court or agency when perfecting a security interest, proving a claim in bankruptcy, or collecting a debt for itself or a fiduciary (12 USC 3403(d)(1)).
- Provide copies of documents on behalf of a customer to an appropriate government authority to assist such authority in carrying out its responsibilities under a loan, loan guaranty, or loan insurance agreement (12 USC 3403(d)(2)).
- Provide records that must be reported in accordance with any federal statute or rule (e.g., the Bank Secrecy Act) (12 USC 3413(d)).

The act does not apply to:

- Records that are not individually identifiable with a particular customer (12 USC 3413(a)).
- Records sought by a supervisory agency for its supervisory, regulatory, or monetary functions. This also includes examinations and any investigations relating to consumer complaints (12 USC 3413(b)).
- Records sought in accordance with procedures authorized by the Internal Revenue Code (records intended to be accessed by procedures authorized by the Tax Reform Act of 1976) (12 USC 3413(c)).
- Records that are required to be reported in accordance with any federal statute or rule (12 USC 3413(d)).
- Information that is requested by a government authority for a legitimate law enforcement inquiry that is seeking only the name, address, account number, and type of account of any customer or ascertainable group of customers associated with a financial transaction or class of financial transactions or in connection with certain international matters 12 USC 3413(g).

- A subpoena issued in conjunction with proceedings before a grand jury (12 USC 3413(i)).
- Records sought by the Government Accountability Office for an authorized proceeding or audit directed at a federal agency (12 USC 3413(j)).
- Records of any bank officer, director, employee, or controlling shareholder, or any major borrower who there is reason to believe may be acting in concert with any such officer, director, employee, or controlling shareholder, provided by the bank to the U.S. Attorney, state law enforcement agency, or, in the case of violations of 31 USC 5311 *et seq.* to the Secretary of the Treasury, for criminal violation and violations of the Bank Secrecy Act and anti-money laundering statutes (12 USC 3413(l)).

If the agency and the customer are parties to a suit, records may be obtained under the Federal Rules of Civil and Criminal Procedure or the Administrative Procedure Act (12 USC 3413(e) and (f)).

Exceptions to Notice Requirements—Certification Is Required

The act does not apply when a bank is being investigated, even if the investigation also is directed at a customer. However, the federal agency seeking access to customer records must provide the bank with the required certification of compliance 12 USC 3413 (h)(1)(A)).

Records also may be provided incidental to processing a government loan, loan guaranty, loan insurance agreement, or default upon a government-guaranteed or insured loan. Again, the federal agency seeking access must provide the bank with the written certification of compliance (12 USC 3413 (h)(1)(B) and (h)(6)).

The federal agency also must give to the loan applicant a notice of its access rights when the customer initially applies for the loan. The bank is required to keep a record of all disclosures made to government authorities, which the customer is entitled to inspect.

Delayed Notice Requirements

The government may petition a court to authorize a delay in providing notice to customers for an initial period of 90 days, if there is reason to believe that, among other things, providing a notice would result in:

- Endangering the life or physical safety of any person.
- Flight from prosecution.
- Destruction of or tampering with evidence.
- Intimidation of potential witnesses.
- Seriously jeopardizing or unduly delaying an investigation, trial, or official proceeding.

Further extensions can be provided for by the court.

Civil Liability

Any government agency that obtains, or any bank or bank employee who discloses, information in violation of the act is liable for (12 USC 3417):

- Actual damages.
- Such punitive damages as the court may allow for willful or intentional violations
- One hundred dollars, regardless of the volume of records involved.
- Court costs and reasonable attorney's fees.

References

Laws

12 USC 3401 *et seq.*, Right to Financial Privacy Act

Background and Summary

Section 711 of the Gramm–Leach–Bliley Act (GLBA) added a new section 48 to the Federal Deposit Insurance Act (FDI Act) titled “CRA Sunshine Requirements.” (CRA stands for Community Reinvestment Act.) This section requires nongovernmental entities or persons (NGEP), insured depository institutions (IDI), and affiliates of IDIs that are parties to certain agreements that are in fulfillment of the CRA to make certain CRA-related agreements available to the public and the appropriate agency and to file annual reports concerning the agreements with the appropriate agency. The GLBA CRA Sunshine requirements and the implementing CRA Sunshine Regulation do not affect the CRA of 1977, its implementing regulations, or the OCC’s interpretation or administration of that act or regulations.

The CRA Sunshine Regulation, titled “Disclosure and Reporting of CRA-Related Agreements,” (12 CFR Part 35), became effective April 1, 2001. The CRA Sunshine Regulation identifies the types of written agreements that are covered by the statute (referred to as covered agreements), defines many of the terms used in the statute, describes how the parties to a covered agreement must make the agreement available to the public and the appropriate agencies, and explains the type of information that must be included in the annual report filed by a party to a covered agreement. GLBA and the CRA Sunshine Regulation expressly deny the OCC any authority to enforce the provisions of any covered agreement. The disclosure requirements apply to covered agreements entered into after November 12, 1999, and the annual reporting requirements apply to covered agreements entered into on or after May 12, 2000.

Definitions

Covered agreement: Any contract, arrangement, or understanding that meets all of the following criteria:

- The agreement is in writing.

- The parties to the agreement include:
  - One or more insured depository institutions or affiliates of an insured depository institution, and
  - One or more NGEPs.
- The agreement provides for the insured depository institution or any affiliate to:
  - Provide to one or more individuals or entities (whether or not parties to the agreement) cash payments, grants, or other consideration (except loans) that have an aggregate value of more than $10,000 in any calendar year, or
  - Make to one or more individuals or entities (whether or not parties to the agreement) loans that have an aggregate principal amount of more than $50,000 in any calendar year.
- The agreement is made pursuant to, or in connection with, the fulfillment of the CRA.
- The agreement is with a nongovernmental entity or person (NGEP) that has had a CRA communication prior to entering into the agreement.

A covered agreement does not include:

- Any individual loan that is secured by real estate.
- Any specific contract or commitment for a loan or extension of credit to an individual, business, farm, or other entity, or group of such individuals or entities if:
  - The funds are loaned at rates that are not substantially below market rates, and
  - The loan application or other loan documentation does not indicate that the borrower intends or is authorized to use the borrowed funds to make a loan or extension of credit to one or more third parties.

Affiliate: Any company that controls, is controlled by, or is under common control with another company.

- To determine whether an agreement is a covered agreement, an "affiliate" includes any company that would be under common control or merged with another company on consummation of any transaction pending before a federal banking agency at the time:
  - The parties enter into the agreement, and
  - The NGEP that is a party to the agreement makes a CRA communication, as described in 12 CFR 35.3.

CRA affiliate: Any company that is an affiliate of an insured depository institution to the extent, and only to the extent, that the activities of the affiliate were considered by the appropriate federal banking agency when evaluating the CRA performance of the institution at its most recent CRA examination prior to the agreement. An insured depository institution or affiliate also may designate any company as a CRA affiliate at any time prior to the time a covered agreement is entered into by informing the NGEP that is a party to the agreement of such designation.

CRA communication: Any of the following that meets the timing and knowledge requirements of 12 CFR 35.3(b):

- Any written or oral comment or testimony provided to a federal banking agency concerning the adequacy of the performance under the CRA of the insured depository institution, any affiliated insured depository institution, or any CRA affiliate.
- Any written comment submitted to the insured depository institution that discusses the adequacy of the performance under the CRA of the institution and must be included in the institution's CRA public file.
- Any discussion or other contact with the insured depository institution or any affiliate about:
  - Providing (or refraining from providing) written or oral comments or testimony to any federal banking agency concerning the adequacy of the performance under the CRA of the insured depository institution, any affiliated insured depository institution, or any CRA affiliate;
  - Providing (or refraining from providing) written comments to the insured depository institution that concern the adequacy of the institution's performance under the CRA and must be included in the institution's CRA public file; or
  - The adequacy of the performance under the CRA of the insured depository institution, any affiliated insured depository institution, or any CRA affiliate.

Examples of actions that are CRA communications may be found in 12 CFR 35.3(c)(1), and examples of actions that are not CRA communications may be found in 12 CFR 35.3(c)(2).

Fulfillment of the CRA: Factors that are in fulfillment of the CRA fall into the following two categories:

- *Comments to a federal banking agency or included in CRA public file*—Providing or refraining from providing written or oral comments or testimony to any federal banking agency concerning the performance under the CRA of an insured depository institution or CRA affiliate that is a party to the agreement or an affiliate of a party to the agreement or written comments that are required to be included in the CRA public file of any such insured depository institution.
- *Activities given favorable CRA consideration*—Performing any of the following activities, if the activity is of the type that is likely to receive favorable consideration by a federal banking agency in evaluating the performance under the CRA of the insured depository institution that is a party to the agreement or an affiliate of a party to the agreement:
  - Home purchase, home improvement, small business, small farm, community development, and consumer lending, as described in 12 CFR 25.22 of the CRA regulations, including loan purchases, loan commitments, and letters of credit.
  - Making investments, deposits, or grants, or acquiring membership shares, that have as their primary purpose community development, as described in 12 CFR 25.23 of the CRA regulations.
  - Delivering retail banking services, as described in 12 CFR 25.24(d) of the CRA regulations.
  - Providing community development services, as described in 12 CFR 25.24(e) of the CRA regulations.
  - In the case of a wholesale or limited-purpose insured depository institution, community development lending, including originating and purchasing loans and making loan commitments and letters of credit, making qualified investments, or providing community development services, as described in 12 CFR 25.25(c) of the CRA regulations.
  - In the case of a small insured depository institution, any lending or other activity described in 12 CFR 25.26(a) of the CRA regulations.
  - In the case of an insured depository institution that is evaluated on the basis of a strategic plan, any element of the strategic plan, as described in 12 CFR 25.27(f) of the CRA regulations.

Insured depository institution: Any bank or savings associations whose deposits are insured by the FDIC and includes any uninsured branch or agency of a foreign bank or a commercial lending company owned or controlled by a foreign bank for the purpose of section 8 of the FDI Act.

Nongovernmental Entity or Person (NGEP): Any partnership, association, trust, joint venture, joint stock company, corporation, limited liability corporation, company, firm, society, other organization, or individual.

An NGEP does not include:

- The U.S. government, a state government, a unit of local government (including a county, city, town, township, parish, village, or other general-purpose subdivision of a state) or an Indian tribe or tribal organization established under federal, state, or Indian tribal law (including the Department of Hawaiian Home Lands), or a department, agency, or instrumentality of any such entity.
- A federally chartered public corporation that receives federal funds appropriated specifically for that corporation.
- An insured depository institution or affiliate of an insured depository institution.
- An officer, director, employee, or representative (acting in his or her capacity as an officer, director, employee, or representative) of the above mentioned entities.

Relevant supervisory agency: The appropriate federal banking agency for:

- Each insured depository institution (or subsidiary thereof) that is a party to the covered agreement.
- Each insured depository institution (or subsidiary thereof) or CRA affiliate that makes payments or loans or provides services that are subject to the covered agreement.
- Any company (other than an insured depository institution or subsidiary thereof) that is a party to the covered agreement.

Term of agreement: An agreement that does not have a fixed termination date is considered to terminate on the last date on which any party to the agreement makes any payment or provides any loan or other resources under the agreement, unless the relevant supervisory agency for the agreement otherwise notifies each party in writing.

Summary of the Disclosure and Reporting Requirements of the Regulation

Disclosure of Covered Agreements to the Public

	Nongovernmental Entity or Person (NGEP)	**Insured Depository Institution (IDI) or Affiliate**
Which agreements must be disclosed to the public?	Covered agreements entered into after 11/12/99.	Covered agreements entered into after 11/12/99.
When does my duty to disclose a covered agreement to the public begin?	4/1/01	4/1/01
What event triggers my obligation to disclose a covered agreement to a member of the public?	An individual or entity must request that you make a covered agreement available.	An individual or entity must request that you make a covered agreement available.
How do I disclose a covered agreement to the public?	You must promptly make a copy of the covered agreement available. You may withhold information that is confidential and proprietary under FOIA standards. However, you must disclose certain enumerated items of information identified at 12 CFR 35.6(b)(3).	You must promptly make a copy of the covered agreement available. You may withhold information that is confidential and proprietary under FOIA standards. However, you must disclose certain enumerated items of information identified at 12 CFR 35.6(b)(3). An IDI or affiliate may make an agreement available by placing a copy of the covered agreement in the IDI's CRA public file. The IDI must make the agreement available in accordance with the CRA rule on public files.
When does my duty to disclose a covered agreement to the public end?	Twelve months after the end of the term of the agreement.	Twelve months after the end of the term of the agreement.

Disclosure of Covered Agreements to the Relevant Supervisory Agency (RSA)

	Nongovernmental Entity or Person (NGEP)	Insured Depository Institution (IDI) or Affiliate
What agreements must be disclosed to the RSA?	Covered agreements entered into after 11/12/99.	Covered agreements entered into after 11/12/99.
When does my duty to disclose a covered agreement to the RSA begin?	4/1/01	4/1/01
When must I disclose a covered agreement to the RSA?	You must disclose your covered agreement to the RSA within 30 days after the RSA requests a copy of the agreement.	You must disclose your covered agreement to the RSA within 60 days of the end of the calendar quarter after the agreement is entered into.
How do I disclose a covered agreement to the RSA?	You must provide the RSA with a complete copy of the agreement. If you propose the withholding of any information that can be withheld from disclosure under FOIA, you must also provide a public version of the agreement that excludes such information and an explanation justifying the exclusion. The public version must include certain information. See 12 CFR 35.6(b)(3).	You must provide the RSA with a complete copy of the agreement. If you propose the withholding of any information that can be withheld from disclosure under FOIA, you must also provide a public version of the agreement that excludes such information and an explanation justifying the exclusion. The public version must include certain information. See 12 CFR 35.6(b)(3). Alternatively, you may provide a list of all covered agreements that you entered into during the calendar quarter, and include the information described at 12 CFR 35.6(d)(1)(B)(ii). If the RSA requests a copy of an agreement referenced in the list, you must provide a copy of the agreement and a public version (if applicable) within seven calendar days.

