

The background features a large, light blue watermark of the National Credit Union Administration logo. The logo consists of a circular border containing the text "NATIONAL CREDIT UNION ADMINISTRATION" in a sans-serif font. Inside the circle is a stylized house shape with a triangular roof and a vertical line extending from the base to the top vertex of the roof.

Consumer Compliance Self Assessment Guide

NATIONAL CREDIT UNION ADMINISTRATION

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Compliance: A Self-Assessment Guide

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Using this Self-Assessment Guide

This guide is intended for use by a credit union's board of directors and management, compliance officers, and others having responsibility for compliance as part of their duties. While the guide covers most federal consumer protection laws and regulations that affect credit unions, it does not address all federal laws or any state laws.

This guide is divided into five sections:

- **Overviews** - provide a brief description of what is covered in each regulation, what the regulations require of credit unions, and some potential risks;
- **Review Considerations** – contain various areas management should consider when evaluating compliance issues or developing compliance policies;
- **Checklists** – can be used to test compliance with the various laws and regulations, or as a starting point in developing a policy for compliance with the various regulations. The questions are written so that a “yes” answer indicates compliance with the regulation, and a “no” answer indicates a potential problem area;
- **Glossaries** - provide definitions of terms used in the narrative sections of this guide as well as terms used in the laws and regulations; and
- **Miscellaneous** – other additional information.

While the content of this guide was carefully reviewed for applicability and accuracy, changes occur in the wording and interpretation of consumer compliance regulations. If a situation arises where this guide becomes inconsistent with the provisions of applicable laws or regulations, the requirement of the law or regulation will prevail.

Key Elements of an Effective Compliance Review Program

Overview

Nearly every functional area in a credit union is subject to either federal or state laws and regulations, or both. Many credit unions have relied on auditors and examiners to identify operating deficiencies or violations of the consumer protection laws and regulations. Since noncompliance with these laws and regulations can be costly and result in civil liability, reimbursement, or adverse publicity, it is prudent to take steps to assure compliance. This can be done either in connection with a regular audit program (internal or independent) that focuses in-depth on compliance matters or through a separate compliance review program. If a credit union intends to combine a compliance review with its regular audit conducted by independent auditors, the credit union should consult with the auditors to ensure that the compliance issues are fully covered.

Many lending laws and regulations apply only to consumer-purpose loans. However, there are some, such as the Equal Credit Opportunity Act, that cover all loans. In order to conduct a thorough compliance review, it is necessary to understand to what extent the laws and regulations apply to the operations and products of the credit union. (The Compliance Matrices and Checklists should be helpful in this regard, as well as in completing the review.)

For the purposes of this chapter, it is assumed that the credit union has a compliance officer who is responsible for the compliance program. In some instances, however, a credit union may not have just one compliance officer, but may have a senior loan officer, or other member(s) of the staff (possibly in each division), who is responsible for an individual area. While this sample is directed toward one compliance review covering all of the applicable compliance laws and regulations, it is possible to adapt the procedures described herein to individual areas of the credit union.

Evaluation of Associated Risks

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with appropriate consumer compliance regulations; and
- Reputation risk can occur when the credit union incurs fines, penalties, and poor publicity as a result of failure to comply with the appropriate consumer compliance regulations; and
- Strategic risk can occur when management fails to perform adequate planning and due diligence in regard to consumer compliance regulations.

Compliance risk obviously exists in blatant violations of law. However, it may also arise in situations where ambiguous or untested laws or rules govern certain credit union

products or member activities. Compliance risk exposes the credit union to fines, civil money penalties, payment of damages, and the voiding of contracts. It can result in diminished reputation, limited opportunities, reduced field of membership expansion potential, and lack of contract enforceability.

Frequency of the Review

Review frequency depends on a number of factors, including the level of risk, complexity of the credit union, the expertise of the staff, the extent of any compliance difficulties, and matters that should be considered in deciding the scope of the review (see next section). Furthermore, all reviews need not be full-scope, but may be focused to the areas posing the most risk to the credit union. However, it should be noted that the longer an area goes without review, the higher the risk of noncompliance.

Scope of the Review

Probably the most critical step in the process is defining the scope of the review. The scope not only determines which of the credit union's operations and procedures will be reviewed, but the effectiveness of the review itself. If the scope is too narrow, there is an increased possibility of not identifying significant deficiencies. For example, a certain operational procedure resulting in regulatory deficiencies occurring in only one branch or division could be missed if the scope did not include loan samples from a good number and mixture of branches and loan officers. On the other hand, a scope that is too broad would be an unnecessary waste of time and resources. The objective then is to strike a balance by identifying a preliminary scope for the review and expanding it as needed as the review proceeds.

Following is a partial list of possible factors that may be helpful in defining the scope of a review:

- Changes to or additional products or services that fall under a consumer compliance regulation;
- New consumer compliance regulation affecting the credit union industry;
- A change in staff responsible for compliance with consumer laws;
- Length of time since someone performed a review of the area;
- Volume and severity of consumer complaints;
- Current or pending litigation regarding consumer compliance issues;
- Previous NCUA examination reports;
- Correspondence with the NCUA regional office, Federal Reserve Board, Federal Trade Commission, or other enforcement authorities regarding consumer compliance issues;
- Previous internal and external audit reports and/or previous compliance officer reports;
- Types and amounts of credit and other services being offered;

- Changes in policies and procedures since the last review; minutes of the board of directors and credit committee meetings;
- Legal opinions about policies, procedures, services, and forms; and
- Answers to the questions in the Compliance Checklists;

In general, the scope of the review should include transaction samples and/or the procedures from each of the credit union's lending or operational areas. Since different offices or departments could be implementing the credit union's policies and procedures in different ways, the scope should also include a review of transactions and/or procedures from different offices or divisions. This approach will not only help to identify any deficiencies, but will allow management the opportunity to ensure that the policies and procedures are implemented correctly, consistently, and uniformly throughout the credit union.

The Checklists section of this guide contains a compliance questionnaire for each consumer compliance regulation for which NCUA has enforcement authority. Each questionnaire includes the following key components:

- A summary of the basic purpose of the law/regulation;
- NCUA's enforcement responsibility;
- Penalties resulting from failure to comply; and
- Key questions to consider during a review.

Conducting the Review

There are essentially three steps for the compliance officer to complete as part of the review.

First. The compliance officer should review the credit union's policies, procedures, and underwriting guidelines to ensure that they are current, in compliance, and do not illegally discriminate against members of protected classes. It is also important to review all applicable forms, as an error in a form can lead to systemic violations. Examples of the types of materials that should be reviewed during this phase are lending policies, compliance policies, operational policies (such as those regarding checkholds), and error resolution procedures.

If the credit union has its own training program, the compliance officer should also review the training materials, schedules, and personnel attendance records at training functions to ensure the program adequately meets the needs of the credit union.

Second. The compliance officer should interview lending and operational personnel to determine their level of knowledge of the regulatory requirements and adherence to policies and procedures. When interviewing the lending or operational personnel, one approach is for the compliance officer to ask for a demonstration of the processing of a

transaction. For example, in the case of a lending officer, the officer could be asked to demonstrate the procedures that are followed when accepting and processing a loan application. Going over the applicable compliance checklists with these individuals would also be an effective means of determining whether they understand and are adhering to the requirements.

Third. The compliance officer should review the forms used and a sample of the work generated by each department, division, or office for compliance. Special care should be given to selecting work samples from each area of the association and from different branches. When reviewing loans, for instance, the selection of a representative sample from different lending areas, such as mortgage loans, consumer loans, and credit cards is critical to the success of the review. If similar activities are handled by more than one person, attempt to review samples of each person's work. Again, use of the compliance checklists should assist in this phase.

During this phase of the review, the compliance officer should review the credit union's overall lending record for any possible indications of prohibited discrimination and/or redlining. A thorough review of rejected loan applications, Home Mortgage Disclosure Act information, and property appraisals should provide a solid base of information for determining the credit union's record in this area.

Findings and Recommendations

After completing the review, the compliance officer should compile a list of significant findings, conclusions, and recommendations for presentation to senior management and/or the board of directors. If the compliance officer has the authority to effectuate corrective measures, any changes, or corrections made to policies, procedures, and training programs initiated as a result of the review should be detailed in the report of findings.

Management should also act on the findings, recommendations, and/or changes of the compliance officer to ensure that policies and procedures, as implemented, comply with all applicable laws and regulations. As appropriate, the findings of the compliance review should be presented to the board of directors in writing.

Follow-Up

The compliance officer, or other designated officer, should, on a periodic basis, follow up with the appropriate persons to ensure that all recommendations and changes are being implemented correctly. The credit union should provide additional training to all staff in areas where deficiencies were noted during the review.

Following each NCUA examination, compare issues identified during the examination to findings identified during the credit union's review. This may assist in identifying areas missed during the internal review that could be incorporated during the next review conducted by the credit union.

Laws and Enforcement Authorities for Credit Unions

Law or Regulation	FCUs	FISCUs	Non-federally insured CUs
B - Equal Credit Opportunity	NCUA	FTC	FTC
BSA – Bank Secrecy Act	NCUA	NCUA	TREAS
C - Home Mortgage Disclosure Act	NCUA	NCUA	NCUA
CC - Expedited Funds Availability Act	NCUA	NCUA	FED
COPPA - Children's Online Privacy Protection Act	NCUA	FTC	FTC
D - Reserves on Transaction Accounts	NCUA	NCUA	FED
E - Electronic Funds Transfer Act	NCUA	FTC	FTC
FCPR - Fair Credit Practice Rule	NCUA	FTC	FTC
FCRA - Fair Credit Reporting Act	NCUA	FTC	FTC
FDCPA - Fair Debt Collection Practices Act	NCUA	FTC	FTC
FDPA – Flood Disaster Protection Act	NCUA	NCUA	1
FHA - Fair Housing Act	HUD	HUD	HUD
HIDC - Holder in Due Course	FTC	FTC	FTC
HOPA - Homeowners Protection Act	NCUA	NCUA	NCUA
M – Consumer Leasing	NCUA	FTC	FTC
Management Official Interlocks Act	NCUA	NCUA	DOJ
Privacy of Consumer Financial Information	NCUA	NCUA	FTC
RESPA - Real Estate Settlement Procedures Act	HUD	HUD	HUD
RFPA - Right to Financial Privacy Act	PCA	PCA	PCA
SCRA – Servicemembers' Civil Relief Act	PCA	PCA	PCA
TIS - Truth in Savings Act	NCUA	NCUA	NCUA
Z - Truth in Lending	NCUA	FTC	FTC

Legend:

- DOJ Department of Justice
- FED Federal Reserve Board
- FHA Federal Housing Administration
- FTC Federal Trade Commission
- HUD Dept. of Housing and Urban Development
- PCA Private Cause of Action
- TREAS Treasury Department
- VA Veterans Administration

NOTE: Although NCUA is not the primary enforcer under some of these regulations, Title II of the FCU Act authorizes NCUA to take cease and desist actions for violations of any law.

¹ Non-federally insured credit unions are not covered per se. They are only covered if they sell loans on the secondary market to government sponsored enterprises (GSEs), such as Fannie Mae or Freddie Mac, which cannot buy unless the loan conforms with flood guidelines.

BANK SECRECY ACT

OVERVIEW

Overview

Congress enacted the Bank Secrecy Act (BSA) to prevent credit unions from being used as intermediaries for the transfer or deposit of money derived from criminal activity. NCUA monitors credit unions for compliance with the BSA and its implementing regulation (31 CFR 103).

Since its passage, Congress has amended the BSA a number of times to enhance law enforcement effectiveness. The Anti-Drug Abuse Act of 1986, which included the Money Laundering Control Act of 1986 (MLCA), strengthened the government's ability to fight money laundering by making it a criminal activity. The Money Laundering Suppression Act of 1994 (Title IV of the Riegle-Neal Community Development and Regulatory Improvement Act of 1994) required regulators to develop enhanced examination procedures and increase examiner training to improve the identification of money laundering schemes in financial institutions. Title III of the USA Patriot Act of 2001 made a number of amendments to the anti-money laundering provisions of the BSA. The amendments were intended to make it easier to prevent, detect, and prosecute international money laundering and the financing of terrorism by imposing additional due diligence and record keeping practices.

The primary objective of the BSA is to provide a paper trail of financial transactions to help detect and prevent money laundering activities connected with drug traffickers, terrorists, and other elements of white collar and organized crime. Congress delegated authority for issuing regulations to the Secretary of the Treasury. The financial regulatory agencies, in turn, were given responsibility for determining compliance with the Act and applicable regulations by institutions under their jurisdiction.

Compliance Program

Credit unions must establish and maintain a written compliance program for fulfilling the requirements of the BSA that includes at least: (1) a system of internal controls; (2) designation of an individual to coordinate/monitor BSA compliance; (3) independent testing; and (4) training of appropriate personnel. In addition, an effective BSA compliance program should include written policies and procedures designed to detect and prevent money laundering activities. Failure to comply with the requirements of BSA and its implementing regulations can result in both civil and criminal penalties.

Customer Identification Program¹

Section 326 of the USA Patriot Act sets forth minimum standards for financial institutions, including credit unions, for the identification and verification of the identity of any customer who opens an account (12 CFR §103.121). The written customer identification program (CIP) must be a part of the credit union's anti-money laundering program, approved by the board and should be tailored to the credit union's size, location, and type of business. Customers must be provided notice that the credit union is verifying their identity and why. The CIP must, at a minimum, provide for:

- Obtainment of certain basic identifying data;
- Verification of the identity of each customer to the extent reasonable and practicable;
- Maintenance of records of the information used to verify the identity; and
- Determination of whether the customer appears on any lists of suspected terrorists provided by the Federal government.

The CIP must also address:

- How to handle discrepancies in identifying information received;
- Terms under which a customer can conduct transactions while the identity is being verified; and
- What to do if the credit union cannot form a reasonable belief that the true identity of the customer is known.

At a minimum the credit union must obtain the following information prior to opening or adding a signatory to an account:

- Name;
- Date of birth (for individuals);
- Residential or business street address, APO or FPO or address of next of kin, (individual) or principal place of business, local office or other physical location (corporation, partnership, etc.); and
- Taxpayer identification number (U.S. person) or passport number and country of issuance, alien identification card number, or other government issued document bearing a photo or similar safeguard (non-U.S. person).

The credit union must retain records of the identifying information (name, date of birth, etc.) for five years after the account is closed. A description of the information used to verify the identity (driver's license number, passport number, etc.) must be maintained for five years after the record was made.

¹ It is recognized that credit unions have "members" not customers; however the BSA regulations refer to this requirement as the customer identification program. So as not to cause confusion, the program will be referred to as the customer identification program or CIP.

Reports & Record Keeping

The BSA and its implementing regulations require that credit unions file certain currency and monetary instrument reports and maintain certain records for possible use in criminal, tax, and regulatory investigations or proceedings. Credit unions are required to submit reports and/or retain records of various types of transactions including, for example: (1) large currency transactions by its members; (2) certain cash purchases of monetary instruments by its members; (3) known or suspected crimes and suspicious activities; and (4) certain wire (funds) transfers.

Exemptions from CTR Filing Requirements

The BSA regulations permit certain types of transactions to be exempt from the Currency Transaction Report (CTR) filing requirements to reduce the large volume of CTRs filed. The exemption provisions were revised and issued in two parts commonly referred to as “Phase I” and “Phase II.”

As of April 30, 1996, credit unions were not required to file CTRs on large currency transactions by certain classes of “Exempt Persons.” Exempt Persons are defined in 31 C.F.R. 103.22(d)(2) as:

Phase I:

1. Domestic depository institutions.
2. Departments and agencies of the United States, the states, and their political subdivisions.
3. Any entity established under the laws of the United States, of any state, or of the political subdivision of any state, or under an interstate compact between two or more states, that exercises authority on behalf of the United States or any such state or political subdivision.
4. Any entity, other than a bank, whose common stock or analogous equity interests are listed on the New York Stock Exchange, the American Stock Exchange, or whose common stock, or analogous equity interests have been designated as a Nasdaq National Market Security listed on the Nasdaq Stock Market (except stock or interests listed under the separate “Nasdaq Small-Cap Issues” heading).
5. Any subsidiary, other than a bank, of any entity described in number four (a “listed entity”) that is organized under the laws of the United States or of any state and at least 51 percent of whose common stock is owned by the listed entity. Franchises of listed entities may not be treated as exempt persons, unless they qualify as subsidiaries.