When does my duty to disclose a covered agreement to the RSA end?	Twelve months after the end of the term of the agreement.	If you file a list, your obligation to provide a copy of an agreement referenced in the list terminates 36 months after the end of the term of the agreement.

Filing of Annual Reports with the Relevant Supervisory Agency (RSA)

	Nongovernmental Entity or Person (NGEP)	**Insured Depository Institution (IDI) or Affiliate**
What agreements are subject to annual reporting requirements to the RSA?	Covered agreements entered into on or after 5/12/00.	Covered agreements entered into on or after 5/12/00.
What periods require an annual report?	You must report for each fiscal year in which you receive or use funds or other resources under the covered agreement. Alternatively, you may file your report on a calendar-year basis.	You must report for each fiscal year in which you have any reportable data concerning the covered agreement described in 12 CFR 35.7(e)(1)(iii), 35.7(e)(1)(iv), or 35.7(e)(1)(vi). Alternatively, you may file your report on a calendar-year basis.
When must I file the annual report?	For fiscal years that end after 1/1/01, you must file the report with each RSA within six months after the end of the fiscal year covered by the report. Alternatively, you may, within this six-month period, provide the report to an IDI or affiliate that is a party to the agreement. You must include written instructions requiring the IDI or affiliate to promptly forward the report to the RSA(s).	For fiscal years that end after 1/1/01, you must file the report with each RSA within six months after the end of the fiscal year covered by the report. If a NGEP has provided its report to you, you must also file that report with the RSA(s) on behalf of the NGEP within 30 days of receipt.

May I file a consolidated annual report?	If you are a party to two or more covered agreements, you may file a single, consolidated annual report concerning all the covered agreements.	If you are a party to two or more covered agreements, you may file a single, consolidated annual report concerning all the covered agreements. If you and your affiliates are parties to the same covered agreement, you may file a single consolidated annual report relating to the agreement.
What must I include in the annual report?	You must include the information described at 12 CFR 35.7(d).	You must include the information described at 12 CFR 35.7(e).

References

Laws

12 USC 1831y, CRA sunshine requirements

Regulations

12 CFR 35, Disclosure and reporting of CRA-related agreements

Prohibition Against Use of Interstate Branches Primarily for Deposit Production

Background and Summary

Section 109 of the Riegle–Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act) expanded the ability of banks to branch across state lines. Section 109, however, prohibits banks from establishing or acquiring a branch or branches outside of its home state, pursuant to the Interstate Act, primarily for the purpose of deposit production. Congress enacted section 109 to ensure that interstate branches would not take deposits from a community without the bank reasonably helping to meet the credit needs of that community.

Subsequently, section 106 of the GLBA of 1999 amended section 109 by changing the definition of an "interstate branch" to include any branch of a bank controlled by an out-of-state bank holding company. Interagency regulations implementing this amendment became effective October 1, 2002.

The language of section 109 and its legislative history make clear that the agencies are to administer section 109 without imposing additional regulatory burden on banks. Consequently, the agencies' regulations do not impose additional data reporting requirements nor do they require a bank to produce, or assist in producing, relevant data.

Coverage

Section 109 applies to any bank that has covered interstate branches.

Definitions

Covered interstate branch:

- Any branch of a national bank, and any federal branch of a foreign bank that:
  - Is established or acquired outside the bank's home state pursuant to the interstate branching authority granted by the Interstate Act or by

    any amendment made by the Interstate Act to any other provision of law, or
  - Could not have been established or acquired outside of the bank's home state but for the establishment or acquisition of a branch described above, and

- Any bank or branch of a bank controlled by an out-of-state bank holding company.

Home state: the state in which the main office of the bank is located.

- For a bank holding company, home state means the state in which the total deposits of all banking subsidiaries of such company are the largest on the later of:
  - July 1, 1966, or
  - The date on which the company becomes a holding company under the Bank Holding Company Act.

- For a foreign bank, home state means:
  - For purposes of determining whether a U.S. branch of a foreign bank is a covered interstate branch, the home state of the foreign bank as determined in accordance with 12 USC 3103(c) and 12 CFR 28.11(o), and.
  - For purposes of determining whether a branch of a U.S. bank controlled by a foreign bank is a covered interstate branch, the state in which the total deposits of all banking subsidiaries of such foreign bank are the largest on the later of:
    - July 1, 1966, or
    - The date on which the foreign bank becomes a bank holding company under the Bank Holding Company Act.

Host state: A state in which a covered interstate branch is established or acquired.

Host state loan-to-deposit ratio: The ratio of total loans in the host state to total deposits from the host state for all banks.

Out-of-state bank holding company: For any state, a bank holding company whose home state is another state.

Statewide loan-to-deposit ratio: The ratio of a bank's loans to its deposits in a particular state where it has one or more covered interstate branches, as determined by the OCC.

The Two-Step Test

Beginning no earlier than one year after a covered interstate branch is acquired or established, the agency will determine whether a bank is complying with the provisions of section 109. Section 109 provides a two-step test for determining compliance with the prohibition against interstate deposit production offices:

1. *Loan-to-deposit ratio.* The first step involves a loan-to-deposit (LTD) ratio screen, which is designed to measure the lending and deposit activities of covered interstate branches. The LTD ratio screen compares the bank's statewide LTD ratio to the host state LTD ratio. If the bank's statewide LTD ratio is at least one-half of the relevant host state LTD ratio, the bank passes the section 109 evaluation, and no further review is required. Host state ratios are prepared and made public by the agencies annually. (Most recent ratios are available on the OCC Website in current bulletins.)

2. *Credit needs determination.* The second step is a credit needs determination that is conducted if a bank fails the LTD ratio screen or if the LTD ratio cannot be calculated owing to insufficient data or to data that are not reasonably available. This step requires the examiner to review the activities of the bank, such as its lending activity and performance under the CRA, to determine whether the bank is reasonably helping to meet the credit needs of the communities served by the bank in the host state. Banks may provide the examiner with any relevant information, including loan data, if a credit needs determination is performed.

Although section 109 specifically requires the examiner to consider a bank's CRA rating when making a credit needs determination, a bank's CRA rating should not be the only factor considered. However, since most of the other factors are taken into account as part of a bank's performance context under CRA, it is expected that banks with a satisfactory or better CRA rating will receive a favorable credit needs determination. Banks with a less-than-satisfactory CRA rating may receive an adverse credit needs determination unless mitigated by the other factors enumerated in section

109 and 12 CFR 25.64(b). To ensure consistency, compliance with section 109 generally should be reviewed in conjunction with the evaluation of a bank's CRA performance.

For institutions designated as wholesale or limited-purpose banks, a credit needs determination should consider a bank's performance using the appropriate CRA performance test provided in the CRA regulations. For banks not subject to CRA, including certain special-purpose banks and uninsured branches of foreign banks, the examiner should use the CRA regulations only as a guideline when making a credit needs determination for such institutions. Section 109 does not obligate the institution to have a record of performance under the CRA nor does it require the institution to pass any CRA performance tests.

Enforcement and Sanctions

Before a bank can be sanctioned under section 109, the OCC is required to demonstrate that the bank failed to comply with the LTD ratio screen and failed to reasonably help meet the credit needs of the communities served by the bank in the host state. Since the bank must fail both the LTD ratio screen and the credit needs determination to be in noncompliance with section 109, the OCC has an obligation to apply the LTD ratio screen before seeking sanctions, regardless of the regulatory burden imposed. Thus, if a bank receives an adverse credit needs determination, the LTD ratio screen must be applied even if the data necessary to calculate the appropriate ratio are not readily available. Consequently, the OCC is required to obtain the necessary data to calculate the bank's statewide LTD ratio before sanctions are imposed.

If a bank fails both steps of the section 109 evaluation, the statute outlines sanctions that the appropriate agency can impose. The sanctions are:

- Ordering the closing of the interstate branch or branches in the host state.
- Prohibiting the bank from opening a new branch in the host state.

Sanctions, however, may not be warranted if a bank provides reasonable assurances to the satisfaction of the OCC, after an opportunity for public comment, that it has an acceptable plan that will reasonably help to meet the credit needs of the communities served, or to be served. An examiner should consult with the appropriate deputy comptroller and the Compliance Policy

Department before discussing possible sanctions with any bank. Also, before sanctions are imposed, the agencies stated in the preamble to the final 1997 regulation that they intend to consult with state banking authorities. In addition, the bank must receive notice and the opportunity for a hearing before the OCC orders the bank to close any covered interstate branch.

References

Regulations

12 CFR 25, Subpart E, Prohibition against use of interstate branches primarily for deposit production

Background and Summary

The Children's Online Privacy Protection Act of 1998 (COPPA) (15 USC 6501 *et seq.)* addresses the collection, use, or disclosure of personal information that is collected from children through Web sites or other online services. On November 3, 1999, the FTC issued a regulation (16 CFR 312), which implements COPPA. The regulation became effective on April 21, 2000.

Financial institutions are subject to COPPA if they operate a Web site(s) or online service(s) (or portion thereof) directed to children, or have actual knowledge that they are collecting or maintaining personal information from a child online. COPPA grants each of the federal financial regulatory agencies enforcement authority over the institutions they supervise under 12 USC 1818.

Financial institutions that do not currently operate a Web site or online service directed to children, or do not have actual knowledge that they are collecting or maintaining personal information from a child online, are not subject to COPPA and will not be subject to COPPA examinations by the OCC. However, financial institutions are urged to review their Web sites and their online information collection practices to ensure that they do not inadvertently trigger the provisions of this act.

Definitions

Child, children: (An) individual(s) younger than 13.

Personal information: Individually identifiable information about an individual collected online, including first and last name, home address, e-mail address, telephone number, social security number, or any combination of information that permits physical or online contact.

General Requirements

The regulation requires an operator of a Web site or online service directed to a child, or any operators who have actual knowledge that they are collecting or maintaining personal information from a child, to:

- Provide a clear, complete, and understandably written notice to the parent and on the Web site or online service of their information collection practices with regard to children, describing how the operator collects, uses, and discloses the information (16 CFR 312.4);
- Obtain, through reasonable efforts and with limited exceptions, verifiable parental consent prior to the collection, use, or disclosure of personal information from children (16 CFR 312.5);
- Provide a parent, upon request, with the means to review and have deleted the personal information collected from his or her child and to refuse to permit its further use or maintenance (16 CFR 312.6);
- Limit collection of personal information for a child's online participation in a game, prize offer, or other activity to information that is reasonably necessary for the activity (16 CFR 312.7); and
- Establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of the personal information collected from children (16 CFR 312.8).

Notice on the Web Site

Placement of Notice (16 CFR 312.4(b)(1))

An operator of a Web site or online service directed to children must post a link to a notice of its information practices with regard to children on its home page and at each area on the site or service where it collects personal information from any child. An operator of a general-audience Web site that has a separate children's area must post a link to its notice on the home page of the children's area.

These links must be placed in a clear and prominent location on the home page of the Web site or online service. To make a link clear and prominent, a financial institution may, for example, use a larger font size in a different color on a contrasting background. A link in small print at the bottom of a home page that requires visitors to scroll down the page does not satisfy the clear and prominent guidelines.

Content (16 CFR 312.4(b)(2))

The notice must state among other requirements all of the following:

- The name, address, telephone number, and e-mail address of all operators collecting or maintaining personal information from any child through the Web site or online service.
- The types of personal information collected from any child and how the information is collected.
- The way the operator uses, or may use, the personal information.
- A statement of whether the operator discloses information collected to third parties. If it does, the notice must state the types of businesses engaged in by the third parties, the purposes for which the information is used, and whether the third parties have agreed to maintain the confidentiality, security, and integrity of the information. In addition, the notice must state that the parent has the option to consent to the collection and use of the information without consenting to the disclosure of the information to third parties.
- That there is a prohibition against requiring, as a condition of participation in an activity, that a child disclose more information than is reasonably necessary to participate in such activity.
- That a parent has a right to review his or her child's personal information, have it deleted, and refuse to allow any further collection or use of the child's information, and state the procedures for doing so.

Notice to a Parent (16 CFR 312.4 (c))

An operator is required to obtain verifiable parental consent before any collection, use, or disclosure of personal information from any child can be made. An operator also must make reasonable efforts to provide a parent with notice of the operator's information practices with regard to children, as described above, and in the case of a notice seeking consent, all of the following additional information:

- The operator's wishes to collect personal information from the parent's child.
- The requirement of the parent's consent for the collection, use, and disclosure of the information.
- The way(s) the parent can provide consent.

Internal Uses (16 CFR 312.5(b))

Financial institutions that use the personal information solely for internal purposes may use e-mail to get parental consent, provided the operator takes additional steps to verify that a parent is the person providing consent, such as by confirming receipt of consent by e-mail, letter, or telephone call. Operators who use such methods must provide notice that the parent can revoke consent.

Disclosure to Others (16 CFR 312.5(b))

Disclosure of a child's personal information to others (e.g., chat rooms, message boards, and third parties) presents greater risk to a child's privacy, and requires a more reliable method of consent. The method used to obtain verifiable parental consent must be reasonably calculated, in light of available technology, to ensure that the person providing the consent is the child's parent. Methods that satisfy this requirement include:

- Obtaining a signed consent form from a parent via postal mail or facsimile.
- Accepting and verifying a parent's credit card number.
- Taking a parent's call, through a toll-free telephone number staffed by trained personnel.
- Receiving a parent's e-mail, accompanied by a digital signature.
- Receiving an e-mail from a parent that is accompanied by a personal identification number (PIN) or password obtained through one of the methods mentioned above.

Disclosures to Third Parties (16 CFR 312.5(a))

A parent may permit an operator of a Web site or online service to collect and use information about a child while prohibiting the operator from disclosing the child's information to third parties. An operator must give a parent this option.

Parental Consent to Material Changes (16 CFR 312.5(a))

The operator must send a new notice and request for consent to a parent if there is a material change in the collection, use, or disclosure practices to which a parent has previously agreed.