Phase II:

1. Any other commercial enterprise (also known under the new exemption procedures as a non-listed business), to the extent of its domestic operations, other than those ineligible businesses covered by 103.22(d)(6)(viii) (e.g., pawnbroker, gaming establishment, etc).
2. A customer who holds a payroll account and regularly withdraws more than \$10,000 to pay its U.S. employees in currency solely for withdrawals for payroll purposes from existing transaction accounts.

Non-listed businesses and payroll customers must meet certain additional criteria to be eligible for exemption:

- The entity must have maintained a transaction account at the credit union for at least 12 months. The months do not have to be consecutive but should be recent.
- The entity must engage in frequent currency transactions with the credit union in excess of \$10,000 (eight or more a year).
- The entity must be incorporated or organized under the laws of the United States or a state or registered as and eligible to do business in the United States.

Annually, credit unions must verify whether each exemption continues to meet the exemption eligibility requirements. Biennially, credit unions must file the “Designation of Exempt Person” form for each non-listed business and payroll customer. Biennial renewals must include a statement certifying the credit union’s system of monitoring transactions in currency of an exempt person for suspicious activity has been applied.

Suspicious Activity Reporting Requirements

An effective BSA compliance program also recognizes that certain member transactions are suspicious in nature. A credit union must know its members to be able to make an informed decision as to the suspicious nature of a particular transaction and whether to file a Suspicious Activity Report (SAR). SARs can be filed on any transaction occurring in any department. SARs must be filed no later than 30 days after the date of initial detection of facts that may constitute a basis for filing a SAR. A copy of each filed SAR along with supporting documentation should be retained for a period of 5 years from the date filed.

Credit unions must file a SAR following the discovery of:

- Insider abuse involving any amount.

- Violations of federal law aggregating \$5,000 or more when a suspect can be identified.
- Violations of federal law aggregating \$25,000 or more regardless of a potential suspect.
- Transactions aggregating \$5,000 or more that involve potential money laundering or violations of the BSA if the credit union knows, suspects, or has reason to suspect that the transaction:
 - Involves funds from illegal activities or is intended or conducted to hide or disguise illicit funds or assets as part of a plan to violate or evade any law or regulations or to avoid any transaction reporting requirement under federal law;
 - Is designed to evade any of the BSA regulations; or
 - Has no business or apparent lawful purpose or is not the sort in which the particular member would normally be expected to engage, and the credit union knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

Information Sharing Between Federal Law Enforcement Agencies and Financial Institutions

Section 314(a) of the USA Patriot Act authorized law enforcement authorities to communicate with financial institutions about suspected money launderers and terrorists (§103.100).

A request for information under section 314(a) (referred to as a “314(a) request”) will be made by the Financial Crimes Enforcement Network (FinCEN). Generally, the requests will be batched and issued every two weeks and financial institutions, including credit unions, will have two weeks to respond to the request. Searches will be limited to specific records and, unless otherwise noted, will be a one-time search. If the credit union identifies a match for a named subject, it should stop its search of accounts for that suspect and respond to FinCEN that it has a match and provide point-of-contact information for the requesting law enforcement agency to follow-up directly with the credit union.

Searches need only encompass current accounts and accounts maintained by a named subject during the preceding twelve (12) months, and transactions not linked to an account conducted by a named subject during the preceding six (6) months. Any record that is not maintained in electronic form need only be searched if it is required to be kept under federal law or regulation.

Credit unions are not required by a 314(a) request to close any account or take any other action with respect to an account or a transaction by virtue of a match with any named subject. Credit unions do not need to maintain the list of named subjects for the purpose of evaluating whether to open an account or to conduct a transaction, unless specific instructions accompanying a 314(a) request state otherwise.

A credit union may not disclose to any other person the fact that FinCEN has requested or obtained information, except to the extent necessary to comply with FinCEN's request.

While there are no specific record keeping requirements concerning 314(a) requests, appropriate documentation of the request and record search should be maintained for a reasonable time period to provide for an effective examination trail. Credit unions may use third party vendors to conduct these searches provided the vendor agrees to maintain the confidentiality of the process.

Voluntary Information Sharing Among Financial Institutions

Section 314(b) of the USA Patriot Act authorized financial institutions to communicate amongst themselves about suspected money launderers and terrorists (§103.110). A credit union that intends to share information must submit a notice to FinCEN. The notice is effective for one year and a new notice must be submitted for each subsequent year. Completed notices can be submitted by accessing FinCEN's Web site at: <http://www.treas.gov/fincen> and entering the appropriate information. Notices may also be mailed to: FinCEN, P.O. Box 39, Mail Stop 100, Vienna, VA 22183.

If a credit union intends to share information with another institution, it must verify that the institution with which it intends to share has also filed a notice with FinCEN. Each credit union that shares information must maintain adequate security and confidentiality of the information.

Associated Risks

Compliance risk can occur when the credit union fails to implement an effective program implementing the requirements of the BSA.

Reputation risk can occur when the credit union incurs fines and penalties as a result of failure to comply with the BSA. Enforcement actions against institutions are public information, and negative publicity can result from such exposure.

Additional Information

FinCEN's Web site contains additional information including links to the regulation, BSA forms, and general compliance information. It can be located at: <http://www.fincen.gov>.

BANK SECRECY ACT

OPERATIONAL REQUIREMENTS

Written Programs / Documentation

Part 748 of the NCUA Rules and Regulations (§741.214 for state-chartered credit unions by reference) requires all credit unions to establish and maintain procedures reasonably designed to assure and monitor their compliance with the BSA and its implementing regulations. This includes establishing an effective Customer Identification Program (CIP) that is part of the overall BSA program. A credit union must develop and administer a program which assures and monitors compliance with BSA record keeping and reporting requirements. Such a program also can protect a credit union against possible criminal and civil penalties and asset forfeitures. Section 748.2 establishes four minimum requirements for a compliance program.

At a minimum, a credit union's internal compliance program must be written, approved by the board of directors, and noted in the board's meeting minutes. The program must include:

- A system of internal controls to ensure ongoing compliance;
- Independent testing of compliance;
- Daily coordination and monitoring of compliance by a designated person; and
- Training for appropriate personnel.

Internal Controls

Credit unions must have appropriate internal control procedures to allow them to detect money laundering. These procedures must provide, among other things, a credit union with the ability to identify and report: (1) currency transactions in excess of \$10,000 on Internal Revenue Service (IRS) Form 4789; and (2) transactions suspicious in nature.

Senior management responsibilities for internal controls should demonstrate their commitment to compliance by:

- Establishing a comprehensive compliance plan that is approved by the board of directors and fully implemented by credit union staff.
- Instituting a requirement that senior management be kept informed of compliance efforts, audit reports, identified compliance deficiencies, and the corrective action taken.
- Making BSA compliance a condition for employment.
- Incorporating compliance with the BSA and its implementing regulation into job descriptions and performance evaluations of credit union personnel.

Independent Testing

Compliance with the BSA should be independently tested at least annually by the internal audit department, outside auditors, or consultants. The audit program should, at a minimum, be able to:

- Attest to the effectiveness of internal procedures for monitoring compliance with the BSA by, for example:
 - Sampling large currency transactions traced to CTR filings;
 - Testing the validity and reasonableness of exemptions granted; and
 - Reviewing a sample of SARs filed for completeness and accuracy.
- Assess employees' knowledge of regulations and procedures.
- Assess adequacy of training programs.

Audit findings should be incorporated into a report for senior management and board review. Appropriate follow-up should be ensured.

Compliance Officer

A credit union must designate a credit union employee as the BSA compliance officer. This officer should have day-to-day responsibility for the BSA compliance program.

Training

Senior management must ensure that appropriate credit union personnel are trained in all aspects of the regulatory requirements of the BSA and the credit union's internal policies and procedures to ensure compliance. An effective training program includes provisions to ensure that:

- All credit union personnel who have contact with members – tellers, member service representatives, lending officers, etc. – receive appropriate training.
- Such training is ongoing and incorporates current developments such as new and different money laundering schemes involving credit unions. It also can include examples of money laundering cases, tailored to the audience, and the ways in which such activities can be detected or resolved.

Record Keeping

The BSA regulations require credit unions to maintain numerous records so that, for example, transactions can be reconstructed. The general retention period under the BSA is five years. Specific record keeping requirements can be found in §103.33 of the BSA (31 CFR 103.33). Following is a list of some of the records which must be kept.

- Extensions of credit in excess of \$10,000;
- Currency transaction in excess of \$10,000 to or from any person, account, or place outside the United States;
- Cash sales of monetary instruments (e.g., money orders, traveler's checks, cashier's checks) between \$3,000 and \$10,000;
- Each certificate of deposit sold or redeemed;
- Each document granting signature authority;
- Each statement;
- Each share draft of more than \$100;
- The name, address and taxpayer identification number of any person purchasing or redeeming a certificate of deposit; and
- Numerous, detailed records with respect to a funds transfer of \$3,000 or more (§103.33(e)).

In addition, credit unions must keep copies of Suspicious Activity Reports, along with supporting documentation and Currency Transaction Reports.

Reports

The following list details reports that credit unions generally will file. (This is not an exhaustive list of all BSA reports.)

- Suspicious Activity Report (SAR), TD F 90-22.47
- Currency Transaction Report (CTR), Form 4789
- Designation of Exempt Person, TD F 90-22.53
- Report of International Transportation of Currency or Monetary Instruments (CMIR), Form 4790
- Report of Foreign Bank and Financial Accounts (FBAR), TD F 90-22.1

Enforcement / Liability

Enforcement and compliance lies with the Assistant Secretary of the Treasury (Enforcement). Authority to examine credit unions for compliance has been delegated to NCUA with respect to those credit unions NCUA examiners regularly examine for safety and soundness. The IRS has the authority to examine those credit unions not regularly examined by NCUA.

The BSA regulations provide for civil penalties not to exceed the greater of the amount (not to exceed \$100,000) involved in the transaction or \$25,000. Criminal penalties can be up to \$500,000 and up to 10 years in prison.

BANK SECRECY ACT
REVIEW CONSIDERATIONS

Review Considerations

Review Area	Requirements / Recommendations
Policy/Procedure/Program:	
BSA Compliance Policy and Procedures	<p>Establish and maintain a board-approved written program designed to monitor compliance with the BSA and its implementing regulations that must include, at a minimum:</p> <ol style="list-style-type: none"> 1. A system of internal controls; 2. Daily coordination and monitoring of compliance by a designated person; 3. Independent testing of compliance; and 4. Training for appropriate personnel. <p>The program should also include procedural guidelines to ensure the credit union will:</p> <ol style="list-style-type: none"> 1. Meet the reporting and record keeping requirements of the BSA regulations. 2. Detect, prevent, and report suspicious transactions related to money laundering.
Customer Identification Program	<p>Establish and maintain a board-approved written Customer Identification Program (CIP) in compliance with §103.121 that is part of the credit union's BSA program. The minimum requirements include:</p> <ol style="list-style-type: none"> 1. Obtainment of certain basic identifying data; 2. Verification of the identity of any person who opens an account to the extent reasonable and practicable; 3. Maintenance of records of the information used to verify the person's identity including name, address, and other identifying information; and 4. Determination whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the credit

	<p>union by any federal government agency.</p> <p>In addition, the credit union must provide adequate notice that it will request information to verify identities.</p> <p>The CIP must also address procedures for:</p> <ol style="list-style-type: none"> 1. Handling discrepancies in information received; and 2. Conducting transactions while the identity is being verified. <p>In addition, the CIP must have procedures addressing when the credit union can not determine, with a reasonable belief, that the true identity is known.</p> <p>The policy should require periodic testing to assure that the CIP is being properly implemented and complies with the Treasury regulation.</p>
Anti-Money Laundering Program	<p>Develop procedures designed to detect and/or prevent money laundering activities that will:</p> <ol style="list-style-type: none"> 1. Define money laundering in its different forms (placement, layering, integration). 2. Address compliance with applicable anti-money laundering laws and regulations. 3. Identify high-risk business activities, businesses, and foreign countries associated with money laundering. <p>Ensure that the anti-money laundering procedures are extended to all areas of the credit union's operations including teller operations, loan department, wire transfer room, and safe deposit box activity.</p> <p>Establish internal controls to minimize the risk of money laundering that include:</p> <ol style="list-style-type: none"> 1. Money laundering detection procedures. 2. Monitoring non-bank financial institution depositors with high volume cash activity. 3. Periodic account activity monitoring.

	4. Internal investigations, monitoring, and reporting of suspicious transactions.
Special Information Sharing Procedures:	
<i>With Federal Law Enforcement (referred to as Section 314(a) Request)</i>	<p>Upon receiving an information request from FinCEN, the credit union will have two weeks to search certain designated records and respond with any matches. Generally, this is a one-time search, unless specified in the request.</p> <p>If a match is found, stop the search on that subject and report the match to FinCEN. If no match is found, no reply should be made.</p> <p>A point-of-contact (POC) to receive the information requests must be designated by each credit union and reported on the quarterly call report.</p> <p>(Reference §103.100)</p>
<i>Among Financial Institutions</i>	<p>A credit union may voluntarily share information with any other financial institution for purposes of identifying and reporting activities involving suspected terrorist activity or money laundering.</p> <p>Prior to sharing information, a 314(b) Notice must be submitted to FinCEN. This notice must be resubmitted each year. In addition, prior to sharing information, the credit union must verify that the financial institution with which it plans to share information has also submitted a notice to FinCEN.</p> <p>314(b) Notices may be submitted by accessing FinCEN's web site at: http://www.fincen.gov/ and clicking on "Section 314(b) Notif."</p> <p>(Reference §103.110)</p>
REPORTS:	
Currency Transaction Report (CTR) (IRS Form 4789)	File, with the IRS, a completed CTR involving any transaction in currency over \$10,000, including each deposit, withdrawal, currency exchange, or other payment or transfer.

	<p>Multiple transactions totaling more than \$10,000 during any one-business day are treated as a single transaction if the credit union has knowledge that they are by or on behalf of any person. Beware of persons attempting to structure currency transactions in such a manner to evade CTR filing requirements.</p> <p>The CTR must be filed with the Internal Revenue Service (IRS) within 15 days after the date of the transaction with a copy retained for at least 5 years.</p>
<p>Designation of Exempt Person (TD Form 90-22.53)</p>	<p>Currency transactions involving transactions with “exempt persons” need not be reported. Exempt persons include:</p> <ol style="list-style-type: none"> 1. Banks and credit unions in the United States; 2. Federal, state, or local governments; or 3. Corporations whose common stock is traded on the New York Stock Exchange, most corporations whose common stock is traded on the American Stock Exchange and the NASDAQ Stock Market, and certain subsidiaries of those corporations (“listed businesses”) (See Section 103.22(d)(2)). 4. Other commercial entities that have had an account at the credit union for at least 12 months, are organized under U.S. or state law or are registered and eligible to do business in the U.S., and either: (1) frequently engage in transactions at the credit union exceeding \$10,000 (“non-listed businesses”) or (2) operate a payroll business that regularly withdraws more than \$10,000 to pay employees in the U.S. in currency (“payroll customers”). <p>For those “non-listed businesses” or “payroll customers” the credit union must file a TD Form 90-22.53 for the required biennial renewal of the exempt person designation.</p> <p>Businesses that do not qualify to receive an exemption include:</p>

	<ol style="list-style-type: none"> 1. Financial institutions and their agents. (Banks, as defined in §103.11(c), are specifically exempt persons (§103.22(d)(2)(i)); financial institutions, which, as defined in §103.11(n) includes banks as well as broker-dealers, casinos, and money service business in addition to others, can not be exempt.) 2. Dealers in automobiles, boats, vessels, aircraft, farm equipments, or mobile homes, and those who charter or operate ships, buses, or aircraft. 3. Lawyers, accountants, doctors, investment advisers, investment bankers, real estate or pawn brokers, title insurers, real estate closing businesses, auction businesses, and trade union businesses. 4. Gaming of any type except licensed pari-mutuel betting at racetracks.
<p>Currency and Monetary Instrument Report (CMIR) (U.S. Customs Form 4790)</p>	<p>File, with the appropriate U.S. Customs officer or the Commissioner of Customs, a completed CMIR for each shipment of currency or other monetary instrument(s) in excess of \$10,000 out of or into the U.S., except via the postal service or common carrier. For transport into or out of the U.S., file CMIR at time of entry into or departure from U.S. For receipt from outside the U.S., file CMIR within 15 days of receipt of instruments (unless a report has already been filed).</p>
<p>Report of Foreign Bank Financial Accounts (Treasury Form 90-22.1)</p>	<p>Each person subject to U.S. jurisdiction with a financial interest in, or signature authority over, a bank, securities, or other financial account in a foreign country must annually file a Report of Foreign Bank Financial Accounts with the IRS, as required by §103.24. The reports are due on or before June 30 each calendar year. This requirement includes credit unions with such financial interests.</p> <p>Records of accounts reported must be maintained for a period of 5 years (§103.32).</p>
<p>Suspicious Activity Report (SAR) (TD Form 90-22.47)</p>	<p>File a completed SAR for any transaction involving \$5,000 or more when the institution</p>