Exceptions to Prior Parental Consent Requirement (16 CFR 312.5(c))

A financial institution does not need prior parental consent when it is collecting any of the following:

- A parent's or child's name or online contact information solely to obtain consent or to provide notice. However, if the operator has not obtained parental consent after a reasonable time period from the date of the information collection, the operator must delete such information from its records.
- A child's online contact information solely to respond to, on a one-time basis, a specific request from the child, if the information is not used to re-contact the child, and is deleted by the operator.
- A child's online contact information to respond more than once to a specific request of the child (e.g., a request to receive a monthly online newsletter), when the operator does not use the information to contact the child beyond the scope of the request, and a parent is notified and allowed to request that the information not be used further.
- The name and online contact information of the child to be used solely to protect the child's safety.
- The name and online contact information of the child solely to protect the security of the site, to take precautions against liability, or to respond to judicial process, law enforcement agencies, or an investigation related to public safety.

Right to Review Information (16 CFR 312.6)

An operator of a Web site or online service is required to provide to a parent a means by which he or she can obtain any personal information collected from his or her child by that operator. At a parent's request, an operator must provide a parent with a description of the types of personal information it has collected from the child and an opportunity to review the information collected from the child.

Before a parent can review a child's information, the operator must take steps to ensure that the person making the request is the child's parent. An operator or its agent will not be held liable under any federal or state laws for any disclosures made in good faith and following reasonable procedures to verify a requester's identity in responding to a request for disclosure of personal information. These methods might include requiring a parent to use a credit card in connection with a transaction; having a parent call a toll-free number staffed by trained personnel; using a digital certificate that uses public key technology; or using e-mail accompanied by a PIN or password.

The regulations allow parents to refuse to permit an operator to continue to use or to collect their child's personal information in the future and to instruct the operator to delete the information. If a parent does so, an operator may terminate its service to that child.

Confidentiality, Security, and Integrity of Personal Information Collected from a Child (16 CFR 312.8)

The operator of a Web site or an online service is required to establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from any child.

Safe Harbor (16 CFR 312.10)

Industry groups, financial institutions or others may establish, with the FTC's approval, a self-regulatory program. An operator of a Web site or online service that complies with FTC-approved self-regulatory guidelines will receive a "safe harbor" from the requirements of COPPA and the regulation.

To be approved by the FTC, self-regulatory guidelines must include a requirement that operators subject to the guidelines implement substantially similar requirements that provide the same or greater protections for a child as the FTC regulation (16 CFR 312.2-9). These guidelines also must include an effective, mandatory mechanism for assessing operators' compliance, as well as incentives to ensure that an operator will comply.

References

Laws

15 USC 6501 *et seq.*, Children's Online Privacy Protection Act

Regulations

16 CFR 312, Children's Online Privacy Protection Rule

OCC Issuances

Bulletin 2001-8, "Guidelines Establishing Standards for Safeguarding Customer Information," dated 02/05/01

Bulletin 2001-26, "Privacy of Consumer Financial Information, 12 CFR 40," dated 05/25/01

Bulletin 2001-31, "Weblinking," dated 07/03/01

Background and Summary

Under the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN–SPAM or Act),[24] the FTC is charged with issuing regulations for implementing CAN–SPAM.[25] The FTC has issued regulations, effective March 28, 2005, that provide criteria to determine the *primary purpose* of e-mail messages. The FTC has also issued regulations that contain criteria pertaining to warning labels on sexually oriented materials, which became effective May 19, 2004.

The goals of the act are:

- To reduce spam and unsolicited pornography by prohibiting senders of unsolicited commercial e-mail messages from disguising the source and content of their messages.
- To give consumers the choice to cease receiving a sender's unsolicited commercial e-mail messages.

The act granted the OCC, FDIC, Federal Reserve Board, and the Office of Thrift Supervision enforcement authority under section 8 of the Federal Deposit Insurance Act. The National Credit Union Association was granted authority through the Federal Credit Union Act (12 USC 1751).

The FTC has researched and determined that a "Do Not Spam" registry (similar to the highly effective "Do Not Call" registry) would not be effective or practicable at this time.

[24] 15 USC 7701–7713.

[25] Final rules relating to the established criteria for determining when the primary purpose of an e-mail message is commercial were published in the *Federal Register* on January 19, 2005 (70 FR 3110). Final rules relating to governing the labeling of commercial e-mail containing sexually oriented material were published in the *Federal Register* on April 19, 2004 (69 FR 21024). A notice of proposed rulemaking relating to definitions, implementation, and reporting requirements under the CAN-SPAM Act was published in the *Federal Register* on May 12, 2005 (70 FR 25426).

Definitions

Affirmative consent (commercial e-mail message):

- The recipient expressly consented to receive the message, either in response to a clear and conspicuous request for such consent or at the recipient's own initiative; and
- If the message is from a party other than the party to which the recipient communicated such consent, the recipient was given clear and conspicuous notice at the time the consent was communicated that the recipient's e-mail address could be transferred to such other party for the purpose of initiating commercial e-mail messages.

Commercial e-mail message: Any e-mail message the *primary purpose* of which is to advertise or promote for a commercial purpose, a commercial product or service (including content on the Internet). An e-mail message would not be considered to be a commercial e-mail message solely because such message includes a reference to a commercial entity that serves to identify the sender or a reference or link to an Internet Web site operated for a commercial purpose.

Dictionary attacks: Obtaining e-mail addresses by using an automated means that generates possible e-mail addresses by combining names, letters, or numbers into numerous permutations.

Harvesting: Obtaining e-mail addresses using an automated means from an Internet Web site or proprietary online service operated by another person, when such service or person, at the time the address was obtained, had provided a notice stating that the operator of such Web site or online service would not give, sell, or otherwise transfer electronic addresses.

Header information: The source, destination, and routing information attached to the beginning of an e-mail message, including the originating domain name and originating e-mail address.

Hijacking: The use of automated means to register for multiple e-mail accounts or online user accounts from which to transmit, or enable another person to transmit, an unlawful commercial e-mail message.

Initiate: To originate, transmit, or procure the origination or transmission of such message, but shall not include actions that constitute routine conveyance. For purposes of the act, more than one person may be considered to have initiated the same message.

Primary purpose: The FTC's regulations provide further clarification regarding determination of whether an e-mail message has "commercial" promotion as its *primary purpose* (16 CFR 316.3):

- The primary purpose of an e-mail message will be deemed to be commercial if it contains only the commercial advertisement or promotion of a commercial product or service (commercial content).
- The primary purpose of an e-mail message will be deemed to be commercial if it contains both commercial content and "transactional or relationship" content (see below for definition) if either:
  - A recipient reasonably interpreting the subject line of the e-mail message would likely conclude that the message contains commercial content; or
  - The e-mail message's "transactional or relationship" content does not appear in whole or substantial part at the beginning of the body of the message.
- The primary purpose of an e-mail message will be deemed to be commercial if it contains both commercial content as well as content that is not transactional or relationship content, if a recipient can reasonably conclude by interpreting either:
  - The subject line of the e-mail message that the message contains commercial content; or
  - The body of the e-mail message that the primary purpose of the message is commercial.
- The primary purpose of an e-mail message will be deemed to be transactional or relationship (non-commercial) if it contains only transactional or relationship content.

Protected computer: A computer—

- Exclusively for the use of a financial institution or the U.S. government, or, in the case of a computer not exclusively for such use, used by or for a financial institution or the U.S. government and the conduct constituting the offense affects that use by or for the financial institution or the government; or
- That is used in interstate or foreign commerce or communication.

Recipient: An authorized user of the e-mail address to which the message was sent or delivered.

Sender: A person who initiates an e-mail message and whose product, service, or Internet Web site is advertised or promoted by the message.

Sexually oriented material: Any material that depicts sexually explicit conduct unless the depiction constitutes a small and insignificant part of the whole.

Transactional or relationship e-mail message: An e-mail message with the primary purpose of facilitating, completing, or confirming a commercial transaction that the recipient had previously agreed to enter into; to provide warranty, product recall, or safety or security information; or subscription, membership, account, loan, or other information relating to an ongoing purchase or use.

General Requirements of the CAN–SPAM Statute

- Prohibits the use of false or misleading transmission information (section 7704(a)(1)) such as:
  - False or misleading header information,
  - A “from” line that does not accurately identify any person who initiated the message, and
  - Inaccurate or misleading identification of a protected computer used to initiate the message because the person initiating the message knowingly uses another protected computer to relay or retransmit the message for purposes of disguising its origin.
- Prohibits the use of deceptive subject headings (section 7704(a)(2)).
- Requires a functioning e-mail return address or other Internet-based response mechanism (section 7704(a)(3)).
- Requires that commercial e-mail messages be discontinued within 10 business days after receipt of opt-out notification from recipient (section 7704(a)(4)).
- Requires a clear and conspicuous identification that the message is an advertisement or solicitation, clear and conspicuous notice of the opportunity to decline to receive further commercial e-mail messages from the sender, and a valid physical postal address of the sender (section 7704(a)(5)).
- Prohibits address harvesting (obtaining e-mail addresses using an automated means from an Internet Web site or proprietary online service

operated by another person, where such service or person, at the time the address was obtained, had provided a notice stating that the operator of such Web site or online service will not give, sell, or otherwise transfer electronic addresses) and dictionary attacks (obtaining e-mail addresses by using an automated means that generates possible e-mail addresses by combining names, letters, or numbers into numerous permutations) (section 7704(b)(1)).

- Prohibits hijacking—the use of automated means to register for multiple e-mail accounts or online user accounts from which to transmit, or enable another person to transmit—a commercial e-mail message that is unlawful (section 7704(b)(2)).
- Prohibits any person from knowingly relaying or retransmitting a commercial e-mail message that is unlawful (section 7704(b)(3)).
- Requires warning labels (in the subject and within the message body) on commercial e-mail messages containing sexually oriented material (section 7704(d)).
- Prohibits a person from promoting, or allowing the promotion of, that person's trade or business, or goods, products, property, or services, in an unlawful commercial e-mail message (section 7705)(a)).

References

Laws

15 USC 7701 *et seq.*, Controlling the Assault of Non-Solicited Pornography and Marketing Act

Background and Summary

The Federal Communications Commission (FCC) has issued regulations that establish a national "Do-Not-Call" registry[26] and other requirements pursuant to the Telephone Consumer Protection Action of 1991 (TCPA).[27] The FCC regulations detail certain requirements for entities making telemarketing calls, such as complying with do-not-call list requirements, keeping to a maximum number of abandoned calls, and transmitting caller ID information. The regulations also detail the FCC's unsolicited facsimile advertising requirements, which were modified by the Junk Fax Prevention Act of 2005 and became effective on July 9, 2005. The FCC regulations were generally effective as of October 1, 2003.

The FCC regulations apply to banks, insurance companies, credit unions, and savings associations. The FTC's telemarketing regulations parallel the FCC regulations[28] and apply to all other business entities, including third parties acting as agent or on behalf of a financial institution.

Definitions

Abandoned call: A telephone call that is not transferred to a live sales agent within two seconds of the recipient's completed greeting.

Automatic telephone dialing system and autodialer: Equipment that has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and the capability to dial such numbers.

[26] The FTC maintains the national Do-Not-Call registry adopted by the FCC.
[27] 47 USC 227. The FCC's final regulations were published in the *Federal Register* on July 25, 2003 (68 FR 44144). The regulations were modified several times. *See* 68 FR 59131 (October 14, 2003); 69 FR 60311 (October 8, 2004); 70 FR 19337 (April 13, 2005); 71 FR 25977 (May 3, 2006); 71 FR 56893 (September 28, 2006); 71 FR 75122 (December 14, 2006).
[28] The FTC's final regulations were published in the *Federal Register* on January 29, 2003 (68 FR 4580).

Established business relationship for the purpose of telephone solicitations: A prior or existing relationship between a person or entity and a residential subscriber based on the subscriber's purchase or transaction with the entity within the 18 months immediately preceding the date of the telephone call or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, and neither party has previously terminated the relationship. The established business relationship does not extend to an affiliate unless the subscriber would reasonably expect them to be included given the nature and type of goods or services offered by the affiliate and the identity of the affiliates.

Established business relationship for purposes of sending of facsimile (or fax) advertisements: A prior or existing relationship formed by a voluntary two-way communication between a person or entity and a business or residential subscriber, on the basis of an inquiry, application, purchase, or transaction by the business or residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.

Facsimile broadcaster: A person or entity that transmits messages to telephone fax machines on behalf of another person or entity for a fee.

Residential subscriber: An individual who has contracted with a common carrier to provide telephone exchange service at a personal residence.

Seller: The person or entity on whose behalf a telephone call or message is initiated for the purpose of encouraging purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

Telemarketer: The person or entity that initiates a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

Telemarketing: The initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

Telephone fax machine: Equipment that has the capacity to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.

Telephone solicitation: The initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person. Telephone solicitation *does not* include a call or message to any person with that person's permission, to any person with whom the caller has an established business relationship, or on behalf of a tax-exempt nonprofit organization.

Unsolicited advertisement: Any material that advertises the commercial availability or quality of any property, goods, or services that is transmitted to any person without that person's prior express invitation or permission.

General Requirements of TCPA

The FCC regulations that implement the Telephone Consumer Protection Act of 1991 provide consumers with options to avoid unwanted telephone solicitations. The regulations address the following:

- The FCC's adoption of a national "Do-Not-Call" registry expands coverage to entities not regulated by the FTC.[29]
- Under the FCC's rules, no seller, or entity telemarketing on behalf of the seller, can initiate a telephone solicitation to a residential telephone subscriber who has registered his or her telephone number on the national Do-Not-Call registry. A safe harbor exists for an inadvertent violation of this requirement if the telemarketer can demonstrate that the violation was an error and that its routine practices include:
  - Written procedures,
  - Training of personnel,
  - Maintenance of a list of telephone numbers excluded from contact,
  - Use of a version of the national Do-Not-Call registry obtained no more than 31 days prior to the date any call is made (with records to document compliance), and
  - A process to ensure that it does not sell, rent, lease, purchase, or use the Do-Not-Call database in any manner except in compliance with regulations (47 CFR 64.1200(c)(2)(i)).

[29] By doing so, the FCC asserts its considerably broader jurisdiction over telemarketing than the FTC. Specifically, telemarketing by in-house employees of banks, savings associations, and credit unions, as well as other areas of commerce, are covered by the FCC's authority.

- Companies must maintain company-specific do-not-call lists reflecting the names of customers with established business relationships who have requested to be excluded from telemarketing. Such requests must be honored for five years (47 CFR 64.1200(d)(6)).
- Telemarketing calls can be made only between the hours of 8 a.m. and 9 p.m. (local time at the called party's location) (47 CFR 64.1200(c)(1)).
- All telemarketers must comply with limits on "abandoned calls" and employ other consumer-friendly practices when using automated telephone-dialing equipment. A telemarketer must abandon no more than three percent of calls answered by a person and must deliver a prerecorded identification message when abandoning a call. Two or more telephone lines of a multi-line business are not to be called simultaneously. Telemarketers must not disconnect an unanswered telemarketing call prior to at least 15 seconds or four rings. All businesses that use autodialers to sell services must maintain records documenting compliance with call abandonment rules (47 CFR 64.1200(a)(4),(5),(6)).
- All prerecorded messages, whether delivered by automated dialing equipment or not, must identify the name of the entity responsible for initiating the call, along with the telephone number of that entity (this cannot be a 900 number) and must provide a valid number for the subscriber to call that can be used during normal business hours to request not to be called again (47 CFR 64.1200(b)).
- All persons or entities that initiate calls for telemarketing purposes to a residential telephone subscriber must have procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity. The procedures must meet the following minimum standards:
  - *Written policy*. The institution must have a written policy, available on demand, for maintaining a do-not-call list.
  - *Training of personnel*. The institution must train personnel engaged in telemarketing about the existence and use of the do-not-call list.
  - *Recording and honoring of do-not-call requests*. The institution must start honoring do-not-call requests within 30 days after they are made. Disclosures of such requests may not be made to any other entity (except an affiliated entity) without the express permission of the residential telephone subscriber.
  - *Identification of sellers and telemarketers*. The person or entity making the call must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which

the person or entity may be contacted. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.
  - *Affiliated persons or entities*. In the absence of a specific request by the subscriber to the contrary, a residential subscriber's do-not-call request shall apply to the particular business entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.
  - *Maintenance of do-not-call lists*. A person or entity making calls for telemarketing purposes must maintain a record of a consumer's request not to receive further telemarketing calls. A do-not-call request must be honored for five years from the time the request is made (47 CFR 64.1200(d)(1)-(6)).
- All telemarketers must transmit caller ID information, when available, and must refrain from blocking any such transmission(s) to the consumer (47 CFR 64.1601(e)).[30]
- Unsolicited fax transmissions must not be sent unless the sender has *both* (a) an established business relationship with the recipient, and (b) the number of the facsimile machine, received through the recipient's voluntary communication of that number or through an Internet site to which the recipient voluntarily made its facsimile number available for public dissemination (47 CFR 64.1200(a)(3)).
- Such fax transmissions must contain a notice informing the recipient of the right to opt out of receiving future unsolicited fax advertisements and the means by which the recipient may do so (47 CFR 64.1200(a)(3)(iii)).
- The sender must honor requests to opt out that meet the criteria detailed in the regulation (47 CFR 64.1200(a)(3)(v), (vi)).
- Tax-exempt nonprofit organizations are not required to comply with the do-not-call provisions of the TCPA (47 CFR 64.1200(d)(7)).

[30] The rule sets forth the technical information that must be made available (subject to differing technologies). The FCC stated that caller ID information should also increase accountability and provide an important resource for the FCC and FTC in pursuing enforcement actions against TCPA violators (68 FR 44166, July 25, 2003).

References

Laws

47 USC 227, Telephone Consumer Protection Act and Junk Fax Prevention Act

Replaced by Comptroller's Handbook – Military Lending Act

RESCINDED

Background and Summary

The Department of Defense (DOD) regulations implementing the consumer protection provisions of the John Warner National Defense Authorization Act for Fiscal Year 2007[31] contain limitations and requirements for certain types of consumer credit extended to active duty service members and their spouses, children, and other dependents (covered borrowers). The regulation covers "payday loans," "vehicle title loans," and "tax refund anticipation loans," as defined by DOD (covered transactions), and applies to all persons who meet the definition of creditor in Regulation Z[32] who are engaged in the business of extending such credit and their assignees.

For covered transactions, the DOD rule limits the amount that a creditor can charge, including interest, fees, and charges imposed for credit insurance, debt cancellation and suspension, and other credit-related ancillary products sold in connection with the transaction. The total charges must be expressed as a total dollar amount and as an annualized rate referred to as the "military annual percentage rate" or "MAPR," which may not exceed 36 percent. The MAPR includes charges that are not included in the finance charge or annual percentage rate (APR) disclosed under the Truth in Lending Act (TILA), and must be separately disclosed for covered transactions. Among other provisions, the DOD rule:

- Provides a safe harbor and model form for creditors to use in connection with identifying covered borrowers,
- Requires creditors to provide written and oral disclosures in addition to those required by TILA,

[31] Public Law 109–364, 670, 120 Stat. 2266 (2006) (codified at 10 USC 987).

[32] 15 USC 1602(f). Among other things, Regulation Z, 12 CFR 226, which implements the Truth in Lending Act (TILA), states that a creditor is one who "regularly" extends credit to consumers that is subject to a finance charge or is payable by written agreement in more than four installments and to whom the obligation is initially payable. A creditor making loans not secured by dwellings extends credit regularly if it makes more than 25 loans a year 12 CFR 226.2(a)(17).

- Prohibits certain loan terms, such as prepayment penalties, mandatory arbitration clauses, and unreasonable legal notice requirements, and
- Restricts loan rollovers and refinancings.

Creditors that knowingly violate the rule may be subject to criminal penalties, and a credit agreement that is prohibited under the rule is void from inception. The final rule took effect on October 1, 2007, and applies to covered transactions that are consummated on or after that date.

Definitions

Consumer credit: Consumer credit means closed-end credit offered or extended to a covered borrower primarily for personal, family, or household purposes for *payday loans, motor vehicle title loans,* and *tax refund anticipation loans,* as defined below.

- *Payday loans*—Closed-end credit:
  - With a term of 91 days or fewer;
  - In which the amount financed does not exceed $2,000; and
  - In which the covered borrower receives funds from and incurs interest and/or is charged a fee by a creditor, and contemporaneously with the receipt of funds
    - Provides a check or other payment instrument to the creditor, who agrees not to deposit or present it for more than one day; or
    - Authorizes the creditor to initiate a debit to the borrower's deposit account by electronic fund transfer or a remotely created check after one or more days.
- *Motor vehicle title loans*—Closed-end credit:
  - With a term of 181 days or fewer, and
  - Is secured by the title to a motor vehicle that has been registered for use on public roads and is owned by the covered borrower (other than a purchase-money transaction).
- *Tax refund anticipation loans*—Closed-end credit in which the covered borrower expressly:
  - Grants the creditor the right to receive all or part of the covered borrower's income tax refund, or
  - Agrees to repay the loan with the proceeds of the covered borrower's refund.

Covered borrower: A person with the following status at the time he or she becomes obligated on a covered transaction:

- A regular or reserve member of the Air Force, Army, Navy, Marine Corps, or Coast Guard, serving on active duty or under a call or order that does not specify a period of 30 days or fewer, or such a member serving on Active Guard and Reserve Duty as that term is defined in 10 USC 101(d)(6); or
- The member's spouse; child, as defined in 38 USC 101(4); or a person for whom the member provided more than one-half of the person's support for 180 days immediately preceding an extension of a covered transaction.

Creditor: Any person who meets the definition of creditor under Regulation Z[33] who is engaged in the business of extending consumer credit covered by the rule.

> ***Note:*** Instead of including assignees in the definition of "creditor," the rule specifically refers to assignees in each section of the rule that would apply to an assignee.

Military annual percentage rate (MAPR): The cost of the consumer credit transaction expressed as an annual rate. The MAPR for covered transactions may not exceed 36 percent, unless a lower limit applies.[34]

- *Calculation of the MAPR*—The MAPR shall be calculated based on the costs in this definition but, in all other respects, it shall be calculated and disclosed following the rules used for calculating the APR for closed-end credit under Regulation Z (Truth in Lending, 12 CFR 226).
- *Cost Elements*—The MAPR *includes* the following cost elements associated with the extension of a covered transaction if they are financed, deducted from the proceeds of the covered transaction, or otherwise required to be paid as a condition of the credit:
  - Interest, fees, credit service charges, and credit renewal charges;

[33] Id.

[34] DOD rules also prohibit an institution from imposing an MAPR except as authorized by applicable state or federal law. Depending on the type of institution, different state or federal laws may govern the maximum rates and fees that the institution may impose for consumer credit transactions covered by the DOD rules, but in no instances may such rates and fees exceed the 36 percent MAPR cap contained in the DOD rules.

- Credit insurance premiums, including charges for single premium credit insurance, or fees for debt cancellation or debt suspension agreements; and
- Fees for credit-related ancillary products sold in connection with and either at or before consummation of the credit transaction.

The MAPR does not include:

- Fees or charges imposed for actual unanticipated late payments, default, delinquency, or similar occurrence;
- Taxes or fees prescribed by law that actually are or will be paid to public officials for determining the existence of, or for perfecting, releasing, or satisfying a security interest;
- Any tax levied on security instruments or documents evidencing indebtedness if the payment of such taxes is a requirement for recording the instrument securing the evidence of indebtedness; and
- Tax return preparation fees associated with a tax refund anticipation loan, whether or not the fees are deducted from the loan proceeds.

Note: DOD's intent is to ensure that the credit products covered by the regulation cannot evade the 36 percent limit by combining low-interest rates with high fees associated with origination, membership, administration, or other costs that may not be captured in the TILA definition of APR. Because the MAPR includes charges that are not included in the finance charge or APR disclosed under TILA, the MAPR is required to be disclosed separately and is in addition to the APR disclosures required under TILA for covered transactions.

References

Regulations

32 CFR 232, Limitations on terms of consumer credit extended to service members and dependents

12 CFR 226, Truth in lending

12 CFR 205, Electronic fund transfers

OCC Issuances

Bulletin 2007-40, "Limitations of terms of consumer credit extended to military servicemembers and dependents," dated 10/17/08

Expanded Procedures– Interest on Loans

Objective: Determine the bank's level of compliance with laws in connection with preemption of state usury laws, 12 USC 85 and 12 CFR 590.

1. Determine (from the bank if necessary) the applicable state usury rate for the various types of loans offered.
2. Review loan reports or a sample of loans originated since the preceding examination to determine that the rates charged comply with 12 USC 85, or where applicable, are consistent with 12 CFR 590.
3. Determine whether the bank has extended loans to finance residential, manufactured homes (e.g., mobile home loans) subject to 12 CFR 590.4.
4. If 12 CFR 590.4 applies, review the contracts, disclosures, and payment histories for a sample of residential, manufactured home loans to determine that:
   - If the entire debt is prepaid, the bank refunds the unearned portion of the precomputed finance charge[35] and the refund is calculated on the actuarial method or one at least as favorable as that method (12 CFR 590.4(c)).
   - No prepayment penalty is imposed, and the right to prepay is disclosed in the loan document in a typeface larger than that used in the body of the loan document (12 CFR 590.4(d)).
   - Rules governing late charges are followed (12 CFR 590.4(f)).
   - Rules governing deferral fees are followed (12 CFR 590.4(g)).
   - The notice before repossession, foreclosure, or acceleration is delivered, in the manner prescribed in 12 CFR 590.4(h)(1), to the debtor 30 days before action is taken (12 CFR 590.4(h)(1)).
   - The notice of default conforms with the form set forth in the regulation (12 CFR 590.4(h)(2)).

[35] The unearned portion of the precomputed finance charge may be determined under one of two methods at the option of the creditor, which methods are described in 12 CFR 590.4(c)(1) and (2).

Expanded Procedures–
Branch Closings

Objective: Determine the bank's level of compliance with the branch closing requirements of 12 USC 1831r-1.

1. Determine whether a branch closings examination is applicable:

   Does the insured depository bank have any branches, as defined in the Joint Policy Statement on Branch Closing (policy statement), that would subject it to the policy statement and section 42 of the FDI Act (12 USC 1831r-1)?

   or

   Has the insured depository bank closed any of its branches since December 19, 1991 (or the last examination if later) that would have subjected it to the notification requirements of the policy statement and section 42 of the FDI Act?

If the answer to both questions is "no," do not proceed with a branch closing examination. If the answer to either question is "yes," complete the Branch Closing Examination Worksheet.

Branch Closing Examination Worksheet

This worksheet can be used for reviewing audit work papers, evaluating bank policies, performing expanded procedures, and training as appropriate. Complete only those sections that specifically relate to the issue being reviewed, evaluated, or tested, and retain the completed sections in the work papers.

When reviewing audit or evaluating bank policies, a "no" answer indicates a possible exception/deficiency and should be explained in the work papers. When performing expanded procedures, a "no" answer indicates a violation and should be explained in the work papers. If a line item is not applicable within the area you are reviewing, indicate "NA."