	<p>knows, suspects, or has reason to suspect that a transaction:</p> <ol style="list-style-type: none"> 1. Involves money laundering; 2. Is designed to evade regulations promulgated under the BSA; or 3. Has no business or apparent lawful purpose or is not of the type that the particular member would normally be expected to undertake. <p>File a completed SAR for insider abuse involving any amount.</p> <p>Note: If the suspicious transaction involves currency of more than \$10,000, both a SAR and a CTR must be filed. For suspicious transactions involving currency under \$10,000, only a SAR need be filed.</p> <p>SARs must be sent to: Detroit Computing Center, P.O. Box 33980, Detroit, MI 48232-0980 no later than 30 days after the date of initial detection of facts constituting a basis for the SAR filing. If no suspect was initially identified on the date of detection, filing may be delayed for an additional 30 calendar days to identify a suspect. Do not include supporting documentation.</p> <p>Maintain copy of SAR filed along with supporting documentation for a period of 5 years.</p>
Record Keeping:	
General Record Retention Requirements	<p>Ensure that the extensive record retention requirements (particularly §§§103.33, 34, and 121 pertaining to financial institutions) are implemented. An institution is required to retain either the original, microfilm, copy, or other reproduction of the relevant documents. Records are required to be retained at least 5 years in most cases.</p> <p>Effective October 1, 2003, the requirements contained in §103.34(a) will be deleted. Section 103.34(b) will remain in effect.</p>
Monetary Instruments Record	Maintain records of monetary instrument (e.g.,

<p>Keeping Involving \$3,000 to \$10,000 in Currency</p>	<p>traveler's checks, money orders, cashier's checks) issuance or sale for currency in amounts between \$3,000 and \$10,000, with supporting information prescribed by §103.29(a).</p> <p>For deposit account holders:</p> <ol style="list-style-type: none"> 1. Name; 2. Date; 3. Type of instrument purchased; 4. Serial number(s) of each instrument; and 5. Amount in dollars of each of the instruments purchased. <p>For non-deposit holders:</p> <ol style="list-style-type: none"> 1. Name and address; 2. Social Security number; 3. Date of birth; 4. Date; 5. Type of instrument purchased; 6. Serial number(s) of each instrument; and 7. Amount in dollars of each of the instruments purchased. <p>Contemporaneous purchases of the same or different types of instruments totaling \$3,000 or more must be treated as one purchase. Also multiple purchases totaling \$3,000 or more must be treated as a single purchase where the employee has knowledge that these multiple purchases occurred.</p> <p>Verify that the purchaser is a deposit account holder or verify purchaser's identity in the manner described at Sections 103.29(a)(1)(ii) and 103.29(a)(2)(ii).</p>
<p>Records of Wire (Funds) Transfer</p>	<p>Collect and retain the information specified in §103.33(e) and (g) for all wire (funds) transfers in the amount of \$3,000 or more. The information to be collected and retained depends upon: (1) the type of financial institution, (2) its role in the wire transfer (originator, intermediary, or beneficiary), (3) the amount of the wire transfer, and (4) the relationship of the parties to the transaction with the financial institution.</p>

	<p>The record keeping requirements are not required where the originator and beneficiary are any of the following:</p> <ol style="list-style-type: none"> 1. A domestic bank; 2. A wholly-owned domestic subsidiary of a domestic bank; 3. A broker or dealer in securities; 4. The U.S. government; 5. A state or local government; and 6. A federal, state or local government agency or instrumentality. <p>If the originator and beneficiary are the same and the institutions involved in the funds transfer are the same, the transfer is also exempt.</p> <p>Audit procedures should verify that:</p> <ol style="list-style-type: none"> 1. A separation of duties ensures proper authorization for sending and receiving transfers and for correct account posting. 2. CTRs are properly filed for non-members submitting cash for funds transfers. 3. Fund transfers to/from foreign institutions involve amounts, frequency and countries consistent with the member's business. 4. Accounts with frequent cash deposits and subsequent wire transfers of funds to larger institutions are closely monitored.
Internal Controls	<p>Institute internal audit procedures or a management review process designed to:</p> <ol style="list-style-type: none"> 1. Confirm the integrity and accuracy of report of large currency transactions. 2. Include a review of tellers' activities that relate to BSA and Forms 4789 and 4790. 3. Confirm the integrity and accuracy of record keeping activities and adherence to the in-house record retention schedule. 4. Ascertain whether a list of exempt members is being properly maintained. 5. Test the reasonableness of the exemptions granted. 6. Confirm that records of cash purchases of

	<p>monetary instruments (in amounts from \$3,000 to \$10,000) are maintained and that appropriate identification measures are in place.</p> <ol style="list-style-type: none"> 7. Review effectiveness of training program. 8. Conduct audits as frequently as is appropriate given volume/complexity of transactions, but at least annually. 9. Test CIP and related recordkeeping requirements.
<p>Training and Education</p>	<p>Establish a program for training appropriate employees regarding BSA and money laundering that includes the following:</p> <ol style="list-style-type: none"> 1. Reporting of large currency transactions. 2. Exemptions from reporting. 3. Sale of monetary instruments. 4. Reporting suspicious activity or alleged criminal conduct. 5. Examples of money laundering and how to detect, resolve and report such activity. 6. Overview of various forms that money laundering can take. 7. Wire (fund) transfer activity. 8. Payable through accounts. 9. Filing of SARs.

BANK SECRECY ACT CHECKLIST

	Yes	No
1. Has the board approved a compliance program addressing all aspects of BSA including the credit union's Customer Identification Program (CIP) that provides for:		
• A system of internal controls;	_____	_____
• Independent testing;	_____	_____
• An individual responsible for daily compliance; and	_____	_____
• Training for appropriate personnel? NCUA §748.2(b)	_____	_____
2. Has the credit union established a Customer Identification Program (CIP) that provides for:		
• Obtaining basic identifying data for each person opening an account;	_____	_____
• Verification of the identity of any person opening an account;	_____	_____
• Maintenance of records of the information used to verify the person's identity;	_____	_____
• Determination whether the person appears on any federal government list of suspected terrorists; and	_____	_____
• Adequate notice that the credit union will request information to verify identity? §103.121	_____	_____
3. Does the CIP require the following minimum information prior to opening an account:		
a. Name;	_____	_____
b. Date of birth, for an individual;	_____	_____
c. Address;	_____	_____
d. Identification number (taxpayer identification number for U.S. person; for a non-U.S. person a taxpayer identification number, passport number and country of issuance; alien identification card number, or number and country of issuance of any other government-issued document bearing a photo or similar safeguard? §103.121(b)(2)	_____	_____
4. Does the credit union maintain the identifying data for		

5 years after the account is closed? _____

5. Does the credit union maintain a descriptive record of any document used to verify identity for 5 years after the account is opened? _____

6. Does the credit union maintain a record of the resolution of any discrepancies in basic identifying data for 5 years? _____

7. Does the credit union maintain a descriptive record of any non-documentary method used to verify identity for 5 years after the account is opened? _____

8. Is a Currency Transaction Report (CTR), IRS Form 4789, filed within 15 days after a transaction in currency over \$10,000 has occurred unless it is an exempt transaction? §103.22(b) _____

Note: Multiple transactions totaling more than \$10,000 during any one business day are treated as a single transaction.

9. To be exempt from CTR filing, did the credit union properly file TD Form 90-22.53 – “Designation of Exempt Person? §103.22(d)(3)(i) _____

10. If a person has been exempted from CTR filing, has the credit union performed an annual review of the account and renewed, biennially, a statement certifying that the exempt person’s account has been monitored for suspicious activity? §103.22(d)(4) and (5) _____

Note: TD Form 90-22.53 must be filed for the biennial renewal of the exempt person designation. The credit union may, but is not required to, use this form to notify Treasury that it has revoked a member’s exempt designation.

11. Does the credit union file a Suspicious Activity Report (SAR) within 30 calendar days after discovery of a suspicious transaction involving \$5,000 or more or for insider abuse of any amount? NCUA §748 (c) and §103.18 _____

12. Is the supporting documentation for a SAR retained

by the credit union for 5 years? _____

Note: Supporting documentation is not to be sent with the SAR, but retained by the credit union and made available to FinCEN and any appropriate law enforcement agency upon request.

13. Does the credit union adhere to the prohibition regarding the notification to any person that is involved in the activity being reported on a SAR that the activity has been reported? §103.18(e) _____

14. Is a Report of Foreign Financial Accounts indicating a financial interest in an account in a foreign country filed annually on or before June 30? §103.24 _____

15. Is a record of required information maintained for the issuance or sale by currency of credit union checks, cashier's checks, traveler's checks and money orders for amounts between \$3,000 and \$10,000 including:
a. Name of purchaser; _____
b. Date of purchase; _____
c. Type(s) of instrument(s) purchased; _____
d. Serial number(s) of each instrument(s) purchased; _____
e. Amount in dollars of each instrument purchased; and _____
f. Method used to verify the identity of the purchaser? _____
§103.29(a)

16. Is a record retained for each extension of credit over \$10,000 (except for those secured by real estate)? §103.33(a) _____

17. Is a record retained of each advice, request, or instruction resulting in a transfer of currency or other monetary instruments, funds, checks, etc. over \$10,000 outside the U.S.? §103.33(b) _____

18. For funds transfers of \$3,000 or more, does the credit union retain a record of the following information:
a. Name and address of originator; _____
b. Amount of the payment order; _____
c. Execution date of the payment order; _____
d. Payment instructions; _____
e. Identity of the beneficiary's bank; and _____
f. As many of the following as are received with the order: _____

- 1. Name and address of beneficiary; _____
 - 2. Account number of beneficiary; and _____
 - 3. Any other specific identifier of the beneficiary? _____
- §103.33(e)

19. Does the credit union retain, for a period of 5 years either the original or a microfilm or other copy or reproduction of each of the following:
- a. Each document granting signature authority over each deposit or share account? §103.34(b)(1) _____
 - b. Each statement, ledger card or other record on each deposit or share account, showing each transaction in, or with respect to, that account? §103.34(b)(2) _____
 - c. Each check, draft, or money order drawn on the credit union issued and payable by it, except those drawn for \$100 or less? §103.34(b)(3) _____
 - d. Each item in excess of \$100 comprising a debit to a member's deposit or share account? §103.34(b)(4) _____
 - e. Each item, including checks, drafts, or transfers of credit, in excess of \$10,000 remitted or transferred to a person, account, or place outside the U.S.? §103.34(b)(5) _____
 - f. A record (letter of transmittal, cash letter, or application for a draft or transfer, etc.) of each remittance or transfer of funds, or of currency, other monetary instruments, checks, investments securities, or credit, in excess of \$10,000 to a person, account or place outside the U.S.? §103.34(b)(6) _____
 - g. Each check or draft over \$10,000 drawn on or issued by a foreign bank which the credit union has paid? §103.34(b)(7) _____
 - h. Each item over \$10,000 received directly from a bank, broker or dealer in foreign exchange outside the U.S.? §103.34(b)(8) _____
 - i. A record of each receipt of currency, other monetary instruments, investment securities or checks over \$10,000 from a bank, broker or dealer in foreign exchange outside the U.S.? §103.34(b)(9) _____
 - j. With respect to demand deposits, records needed to reconstruct a transaction account and to trace a check in excess of \$100? §103.34(b)(10) _____
 - k. A record with the name, address, and taxpayer identification number of the purchases of each certificate of deposit, as well as a description of the instrument, a note of the method of payment, and the date of the transaction? §103.34(b)(11) _____

l. A record with the name, address, and taxpayer identification number of any person presenting a certification of deposit for payment, as well as a description of the instrument and the date of the transaction? §103.34(b)(12)

m. Each deposit slip showing a transaction more than \$100 and showing the currency involved? §103.34(b)(13)

20. Has the credit union designated a point-of-contact to receive information requests from FinCEN regarding investigations of terrorist activity or money laundering? §103.100(b)(2)(iii)

Notes: The point-of-contact information is collected on the quarterly call report.

These requests are generally referred to as “Section 314(a) requests.”

21. Does the credit union begin its search for the information request (Section 314(a) request) promptly and complete it within two weeks, reporting any matches to FinCEN immediately? §103.100(b)(2)(ii)

22. If the credit union wishes to share information with any other financial institution for purposes of identifying and reporting activities involving suspected terrorist activity or money laundering, has it submitted a certification to FinCEN and resubmitted the certification each year for which it plans to share information? §103.110(b)(2)

Note: Certifications may be submitted by accessing FinCEN’s web site at: <http://www.fincen.gov/> and clicking on “Section 314(b) Notif.”

Comments

BANK SECRECY ACT

DEFINITIONS

Definitions BSA 31CFR103

Accept

A receiving financial institution, other than the recipient's financial institution, accepts a transmittal order by executing the transmittal order. A recipient's financial institution accepts a transmittal order by paying the recipient, by notifying the recipient of the receipt of the order or by otherwise becoming obligated to carry out the order.

Section 314(a)

Refers to section 314(a) of the law Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Public Law 107-56. In addition, the final rule implementing section 314 of the USA PATRIOT Act was issued by the Department of the Treasury on September 26, 2002, 67 Fed. Reg. 187 (2002). That rule is codified beginning at 31 C.F.R. §103.100.

At one time

For purposes of Sec. 103.23 of this part, a person who transports, mails, ships or receives; is about to or attempts to transport, mail or ship; or causes the transportation, mailing, shipment or receipt of monetary instruments, is deemed to do so "at one time" if:

- (1) That person either alone, in conjunction with or on behalf of others;
- (2) Transports, mails, ships or receives in any manner; is about to transport, mail or ship in any manner; or causes the transportation, mailing, shipment or receipt in any manner of;
- (3) Monetary instruments;
- (4) Into the United States or out of the United States;
- (5) Totaling more than \$10,000;
- (6) (i) On one calendar day or (ii) if for the purpose of evading the reporting requirements of Sec. 103.23, on one or more days.

Bank

Each agent, agency, branch or office within the United States of any person doing business in one or more of the capacities listed below:

- (1) A commercial bank or trust company organized under the laws of any state or of
- (2) the United States;
- (3) A private bank;
- (4) A savings and loan association or a building and loan association organized under the laws of any State or of the United States;
- (5) An insured institution as defined in section 401 of the National Housing Act;

- (6) A savings bank, industrial bank or other thrift institution;
- (7) **A credit union organized under the law of any state or of the United States;**
- (8) Any other organization (except a money services business) chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a state; and
- (9) A bank organized under foreign law.

Beneficiary

The person to be paid by a beneficiary's credit union or bank.

Beneficiary's bank

The credit union, bank or foreign bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

Business day

Business day, as used in this part with respect to credit unions, means that day, as normally communicated to its members, on which a bank routinely posts a particular transaction to its member's account.

Currency

The coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes U.S. silver certificates, U.S. notes and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country.

Deposit account

Deposit accounts include transaction accounts, savings accounts, and other time deposits.

Domestic

When used herein, refers to the doing of business within the United States, and limits the applicability of the provision where it appears to the performance by such institutions or agencies of functions within the United States.

Eligible Non-Listed business

A business which (1) has had a transaction account at the credit union for at least 12 months; (2) frequently engages in currency transactions greater than \$10,000; (3) is incorporated, or organized under the laws of the United States or a state, or is registered as and eligible to do business in the United States; and (4) is not an ineligible business. Eligible non-listed businesses may be exempted only to the extent of their domestic (i.e. U.S.) operations.

Established customer

A person with an account with the credit union, including a loan account or deposit or other asset account, or a person with respect to which the credit union has obtained and maintains on file the person's name and address, as well as taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, and to which the credit union provides financial services relying on that information.

Execution date

Execution date is the day on which the receiving financial institution may properly issue a transmittal order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received, and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the recipient on the payment date.

FinCEN

FinCEN means the Financial Crimes Enforcement Network, an office within the Office of the Under Secretary (Enforcement) of the Department of the Treasury.