Branch Closing Examination Worksheet

Underline the applicable use:

Audit Bank Policies Expanded Procedures

	Yes	**No**	**NA**
1. Has the bank provided written notice of any branch closing to the OCC at least 90 days in advance of such closing? (12 USC 1831r-1(a)(1))			
2. Did the notice to the OCC contain: a. The identification of the branch to be closed (policy statement)? b. The proposed closing date (policy statement)? c. The specific reasons for closing the branch (12 USC 1831r-1(a)(2)(A))? d. Statistical or other information in support of the reason(s) and that is consistent with the bank's written policy for closing the branch (12 USC 1831r-1(a)(2)(B); policy statement)?			
3. Did the bank provide written notice, in a regular account statement or separate mailing, to customers of the branch[36] to be closed at least 90 days before such closing (12 USC 1831r-1(b)(2)(B))?			
4. Did the mailed customer notice contain: a. The location of the branch to be closed (policy statement)? b. The proposed closing date (policy statement)? c. A listing of alternative banking locations or a telephone number customers may call to determine such alternative locations (policy statement)? d. If the bank is an interstate bank and the notice involved a branch in a low- or moderate-income area, the address of the OCC, a statement that comments on the proposed closing may be mailed there, and a statement that the OCC does not have the authority to approve or prevent the branch closing (12 USC 1831r-1(d); policy statement)?			

[36] See the policy statement for definition of "customer of a branch."

	Yes	No	NA
5. Did the bank conspicuously display a notice to customers on the premises of the branch to be closed at least 30 days before such closing (12 USC 1831r-1(b)(2)(A))?			
6. Did the notice posted on the bank premises contain: (policy statement) a. The proposed closing date? b. A listing of alternative banking locations or a phone number customers may call to determine alternative locations?			
7. Has the bank adopted a written branch closing policy (12 USC 1831r-1(c); policy statement)?			
8. Does the written branch closing policy include: (policy statement) a. Factors for determining which branch to close? b. Factors for determining which customers to notify? c. Procedures for providing the required notices?			
9. Does the bank have a reasonable method of identifying and allocating customers (policy statement)?			

Expanded Procedures–
Fair Debt Collection Practices Act

Objective: Determine the bank's level of compliance with the Fair Debt Collection Practices Act (FDCPA).

1. If the bank acts as a debt collector, as defined in 15 USC 1692, select a sample of collection account files.
2. Assess the bank's level of compliance with the Fair Debt Collection Practices Act by using the Fair Debt Collection Practices Worksheet.

Fair Debt Collection Practices Worksheet

This worksheet can be used for reviewing audit work papers, evaluating bank policies, performing expanded procedures, and training as appropriate. Complete only those sections that specifically relate to the issue being reviewed, evaluated, or tested, and retain the completed sections in the work papers.

When reviewing audit or evaluating bank policies, a "no" answer indicates a possible exception/deficiency and should be explained in the work papers. When performing expanded procedures, a "no" answer indicates a violation and should be explained in the work papers. If a line item is not applicable within the area you are reviewing, indicate "NA."

Fair Debt Collection Practices Worksheet

Underline the applicable use:

Audit   Bank Policies   Expanded Procedures

Name of Collection Account:									
Account #:									
	Yes	**No**	**NA**	**Yes**	**No**	**NA**	**Yes**	**No**	**NA**
1. The bank communicates with third parties or the consumer in a permissible manner (15 USC 1692b and c).									
2. The written validation notice complies with applicable requirements and is furnished in a timely manner (15 USC 1692g).									
3. Collection practices are conducted in a nonabusive and fair manner (15 USC 1692d, e, f, and j).									
4. The amounts collected are authorized expressly by the agreement creating the debt (15 USC 1692f(1)).									

Name of Collection Account:									
Account #:									
	Yes	No	NA	Yes	No	NA	Yes	No	NA
5. All payments were applied as instructed and, when no instruction was given, they were applied only to undisputed debts (15 USC 1692h).									
6. If the bank filed suit to collect the debt, it was filed in an authorized forum (15 USC 1692i).									

Expanded Procedures–
Credit Practices Rule

Objective: Determine the bank's level of compliance with the Credit Practices Rule.

1. Obtain a sample of consumer loans that excludes loans for the purchase of real property. The sample should include loans originated by the bank and those acquired by the bank that were originated by other creditors. Also, if applicable, include transactions conducted electronically (e.g., Internet transactions) in the sample.
2. Assess the bank's level of compliance using the Credit Practices Rule Worksheet.

Credit Practices Rule Worksheet

This worksheet can be used for reviewing audit work papers, evaluating bank policies, performing expanded procedures, and training as appropriate. Complete only those sections that specifically relate to the issue being reviewed, evaluated, or tested, and retain the completed sections in the work papers.

When reviewing audit or evaluating bank policies, a "no" answer indicates a possible exception/deficiency and should be explained in the work papers. When performing expanded procedures, a "no" answer indicates a violation and should be explained in the work papers. If a line item is not applicable within the area you are reviewing, indicate "NA."

Credit Practices Rule Worksheet

Underline the applicable use:

Audit Bank Policies Expanded Procedures

Name of Borrower:									
Loan #:									
	Yes	**No**	**NA**	**Yes**	**No**	**NA**	**Yes**	**No**	**NA**
1. Has the bank refrained from entering any consumer credit obligations that contain any of the following prohibited provisions (as defined in 12 CFR 227.13): 1) a confession of judgment; 2) a waiver of statutory property exemption (except as permitted); 3) an assignment of wages or other earnings (except as permitted); or 4) a nonpossessory security interest in household goods (as defined in 12 CFR 227.12(d) other than a purchase money security interest) (12 CFR 227.13(a),(b),(c),(d))?									

Name of Borrower:									
Loan #:									
	Yes	**No**	**NA**	**Yes**	**No**	**NA**	**Yes**	**No**	**NA**
2. If the bank purchases a consumer credit obligation originated by other creditors, does it refrain from enforcing any of the following prohibited provisions (as defined in 12 CFR 227.13): 1) a confession of judgment; 2) a waiver of statutory property exemption (except as permitted); 3) assignment of wages or other earnings, except as permitted); or 4) a nonpossessory security interest in household goods (as defined in 227.12(d)) other than a purchase money security interest (12 CFR 227.13(a),(b),(c),(d))?									
3. Has the bank refrained from misrepresenting the nature or extent of cosigner liability to any person (12 CFR 227.14(a)(1))?									
4. Has the bank obligated cosigners only after informing them of the nature of their liability by making the disclosure as required by 227.14(b) (below) or otherwise (12 CFR 227.14(a)(2))?									
5. Has the bank provided to each cosigner, before the cosigner becomes contractually obligated (for open-end credit, this means before the cosigner is contractually obligated for fees or transactions on the account), the required notice in 12 CFR 227.14(b) or one that is substantially similar (whether separate or with the consumer credit obligation documents) (12 CFR 227.14(b))?									

Name of Borrower:									
Loan #:									
	Yes	**No**	**NA**	**Yes**	**No**	**NA**	**Yes**	**No**	**NA**
6. Does the bank refrain from collecting or levying a delinquency charge on a timely payment, when the charge is only caused by the consumer's failure to pay late fees or delinquency charges assessed on earlier installments, and the payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period (12 CFR 227.15))?									

Expanded Procedures–
Consumer Leasing Act

Objective: Determine the bank's level of compliance with the Consumer Leasing Act. Use the Consumer Leasing Act Worksheets to determine compliance.

1. Review lease disclosure forms and a sample of lessee files for each type of lease to determine that disclosures are made before consummation of the lease agreement, contain accurate information, and disclose all required information. If applicable, include in the samples transactions conducted electronically (e.g., Internet transactions).
2. Check renegotiated or extended leases of single and multiple items to determine whether proper and applicable redisclosures are made 12 CFR 213.5(a) and (b)).

3. Determine whether records and evidence of compliance are maintained for two years after the date disclosures were required to be made or action was required to be taken (12 CFR 213.8).

4. Review advertising copy from the last 12 months.

5. Draw conclusions on the bank's compliance with the Consumer Leasing Act.

Consumer Leasing Act Worksheets

This worksheet can be used for reviewing audit work papers, evaluating bank policies, performing expanded procedures, and training as appropriate. Complete only those sections that specifically relate to the issue being reviewed, evaluated, or tested, and retain the completed sections in the work papers.

When reviewing audit or evaluating bank policies, a "no" answer indicates a possible exception/deficiency and should be explained in the work papers. When performing expanded procedures, a "no" answer indicates a violation and should be explained in the work papers. If a line item is not applicable within the area you are reviewing, indicate "NA."

Consumer Leasing Act Worksheets

Underline the applicable use:

Audit **Bank Policies** **Expanded Procedures**

Consumer Leases

Type of Lease:									
Name of Lessee:									
	Yes	**No**	**NA**	**Yes**	**No**	**NA**	**Yes**	**No**	**NA**
General Information:									
1. Disclosures are clear and conspicuous and provided in writing in a form the consumer may keep (12 CFR 213.3(a)).									
2. Electronic disclosures are provided in compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (12 CFR 213.3(a)).									
3. For an advertisement accessed by the consumer in electronic form, the disclosures, which are required by 12 CFR 213.7, are provided to the consumer in electronic form in the advertisement (12 CFR 213.3(a)).									

Type of Lease:									
Name of Lessee:									
	Yes	**No**	**NA**	**Yes**	**No**	**NA**	**Yes**	**No**	**NA**
4. Disclosures are dated, identify the lessee and lessor, and made (i) in a separate statement that identifies the consumer lease transaction, (ii) in the contract or (iii) in another document evidencing the lease [12 CFR 213.3(a)(1)).									
5. Information required by sections 213.4(b) through (f), (g)(2), (h)(3), (i)(1), (j), and (m)(1) are segregated and in a form substantially similar to the applicable Appendix A model (12 CFR 213.3(a)(2)).									
6. Disclosures are made prior to lease consummation (12 CFR 213.3(a)(3)).									
7. If the disclosures required by 12 CFR 213.4 are provided in a language other than English, they are made available in English if requested by the lessee (12 CFR 213.3(a)(4)).									
8. Additional information is provided in a manner that does not mislead or confuse the lessee and is not provided with any of the disclosures required to be segregated by 12 CFR 213.3(a)(2) (12 CFR 213.3(b)).									
9. Disclosures are provided to the lessee primarily liable on the lease if there is more than one lessee, and by at least one lessor when there is more than one lessor (12 CFR 213.3(c)).									
10. Estimates are clearly identified and reasonable (12 CFR 213.3(d)).									

Type of Lease:									
Name of Lessee:									
	Yes	**No**	**NA**	**Yes**	**No**	**NA**	**Yes**	**No**	**NA**
11. Lessees are given new disclosures when leases are renegotiated or extended, except as provided in 12 CFR 213.5(d) (12 CFR 213.5).									
12. Lease records (other than for advertising requirements) are retained for two years after the date the disclosures were required to be made or action was required to be taken (12 CFR 213.8).									
The following disclosures are in the lease, in the form specified in the applicable regulation section:									
1. Property description (12 CFR 213.4(a))									
2. Amount due at lease signing or delivery (12 CFR 213.4(b))									
3. Payment schedule and total of periodic payments (12 CFR 213.4(c))									
4. Other charges (12 CFR 213.4(d))									
5. Total of payments (12 CFR 213.4(e))									

Type of Lease:									
Name of Lessee:									
	Yes	**No**	**NA**	**Yes**	**No**	**NA**	**Yes**	**No**	**NA**
6. Payment calculation (12 CFR 213.4(f)) a. Gross capitalized cost b. Capitalized cost reduction c. Adjusted capitalized cost d. Residual value e. Depreciation and any amortized amounts f. Rent charge g. Total of base periodic payments h. Lease payments i. Base periodic payment j. Itemization of other charges k. Total periodic payment									
7. Early termination (12 CFR 213.4(g)) a. Conditions for terminating the lease prior to the end of the lease term b. Amount or description of reasonable method for determining any penalty or charge c. Early-termination notice									
8. Maintenance responsibilities (12 CFR 213.4(h)) a. Statement of servicing responsibilities b. Statement of lessor's wear and use standards, which are reasonable c. Wear/use standards notice									

Type of Lease:									
Name of Lessee:									
	Yes	**No**	**NA**	**Yes**	**No**	**NA**	**Yes**	**No**	**NA**
9. Statement of whether purchase option is available (12 CFR 213.4(i)) a. If available at end of lease term, statement of purchase price b. If available during lease term, statement of purchase price or the method to determine the price and when the option may be exercised by the lessee									
10. Statement referencing other nonsegregated disclosures (12 CFR 213.4(j))									
11. Liability between residual and realized values (12 CFR 213.4(k))									
12. Right of appraisal (12 CFR 213.4(l))									
13. Liability at end of lease term based on residual value (open-end leases) (12 CFR 213.4(m)): a. Rent and other charges b. Excess liability c. Mutually agreeable final adjustment									
14. Fees and taxes (12 CFR 213.4(n))									
15. Identification of insurance in connection with the lease (12 CFR 213.4(o)) a. If through the lessor, types and amounts of coverage and cost to lessee b. If through a third party, types and amounts of coverage required of lessee									

Type of Lease:									
Name of Lessee:									
	Yes	**No**	**NA**	**Yes**	**No**	**NA**	**Yes**	**No**	**NA**
16. Warranties or guarantees (12 CFR 213.4(p))									
17. Penalties and other charges for delinquency (12 CFR 213.4(q))									
18. Security interest (12 CFR 213.4(r))									
19. Limitations on rate information (12 CFR 213.4(s))									

Consumer Lease Advertising Worksheet

Name of Advertisement:									
Account #:									
	Yes	No	NA	Yes	No	NA	Yes	No	NA
1. Advertisements state the availability of specific lease of property at specific amounts or terms only if the lessor usually and customarily leases or will lease the property at those amounts or terms (12 CFR 213.7(a)).									
2. Advertisements are clear and conspicuous (12 CFR 213.7(b)): a. Affirmative or negative references to a charge that is part of the disclosure required under 12 CFR 213.7(d)(2)(ii) are less prominent than the disclosure (except for the statement of a periodic payment). b. Advertisements of percentage rates are less prominent than any disclosure required by 12 CFR 213 (except the notice required to be provided with the rate by 12 CFR 213.4(s)).									
3. Catalogs, multiple page advertisements, and electronic advertisements comply with page reference requirements (12 CFR 213.7(c)).									