Foreign bank

A bank organized under foreign law, or an agency, branch or office located outside the United States of a bank. The term does not include an agent, agency, branch or office within the United States of a bank organized under foreign law.

Foreign financial agency

A person acting outside the United States for a person (except for a country, a monetary or financial authority acting as a monetary or financial authority, or an international financial institution of which the United States Government is a member) as a financial institution, bailee, depository trustee, or agent, or acting in a similar way related to money, credit, securities, gold, or a transaction in money, credit, securities, or gold.

Funds transfer

The series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's credit union, bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's credit union or bank of a payment order for the benefit of the beneficiary of the originator's payment order. Funds transfers governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. 95-630, 92 Stat. 3728, 15 U.S.C. 1693, et seq.), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.

Ineligible Businesses

A business engaged primarily in one or more of the following activities: serving as financial institutions or agents of financial institutions of any type; purchase or sale to customers of motor vehicles of any kind, vessels, aircraft, farm equipment or mobile homes; the practice of law, accountancy, or medicine; auctioning of goods; chartering or operation of ships, buses, or aircraft; gaming of any kind (other than licensed pari-mutuel betting at race tracks); investment advisory services or investment banking services; real estate brokerage; pawn brokerage; title insurance and real estate closing; trade union activities; and any other activities that may be specified by FinCEN.

A business that engages in multiple business activities is not an ineligible business as long as no more than 50% of its gross revenues is derived from one or more ineligible business activities.

Intermediary credit union or bank

A receiving bank other than the originator's bank or the beneficiary's bank.

Intermediary financial institution

A receiving financial institution, other than the transmitter's financial institution or the recipient's financial institution. The term intermediary financial institution includes an intermediary bank.

Issuer of traveler's checks, money orders, or stored value

An issuer of traveler's checks, money orders, or stored value (other than a person who does not issue such checks or money orders or stored value in an amount greater than \$1,000 in currency or monetary or other instruments to any person on any day in one or more transactions).

Listed Company Subsidiary

A subsidiary, other than a bank, which is owned at least 51%, and is controlled by a Listed Company. See 31 CFR 103.22(d)(2) for the extent to which listed companies' subsidiaries that are financial institutions may be exempted.

Monetary instruments

Monetary instruments includes currency, traveler's checks in any form and all negotiable instruments (including personal checks, business checks, official bank checks, cashier's checks, third-party checks, promissory notes (as that term is defined in the Uniform Commercial Code), and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee (for the purposes of Sec. 103.23), or otherwise in such form that title thereto passes upon delivery.

Money services business

Each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed in paragraphs (uu)(1) through (uu)(6) of this section. Notwithstanding the preceding sentence, the term "money services business" **shall not include a credit union or bank**, nor shall it include a person registered with, and

regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission.

Money transmitter

In general any person, whether or not licensed or required to be licensed, who engages as a business in accepting currency, or funds denominated in currency, and transmits the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both, or an electronic funds transfer network.

Originator

The sender of the first payment order in a funds transfer.

Originator's bank

The receiving bank to which the payment order of the originator is issued if the originator is not a bank or foreign bank, or the originator if the originator is a bank or foreign bank.

Payment date

The day on which the amount of the transmittal order is payable to the recipient by the recipient's financial institution. The payment date may be determined by instruction of the sender, but cannot be earlier than the day the order is received by the recipient's financial institution and, unless otherwise prescribed by instruction, is the date the order is received by the recipient's financial institution.

Payment order

An instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank or foreign bank to pay, a fixed or determinable amount of money to a beneficiary if:

- (1) The instruction does not state a condition to payment to the beneficiary other than time of payment;
- (2) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and
- (3) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds transfer system, or communication system for transmittal to the receiving bank.

Payroll Customers

A business which (1) has had a transaction account at the credit union for at least 12 months; (2) frequently withdraws more than \$10,000 in currency for payroll purposes in order to pay its employees in the U.S.; (3) is incorporated or organized under the laws of the United States or a state, or is registered as and eligible to do business in the United States.

Person

An individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, an Indian Tribe (as that term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities.

Receiving bank

The bank or foreign bank to which the sender's instruction is addressed.

Receiving financial institution

The financial institution or foreign financial agency to which the sender's instruction is addressed. The term receiving financial institution includes a receiving bank.

Recipient

The person to be paid by the recipient's financial institution. The term recipient includes a beneficiary, except where the recipient's financial institution is a financial institution other than a bank.

Recipient's financial institution

The financial institution or foreign financial agency identified in a transmittal order in which an account of the recipient is to be credited pursuant to the transmittal order or which otherwise is to make payment to the recipient if the order does not provide for payment to an account. The term recipient's financial institution includes a beneficiary's bank, except where the beneficiary is a recipient's financial institution.

Retail type of business

The term "retail type of business" means "a business primarily engaged in providing goods to ultimate consumers and for which the business is paid in substantial portions by currency" 31 CFR 103.22(b)(2)(i). A business that is primarily engaged in providing *services*, rather than *goods*, to ultimate consumers (e.g., a car wash, a dry cleaning store, an appliance repair shop, or a health spa) does not come within the scope of this exemption. In addition, a business that is primarily engaged in selling goods wholesale rather than retail, is not within the scope of this exemption.

Seller or redeemer of traveler's checks, money orders, or stored value

A seller or redeemer of traveler's checks, money orders, or stored value (other than a person who does not sell such checks or money orders or stored value in an amount greater than \$1,000 in currency or monetary or other instruments to or redeem such instruments for an amount greater than \$1,000 in currency or monetary or other instruments from, any person on any day in one or more transactions).

Stored value

Funds or monetary value represented in digital electronics format (whether or not specially encrypted) and stored or capable of storage on electronic media in such a way as to be retrievable and transferable electronically.

Structure (structuring)

For purposes of section 103.53, a person structures a transaction if that person, acting alone, or in conjunction with, or on behalf of, other persons, conducts or attempts to conduct one or more transactions in currency, in any amount, at one or more financial institutions, on one or more days, in any manner, for the purpose of evading the reporting requirements under section 103.22 of this part. "In any manner" includes, but is not limited to, the breaking down of a single sum of currency exceeding \$10,000 into smaller sums, including sums at or below \$10,000, or the conduct of a transaction, or series of currency transactions, including transactions at or below \$10,000. The transaction or transactions need not exceed the \$10,000 reporting threshold at any single financial institution on any single day in order to constitute structuring within the meaning of this definition.

Transaction account

Transaction accounts include those accounts described in 12 U.S.C. 461(b)(1)(C), money market accounts and similar accounts that take deposits and are subject to withdrawal by check or other negotiable order.

Transaction

Transaction means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a credit union includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security, purchase or redemption of any money order, payment or order for any money remittance or transfer, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

Transaction in Currency

A transaction involving the physical transfer of currency from one person to another. A transaction which is a transfer of funds by means of credit union check, credit union draft, wire transfer, or other written order, and which does not include the physical transfer of currency, is not a transaction in currency for this purpose.

Transmittal of funds

A series of transactions beginning with the transmitter's transmittal order, made for the purpose of making payment to the recipient of the order. The term includes any transmittal order issued by the transmitter's financial institution or an intermediary financial institution intended to carry out the transmitter's transmittal order. The term transmittal of funds includes a funds transfer. A transmittal of funds is completed by acceptance by the recipient's financial institution of a transmittal order for the benefit of the recipient of the transmitter's transmittal order. Funds transfers governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. 95-630, 92 Stat. 3728, 15 U.S.C. 1693, et seq.), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.

Transmitter

The sender of the first transmittal order in a transmittal of funds. The term transmitter includes an originator, except where the transmitter's financial institution is a financial institution or foreign financial agency other than a bank or foreign bank.

Transmitter's financial institution

The receiving financial institution to which the transmittal order of the transmitter is issued if the transmitter is not a financial institution or foreign financial agency, or the transmitter if the transmitter is a financial institution or foreign financial agency. The term transmitter's financial institution includes an originator's bank, except where the originator is a transmitter's financial institution other than a bank or foreign bank.

Transaction

Transaction includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or security, purchase or redemption of any money order, payment or order for any money remittance or transfer, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

CHILDREN'S ONLINE PRIVACY PROTECTION ACT (COPPA)

OVERVIEW

Overview

The Children's Online Privacy Protection Act (COPPA) was passed by Congress in October 1998, with a requirement that the Federal Trade Commission (FTC) issue and enforce regulations concerning children's online privacy. The FTC issued the implementing regulations, 16 C.F.R. Part 312, effective April 21, 2000. The primary goal of COPPA and its rule is to place parents in control over what information is collected from their children online. The COPPA rule was designed to be strong, yet flexible, to protect children while recognizing the dynamic nature of the Internet. NCUA issued Regulatory Alert No. 01-RA-07 in July 2001 addressing COPPA.

- The COPPA rule applies to operators of commercial websites and online services directed to children under the age of 13 that collect personal information from children, and operators of general audience sites with actual knowledge that they are collecting information from children under 13.
- Those operators must:
 - (1) Post clear and comprehensive Privacy Policies on the website describing their information practices for children's personal information;
 - (2) Provide notice to parents, and with limited exceptions, obtain verifiable parental consent before collecting personal information from children;
 - (3) Give parents the choice to consent to the operator's collection and use of a child's information while prohibiting the operator from disclosing that information to third parties;
 - (4) Provide parents access to their child's personal information to review and/or have it deleted;
 - (5) Give parents the opportunity to prevent further collection or use of the information
 - (6) Maintain the confidentiality, security, and integrity of information they collect from children.
- In addition, the COPPA rule prohibits operators from conditioning a child's participation in an online activity on the child's providing more information than is reasonably necessary to participate in that activity.

Exceptions

The COPPA rule includes several exceptions (16 C.F.R. § 312.5(c)) that allow operators to collect a child's email address without getting the parent's consent in advance. These exceptions cover many popular online activities for kids, including *contests*, *online newsletters*, *homework help*, and *electronic postcards*.

Prior parental consent is not required when:

- An operator collects a child's or parent's email address to provide notice and seek consent;
- An operator collects an email address to respond to a *one-time* request from a child and then deletes it;
- An operator collects an email address to respond *more than once to a specific* request. (for example, for a subscription to a newsletter, the operator must notify the parent that it is communicating regularly with the child and give the parent the opportunity to stop the communication before sending or delivering a second communication to a child);
- An operator collects a child's name or online contact information to protect the safety of a child who is participating on the site. In this case, the operator must notify the parent and give him or her the opportunity to prevent further use of the information;
- An operator collects a child's name or online contact information to protect the security or liability of the site or to respond to law enforcement, if necessary, and does not use it for any other purpose.

Associated Risks

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with COPPA.
- Reputation risk can occur when the credit union incurs fines or damaging publicity as a result of failure to comply with COPPA.

Additional Information

For additional information visit the FTC online at <http://www.ftc.gov/kidzprivacy/> . You also may call the FTC's Consumer Response Center toll-free at 1-877-FTC-HELP (382-4357), or write Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

CHILDREN’S ONLINE PRIVACY PROTECTION ACT (COPPA) OPERATIONAL REQUIREMENTS

Disclosures / Notices

Privacy Notice (16 C.F.R. § 312.4)

If the credit union is subject to the requirements of COPPA, a link to its privacy notice must appear on the home page of its website or online service and at each area where it collects personal information from children. If the credit union operates a general audience site with a separate children’s area, it must post a clear and prominent link to its privacy notice on the home page of the children’s area. Credit unions may wish to emphasize the link by using a larger font size or a different color type on a contrasting background.

COPPA requires a clearly written and understandable privacy notice that includes the following information:

- Name and contact information of the credit union;
- Types of personal information collected from children and the procedures used for collecting the information;
- How the credit union uses the personal information;
- Whether the credit union discloses the information to third parties;
- Notification that the parent has the option to agree to the collection and use of the child’s information without consenting to its disclosure to third parties;
- Notification that the credit union may not require a child to disclose more information than is reasonably necessary to participate in an activity as a condition of participation; and
- Notification that the parent can review the child’s personal information, ask to have it deleted, and refuse to allow any further collection or use of the child’s information. The notice also must state the procedures for the parent to follow.

Notice to Parents (16 C.F.R. § 312.5)

The notice to parents must contain the same information included on the notice on the website.

- The credit union must notify a parent that it wishes to collect personal information from the child.
- The notice must also state that the parent’s consent is required for the collection, use, and disclosure of the information and how the parent can provide consent.
- The credit union must obtain verifiable consent, meaning that the credit union must make reasonable efforts to ensure that the parent receives the notice and consents.

- The required method of consent depends on the use of the child's information.

New Notice for Consent (16 C.F.R. § 312.5)

An operator is required to send a *new notice and request for consent to parents* if there are material changes in the collection, use or disclosure practices to which the parent had previously agreed.

Access Verification (16 C.F.R. § 312.6)

At a parent's request, operators must disclose the general kinds of personal information they collect online from children (for example, name, address, telephone number, email address, hobbies), as well as the specific information collected from children who visit their sites. Operators must use reasonable procedures to ensure they are dealing with the child's parent before they provide access to the child's specific information.

They can use a variety of methods to verify the parent's identity, including:

- obtaining a signed form from the parent via postal mail or facsimile;
- accepting and verifying a credit card number;
- taking calls from parents on a toll-free telephone number staffed by trained personnel;
- email accompanied by digital signature; or
- email accompanied by a PIN or password obtained through one of the verification methods above.

Operators who follow one of these procedures acting in good faith to a request for parental access are protected from liability under federal and state law for inadvertent disclosures of a child's information to someone who purports to be a parent.

Recordkeeping

Record Retention

COPPA is intentionally silent as to how long records must be retained. NCUA recommends that credit unions retain all records associated with COPPA and their compliance efforts for at least an examination and audit cycle.

Enforcement / Liability

Administrative Enforcement Authority

COPPA gives the NCUA authority to enforce compliance with COPPA for federal credit unions. The FTC has authority to enforce compliance with COPPA for all other credit unions.

Civil Liability

The NCUA and FTC have the authority to hold website operators who violate the COPPA rule liable for civil penalties of up to \$11,000 per violation and/or may bring enforcement actions. The level of penalties assessed may depend upon a number of factors including the egregiousness of the violation, such as: the number of children involved, the amount and type of personal information collected, how the information was used, whether it was shared with third parties, and the size of the credit union.

A credit union may be in violation of the COPPA rule if the NCUA or FTC has determined that a representation, omission, or practice is deceptive if it is likely to: mislead consumers and affect customers' behavior or decisions about the product or service. In addition, an act or practice is unfair if the injury it causes, or is likely to cause, is: substantial, not outweighed by other benefits, and not reasonably avoidable.

CHILDREN’S ONLINE PRIVACY PROTECTION ACT (COPPA)

REVIEW CONSIDERATIONS

Review Considerations

Review Area	Requirements / Recommendations
Policy/Procedures	Adopt a policy for implementing COPPA that includes location of privacy notice on website, notice to parents, when new consent notices will be sent, and access verification.
Coverage	<p>The COPPA rule applies to operators of commercial websites and online services directed to children under 13 that collect personal information from children, and operators of general audience sites with actual knowledge that they are collecting information from children under 13.</p> <p>Exemptions:</p> <p>Prior parental consent is not required when:</p> <ul style="list-style-type: none">• An operator collects a child's or parent's email address to provide notice and seek consent;• An operator collects an email address to respond to a <i>one-time</i> request from a child and then deletes it;• An operator collects an email address to respond <i>more than once to a specific</i> request – such as for a subscription to a newsletter. In this case, the operator must notify the parent that it is communicating regularly with the child and give the parent the opportunity to stop the communication before sending or delivering a second communication to a child;• An operator collects a child's name or online contact information to protect the safety of a child who is participating on the site. In this case, the operator must notify the parent and give him or her the opportunity to prevent further use of the information;• An operator collects a child's name or online contact information to protect the security or

	<p>liability of the site or to respond to law enforcement, if necessary, and does not use it for any other purpose.</p>
<p>Privacy Notice</p>	<p>Ensure the link to the privacy notice appears on the home page of the website or online service and at each area where it collects personal information from children.</p> <p>If the credit union operates a general audience site with a separate children’s area, it must post a clear and prominent link to its privacy notice on the home page of the children’s area.</p> <p>Provide a clearly written and understandable privacy notice that includes the following information:</p> <ul style="list-style-type: none"> • Name and contact information of the credit union; • Types of personal information collected from children and the procedures used for collecting the information; • How the credit union uses the personal information; • Whether the credit union discloses the information to third parties; • Notification that the parent has the option to agree to the collection and use of the child’s information without consenting to its disclosure to third parties; • Notification that the credit union may not require a child to disclose more information than is reasonably necessary to participate in an activity as a condition of participation; and • Notification that the parent can review the child’s personal information, ask to have it deleted, and refuse to allow any further collection or use of the child’s information. The notice also must state the procedures for the parent to follow.
<p>Notice to Parents</p>	<p>Provide a notice to parents that contains the same information included on the notice on the website.</p> <ul style="list-style-type: none"> • The credit union must notify a parent that it wishes to collect personal information from the child.

	<ul style="list-style-type: none"> • The notice must also state that the parent’s consent is required for the collection, use, and disclosure of the information and how the parent can provide consent. • The credit union must obtain verifiable consent, meaning that the credit union must make reasonable efforts to ensure that the parent receives the notice and consents. • The required method of consent depends on the use of the child’s information.
New Notice for Consent	Send a <i>new notice and request for consent to parents</i> if there are material changes in the collection, use or disclosure practices to which the parent had previously agreed.
Access Verification	<p>Disclose, at a parent's request, the general kinds of personal information you collect online from children (for example, name, address, telephone number, email address, hobbies), as well as the specific information collected from children who visit your sites. Use reasonable procedures to ensure you are dealing with the child's parent before you provide access to the child's specific information.</p> <p>Use any of these of methods to verify the parent's identity, including:</p> <ul style="list-style-type: none"> • obtaining a signed form from the parent via postal mail or facsimile; • accepting and verifying a credit card number; • taking calls from parents on a toll-free telephone number staffed by trained personnel; • email accompanied by digital signature; • email accompanied by a PIN or password obtained through one of the verification methods above. <p>Operators who follow one of these procedures acting in good faith to a request for parental access are protected from liability under federal and state law for inadvertent disclosures of a child's information to someone who purports to be a parent.</p>
Record Retention	Retain all records associated with COPPA and compliance efforts for at least an examination and audit cycle.

Training	Provide training to employees whose duties are affected by the requirements of the regulation.
Updating	Update policies, procedures, disclosures, and notices if there are material changes in the collection, use or disclosure practices to which the parent had previously agreed. Ensure effective communication and distribution of updated notices, disclosures and request for consent to parents.
Internal Review	Conduct an internal review at least annually to assess compliance with the regulation and conformity of the credit union's practices with its policies and procedures.

CHILDREN'S ONLINE PRIVACY PROTECTION ACT (COPPA) CHECKLIST

Yes No

Location

1. Is there a link to the privacy policy on the home page of the website or on the home page of the children's area of the website? [16 C.F.R § 312.4(b)]

2. Are the links to the privacy policy near each and every place on the website where the credit union collects personal information from children? [16 C.F.R. § 312.4(b)(1)(iii)]

3. Does the link to the privacy policy stand out so that the website visitor can locate it easily? [16 C.F.R. § 312.4(b)(1)(ii)]

4. Is the link in a different color, a different font, or a larger type size? [16 C.F.R. § 312.4(b)(1)(ii)]

5. Is the link to the privacy policy labeled clearly so a visitor can tell what it is? [16 C.F.R. § 312.4(b)(1)(ii)]

Content

6. Does the privacy policy include the names of all the website operators who collect or maintain personal information from children through the site? [16 C.F.R. § 312.4(b)(2)(i)]

7. Does the privacy policy provide mailing addresses for all the website operators who collect or maintain personal information through the site? (If yes, go to question 10.) [16 C.F.R. § 312.4(b)(2)(i)]

8. Does the privacy policy provide the telephone numbers for all website operators who collect or maintain personal information through the site? [16 C.F.R. § 312.4(b)(2)(i)]

9. Does the privacy policy provide the email addresses of all website operators who collect or maintain personal information through the site? [16 C.F.R.

§ 312.4(b)(2)(i)]

10. Does the privacy policy state each type of personal information (full name, email address, mailing address, phone number, etc.) that the credit union collects from children? [16 C.F.R. § 312.4(b)(2)(ii)]

11. Is the statement of the types of personal information collected descriptive enough to let parents know the kinds of personal information the credit union will be collecting from their children? [16 C.F.R. § 312.4(b)(2)(ii)]

12. Does the privacy policy tell parents whether personal information is collected actively (from the child) or passively (for example, through cookies)? [16 C.F.R. § 312.4 (b)(2)(ii)]

13. Does the privacy policy tell parents how the website will use the personal information that it collects? [16 C.F.R. § 312.4(b)(2)(iii)]

14. Does the website share or disclose children's personal information with third parties? (If no, go to question 19.) [16 C.F.R. § 312.4(b)(2)(iv)]

15. Does the privacy policy state the kinds of business in which the third parties are engaged? [16 C.F.R. § 312.4(b)(2)(iv)]

16. Does the privacy policy tell parents the general purposes for which the third parties will use the children's personal information? [16 C.F.R. § 312.4(b)(2)(iv)]

17. Does the privacy policy state whether the third parties with which the site shares personal information have agreed to maintain the confidentiality, security and integrity of the information? [16 C.F.R. § 312.4(b)(2)(iv)]

18. Does the privacy policy tell parents they can agree to the collection and use of their child's personal information by the site without agreeing to the credit union disclosing the information to third parties? (If yes, go to question 20.) [16 C.F.R. § 312.4(b)(2)(iv)]

19. Does the privacy policy clearly state that the credit union

website does not disclose personal information to third parties? [16 C.F.R. § 312.4(b)(2)(iv)]

20. Does the privacy policy state that the site cannot condition a child's participation in an activity on the child's disclosure of more personal information than is reasonably necessary to participate in the activity? [16 C.F.R. § 312.4(b)(2)(v) & 16 C.F.R. § 312.7]

21. Does the privacy policy let parents know that they can review the personal information that the website has collected from their child? [16 C.F.R. §§ 312.4(b)(2)(vi), 312.6]

22. Does the privacy policy tell parents how they can review their child's personal information? [16 C.F.R. §§ 312.4(b)(2)(vi), 312.6]

23. Does the privacy policy tell parents they can have their child's personal information deleted from the site and how they can have it deleted? [16 C.F.R. §§ 312.4(b)(2)(vi), 312.6]

24. Does the privacy policy tell parents that they can stop the website from further collecting or using additional personal information from their child and how they can stop further collection? [16 C.F.R. §§ 312.4(b)(2)(vi), 312.6]

Style

25. Is the privacy policy clear, understandable and easy to read? [16 C.F.R. § 312.4(a)]

26. Does the privacy policy give a complete description of the information practices, explain all the personal information the credit union collects and spell out how the credit union will use the information? [16 C.F.R. § 312.4(a)]

27. Does the privacy policy include any contradictory, confusing or ambiguous language? [16 C.F.R. § 312.4(a)]

28. Does the privacy policy contain any material or content that does not relate to the credit union's information practices? [16 C.F.R. § 312.4(a)]

29. Is the privacy policy well-organized and easy to follow? [16 C.F.R. § 312.4(a)]

30. Do the practices reflect the promises the credit union makes in the privacy policy?

Comments

CHILDREN'S ONLINE PRIVACY PROTECTION ACT (COPPA)

DEFINITIONS

Definitions (16 C.F.R. § 312.2)

Child

An individual under the age of 13.

Collects or collection

The gathering of any personal information from a child by any means, including but not limited to:

- (a) Requesting that children submit personal information online;
- (b) Enabling children to make personal information publicly available through a chat room, message board, or other means, except where the operator deletes all individually identifiable information from postings by children before they are made public, and also deletes such information from the operator's records; or
- (c) The passive tracking or use of any identifying code linked to an individual, such as a cookie.

Commission

The Federal Trade Commission.

Delete

To remove personal information such that it is not maintained in retrievable form and cannot be retrieved in the normal course of business.

Disclosure

With respect to personal information:

- (a) The release of personal information collected from a child in identifiable form by an operator for any purpose, except where an operator provides such information to a person who provides support for the internal operations of the website or online service and who does not disclose or use that information for any other purpose. For purposes of this definition:
 - (1) Release of personal information means the sharing, selling, renting, or any other means of providing personal information to any third party, and
 - (2) Support for the internal operations of the website or online service means those activities necessary to maintain the technical functioning of the website or online service, or to fulfill a request of a child as permitted by Sec. 312.5(c)(2) and (3);
or
- (b) Making personal information collected from a child by an operator publicly available in identifiable form, by any means, including by a public posting through the Internet,

or through a personal home page posted on a website or online service; a pen pal service; an electronic mail service; a message board; or a chat room.

Federal agency

An agency, as that term is defined in Section 551(1) of title 5, United States Code.

Internet

Collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire, radio, or other methods of transmission.

Online contact information

An e-mail address or any other substantially similar identifier that permits direct contact with a person online.

Operator

Any person who operates a website located on the Internet or an online service and who collects or maintains personal information from or about the users of or visitors to such website or online service, or on whose behalf such information is collected or maintained, where such website or online service is operated for commercial purposes, including any person offering products or services for sale through that website or online service, involving commerce:

- (a) Among the several States or with one or more foreign nations;
- (b) In any territory of the United States or in the District of Columbia, or between any such territory and
 - (1) Another such territory, or
 - (2) Any State or foreign nation; or
- (c) Between the District of Columbia and any State, territory, or foreign nation. This definition does not include any nonprofit entity that would otherwise be exempt from coverage under Section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

Parent

Includes a legal guardian.

Person

Any individual, partnership, corporation, trust, estate, cooperative, association, or other entity.

Personal information

Individually identifiable information about an individual collected online, including:

- (a) A first and last name;
- (b) A home or other physical address including street name and name of a city or town;

- (c) An e-mail address or other online contact information, including but not limited to an instant messaging user identifier, or a screen name that reveals an individual's e-mail address;
- (d) A telephone number;
- (e) A Social Security number;
- (f) A persistent identifier, such as a customer number held in a cookie or a processor serial number, where such identifier is associated with individually identifiable information; or a combination of a last name or photograph of the individual with other information such that the combination permits physical or online contacting; or
- (g) Information concerning the child or the parents of that child that the operator collects online from the child and combines with an identifier described in this definition.

Third party

Any person who is not:

- (a) An operator with respect to the collection or maintenance of personal information on the website or online service; or
- (b) A person who provides support for the internal operations of the website or online service and who does not use or disclose information protected under this part for any other purpose.

Obtaining verifiable consent

Making any reasonable effort (taking into consideration available technology) to ensure that before personal information is collected from a child, a parent of the child:

- (a) Receives notice of the operator's personal information collection, use, and disclosure practices; and
- (b) Authorizes any collection, use, and/or disclosure of the personal information.

Website or online service directed to children

A commercial website or online service, or portion thereof, that is targeted to children. Provided, however, that a commercial website or online service, or a portion thereof, shall not be deemed directed to children solely because it refers or links to a commercial website or online service directed to children by using information location tools, including a directory, index, reference, pointer, or hypertext link. In determining whether a commercial website or online service, or a portion thereof, is targeted to children, the Federal Trade Commission or NCUA will consider its subject matter, visual or audio content, age of models, language or other characteristics of the website or online service, as well as whether advertising promoting or appearing on the website or online service is directed to children. The Federal Trade Commission or NCUA will also consider competent and reliable empirical evidence regarding audience composition; evidence regarding the intended audience; and whether a site uses animated characters and/or child-oriented activities and incentives.

CREDIT PRACTICES RULE

OVERVIEW

Overview

Part 706 of the NCUA Rules and Regulations, the Credit Practices Rule, implements Section 18(f) of the Federal Trade Commission Act, 15 U.S.C. 57a, as it applies to federal credit unions. The purpose of the regulation is to define unfair or deceptive acts or practices of credit unions in connection with extensions of credit to consumers.

The Credit Practices Rule is broken down into three parts:

- Unfair Credit-Contract Provisions
- Unfair or Deceptive Practices Involving Cosigners
- Unfair Late Charges

Unfair Credit-Contract Provisions

It is an unfair act or practice for a credit union, directly or indirectly, to take or receive from a consumer an obligation in connection with the extension of credit that:

- Constitutes or contains a cognovit or confession of judgment, warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon.
- Constitutes or contains an executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation.
- Constitutes or contains an assignment of wages or other earnings unless:
 - the assignment by its terms is revocable at the will of the debtor; or
 - the assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment; or,
 - the assignment applies only to wages or other earnings already earned at the time of the assignment.
- Constitutes or contains a nonpossessory security interest in household goods other than a purchase money security interest.

Unfair or Deceptive Practices Involving Cosigners

In connection with the extension of credit to consumers, it is:

- A deceptive act or practice for a credit union, directly or indirectly, to misrepresent the nature or extent of cosigner liability to any person.
- An unfair act or practice for a credit union, directly or indirectly, to obligate a cosigner unless the cosigner is informed prior to becoming obligated.

To comply with the cosigner notification requirement, credit unions must provide a clear and conspicuous disclosure statement in writing to the cosigner prior to becoming obligated. The notice may be a separate document or included in the documents evidencing the consumer credit obligation.

Unfair Late Charges

In connection with collecting a debt arising out of an extension of credit to a consumer, it is an unfair act or practice for a credit union, directly or indirectly, to levy or collect any delinquency charge on a payment, if the payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, when the only delinquency is attributable to late fee(s) or delinquency charge(s) assessed on earlier installment(s). To do so would be considered “pyramiding” late fees.

For example: A consumer’s payments are \$40 a month. The consumer makes his or her February payment in full, but makes it late. The credit union assesses a \$5 late charge. The consumer makes a March payment of \$40 on time, but fails to pay the \$5 late charge. The credit union uses part of the March payment to pay off the outstanding late charge, and then considers the March payment deficient. **The credit union may not assess another late charge since the March payment was made in full and on time.**

Associated Risks

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with the credit practices rule.
- Reputation risk can occur when the credit union incurs administrative action or poor publicity and reduced member confidence as a result of failure to comply with the rule.

Additional Information

Additional information is available in Part 706 of NCUA Rules and Regulations. In addition, you may review similar rules issued by the Federal Trade Commission, 15 C.F.R. Part 444, at <http://www.ftc.gov> or the Federal Reserve Board's Regulation AA, 12 C.F.R. Part 227, Subpart B, which provides question and answer examples in the staff commentary and can be accessed at <http://www.federalreserve.gov/>.

CREDIT PRACTICES RULE

OPERATIONAL REQUIREMENTS

Disclosures / Notices

Notice to Cosigner [Part 706.3(b)]

A credit union must provide a clear and conspicuous disclosure statement in writing to the cosigner prior to becoming obligated. The notice is to contain only the following statement, or one which is substantially equivalent, and will either be a separate document or included in the documents evidencing the consumer credit obligation.

NOTICE TO COSIGNER

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increases this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

This notice is not the contract that makes you liable for the debt.

Enforcement / Liability

Administrative Enforcement Authority

The National Credit Union Administration is responsible for enforcement among federal credit unions, while the Federal Trade Commission (FTC) enforces the Credit Practices Rule for state-chartered credit unions.

Penalties and Liabilities

The Credit Practices Rule sets no specific administrative action. There are no penalties specifically listed in NCUA Rules and Regulations Part 706. NCUA has the enforcement authority to declare unfair or deceptive trade practices of federal credit unions, to investigate such practices, and to issue rules regulating such practices. NCUA may take administrative action if such prohibited practices are identified. Federal credit unions engaging in prohibited practices are also exposed to suit by the victims of such practices.

CREDIT PRACTICES RULE
REVIEW CONSIDERATIONS

Review Considerations

Review Area	Requirements / Recommendations
Unfair Credit Practices	Do not engage in an unfair act or practice in connection with the extension of credit to a consumer that is prohibited in NCUA Rules and Regulations Part 706.
Unfair or Deceptive Cosigner Practices	Refrain from misrepresenting a cosigner's liability to any person. Provide to a cosigner, before becoming obligated in a consumer credit transaction, a disclosure notice explaining the nature of the cosigner's obligations and liabilities under the contract.
Late Charges	Refrain from collecting or attempting to collect late charges on a timely payment because of the member's failure to pay a late charge attributable to a prior delinquent payment.
Training	Ensure training is provided to employees whose duties are impacted by the Credit Practices Rule.