Name of Advertisement:									
Account #:									
	Yes	**No**	**NA**	**Yes**	**No**	**NA**	**Yes**	**No**	**NA**
4. When triggering terms are used, the following disclosures are made (12 CFR 213.7(d)): a. The advertised transaction is a lease. b. Total amount due prior to or at consummation or by delivery (if delivery occurs after consummation). c. Number, amounts, and due dates or periods of scheduled payments under lease. d. Whether a security deposit is required. e. An extra charge may be assessed at end of lease term (only applies to open-end leases).									
5. Merchandise tags that state any of the trigger terms, but do not contain the additional information required by 12 CFR 213.7(d)(2), refer to a sign or display prominently posted in the lessor's place of business that contains a table or schedule of the required disclosures (12 CFR 213.7(e)).									

Name of Advertisement:									
Account #:									
	Yes	**No**	**NA**	**Yes**	**No**	**NA**	**Yes**	**No**	**NA**
6. Television and radio advertisements that do not contain all of the additional information required by 12 CFR.7(d)(2) disclose the terms in 12 CFR 213.7(d)(2)(i)–(iii) and direct consumers to a toll-free number or written advertisement for the additional information when triggering terms are used (12 CFR 213.7(f)): a. If consumers are directed to a toll-free number, the toll free number is listed along with a comment that the consumer may use the number to obtain the information. b. If consumers are directed to written advertisements, written advertisements in general circulation in the community the station serves include the name and date of publication and are published at least three days before and ending at least 10 days after broadcast. c. Toll-free telephone number has been available for no fewer than 10 days beginning on the date of broadcast. d. Lessor provides the information required by paragraph (d)(2) over the toll-free number, orally or in writing, upon request.									

Expanded Procedures– Homeowners Protection Act

Objective: Determine the bank's level of compliance with the Homeowners Protection Act of 1998 (HPA), as amended.

1. Obtain a sample of recent residential mortgage transactions, including those serviced by the bank and conducted electronically, if applicable. Complete the Homeowners Protection Act Worksheet. Also, obtain a copy of the bank's disclosure and notification forms and policies and procedures to complete the worksheet. As applicable, the forms should include:
   - Initial disclosures for fixed-rate mortgages, adjustable-rate mortgages, high-risk loans, and lender-paid mortgage insurance.
   - Annual notices for fixed and adjustable-rate mortgages, high-risk loans, and existing residential mortgages.
   - Notices of cancellation, termination, grounds for not canceling private mortgage insurance (PMI), grounds for not terminating PMI, cancellation date for adjustable-rate mortgages, and termination date for lender-paid mortgage insurance.

2. Using the above sample of recent transactions and bank policies and procedures, determine whether borrowers were not charged for any required disclosures or notifications (12 USC 4906).
3. Obtain and review a sample of recent written requests from borrowers to cancel their PMI on non-high-risk residential mortgage transactions. Verify that the insurance was canceled on either: (a) the date on which the principal balance of the loan was first scheduled to reach 80 percent of the original value of the property based on the initial amortization schedule (in the case of a fixed-rate loan) or the amortization schedule then in effect (in the case of an adjustable-rate loan); or (b) the date on which the principal balance of the loan actually reached 80 percent of the original value of the property based on actual payments, in accordance with the applicable provisions in 12 USC 4902(a) of HPA (i.e., good payment history, current payments, and, if required by the lender, evidence that the value of the mortgaged property did not decline, and certification that the borrower's equity was unencumbered by a subordinate lien) (12 USC 4902(a)).
4. Obtain and review a sample of non-high-risk PMI residential mortgage transactions when the borrower did not request cancellation. Select

loans from the sample that have reached a 78 percent or lower loan-to-value (LTV) ratio based on the original value of the property and that are current. Verify that PMI was terminated, based on the initial amortization schedule (in the case of a fixed-rate loan) or the amortization schedule then in effect (in the case of an adjustable-rate loan) on the date that the principal balance of the loan was first scheduled to reach 78 percent of the original value of the mortgaged property (if the borrower was current) or on the first day of the first month after the date that the borrower became current (12 USC 4902(b)).

5. Obtain a sample of PMI-covered residential mortgage transactions (including high-risk loans, if any) that are at or beyond the midpoint of their amortization period. Determine whether PMI was terminated by the first day of the following month if the loan was current. If the loan was not current at the midpoint, determine that PMI was terminated by the first day of the month following the day the loan became current. If, at the time of the examination, a loan at the midpoint is not current, determine whether the financial institution is monitoring the loan and has systems in place to ensure that PMI is terminated when the borrower becomes current (12 USC 4902(c) and 12 USC 4902(g)(2)).
6. Obtain a sample of any lender-defined high-risk PMI residential mortgage transactions that have a 77 percent or lower LTV based on the original value of the property. Verify that PMI was canceled, based on the initial amortization schedule (in the case of a fixed-rate loan) or the amortization schedule then in effect (in the case of an adjustable-rate loan), on the date that the principal balance of the loan was scheduled to reach 77 percent of the original value of the mortgaged property (12 USC 4902(g)(1)(B)).
7. Obtain a sample of loans that have had PMI canceled or terminated (the samples obtained above can be used). For PMI loans canceled upon the borrowers' requests, determine that the financial institution did not require any PMI payment(s) beyond 30 days of the borrower satisfying the evidence and certification requirements to cancel PMI (12 USC 4902(e)(1)). For the PMI loans that received automatic termination or final termination, determine that the financial institution did not require any PMI payment(s) beyond 30 days of termination (12 USC 4902(e)(2) and 12 USC 4902(e)(3)).
8. Using the samples in procedures 5, 6, and 7, determine if the financial institution returned unearned premiums, if any, to the borrower within 45 days after cancellation or termination (12 USC 4902(f)(1)).

Homeowners Protection Act Worksheet

This worksheet can be used for reviewing audit work papers, evaluating bank policies, performing expanded procedures, and training as appropriate. Complete only those sections that specifically relate to the issue being reviewed, evaluated, or tested, and retain the completed sections in the work papers.

When reviewing audit or evaluating bank policies, a "no" answer indicates a possible exception/deficiency and should be explained in the work papers. When performing expanded procedures, a "no" answer indicates a violation and should be explained in the work papers. If a line item is not applicable within the area you are reviewing, indicate "NA."

Homeowners Protection Act Worksheet

Underline the applicable use:

Audit   Bank Policies   Expanded Procedures

	Yes	No	NA
1. Does the lender provide written initial disclosures at consummation for fixed-rate residential mortgage transactions that include: a. A written amortization schedule (12 USC 4903(a)(1)(A)(i))? b. A notice that the borrower may submit a written request to cancel PMI as of the date that, based on the initial amortization schedule, the principal balance is first scheduled to reach 80 percent of the original value of the mortgaged property, irrespective of the outstanding balance of the mortgage, or based on actual payments, when the principal balance reaches 80 percent of the original value of the mortgaged property (or any later date) and the borrower has a good payment history, is current on payments, and has satisfied the lender's requirements that the value of the mortgaged property has not declined and is unencumbered by subordinate liens (12 USC 4903(a)(1)(A)(ii)(I) and (II))? c. The specific date, based on the initial amortization schedule, the loan balance is scheduled to reach 80 percent of the original value of the mortgaged property (12 USC 4903(a)(1)(A)(ii)(I))? d. A notice that PMI will terminate automatically on the date that, based on the amortization schedule and irrespective of the outstanding balance of the mortgage, the principal balance is first scheduled to reach 78 percent of the original value of the mortgaged property if the loan is current or on the first day of the first month after the date that the loan becomes current (12 USC 4903(a)(1)(A)(ii)(III))? e. The specific date the loan balance is scheduled to reach 78 percent LTV (12 USC 4903(a)(1)(A)(ii)(III))?			

	Yes	No	NA
f. Notice that exemptions to the right to cancel and automatic termination exist for high-risk loans and whether such exemptions apply (12 USC 4903(a)(1)(A)(ii)(IV))?			
2. Does the lender provide written initial disclosures at consummation for adjustable-rate residential mortgage transactions that include a notice that: a. The borrower may submit a written request to cancel PMI as of the date that, based on the amortization schedule then in effect and irrespective of the outstanding balance of the mortgage, the principal balance is first scheduled to reach 80 percent of the original value of the mortgaged property or based on actual payments, when the principal balance actually reaches 80 percent of the original value of the mortgaged property (or any later date), and the borrower has a good payment history, the loan is current, and the borrower has satisfied the lender requirements that the value of the mortgaged property has not declined and is unencumbered by subordinate liens (12 USC 4903(a)(1)(B)(i))? b. The servicer will notify the borrower when the cancellation date is reached, i.e., when the loan balance represents 80 percent of the original value of the mortgaged property (12 USC 4903(a)(1)(B)(i))? c. PMI will terminate automatically when the loan balance is first scheduled to reach 78 percent of the original value of the mortgaged property irrespective of the outstanding balance of the mortgage if the loan is current, or on the first day of the first month after the date that the loan becomes current (12 USC 4903(a)(1)(B)(ii))? d. On the termination date the borrower will be notified of the termination or the fact that PMI will be terminated on the first day of the first month after the date that the loan becomes current (12 USC 4903(a)(1)(B)(ii))? e. Exemptions to the right to cancel and automatic termination exist for high-risk loans and whether such exemptions apply (12 USC 4903(a)(1)(B)(iii))?			
3. Does the lender have established standards for the type of evidence it requires borrowers to provide to demonstrate that the value of the mortgage property has not declined and are they provided when a request for cancellation occurs (12 USC 4902(a)(4)(A))?			
4. Does the lender provide written initial disclosures at consummation for high-risk residential mortgage transactions (as defined by the lender or Fannie Mae or Freddie Mac), that PMI will not be required beyond the midpoint of the amortization period of the loan, if the loan is current (12 USC 4903(a)(2))?			

	Yes	No	NA
5. If the financial institution acts as servicer for residential mortgage transactions, does it provide an annual written statement to the borrowers explaining their rights to cancel or terminate PMI and an address and telephone number to contact the servicer to determine whether they may cancel PMI (12 USC 4903(a)(3))? ***Note:*** This disclosure may be included on RESPA's annual escrow account disclosure or IRS interest payment disclosures.			
6. If the financial institution acts as servicer, does it provide an annual written statement to each borrower who entered into a residential mortgage prior to July 29, 1999, that includes: a. A statement that PMI may, under certain circumstances, be canceled by the borrower with the consent of the lender or in accordance with applicable state law (12 USC 4903(b)(1))? b. An address and telephone number that the borrower may use to contact the servicer to determine whether the borrower may cancel the PMI (12 USC 4903(b)(2))? ***Note:*** This disclosure may be included on the Real Estate Settlement Procedures Act's annual escrow account disclosure or Internal Revenue Service interest payment disclosure.			
7. If the financial institution acts as servicer for residential mortgage transactions, does it provide borrowers with written notices within 30 days after the date of cancellation or termination of PMI that the borrower no longer has PMI and that no further PMI payments or related fees are due (12 USC 4904(a))?			
8. If the financial institution services residential mortgage transactions, does it return all unearned PMI premiums to the borrower within 45 days of either termination upon the borrower's request or automatic termination under the HPA (12 USC 4902(f))?			
9. If the financial institution acts as servicer for residential mortgage transactions, does it provide borrowers with written notices of the grounds it relied on (including the results of any appraisal) to deny a borrower's request for PMI cancellation, no later than 30 days after the date the request is received, or the date on which the borrower satisfies any evidence and certification requirements established by the lender, whichever is later (12 USC 4904(b)(1) and 12 USC 4904(b)(2)(A))?			

	Yes	No	NA
10. If the financial institution acts as servicer for residential mortgage transactions, does it provide borrowers with written notices of the grounds it relied on (including the results of any appraisal) for refusing to terminate automatically PMI no later than 30 days after the scheduled termination date (12 USC 4904(b)(2)(B))? ***Note:*** The scheduled termination date is reached when, based on the initial amortization schedule (in the case of a fixed-rate loan) or the amortization schedule then in effect (in the case of an adjustable-rate loan), the principal balance of the loan is first scheduled to reach 78 percent of the original value of the mortgaged property, if the borrower is current on that date or the first day of the first month after the date that the borrower becomes current.			
11. If the financial institution acts as a servicer for adjustable-rate residential mortgage transactions, does the financial institution notify borrowers that the cancellation date has been reached (12 USC 4903(a)(1)(B)(i))?			
12. If the financial institution acts as a servicer for adjustable-rate residential mortgage transactions, does the financial institution notify the borrowers on the termination date that PMI has been terminated or that it will be terminated on the first day of the first month after the date that the loan becomes current (12 USC 4903(a)(1)(B)(ii))?			
13. If the financial institution requires "lender paid mortgage insurance" (LPMI) for residential mortgage transactions, does it provide a written notice to a prospective borrower on or before the loan commitment date that includes: a. A statement that LPMI differs from borrower-paid mortgage insurance (BPMI) in that the borrower may not cancel LPMI, while BPMI is subject to cancellation and automatic termination under the HPA (12 USC 4905(c)(1)(A))? b. A statement that LPMI usually results in a mortgage with a higher interest rate than BPMI (12 USC 4905(c)(1)(B)(i))? c. A statement that LPMI terminates only when the transaction is refinanced, paid off, or otherwise terminated (12 USC 4905(c)(1)(B)(ii))? d. A statement that LPMI and BPMI both have benefits and disadvantages and a generic analysis reflecting the differing costs and benefits of each over a 10-year period, assuming prevailing interest and property appreciation rates (12 USC 4905(c)(1)(C))? e. A statement that LPMI may be tax-deductible for federal income taxes if the borrower itemizes expenses for that purpose (12 USC 4905(c)(1)(D))?			

	Yes	No	NA
14. If the lender requires LPMI for residential mortgage transactions, and the financial institution acts as servicer, does it notify the borrower in writing within 30 days after the termination date that would have applied if it were a BPMI transaction that the borrower may wish to review financing options that could eliminate the requirement for PMI (12 USC 4905(c)(2))?			
15. Does the financial institution prohibit borrower-paid fees for the disclosures and notifications required under the HPA (12 USC 4906)?			

Expanded Procedures– Right to Financial Privacy Act

Objective: Determine the bank's level of compliance with the Right to Financial Privacy Act.

1. If requests for customers' financial records have been received, obtain a sample of them.
2. Assess the bank's level of compliance with the Right to Financial Privacy Act by using the Right to Financial Privacy Act Worksheet.

Right to Financial Privacy Act Worksheet

This worksheet can be used for reviewing audit work papers, evaluating bank policies, performing expanded procedures, and training, as appropriate. Only complete those sections that specifically relate to the issue being reviewed, evaluated, or tested, and retain the completed sections in the work papers.

When reviewing audit or evaluating bank policies, a "no" answer indicates a possible exception or deficiency and should be explained in the work papers. When performing expanded procedures, a "no" answer indicates a violation and should be explained in the work papers. If a line item is not applicable within the area you are reviewing, indicate "NA."

Right to Financial Privacy Act Worksheet

Underline the applicable use:

Audit   Bank Policies   Expanded Procedures

Name of Customer:									
	Yes	**No**	**NA**	**Yes**	**No**	**NA**	**Yes**	**No**	**NA**
1. The bank provided customer's financial records to government authorities only after receiving proper written certification (12 USC 3403(b)).									
2. The bank's policy prohibits requiring customer authorization for disclosures of financial records as a condition of doing business (12 USC 3404(b)).									

Name of Customer:									
	Yes	No	NA	Yes	No	NA	Yes	No	NA
3. Determine whether the bank (12 USC 3413(h)(6)): a. Maintains appropriate records, including a copy of the request and the identity of the government authority, when disclosing financial records to a government authority. b. Maintains appropriate records of all disclosures of the customer's records made to a government authority in connection with a government loan, guaranty, or insurance program maintained? c. Allows the customer to examine these records upon request, unless prohibited by law?									
4. If requested, the customer is provided a copy of the records unless prohibited by a court order (12 USC 3404(c)).									

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Expanded Procedures–
Disclosure and Reporting of CRA-Related Agreements

Objective: Determine the bank's level of compliance with the CRA Sunshine Regulation.

1. Determine whether the institution can appropriately identify any written contract, arrangement, or understanding covered under the CRA Sunshine Regulation.
2. For covered agreements that the institution has identified, determine whether the institution discloses covered agreements to the public and the relevant supervisory agency in a timely manner and files annual reports relating to covered agreements in a timely manner.

Expanded Procedures–
Prohibition Against Use of Interstate Branches Primarily for Deposit Production

Objective: Determine the bank's level of compliance with section 109 of the Interstate Act.

Assess the bank's level of compliance by using the Prohibition against Use of Interstate Branches Primarily for Deposit Production Worksheet.

Prohibition Against Use of Interstate Branches Primarily for Deposit Production Worksheet

This worksheet can be used for reviewing audit work papers, evaluating bank policies, performing expanded procedures, and training, as appropriate. Complete only those sections that specifically relate to the issue being reviewed, evaluated, or tested, and retain the completed sections in the work papers.

When reviewing audit or evaluating bank policies, a "no" answer indicates a possible exception/deficiency and should be explained in the work papers. When performing expanded procedures, a "no" answer indicates a violation and should be explained in the work papers. If a line item is not applicable within the area you are reviewing, indicate "NA."

Prohibition Against Use of Interstate Branches Primarily for Deposit Production Worksheet

Underline the applicable use:

Audit   Bank Policies   Expanded Procedures

Identify covered interstate branches subject to section 109 evaluation	Yes	No	NA
1. Does the bank have any covered interstate branches? Determine: a. If the bank has established or acquired any branches outside the bank's home state pursuant to the interstate branching authority granted by the Riegle–Neal Interstate Banking and Branching Efficiency Act of 1994, any amendment to the act, or any other provision of law, or could not have established or acquired any branches outside the bank's home state but for the establishment or acquisition above. b. Whether the bank, including a bank consisting of only a main office, or a branch of the bank is controlled by an out-of-state bank holding company as defined in section 2(o)(7) of the Bank Holding Company Act of 1956. ***Note:*** If the answer to both a and b is "no," further review is not necessary.			
2. Have any covered interstate branches been covered interstate branches for one year or more? If any of a bank's covered interstate branches within a particular state have been covered interstate branches for one year or more, then all of the bank's covered interstate branches within that state are subject to review. ***Note:*** If the answer is "no," further review is not necessary.			

Identify covered interstate branches subject to section 109 evaluation	Yes	No	NA
Assess compliance with the loan-to-deposit (LTD) ratio screen			
3. Does the bank have sufficient data to calculate a statewide LTD ratio(s) in each respective host state for covered interstate branches subject to section 109? ***Note:*** For each host state when the answer is "no," proceed to step 5.			
4. For each host state where a covered interstate branch exists, calculate the bank's statewide LTD ratio. Is the statewide LTD ratio equal to or greater than one-half of the host state LTD ratio? ***Note:*** For each host state when the answer is "yes," the bank complies with section 109, and no further review is necessary. For each host state when the answer is "no," proceed to step 5.			
Perform credit needs determination			
5. For each host state identified in steps 3 or 4, is the bank reasonably helping to meet the credit needs of the communities served by the bank in the host state? When making this determination, consider:			
• Whether the covered interstate branches were formerly part of a failed or failing depository institution.			
• Whether the covered interstate branches were acquired under circumstances where there was a low LTD ratio because of the nature of the acquired institution's business or loan portfolio.			
• Whether the covered interstate branches have a high concentration of commercial or credit card lending, trust services, or other specialized activities, including the extent to which the covered interstate branches accept deposits in the host state.			
• The most recent ratings (overall rating, multistate metropolitan statistical area rating, and state ratings) received by the bank under the CRA, if any.			
• Economic conditions, including the level of loan demand, within the communities served by the covered interstate branches.			
• The safe and sound operation and condition of the bank.			
• The OCC's CRA regulation, (subparts A through D of 12 CFR Part 25), and interpretations of this regulation. ***Note:*** If the bank passes the credit needs determination test, the bank complies with section 109, and no further review is necessary. If the bank fails the credit needs determination test but the LTD ratio screen has not yet been conducted, go to step 6. If the bank fails the credit needs determination test and has failed the LTD ratio screen, go to step 7.			

Identify covered interstate branches subject to section 109 evaluation	Yes	No	NA
Determine if sanctions are warranted			
6. Calculate the statewide LTD ratio for each host state where the bank failed the credit needs determination test. Is this ratio equal to or greater than one-half of the host state LTD ratio? ***Note:*** If the answer is "yes," the bank complies with section 109, and no further review is necessary. If the answer is "no," the bank is in noncompliance with section 109 (go to step 7).			
7. After consultation with the appropriate Deputy Comptroller and the Compliance Policy Division, are sanctions warranted?			

Expanded Procedures–
Children's Online Privacy Protection Act

Objective: Determine the bank's level of compliance with the COPPA.

1. For an institution that is subject to COPPA, determine whether it is participating in an FTC-approved, self-regulatory program (see 16 CFR 312.10). If it is, obtain a copy of the program and supporting documentation, such as reviews or audits, which demonstrate the institution's compliance with the program. If, under the self-regulatory program, an independent assessment found the institution in compliance with COPPA, or no assessment has yet been made, no further examination for COPPA is necessary. If, however, the independent assessment found the institution not in compliance with COPPA and the institution has not taken appropriate corrective action, complete the Children's Online Privacy Act Worksheet.
2. If the institution is subject to COPPA and is not participating in an FTC-approved, self-regulatory program, complete the Children's Online Privacy Act Worksheet.

Children's Online Privacy Protection Act Worksheet

This worksheet can be used for reviewing audit work papers, evaluating bank policies, performing expanded procedures, and training, as appropriate. Complete only those sections of the worksheet that specifically relate to the issue being reviewed, evaluated, or tested, and retain those completed sections in the work papers.

When reviewing audit or evaluating bank policies, a "no" answer indicates a possible exception/deficiency and should be explained in the work papers. When performing expanded procedures, a "no" answer indicates a violation and should be explained in the work papers. If a line item is not applicable within the area you are reviewing, indicate "NA."

Children's Online Privacy Protection Act Worksheet

Underline the applicable use:

Audit   Bank Policies   Expanded Procedures

Web Site Notice (16 CFR 312.4)	**Yes**	**No**	**NA**
1. A Web site link is posted to a notice of the financial institution's information practices with regard to children (16 CFR 312.4 (b)).			
2. The link to the notice is clearly labeled as a notice of the Web site's information practices with regard to children, and is placed in a clear and prominent place on the home page of the Web site and at each area on the Web site where a child directly provides, or is asked to provide, personal information (16 CFR 312.4(b)(1)).			
3. The notice states: • The name, address, telephone number, and e-mail address of any operator who collects or maintains personal information from a child through the Web site (16 CFR 312.4(b)(2)(i)); • The types of information collected from a child and whether the information is collected directly or passively (16 CFR 312.4(b)(2)(ii)); • How such information is or may be used (16 CFR 312.4(b)(2)(iii)); • Whether such information is disclosed to a third party and, if so, determine whether (16 CFR 312.4(b)(2)(iv)): – The notice states the types of businesses engaged in by the third parties; – The purposes for which the information is used; – The third parties have agreed to maintain the			

Web Site Notice (16 CFR 312.4)	Yes	No	NA
confidentiality, security, and integrity of the information; and – A parent has the option to consent to the collection and use of the information without consenting to the disclosure; • The operator is prohibited from conditioning a child's participation in an activity on the disclosure of more information than is reasonably necessary to participate in such activity (16 CFR 312.4(b)(2)(v)); and • That a parent can review and have deleted the child's personal information; and – Refuse to permit further collection or use of the child's information; and – The notice states the procedures for doing so (16 CFR 312.4(b)(2)(vi)).			
4. The notice to a parent: • States that the operator wishes to collect information from the child (16 CFR 312.4(c)(1)(i)(A)); • Includes the information contained in the 16 CFR 312.4(b) Web site notice (see step 3 above) (16 CFR 312.4(c)(1)(i)); • If 16 CFR 312.5(a) applies, states that the parent's consent is required for the collection, use, and/or disclosure of such information and states the means by which the parent can provide verifiable consent to the collection of information (16 CFR 312.4(c)(1)(ii)); and • Includes additional information as detailed in the regulation if the exceptions in 16 CFR 312.5(c)(3) and (4) apply.			

Expanded Procedures– Controlling the Assault of Non-Solicited Pornography and Marketing Act

Objective: Determine the bank's level of compliance with the Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN–SPAM).

Assess the bank's level of compliance by using the CAN–SPAM Examination Worksheet.

CAN–SPAM Examination Worksheet

This worksheet can be used for reviewing audit work papers, evaluating bank policies, performing expanded procedures, and training as appropriate. Complete only those sections that specifically relate to the issue being reviewed, evaluated, or tested, and retain the completed sections in the work papers.

When reviewing audit or evaluating bank policies, a “no” answer indicates a possible exception/deficiency and should be explained in the work papers. When performing expanded procedures, a “no” answer indicates a violation and should be explained in the work papers. If a line item is not applicable within the area you are reviewing, indicate “NA.”

CAN–SPAM Examination Worksheet

Underline the applicable use:

Audit   Bank Policies   Expanded Procedures

	Yes	No	NA
1. Does the financial institution initiate e-mail messages where the primary purpose is “commercial?” If “no,” stop here. If “yes,” continue to question 2.			
For the questions below, every “no” answer indicates a violation of the regulation and/or a possible internal control deficiency that must be explained fully in the work papers.			
Prohibition Against Misleading Information			
2. In the sending of commercial e-mail messages, does the financial institution prohibit the following: (15 USC 7704(a)(1)) • Use of false or misleading header information in commercial e-mail messages? • Use of a “from” line that does not accurately identify the sender? • Inaccurate or misleading identification of a protected computer to send commercial e-mail messages in order to disguise the e-mail message’s origin?			
3. Does the financial institution prohibit the use of deceptive or misleading headings in the subject line of commercial e-mail messages (15 USC 7704(a)(2))?			

	Yes	No	NA
Opt-Out Provisions			
4. Does the financial institution use a functioning e-mail return address or other response mechanism to which consumers can reply or opt-out of receiving future commercial e-mail messages (15 USC 7704(a)(3))? Are these mechanisms displayed in a clear and conspicuous manner?			
5. Does the financial institution prohibit future transmissions of commercial e-mail messages within 10 business days of receiving the opt-out request (15 USC 7704(a)(4))?			
Clear and Conspicuous Identification			
6. Does the financial institution's commercial e-mail message provide the following information clearly and conspicuously: (15 USC 7704(a)(5)): • Identification that the e-mail message is an advertisement or solicitation? ***Note:*** This provision does not apply to a commercial e-mail message if the recipient has given prior affirmative consent to receipt of the message. • A notice of the option to decline further commercial e-mail messages from the sender? • A valid physical postal address of the sender?			
Transmission of Commercial E-Mail Messages			
7. Does the financial institution prohibit the use of address harvesting or dictionary attacks as a means of obtaining consumer e-mail addresses (15 USC 7704(b)(1))?			
8. Does the financial institution prohibit the automated creation of multiple e-mail accounts or online accounts that falsify e-mail message identification and transmit unlawful commercial e-mail messages (15 USC 7704(b)(2))?			
9. Does the financial institution prevent the transmission of			

	Yes	No	NA
unlawful commercial e-mail messages by persons who access financial institution computers or computer network systems without authorization (15 USC 7704(b)(3))?			
Sexually Oriented Material			
10. Does the financial institution refrain from transmitting sexually oriented material in commercial e-mail messages without warning labels in the subject line and message body (15 USC 7704(d))?			

Expanded Procedures–
Telephone Consumer Protection Act and
Junk Fax Prevention Act

Objective: Determine the bank's level of compliance with the Telephone Consumer Protection Act and Junk Fax Prevention Act.

Assess the bank's level of compliance by using the Telephone Consumer Protection Act and Junk Fax Prevention Act Worksheet.