CREDIT PRACTICES RULE CHECKLIST

	Yes	No
1. Do consumer contracts originated by the credit union contain any of the following prohibited provisions or has the credit union attempted to enforce:		
a) a confession of judgment? [§ 706.2(a)(1)]	_____	_____
b) a waiver of statutory property exemption, (unless the waiver applies solely to the property which will serve as security for the loan)? [§ 706.2(a)(2)]	_____	_____
c) an assignment of wages or other earnings (except where permitted)? [§ 706.2(a)(3)]	_____	_____
d) a nonpossessory security interest in household goods (other than a purchase money security interest)? [§ 706.2(a)(4)]	_____	_____
2. Does the credit union acquire loans originated by other creditors?	_____	_____
If so, does the credit union refrain from enforcing any of the following prohibited practices?		
a) Confession of Judgment? [§ 706.2(a)(1)]	_____	_____
b) Waiver of statutory property exemption, (unless the waiver applies solely to the property which will serve as security for the loan)? [§ 706.2(a)(2)]	_____	_____
c) Assignment of wages or other earnings (except where permitted)? [§ 706.2(a)(3)]	_____	_____
d) Nonpossessory security interest in household goods? [§ 706.2(a)(4)]	_____	_____
3. Does the credit union refrain from engaging in any prohibited cosigner practices (e.g., misrepresenting the cosigner's liability or obligating cosigners prior to providing the required notification)? [§ 706.3(a)]	_____	_____
4. Does the credit union provide each cosigner, prior to becoming contractually obligated, the required notice or one that is substantially similar (whether separate or contained in the credit documents)? [§ 706.3(b)]	_____	_____

5. Does the credit union refrain from collecting or attempting to collect late charges on a timely payment because of the member's failure to pay a late charge attributable to a prior delinquent payment? [§ 706.4]

Comments _____

CREDIT PRACTICES RULE

DEFINITIONS

Definitions (Section 706.1)

Definitions used in NCUA Rules and Regulations:

Person

An individual, corporation, or other business organization.

Consumer

A natural person member who seeks or acquires goods, services, or money for personal, family, or household use.

Obligation

An agreement between a consumer and a Federal credit union.

Debt

Money that is due or alleged to be due from one to another.

Earnings

Compensation paid or payable to an individual or for his or her account for personal services rendered or to be rendered by him or her, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension, retirement, or disability program.

Household goods

Clothing, furniture, appliances, one radio and one television, linens, china, crockery, kitchenware, and personal effects (including wedding rings) of the consumer and his or her dependents, provided that the following are not included within the scope of the term “household goods”:

- (1) Works of art;
- (2) Electronic entertainment equipment (except one television and one radio);
- (3) Items acquired as antiques; and
- (4) Jewelry (except wedding rings).

Antique

Any item over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character.

Cosigner

A natural person who renders himself or herself liable for the obligation of another person without receiving goods, services, or money in return for the credit obligation, or, in the case of an open-end credit obligation, without receiving the contractual right to obtain extensions of credit under the obligation.

The term includes any person whose signature is requested as a condition to granting credit to a consumer, or as a condition for forbearance on collection of a consumer's obligation that is in default. The term does not include a spouse whose signature is required on a credit obligation to perfect a security interest pursuant to state law. A person is a cosigner within the meaning of this definition whether or not he or she is designated as such on a credit obligation.

ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE

(E-SIGN ACT)

OVERVIEW

Overview

The E-Sign Act encourages the use of electronic signatures, electronic contracts and electronic records by establishing requirements and standards that when followed give legal validity to these electronic instruments. The E-sign Act provides that: 1) a signature, contract, or other record relating to a transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and 2) a contract may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.

The E-Sign Act neither requires private parties to use or accept electronic records or electronic signatures, nor does it mandate or recommend any specific technological standard. It permits the use of electronic records to provide required disclosures in electronic format rather than written format. In short, it allows the issuance of electronic records to satisfy any statute or regulation that requires written records, provided the consumer/member has previously agreed to accept the records electronically.

The E-Sign Act also permits credit unions to satisfy statutory and regulatory retention of records requirements electronically, as long as the electronic form is accurate and capable of being reproduced for later reference.

Associated Risks

Compliance risk can occur when the credit union fails to implement the necessary controls to comply with the E-Sign Act.

Additional Information

Additional information can be obtained from the National Credit Union Administration on-line at http://www.ncua.gov/reg_alerts/Prior2003/01-RA-03.pdf.

ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE

(E-SIGN ACT)

OPERATIONAL REQUIREMENTS

Disclosures / Notices

Consent To Electronic Records [§101(C)(1)]

If a credit union is required to provide, or make available, a written record of a transaction, the credit union may use an electronic record to provide, or make available this record, if—

- (a) The member has affirmatively consented to the electronic format, and has not withdrawn this consent;
- (b) The member is provided, before consenting, with a clear and conspicuous statement—
 - (i) informing the member that he/she has the right to receive the record(s) in paper form and may withdraw consent, and inform the member of any consequences of withdrawing consent (fees or termination of account, for example);
 - (ii) informing the member whether the consent is for a single transaction, or categories of records to be provided or made available in an ongoing relationship;
 - (iii) describing the procedures the member must use to withdraw consent, and to update information needed to contact the member electronically; and
 - (iv) informing the member of the method to request and obtain a paper copy of an electronic record after consent and any associated fees;
- (c) The member—
 - (i) is provided with a statement of hardware and software requirements for access to and retention of electronic records and
 - (ii) consents, or confirms his/her consent electronically in a manner demonstrating the member can access the information in the electronic form the credit union will use; and
- (d) after receiving member consent, if the hardware and software requirements for accessing or retaining electronic records change, creating a material risk that the member may not be able to access or retain subsequent electronic records, the credit union—
 - (i) provides the member with a notice of the changes, and the right to withdraw the consent without charging a fee for the withdrawal, and without imposing any condition or consequence not previously disclosed.; and
 - (ii) again complies with subparagraph (c).

Accuracy and Accessibility [§101(D)]

Legally imposed records retention requirements are met by retaining an electronic record of the required information. The electronic record must:—

- (a) accurately reflect the information set forth in the contract or other record to be retained; and
- (b) remain accessible to all persons who are entitled to access it for as long as legally required in a form that is capable of being accurately reproduced for later reference, whether by transmission, printing, or otherwise.

Prior Consent [§101(c)(5)]

The consumer disclosures subsection of the E-sign Act does not apply to any records that are provided or made available to a member who has consented prior to the effective date of Subchapter I of the E-sign Act to receive such records in electronic form as permitted by any statute, regulation, or other rule of law.

Oral Communications [§101(c)(6)]

An oral communication or a recording of an oral communication shall not qualify as an electronic record for purposes of the consumer disclosures subsection of the E-sign Act except as otherwise provided under applicable law.

Recordkeeping

Record Retention

As noted in the accuracy and accessibility section above, the E-Sign Act permits credit unions to comply with legally imposed records retention requirements by retaining electronic records

Enforcement / Liability

Penalties

The E-Sign Act does not specify civil liability provisions for violations of that act. Nothing in the E-Sign Act provides an exemption from penalties for failure to deliver disclosures required by regulation.

ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

(E-SIGN ACT)

REVIEW CONSIDERATIONS

Review Considerations

Review Area	Requirements / Recommendations
Policy/Procedures	Adopt a policy and procedures regarding the use of electronic records, receipt of affirmative consent from members to use electronic format, and disclosures that must be issued to members before consent.
Coverage	The E-Sign Act provides for the use of electronic records and signatures in commerce.
Disclosures	<p><u>Consent to electronic records (§101(c)(1))</u> If a credit union is required to provide, or make available, a written record of a transaction, the credit union may use an electronic record to provide, or make available this record, if:</p> <ul style="list-style-type: none">(a) The member has consented to the electronic format and has not withdrawn this consent;(b) The member is provided, before consenting to the format, with a clear and conspicuous statement<ul style="list-style-type: none">• informing the member that he/she has the right to receive the record(s) in paper form. Also, that they may withdraw their consent and any consequences of withdrawing the consent (fees or termination of account, for example)• informing the member of the scope of the consent, whether it is for a single transaction, or categories of records to be provided in an ongoing relationship• describing the procedures the member must use to withdraw consent, and to update information needed to contact the member electronically

- informing the member of the method to request and obtain a paper copy of an electronic record after giving consent and any associated fees.

(c) The member—

- is provided with a statement of hardware and software requirements for access to and retention of electronic records
- consents, or confirms his/her consent electronically in a manner demonstrating the member can access the information in the electronic form the credit union will use.

(d) after receiving member consent, if the hardware and software requirements for accessing or retaining electronic records change, creating a material risk that the member may not be able to access or retain subsequent electronic records, the credit union

- provides the member with a notice of the changes, and the right to withdraw the consent without charging a fee for the withdrawal, and without imposing any condition or consequence not previously disclosed.
- again complies with subparagraph (c).

Accuracy and accessibility (§ 101(d))

Legally imposed records retention requirements are met by retaining an electronic record of the required information. The electronic record must:

- accurately reflect the information set forth in the record to be retained; and
- remain accessible to all persons who are entitled to access it for as long as legally required in a form that is capable of being accurately reproduced for later reference.

Prior Consent (§ 101(c)(5))

The consumer disclosures subsection of the E-Sign

	<p>Act does not apply to any records that are provided or made available to a member who has consented prior to the effective date of Subchapter I of the E-Sign Act to receive such records in electronic form as permitted by any statute, regulation, or other rule of law.</p> <p><u>Oral communications (§ 101(c)(6))</u> An oral communication or a recording of an oral communication shall not qualify as an electronic record for purposes of the consumer disclosures subsection of the E-Sign Act except as otherwise provided under applicable law.</p>
Training	Ensure that all departments are aware of all aspects of the E-Sign Act.
Updating	Update policies and procedures to reflect provisions of the E-Sign Act.
Internal Review	Conduct an internal review at least annually to assess compliance with the E-sign Act and conformity of the credit union's practices with its policies and procedures.

**ELECTRONIC SIGNATURES IN GLOBAL AND
NATIONAL COMMERCE
(E-SIGN ACT)
CHECKLIST**

- | | Yes | No |
|--|-------|-------|
| 1. If the credit union provides information relating to transactions in an electronic form, does the credit union: | | |
| a. Ensure the member has affirmatively consented to this form and not withdrawn that consent? [§101(c)(1)] | _____ | _____ |
| b. Provide the member with a clear and conspicuous statement of his/her consumer's rights? [§101(c)(1)] | _____ | _____ |
| c. Provide the consumer with a statement of hardware and software requirements? [§101(c)(1)] | _____ | _____ |
| 2. If the electronic record needs to be retained, does it remain accessible to all persons who are entitled to access in a form that is capable of being reproduced later? [§101(d)] | _____ | _____ |

Comments _____

ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE

(E-SIGN ACT)

DEFINITIONS

Definitions (Section 106)

Consumer

An individual who obtains, through a transaction, products or services which are used primarily for personal, family, or household purposes, and also means the legal representative of such an individual. Generally, in the credit union context, “consumer” refers to “member.”

Electronic

Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

Electronic agent

A computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part without review or action by an individual at the time of the action or response.

Electronic record

A contract or other record created, generated, sent, communicated, received, or stored by electronic means.

Electronic signature

An electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.

Federal regulatory agency

An agency, as that term is defined in section 552(f) of title 5.

Information

Data, text, images, sounds, codes, computer programs, software, databases, or the like.

Person

An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.

Record

Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Requirement

Includes a prohibition.

Self-regulatory organization

An organization or entity that is not a Federal regulatory agency or a State, but that is under the supervision of a Federal regulatory agency and is authorized under Federal law to adopt and administer rules applicable to its members that are enforced by such organization or entity, by a Federal regulatory agency, or by another self-regulatory organization.

State

The District of Columbia and the territories and possessions of the United States.

Transaction

An action or set of actions relating to the conduct of business, consumer, or commercial affairs between two or more persons, including any of the following types of conduct -

- (a) The sale, lease, exchange, licensing, or other disposition of
 - (i) Personal property, including goods and intangibles,
 - (ii) Services, and
 - (iii) Any combination thereof; and
- (b) The sale, lease, exchange, or other disposition of any interest in real property, or any combination thereof.

FAIR CREDIT REPORTING ACT (FCRA)

OVERVIEW

Overview

The Fair Credit Reporting Act (FCRA) defines the responsibilities and liabilities of those who provide information to and access data from a Consumer Reporting Agency (CRA). The FCRA was designed to promote accuracy, fairness, and privacy of information in the files of every CRA by:

- Regulating the consumer reporting industry;
- Placing disclosure obligations on users of consumer reports;
- Ensuring fair, timely, and accurate reporting of credit information;
- Restricting the use of reports on consumers; and
- In certain situations, requiring the deletion of obsolete information.

Consumer Report

A consumer report means any written, oral or other communication of any information by a CRA bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

- credit or insurance to be used primarily for personal, family, or household purposes;
- employment purposes; or
- any other purpose specifically stated in section 604 of the FCRA.

The term "consumer report" does not mean a report containing information solely about transactions or experiences between the consumer (e.g. applicants, employees, and members) and the credit union. The term "consumer report" also does not include any communication of other information among a credit union and its CUSOs if the credit union gives the consumer a clear and conspicuous disclosure about its affiliate information sharing and the consumer does not opt out of such sharing.

Consumer Reporting Agency

A CRA is any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

The FCRA contains additional requirements for organizations which function as a CRA, in addition to the requirements imposed on users and organizations reporting information to a CRA.

Compliance with the FCRA

The FCRA applies to creditors, employers, landlords, and other businesses that exchange consumer information with CRAs, including institutions that offer checking or share draft accounts.

The FCRA also affects lenders extending credit to an individual for business purposes or to a closely held business. When an individual is or will be personally liable for repayment of a loan for business purposes, such as an individual proprietor, co-signer, or guarantor, the loan may be viewed as a consumer transaction.

Credit Union – A Consumer Reporting Agency

When one credit union provides another credit union or a CRA information about a consumer reported to it by another person or organization, the credit union is considered a CRA. It must comply with all the sections of the FCRA relating to CRAs concerning that consumer.

When a credit union provides information based solely on its own transactions and experiences with the consumer to another entity, it is not acting as a CRA. A credit union may also communicate other credit information to its affiliates (CUSOs) without becoming a CRA if the credit union gave the consumer an opportunity to opt out of the information sharing and the consumer did not opt out. Similarly, if the credit union furnishes information from outside sources to another party involved in the same transaction, the credit union is not a CRA. Such parties could include an insurer or a guarantor (as in the case of FHA, VA, private insurers or insured student loan programs), other financial institutions participating in the transaction, or a collection agency engaged in the collection of the transaction.

Using Consumer Reports

A user of a consumer report must identify itself to the CRA and certify that it will use the information it requests as specified in the FCRA and will not use the information for any other purpose.

If the credit union takes any adverse action with respect to any consumer that is based in whole or in part on any information contained in a consumer report, the credit union must

- provide oral, written, or electronic notice of the adverse action to the member;
- provide to the member orally, in writing, or electronically
 - the name, address, and telephone number of the consumer reporting agency (including a toll-free telephone number established by the

- agency if the agency compiles and maintains files on consumers on a nationwide basis) that furnished the report to the person; and
 - a statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken; and
- provide to the member an oral, written, or electronic notice of the consumer's right
 - to obtain a free copy of his or her consumer report from the consumer reporting agency
 - to dispute with the consumer reporting agency the accuracy or completeness of any information in the consumer report furnished by the agency.

To do this, the credit union should supply a standard disclosure form that provides the consumer with information to gain access to the consumer report and make corrections, if necessary.

Information From Other Sources

If adverse action involving the denial of consumer credit or the increase in cost of credit occurs based on information obtained from a source other than a CRA, the credit union must disclose the applicant's right to file a written request for the nature of the information within 60 days of learning of the adverse action.

If a consumer requests it, the credit union must then disclose the nature of the information to the consumer within 30 days of the request in sufficient detail to enable the consumer to evaluate its accuracy. The credit union may disclose the source of the information, but is not required to do so.

Pre-approved/Pre-screened Credit

A credit union may offer pre-approved or pre-screened credit to a member who has not applied for credit or insurance in the following situations:

- The member authorizes the CRA to provide pre-screened consumer reports; or
- The transaction consists of a firm offer of credit or insurance.

A firm offer of credit is one that the credit union will honor if the member meets the criteria used in the pre-screened report. An offer based on a pre-screened list must be accompanied by a clear and conspicuous disclosure statement informing the member of certain information. A credit union that makes a credit offer to a member based on his or her consumer report, which is not initiated by the member, must comply with the disclosure and recordkeeping requirements outlined in Section 615.

Documenting Compliance

A credit union may disclose orally the information required under the FCRA. However, if the action resulting in a denial of credit under the FCRA also meets the definition of adverse action under Regulation B, the credit union must make additional disclosures to the member.