Telephone Consumer Protection Act and Junk Fax Prevention Worksheet

This worksheet can be used for reviewing audit work papers, evaluating bank policies, performing expanded procedures, and training, as appropriate. Only complete those sections of the worksheet that specifically relate to the issue being reviewed, evaluated, or tested, and retain those completed sections in the work papers.

When reviewing audit or evaluating bank policies, a "no" answer indicates a possible exception/deficiency and should be explained in the work papers. When performing expanded procedures, a "no" answer indicates a violation and should be explained in the work papers. If a line item is not applicable within the area you are reviewing, indicate "NA."

Telephone Consumer Protection Act and Junk Fax Prevention Worksheet

Underline the applicable use:

Audit   Bank Policies   Expanded Procedures

	Yes	No	NA
1. Does the financial institution engage, directly or indirectly through a third-party telemarketing firm, in any form of telemarketing via telephone or facsimile machine (even if such communications are made only to existing customers)? If "no," stop here. If "yes," continue to question 2.			
2. Does the financial institution make any telemarketing calls to consumers that are not its customers? If "yes," continue to question 3. If "no," skip to question 4.			
For the questions below, every "no" answer indicates a violation of the regulation and/or a possible internal control deficiency that must be explained fully in the work papers.			
3. Prior to initiating any call, the financial institution (or third party engaged in making telemarketing calls on the financial institution's behalf) checks the national Do-Not-Call registry to verify that the residential telephone subscriber's number is not listed (47 CFR 64.1200(c)(2)).			
4. The financial institution (or third party engaged in making telemarketing calls on the financial institution's behalf) honors a caller's request not to receive telemarketing calls for five years from the time the request is made (47 CFR 64.1200(d)(6)).			

	Yes	No	NA
5. The financial institution (or third party engaged in making telemarketing calls on the financial institution's behalf) maintains a written policy, available upon demand, for maintaining a do-not-call list (47 CFR 64.1200(d)(1)).			
6. The financial institution (or third party engaged in making telemarketing calls on the financial institution's behalf) trains and informs personnel engaged in any aspect of telemarketing in the existence and use of the do-not-call list (47 CFR 64.1200(d)(2)).			
7. If the financial institution (or third party engaged in making telemarketing calls on the financial institution's behalf) calls a subscriber whose number appears on the national Do-Not-Call registry, does it meet one of the following criteria? • It can demonstrate that the violation is the result of an error and that its routine business practices meet the minimum standards set forth in the regulation (47 CFR 64.1200(c)(2)(i)). • It has the subscriber's prior express invitation or permission evidenced by a signed, written agreement that includes a telephone number to which the calls may be placed (47 CFR 64.1200(c)(2)(ii)). • It has a personal relationship with the recipient of the call (47 CFR 64.1200(c)(2)(iii)).			
8. The financial institution has a process in place that considers whether an established business relationship should extend to an affiliate (47 CFR 64.1200(f)(4)(ii)).			
9. The financial institution (or third party engaged in making telemarketing calls on the financial institution's behalf) refrains from initiating any telephone call using an automatic telephone dialing system or an artificial or prerecorded voice to: • A paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged (47 CFR 64.1200(a)(1)). A residential line without the express prior consent of the called party (47 CFR 64.1200(a)(2)).			
10. The financial institution (or third party engaged in making telemarketing calls on the financial institution's behalf) refrains from disconnecting an unanswered telemarketing call prior to at least 15 seconds or four rings (47 CFR 64.1200(a)(5)).			

	Yes	No	NA
11. The financial institution (or third party engaged in making telemarketing calls on the financial institution's behalf) refrains from abandoning more than 3 percent of all telemarketing calls that are answered live by a person, measured over a 30-day period (47 CFR 64.1200(a)(6)).			
12. For an abandoned call, the information provided is limited to the name and telephone number of the business, entity, or individual on whose behalf the call was placed and that the call was made for "telemarketing purposes" (47 CFR 64.1200(a)(6)).			
13. The financial institution (or third party engaged in making telemarketing calls on the financial institution's behalf) refrains from using any technology to dial any telephone number for determining whether the line is a facsimile or voice line (47 CFR 64.1200(a)(7)).			
14. If the financial institution (or third party engaged in making telemarketing calls on the financial institution's behalf) uses an automatic or prerecorded telephone message, determine whether (47 CFR 64.1200(b)): • At the beginning of the message, the business, individual, or other entity initiating the call is clearly identified (47 CFR 64.1200(b)(1)). • During or after the message, the telephone number for the business responsible for initiating the call is provided (47 CFR 64.1200(b)(2)). • The number provided is available during regular business hours (47 CFR 64.1200(b)(2)). • The number provided is one that is not a 900 number or any other number for which charges exceed local or long distance transmission charges (47 CFR 64.1200(b)(2)).			
15. The financial institution (or third party engaged in making telemarketing calls on the financial institution's behalf) initiates all calls to residential subscribers between the hours of 8 a.m. and 9 p.m. (local time of the called party's location) (47 CFR 64.1200(c)(1)).			
16. The financial institution (or third party engaged in making telemarketing calls on the financial institution's behalf) has instituted procedures to provide the called party with the			

	Yes	No	NA
following information (47 CFR 64.1200(d)(4)): • The name of the individual caller (47 CFR 64.1200(d)(4)). • The name of the person or entity on whose behalf the call is being made (47 CFR 64.1200(d)(4)). • A telephone number or address at which the entity may be contacted (47 CFR 64.1200(d)(4)).			
17. The financial institution (or third party engaged in making telemarketing calls on the financial institution's behalf) transmits caller identification information (47 CFR 64.1601(e)).			
18. The financial institution (or third party, including facsimile broadcasters) refrains from using a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine without • An established business relationship (47 CFR 64.1200(a)(3)(i)); and • The express invitation or permission of the recipient by either obtaining the fax number through a. Voluntary communication with the recipient directly to the sending, within the context of the established business relationship (47 CFR 64.1200(a)(3)(ii)(A)) or b. A directory, advertisement, or site on the Internet to which the recipient voluntarily agreed to make available its facsimile number for public distribution (47 CFR 64.1200(a)(3)(ii)(B). ***Note 1:*** If an established business relationship with recipient was in existence before July 9, 2005, and the sender also possessed the facsimile machine number of the recipient before that time, then clauses a and b (the above two clauses) do not apply (47 CFR 64.1200(a)(3)(ii)(C)). ***Note 2:*** If a sender obtains the facsimile number from the recipient's own directory, advertisement, or Internet site, it will be presumed that the number was voluntarily made available for public distribution, unless such materials explicitly note that unsolicited advertisements are not accepted at the specified facsimile number. If a sender obtains the facsimile number from other sources, the sender must take reasonable steps to verify that the recipient agreed			

	Yes	No	NA
to make the number available for public distribution (47 CFR 64.1200(a)(3)(ii)(B)).			
19. The advertisement contains a notice that informs the recipient of the ability and means to avoid future unsolicited advertisements (47 CFR 64.1200(a)(3)(iii)). • The notice is clear and conspicuous and on the first page of the advertisement (47 CFR 64.1200(a)(3)(iii)(A)). • The notice states that the sender must comply with such requests within 30 days (47 CFR 64.1200(a)(3)(iii)(B)). • The notice includes a domestic contact telephone number and facsimile machine number for the recipient to transmit such a request to the sender (47 CFR 64.1200(a)(3)(iii)(D)(1)). ***Note:*** If neither the required telephone number nor facsimile machine number is a toll-free number, a separate cost-free mechanism, including a Web site address or e-mail address, must be available for a recipient to transmit a request (47 CFR 64.1200(a)(3)(iii)(D)(2)).			
20. The telephone and facsimile numbers and cost-free mechanism identified in the opt-out notice are available 24 hours a day, 7 days a week (47 CFR 64.1200(a)(3)(iii)(E)).			
21. The institution honors opt-out requests when the request: • Identifies the telephone number or numbers of the telephone facsimile machine or machines to which the request relates (47 CFR 64.1200(a)(3)(v)(A)); • Is made to the telephone number, facsimile number, Web site address, or e-mail address identified in the sender's facsimile advertisement (47 CFR 64.1200(a)(3)(v)(B)); and • The person making the request has not, subsequent to such request, provided express invitation or permission to the sender, in writing or otherwise, to send such advertisements to such person at such telephone facsimile machine (47 CFR 64.1200(a)(3)(v)(C)).			
22. The institution honors opt-out requests within the shortest reasonable time from the date of each such request, not to exceed 30 days, and does not send unsolicited advertisements to the recipient unless the recipient subsequently provides prior express invitation or permission to the sender (47 CFR 64.1200(a)(3)(vi)).			

Expanded Procedures–
Limitations on Terms of Consumer Credit Extended to Servicemembers and Dependents

Objective: Determine the level of compliance with the Limitations on Terms of Consumer Credit Extended to Servicemembers and Dependents.

Complete the Limitations on Terms of Consumer Credit Extended to Servicemembers and Dependents Examination Worksheet.

Limitations on Terms of Consumer Credit Extended to Servicemembers and Dependents Examination Worksheet

This worksheet can be used for reviewing audit work papers, evaluating bank policies, performing expanded procedures, and training, as appropriate. Only complete those sections of the worksheet that specifically relate to the issue being reviewed, evaluated, or tested, and retain those completed sections in the work papers.

When reviewing audit or evaluating bank policies, a "no" answer indicates a possible exception/deficiency and should be explained in the work papers. When performing expanded procedures, a "no" answer indicates a violation and should be explained in the work papers. If a line item is not applicable within the area you are reviewing, indicate "NA."

Limitations on Terms of Consumer Credit Extended to Servicemembers and Dependents Examination Worksheet

Underline the applicable use:

Audit   Bank Policies   Expanded Procedures

	Yes	No	NA
32 CFR 232.3—Defined Consumer Credit			
1. Does the creditor offer, or extend, or purchase closed-end credit primarily for personal, family, or household purposes in the following categories: a. Payday loans, b. Vehicle title loans, or c. Tax refund anticipation loans? If "yes," determine whether the loans meet the definitions found in 32 CFR 232.3(b)(1). If "yes," proceed. If "no" or "NA," conclude the review.			

	Yes	No	NA
32 CFR 232.4—Account Terms			
2. Did the creditor impose a military annual percentage rate (MAPR) that is not authorized by applicable state or federal law? (32 CFR 232.4(a)) 3. Did the creditor impose an MAPR greater than 36 percent in connection with extensions of consumer credit to covered borrowers? (32 CFR 232.4(b)) If the answer to either question is "yes," cite a violation of 32 CFR 232.4.			
32 CFR 232.5—Covered Borrower Identification Statement			
4. Prior to consummation of the consumer credit transaction:			
a. Did the creditor provide each applicant a clear and conspicuous "covered borrower identification statement" or an alternate identification form that was substantially similar? b. Did each applicant sign the statement indicating that he or she is or is not a covered borrower? (32 CFR 232.5(a)(1)) c. If the creditor did not use the "covered borrower identification statement" or similar form, did the creditor use procedures that comply with the rule so that the creditor did not make covered loans to covered borrowers on prohibited terms? (32 CFR 232.4))			
32 CFR 232.6—Loan Disclosures			
Delivery of Account Disclosures			
5. Does the creditor provide to a covered borrower clearly and conspicuously the initial disclosures before consummation? 32 CFR 232.6(a))			
6. Does the creditor provide the disclosures in writing in a form the covered borrower can keep? (32 CFR 232.6(b)(1))			
7. Does the creditor provide the initial disclosures orally			

	Yes	No	NA
before consummation (other than in mail or Internet transactions)? (32 CFR 232.6(b)(2))			
8. For mail or Internet transactions, does the creditor provide a toll-free number on or with the written disclosures? (32 CFR 232.6(b)(2))			
9. For refinancing or renewal of a covered loan, does the creditor provide new disclosures when the transaction would be considered a new transaction that requires disclosures under the Truth in Lending Act? (32 CFR 232.6(c))			
32 CFR 232.6 Content of Disclosures			
10. Do the disclosures include:			
a. The "military annual percentage rate" (MAPR) applicable to the extension of consumer credit, and the total dollar amount of all charges included in the MAPR? (32 CFR 232.6(a)(1)) b. Any disclosures required by Regulation Z (Truth in Lending)? (32 CFR 232.6(a)(2)) c. A clear description of the payment obligation of the covered borrower, as applicable, such as a payment schedule? (32 CFR 232.6(a)(3)) d. The required federal notice? (32 CFR 232.6(a)(4))			
32 CFR 232.8—Limitations			
11. Does the creditor, as part of any covered transaction:			
a. Roll over, renew, repay, refinance, or consolidate any covered transaction with the proceeds of a covered transaction to the same covered borrower on the same or less favorable terms to the covered borrower, unless the new transaction results in more favorable terms to the covered borrower? (32 CFR 232.8(a)(1)) b. Require the covered borrower to waive his or her right to legal recourse under any applicable provision of state or federal law, including any provision of the Servicemembers Civil Relief Act (50 USC 527 *et seq.)?* (32 CFR 232.8(a)(2))			

	Yes	No	NA
c. Demand unreasonable notice from the covered borrower as a condition for legal action? (32 CFR 232.8(a)(4)) d. Require use of a check or other method of access to a deposit, savings, or other financial account maintained by the covered borrower, except that in connection with a transaction with an MAPR consistent with the rule (that is, not greater than 36 percent) i. The creditor may require an electronic funds transfer to repay the obligation, unless prohibited by Regulation E, 12 CFR 205; ii. May require direct deposit of the consumer's salary as a condition of eligibility, unless otherwise prohibited by law; or iii. May, if not otherwise prohibited by law, take a security interest in funds deposited after the extension of the covered transaction in an account established in connection with the covered transaction? 32 CFR 232.8(a)(5)) f. Require the covered borrower to establish an allotment to repay the obligation? (32 CFR 232.8(a)(6)) g. Prohibit the covered borrower from prepaying the credit or being charged a penalty fee for prepaying all or part of the credit? (32 CFR 232.8(a)(7))			