Although the credit union may provide the required disclosures for both the FCRA and Regulation B on the same disclosure form, they are independent and one cannot substitute for the other. To meet the requirements of both the FCRA and Regulation B, a credit union may wish to use form letters, copies of which may be kept in files with the completed application forms. That practice allows internal monitoring of compliance and provides evidence in the event of litigation.

Providing Consumer Information

Anyone who furnishes information to a CRA:

- May not furnish information that it knows or consciously avoids knowing is inaccurate;
- Must notify CRAs when members voluntarily close credit accounts. This is important because some users may interpret a closed account as an indicator of bad credit unless it is clearly disclosed that the member - not the creditor - closed the account;
- Must notify the CRA within 90 days after reporting information about a delinquent account placed for collection, charged to profit or loss, or subject to any similar action, of the month and year the delinquency commenced that triggered reporting. It is important to note the correct date the delinquency commenced to compute how long derogatory information can be kept in a member's file; and
- Must promptly correct incomplete or inaccurate information, resubmit it to each CRA, and report only the correct information in the future.

Once a credit union is notified that a consumer disputes information it provided on the consumer report, the credit union:

- May not give that information to any CRA without also telling the CRA that the information is in dispute;
- Must investigate the dispute and review all relevant information provided by the CRA about the dispute; and

- Must report its findings to the CRA involved and all national CRAs that received the information if the investigation shows the information to be incomplete or inaccurate.

The credit union should resolve the dispute within 30 days after receipt of a dispute notice from the consumer. If the consumer provides additional relevant information during the 30-day period, the CRA has an additional 15 days to complete the investigation. The CRA must give the credit union all relevant information that it gets within five business days of receipt and must promptly give additional relevant information provided by the consumer. If a credit union does not investigate and respond within the specified time periods, the CRA must delete the disputed information from its files.

Associated Risks

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with the FCRA.
- Reputation risk can occur when the credit union incurs fines and penalties or experiences decreased member confidence as a result of failure to comply with the FCRA.

FAIR CREDIT REPORTING ACT (FCRA) OPERATIONAL REQUIREMENTS

Disclosures / Notices

Adverse Action Notices, Section 615 (15 U.S.C. §1681m)

A credit union may disclose orally the information required under the FCRA. However, if the action resulting in a denial of credit under the FCRA also meets the definition of adverse action under Regulation B, the credit union must make additional disclosures to the member.

Although the credit union may provide the required disclosures for both the FCRA and Regulation B on the same disclosure form, they are independent and one cannot substitute for the other.

Recordkeeping

Pre-approved/Pre-screened Credit, Section 615 (15 U.S.C. §1681m)

Any credit union that makes a credit offer to a member based on his or her consumer report, which is not initiated by the member, must maintain on file for three years from the date the offer is made to the member:

- All criteria bearing on credit worthiness that is the basis for determining whether or not to extend credit pursuant to the offer, and
- Any requirement for furnishing of collateral as a condition of the extension of credit.

Reports

Notice of Dispute, Sections 611 and 623, (15 U.S.C. §§1681i, 1681s-2)

A credit union should resolve the dispute within 30 days after receipt of a dispute notice from the consumer. If the consumer provides additional relevant information during the 30-day period, the CRA has an additional 15 days to complete the investigation. The CRA must give the credit union all relevant information that it gets within five business days of receipt and must promptly give additional relevant information provided by the consumer. If a credit union does not investigate and respond within the specified time periods, the CRA must delete the disputed information from its files.

Enforcement / Liability

Administrative Enforcement Authority, Section 621 (15 U.S.C. §1681s)

The National Credit Union Administration Board has responsibility for enforcement among federal credit unions, while the Federal Trade Commission enforces the Fair Credit Reporting Act for state-chartered credit unions.

Penalties and Liabilities, Sections 616, 617, and 619 (15 U.S.C. §§1681n, 1681o, 1681q)

Credit unions may be liable for willful noncompliance or negligent noncompliance as either users of information or as CRAs. Liability may include actual damages, punitive damages, court costs, and attorney's fees, depending on the type of noncompliance. Any person that obtains a credit report under false pretenses may receive a penalty of \$1,000 or actual damages, whichever is greater, and may face criminal charges that subject such person to fines and imprisonment up to 2 years.

FAIR CREDIT REPORTING ACT (FCRA)
REVIEW CONSIDERATIONS

Review Considerations

Review Area	Requirements / Recommendations
General Coverage	<p>Determine whether the credit union obtains or uses consumer reports for a permissible purpose under Section 604 of the FCRA.</p> <p>Determine whether the credit union as a user of consumer reports and furnisher of credit information complies with all applicable FCRA provisions.</p> <p>Determine whether all communication of consumer credit information to third-parties fall within the exclusions from the definition of “consumer report” or whether the credit union is acting as a Consumer Reporting Agency (CRA) as defined in Section 603(f) and, is in compliance with the CRA requirements of FCRA.</p>
Procedures	Ensure procedures for implementing and complying with FCRA are in place.
Permissible Purposes for Consumer Reports	Use consumer reports for the following permissible purposes in accordance with the conditions in Section 604: credit or insurance to be used primarily for personal, family, or household purposes; employment purposes; in accordance with written instructions of the consumer; to establish eligibility for government licenses or benefits; to assess the credit or prepayment risks of existing credit obligation; for legitimate business need when consumer initiates the transaction; and to review current accounts.
Adverse Action Based on Consumer Reporting Agency Information	<p>Provide oral, written, or electronic notice of any adverse action to a member. Provide the name, address, and telephone number of the CRA that furnished the report.</p> <p>Provide oral, written, or electronic notice to the member of the member’s right to obtain a free copy of the member’s consumer report and to dispute with a CRA the accuracy or completeness</p>

	<p>of any information.</p> <p>Additional disclosures and requirements for employment adverse actions in Section 604.</p> <p>Note: No credit union will be held liable for a violation of Section 615 if the credit union can show by a preponderance of the evidence that at the time of the alleged violation the credit union maintained reasonable procedures to ensure compliance with the requirements on users of consumer reports, Section 615 of FCRA.</p>
Adverse Action Related to Consumer Credit Based on Information from Other Sources	<p>Clearly and accurately disclose to the member the right to make a written request for the reasons for adverse action within 60 days of learning of the adverse action.</p> <p>Disclose the nature of the information to the member within a reasonable period of time, upon receipt of the member's written request.</p>
Credit or Insurance Transactions Not Initiated By the Member	<p>Ensure pre-approved or pre-screened credit to members meet the conditions outlined in Section 604:</p> <ul style="list-style-type: none"> ▪ Member authorizes the CRA to provide prescreened consumer reports; or ▪ The transaction consists of a firm offer of credit or insurance <p>A firm offer of credit is one that the credit union will honor if the member meets the criteria used in the pre-screened report.</p> <p>An offer based on a pre-screened list must be accompanied by a clear and conspicuous disclosure statement informing the member of certain information.</p>
Furnishing Information to the CRA	<p>Ensure accurate information is provided to the CRA and that information is corrected and updated if the credit union determines incompleteness or inaccuracy.</p>
Disputed Information	<p>Refrain from furnishing information to any CRA without notice that such information is in dispute.</p>
Notice of Closed Accounts	<p>Notify the CRA of the voluntary closure of an account by a member when the credit union regularly and in the ordinary course of business</p>

	furnishes information to a CRA regarding a member who has a credit account with them.
Notice of delinquency of accounts	Notify the CRA of the month and year of the commencement of the delinquency that immediately preceded the action within 90 days of furnishing the information to the CRA.
Notice of Dispute	<p>After receiving notice of a dispute with regard to the completeness or accuracy of any information provided by a credit union to a CRA, the credit union must:</p> <ul style="list-style-type: none"> ▪ Conduct an investigation ▪ Review all relevant information provided by the CRA ▪ Report the results of the investigation to the CRA ▪ If the investigation finds the information is incomplete or inaccurate, report those results to all other CRAs where the credit union furnished the information <p>Complete all investigations, reviews, and reports within required timeframes.</p>
Training	Provide training to employees whose duties are impacted by FCRA.

FAIR CREDIT REPORTING ACT CHECKLIST

	Yes	No
<p>1. When the credit union takes adverse action based on a consumer report, does the credit union provide: [§615(a)]</p> <p>a. oral, written or electronic notice of the adverse action to the consumer;</p> <p>b. the name, address, and telephone number of the consumer reporting agency (including a toll-free telephone number) that furnished the report, and</p> <p>c. a statement that the consumer reporting agency did not make the final decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken, and</p> <p>d oral, written or electronic notice of the consumer's right to obtain a free copy of the consumer report from the consumer reporting agency within a 60 day period and to dispute the accuracy or completeness of any information contained in the report?</p>	<p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	<p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>2. When adverse action on consumer credit is based on information from third parties other than a consumer reporting agency, does the credit union disclose the consumer's right to know the nature of the information (is the right to make a written request clearly and accurately disclosed at the time adverse action is communicated to the consumer)? [§615(b)]</p>	<p>_____</p>	<p>_____</p>
<p>3. Does the credit union have procedures in place to provide the nature of the outside information (Question 2) upon request? [§615(c)]</p>	<p>_____</p>	<p>_____</p>
<p>4. If the credit union makes written credit or insurance solicitations based on consumer reports , does the credit union provide with each solicitation a clear and conspicuous statement that: [§615(d)]</p> <p>a. information contained in the member's consumer report was used in connection with the solicitation?</p> <p>b. the member received the offer of credit or insurance because they satisfied the criteria for creditworthiness or insurability?</p> <p>c. if applicable, the credit or insurance may not be extended if, after the member responds to the offer, the member does not meet the criteria used to select the member for the offer?</p>	<p>_____</p> <p>_____</p> <p>_____</p>	<p>_____</p> <p>_____</p> <p>_____</p>

d. the member has the right to prohibit information contained in the member's file with any consumer reporting agency from being used in connection with any credit or insurance transaction not initiated by the member?

e. the member may exercise the right above by notifying a notification system established under Section 604(e)?

Note: The statement discussed above must include the address and toll-free number of the appropriate notification system established under Section 604(e).

5. Does the credit union who makes an offer of credit or insurance that is not initiated by the member, as described in 615(d), maintain criteria on file as required in Section 615(d)(3)?

6. Does the credit union furnish any information bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living to third-parties? [Section 603]

a. Does this communication contain information solely from the transactions or experiences between the credit union and the consumer? For instance, is the information about a member's account at the credit union, such as the member's balance, or the length of time the consumer has been employed by the credit union?

b. If the communication contains information other than transaction or experience information, does the credit union communicate this information only to its CUSO after giving the consumer a disclosure as required under §603(d)(2) (A)(iii) and an opportunity to opt out from the information sharing?

c. Is the information communicated either an authorization or approval of a specific extension of credit by the credit card issuer or the communication of a credit decision by the credit union to a third-party (i.e. retailer) that requested an extension of credit for a consumer in accordance with §603(d)(2)(C)?

d. If the answers to a, b, and c are no, is the credit union a Consumer Reporting Agency as defined in Section 603(f), and if so does it comply with the requirements imposed by the Act?

7. Does the credit union always obtain or use a consumer report for a permissible purpose under Section 604?

Comments: _____

FAIR CREDIT REPORTING ACT (FCRA)

DEFINITIONS

Definitions (Section 603; 15 U.S.C. §1681a)

Definitions and rules of construction set forth in this section are applicable for the purposes of this title.

Person

Any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

Consumer

An individual.

Consumer report

1. In general, the term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for
 - credit or insurance to be used primarily for personal, family, or household purposes;
 - employment purposes; or
 - any other purpose authorized under section 604 [§ 1681b].
2. Exclusions. The term "consumer report" does not include
 - (A) any
 - report containing information solely as to transactions or experiences between the consumer and the person making the report;
 - communication of that information among persons related by common ownership or affiliated by corporate control; or
 - communication of other information among persons related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons and the consumer is given the opportunity, before the time that the information is initially communicated, to direct that such information not be communicated among such persons;

- (B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;
- (C) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his or her decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made, and such person makes the disclosures to the consumer required under section 615 [§ 1681m]; or
- (D) a communication described in subsection (o).

Investigative Consumer Report

A consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

Consumer Reporting Agency

Any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

File

When used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

Employment Purposes

When used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

Medical Information

Information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

Definitions relating to child support obligations

1. **Overdue support.** The term "overdue support" has the meaning given to such term in section 666(e) of title 42 [Social Security Act, 42 U.S.C. § 666(e)].
2. **State or local child support enforcement agency.** The term "State or local child support enforcement agency" means a State or local agency which administers a State or local program for establishing and enforcing child support obligations.

Adverse Action

1. Actions included. The term "adverse action"

(A) has the same meaning as in section 701(d)(6) of the Equal Credit Opportunity Act; and

(B) means

- (i) a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of insurance;
- (ii) a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee;
- (iii) a denial or cancellation of, an increase in any charge for, or any other adverse or unfavorable change in the terms of, any license or benefit described in section 604(a)(3)(D) [§ 1681b]; and
- (iv) an action taken or determination that is
 - (I) made in connection with an application that was made by, or a transaction that was initiated by, any consumer, or in connection with a review of an account under section 604(a)(3)(F)(ii)[§ 1681b]; and
 - (II) adverse to the interests of the consumer.

Applicable findings, decisions, commentary, and orders. For purposes of any determination of whether an action is an adverse action under paragraph (1)(A), all appropriate final findings, decisions, commentary, and orders issued under section 701(d)(6) of the Equal Credit Opportunity Act by the Board of Governors of the Federal Reserve System or any court shall apply.

Firm Offer of Credit or Insurance

Any offer of credit or insurance to a consumer that will be honored if the consumer is determined, based on information in a consumer report on the consumer, to meet the specific criteria used to select the consumer for the offer, except that the offer may be further conditioned on one or more of the following:

(1) The consumer being determined, based on information in the consumer's application for the credit or insurance, to meet specific criteria bearing on credit worthiness or insurability, as applicable, that are established

(A) before selection of the consumer for the offer; and

(B) for the purpose of determining whether to extend credit or insurance pursuant to the offer.

(2) Verification

(A) that the consumer continues to meet the specific criteria used to select the consumer for the offer, by using information in a consumer report on the consumer, information in the consumer's application for the credit or insurance, or other information bearing on the credit worthiness or insurability of the consumer; or

(B) of the information in the consumer's application for the credit or insurance, to determine that the consumer meets the specific criteria bearing on credit worthiness or insurability.

(3) The consumer furnishing any collateral that is a requirement for the extension of the credit or insurance that was

(A) established before selection of the consumer for the offer of credit or insurance; and

(B) disclosed to the consumer in the offer of credit or insurance.

Credit or Insurance Transaction Not Initiated by the Consumer

Does not include the use of a consumer report by a person with which the consumer has an account or insurance policy, for purposes of

(1) reviewing the account or insurance policy; or

(2) collecting the account.

State

Any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.

Excluded Communications

A communication is described in this subsection if it is a communication

(1) that, but for subsection (d)(2)(D), would be an investigative consumer report;

(2) that is made to a prospective employer for the purpose of

(A) procuring an employee for the employer; or

(B) procuring an opportunity for a natural person to work for the employer;

(3) that is made by a person who regularly performs such procurement;

(4) that is not used by any person for any purpose other than a purpose described in subparagraph (A) or (B) of paragraph (2); and

(5) with respect to which

(A) the consumer who is the subject of the communication

(i) consents orally or in writing to the nature and scope of the communication, before the collection of any information for the purpose of making the communication;

(ii) consents orally or in writing to the making of the communication to a prospective employer, before the making of the communication; and

(iii) in the case of consent under clause (i) or (ii) given orally, is provided written confirmation of that consent by the person making the communication, not later than 3 business days after the receipt of the consent by that person;

(B) the person who makes the communication does not, for the purpose of making the communication, make any inquiry that if made by a prospective employer of the consumer who is the subject of the communication would violate any applicable Federal or State equal employment opportunity law or regulation; and

(C) the person who makes the communication

(i) discloses in writing to the consumer who is the subject of the communication, not later than 5 business days after receiving any request from the consumer for such disclosure, the nature and substance of all information in the consumer's file at the time of the request, except that the sources of any information that is acquired solely for use in making the communication and is

actually used for no other purpose, need not be disclosed other than under appropriate discovery procedures in any court of competent jurisdiction in which an action is brought; and

(ii) notifies the consumer who is the subject of the communication, in writing, of the consumer's right to request the information described in clause (i).

Consumer reporting agency that compiles and maintains files on consumers on a nationwide basis

A consumer reporting agency that regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer's credit worthiness, credit standing, or credit capacity, each of the following regarding consumers residing nationwide:

(1) Public record information.

(2) Credit account information from persons who furnish that information regularly and in the ordinary course of business.

FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

OVERVIEW

Overview

The purpose of the FDCPA is to eliminate abusive debt collection practices by debt collectors, to ensure that those debt collectors who refrain from using abusive practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

The FDCPA has no implementing regulations. The FDCPA states: neither the Federal Trade Commission (FTC) or any other agency referred to in subsection B of 15 U.S.C. §1692l, including the NCUA and other agencies, may promulgate trade regulation rules or other regulations with respect to the collection of debt by debt collectors as defined in the FDCPA, 15 U.S.C. §1692l(d). The FTC, however, has promulgated regulations on procedures for states to apply to it for exemption from the FDCPA's provisions, 16 C.F.R. Part 901.

A credit union is considered a “debt collector” and is subject to the FDCPA only if it regularly collects consumer debts on behalf of another party, with some exceptions. If the credit union merely collects its own debts, in its own name, compliance with the FDCPA is not required. However, it is recommended that the credit union avoid those practices prohibited under the FDCPA.

Prohibited Practices

Harassment or Abuse

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. The following conduct is a violation of this section:

- Use or threat of use of violence or other criminal means to harm the physical person, reputation or property of any person;
- Use of obscene or profane language;
- Publication of a list of consumers who allegedly refuse to pay debts;
- Advertisement for sale of any debt to coerce payment of the debt; or,

- Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with the intent to annoy, abuse, or harass any person at the called number.

False or Misleading Representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Violations of this section include:

- The false representation of the character, amount, or legal status of any debt;
- The false representation or implication that any individual is an attorney or that any communication is from an attorney;
- The threat to take any action that cannot legally be taken or that is not intended to be taken; or,
- Communicating or threatening to communicate to any person credit information that is known to be false, including failure to communicate that a disputed debt is disputed.

Unfair Practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt such as:

- Collecting interest, fees, charges, or expenses incidental to the principal obligation unless it is expressly authorized by the agreement;
- Depositing or threatening to deposit any postdated check prior to the date on the check; or,
- Causing charges to be made to any person for communications by the concealment of the true purpose of the communication, such as a collect telephone call.

Validation of Debts

A debt collector must send the consumer a written notice within five days after the initial communication unless the following information is contained in the initial communication or the consumer has paid the debt:

- Amount of the debt;
- Name of the creditor to whom the debt is owed;
- A statement that the consumer must dispute the validity of the debt, or any portion thereof, within thirty days of receiving the notice, or the debt will be assumed to be valid by the debt collector;

- A statement that if the consumer disputes the debt in writing, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and mail it to the consumer; and,
- A statement that, upon the consumer's written request within thirty days, the debt collector will provide the name and address of the original creditor, if different from the current creditor.

Associated Risks

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with the FDCPA, and
- Reputation risk can occur when the credit union incurs fines and penalties or receives poor publicity and reduced member confidence as a result of failure to comply with the FDCPA.

Additional Information

Additional information about the FDCPA is available on the FTC's website at <http://www.ftc.gov/os/statutes/fdcpajump.htm> . To contact the FTC, call 877-FTC-HELP.

FAIR DEBT COLLECTION PRACTICES ACT (FDCPA) OPERATIONAL REQUIREMENTS

Disclosures / Notices

Validation of Debts [15 U.S.C. 1692g]

A debt collector must send the consumer a written notice within five days after initial communication unless the following information is contained in the initial communication or the consumer has paid the debt:

- Amount of the debt;
- Name of the creditor to whom the debt is owed;
- A statement that the consumer must dispute the validity of the debt, or any portion thereof, within thirty days of receiving the notice, or the debt will be assumed to be valid by the debt collector;
- A statement that if the consumer disputes the debt in writing, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and mail it to the consumer; and,
- A statement that, upon the consumer's written request within thirty days, the debt collector will provide the name and address of the original creditor, if different from the current creditor.

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 debt collector must cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

Enforcement / Liability

Administrative Enforcement Authority

The National Credit Union Administration is responsible for enforcement among federal credit unions, while the Federal Trade Commission (FTC) enforces the FDCPA for state-chartered credit unions.

Penalties and Liabilities

Any debt collector who fails to comply with any provision of the FDCPA is liable in an amount equal to the sum of any actual damage sustained by such person. Additional damages may be recovered, not to exceed \$1,000 for an individual plaintiff or named plaintiff in a class action suit, or \$500,000 or one percent of net worth for all other class

members. Court costs and reasonable attorney fees may also be awarded in the case of a successful action.

FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

REVIEW CONSIDERATIONS

Review Considerations

Review Area	Requirements / Recommendations
General Coverage	<p>Determine whether the credit union has acted as a debt collector as defined in 15 U.S.C. Section 1692a; if so, does it avoid the practices prohibited under the FDCPA?</p> <p>Debt collector – 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.</p> <p>Note: If a credit union merely collects its own debts, in its own name, compliance with the FDCPA is not required. However, it is recommended the credit union avoid those practices prohibited under the FDCPA.</p>
Prohibited Practices	<p>Do not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of debt.</p> <p>Do not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.</p> <p>Do not use unfair or unconscionable means to collect or attempt to collect any debt.</p>
Validation of Debts	<p>Send the consumer a written notice within five days after initial communication unless certain information is contained in the initial communication or the consumer has paid the debt.</p>
Multiple Debts	<p>Apply payments according to the consumer's directions if a consumer owes multiple debts and makes any single payment to a debt collector. No payment may be applied to a disputed amount.</p>

Furnishing Certain Deceptive Forms	Do not design, compile, and furnish any form knowing that it would be used to create the false belief in a consumer that a person other than the consumer's creditor is participating in the collection of, or in an attempt to correct, a debt such consumer allegedly owes such creditor.
Training	Ensure training is provided to employees whose duties are impacted by FDCPA.

FAIR DEBT COLLECTION PRACTICES ACT CHECKLIST

Yes No

1. Is the credit union aware of the circumstances in which the FDCPA applies and, as appropriate, has it established internal procedures and controls to assure compliance with the FDCPA?

2. Has the credit union acted as a "debt collector" under the FDCPA by either:

a. regularly attempting to collect defaulted consumer debts owed to others; or

b. attempting to collect its own consumer debts in a name other than its own?

(If the answers to questions 2a and 2b are "No," the credit union has not acted as a debt collector under the FDCPA and the remainder of the checklist need not be completed.)

3. In attempting to collect consumer debts as a "debt collector" under the FDCPA, did the credit union:

a. avoid communicating with the consumer or any third party in a prohibited manner? [15 U.S.C. §1692(c)]

b. adhere to the required debt validation procedure? [§1692(g)]

c. use any harassing, abusive, false or misleading representation, or unfair practice or means?

[§1692(d), (e), and (f)]

d. collect any more than authorized by the debt instrument or state law? [§1692(f)]

e. properly apply any payment received in the case of multiple debts owned by the same consumer?

[§1692(h)]

f. bring legal action only in a judicial district permitted under the FDCPA? [§1692(i)]

Comments _____

FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

DEFINITIONS

Definitions (Section 1692a)

As used in this subchapter of the FDCPA.

Commission

The Federal Trade Commission.

Communication

The conveying of information regarding a debt directly or indirectly to any person through any medium.

Consumer

Any natural person obligated or allegedly obligated to pay any debt.

Creditor

Any person who offers or extends credit creating a debt or to whom a debt is owed, but not including any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

Debt

Any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

Debt collector

Any person who uses any instrumentality of inter state commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of 15 U.S.C section 1692f(6), such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include—

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only -for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity

(i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;

(ii), concerns a debt which was originated by such person;

(iii) concerns a debt which was not in default at the time it was obtained by such person; or

(iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

Late Charges

An amount charged to the consumer when payment has not been received when contractually due or in default. A federal credit union (FCU) may not assess late charges when a loan is current on principal and interest due but is in arrears on previous late charges. 12 C.F.R. §706.4(a). NCUA's regulation requires FCUs apply any payment first to principal and interest due and then to any outstanding late charges. If a particular payment is timely and sufficient to bring the account current on both principal and interest due, the FCU may not assess additional late charges in connection with that payment even if previous late charges remain unpaid. Only if a timely payment is insufficient to satisfy outstanding principal and interest obligations may the FCU assess an additional late charge.

Location information

A consumer's place of abode and his telephone number at such place, or his place of employment.

State

Any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of these.

FAIR HOUSING ACT (FHA)

OVERVIEW

Overview

The Fair Housing Act (FHA) provides fair housing throughout the United States by regulating many practices relating to housing. In particular, FHA makes it unlawful for any lender to discriminate in its housing-related lending activities against any person because of race, color, religion, national origin, sex, handicap, or familial status.

The FHA works in conjunction with the Equal Credit Opportunity Act (ECOA) to prohibit discrimination by anyone who is in the business of providing loans for housing. The Department of Housing and Urban Development has primary FHA regulatory and enforcement authority over credit unions. HUD FHA regulations are located at 12 CFR Parts 100, 103, and 110, and guidance on discriminatory advertising practices is located on the HUD website. Federal credit unions must also comply with NCUA Rules and Regulations Section 701.31, 12 CFR Section 701.31.

Non-Discrimination in Lending

A credit union may not deny a loan or other financial assistance for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, nor may it discourage an application for such a loan, on the basis of the race, color, religion, handicap, familial status (having children under the age of 18), national origin, or sex of:

- The loan applicant or joint applicant;
- Any person associated with the loan applicant or joint applicant;
- The present or prospective owners, lessees, tenants, or occupants of other dwellings in the vicinity of the dwelling.

It is unlawful to discriminate because of race, color, religion, handicap, familial status, national origin, or sex in determining the:

- Amount;
- Interest rate;
- Duration; or
- Other credit terms.

Consideration of the following factors is not necessary to a federal credit union's business, generally has a discriminatory effect, and is therefore prohibited:

- Age or location of the dwelling;
- Zip code of the applicant's current residence;
- Previous home ownership;
- Age or location of dwellings in the neighborhood of the subject dwelling; or
- Income level of residents in the neighborhood of the dwelling.

A credit union may not rely on an appraisal that it knows or should know is based upon any prohibited bases or factors listed above.

Legal Interpretations

Because the FHA was broadly written by Congress, the courts have ruled a wide variety of lending practices illegal under the Act, including some that the Act itself does not specifically mention but which the courts determined are illegal because they violate implicit requirements and prohibitions. Examples of some prohibited practices include:

- Redlining on a racial basis. "Redlining" is the practice of denying loans for housing in certain neighborhoods even though the individual applicant may be otherwise eligible for credit.
- Making excessively low appraisals in relation to purchase prices, based on prohibited considerations (closely akin to redlining).
- Discouraging applications for credit on prohibited bases, as well as outright denials. Taken together, the FHA and ECOA produce a strong statutory prohibition against prescreening or discouraging applicants by housing sellers or lenders, even to the point of ensuring that their advertising policies do not have that effect.
- The use of excessively burdensome qualification standards for the purpose, or with the effect, of denying housing to protected applicants.
- Applying differing standards or procedures in administering foreclosures, late charges, penalties, or reinstatements, or other collection procedures.
- Racial notation or code on appraisal forms or loan forms (other than the information which §202.13 of Regulation B requires the credit union to retain for monitoring purposes).
- Use by initial interview personnel of scripts designed to discourage protected applications.
- Patterns of significantly greater or exclusive use of insured or guaranteed loan programs by protected groups or in certain areas. This may indicate illegal "steering" to this type of lending by the credit union.

Advertising

Credit unions may not directly or indirectly engage in any form of advertising of real estate related loans that implies or suggests the credit union discriminates.

Any credit union that advertises real estate related loans must prominently indicate in the advertisement, in a manner appropriate to the advertising medium and format used, that it makes such loans without regard to the prohibited bases. In addition, every credit union engaged in real estate lending must provide a notice of nondiscrimination in its lobby. The notice must be clearly visible to the general public and must contain the logotype and language appearing in HUD's FHA guidelines on advertising or, for federal credit unions, NCUA Rules and Regulations Section 701.31(d)(3).

Associated Risks

The following risk areas apply to the compliance area:

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with the FHA, and
- Reputation risk can occur when the credit union receives negative publicity or declined membership confidence as a result of failure to comply with the FHA.

Additional Information

Please refer to Section 701.31(e) of the NCUA Rules and Regulations for additional guidelines concerning nondiscrimination in lending. In addition, information is available on HUD's website at <http://www.hud.gov>.

Please note the ECOA and the Fair Housing Act should be read together in order to fully understand the scope of a credit union's fair lending obligations. For example, the bases of discrimination prohibited by the ECOA are similar, but not identical, to those prohibited by the FHA.

FAIR HOUSING ACT (FHA)

OPERATIONAL REQUIREMENTS

Enforcement / Liability

Administrative Enforcement Authority [Section 810 of the FHA]

The Department of Housing and Urban Development (HUD) has responsibility for administrative enforcement for both federal and state-chartered credit unions.

Enforcement Mechanisms [Sections 810, 812, 813, and 814 of the FHA]

The Attorney General may bring a civil court action directly when reasonable cause exists to believe persons or entities are engaged in a pattern or practice of FHA violations. In addition, a person who claims to have been discriminated against may:

- 1) file a private civil action directly in federal court; or
- 2) file a complaint with HUD. HUD will investigate the complaint and it may attempt to resolve the grievance by means of conference, conciliation, and persuasion. If it finds a FHA violation, HUD may take administrative action against the violator or, when reasonable cause exists to believe that persons or entities are engaged in a pattern or practice of violations, may refer the case to the Attorney General for action in federal court.

Penalties and Liabilities [Sections 812, 813 and 814 of the FHA]

Administrative remedies available to HUD include permanent or temporary injunctions, restraining orders, or other relief including monetary damages and civil penalties. In civil court actions, the court may grant relief as it deems appropriate, including monetary damages, permanent or temporary injunctions, temporary restraining orders, or other similar remedy. Court-awarded monetary damages may include both punitive and actual damages.

It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise of, or because they have exercised, rights granted by certain sections of FHA [Section 818 of the FHA].

FAIR HOUSING ACT (FHA)
REVIEW CONSIDERATIONS

Review Considerations

Review Area	Requirements / Recommendations
Policies / Procedures	Ensure the policy for implementing FHA does not tolerate prohibited discrimination in any aspect of a residential real estate-related transaction.
Nondiscrimination in Residential Lending	<p>Ensure employees do not discriminate against any person in setting or exercising the terms or conditions of such a loan or discourage an application on the basis of race, color, religion, national origin, sex, handicap, or familial status (having children under the age of 18).</p> <p>Note: The use of the term residential real estate-related transaction means (1) the making or purchasing of loans for the purchase, construction, improvement, repair or maintenance of a dwelling secured by residential real estate or (2) the selling, brokering, or appraising of a dwelling.</p>
Nondiscrimination in Appraisals	<p>Do not rely on an appraisal of a dwelling if one knows or should know that the appraisal is based upon consideration of race, color, national origin, religion, sex, handicap, or familial status.</p> <p>Do not rely upon an appraisal of a dwelling if one knows or should know that the appraisal is based upon consideration of a criterion which has the effect of discriminating on the basis of race, color, national origin, religion, sex, handicap, or familial status.</p> <p>Do not rely upon an appraisal that one knows or should know is based upon consideration of any of the following criteria, for such criteria generally have a discriminatory effect, and are not necessary to a federal credit union's business:</p> <ul style="list-style-type: none"> • The age or location of the dwelling • The age or location of dwellings in the

	<p>neighborhood of the dwelling</p> <ul style="list-style-type: none"> The income level of the residents in the neighborhood of the dwelling. <p>Note: See NCUA Rules and Regulations Section 701.31 regarding guidelines concerning possible exceptions or guidelines concerning the consideration of location factors.</p>
Providing Appraisals	Creditors must provide a copy of the appraisal report used in connection with an application for credit to be secured by a lien on a dwelling upon request of the applicant. (Federal credit unions are governed by NCUA Rules and Regulations Section 701.31.)
Nondiscrimination in Advertising	<p>Do not engage in any form of advertising of real estate-related loans that indicate the credit union discriminates on the basis of race, color, religion, national origin, sex, handicap, or familial status in violation of the FHA.</p> <p>Ensure advertisements do not contain any words, symbols, models or other forms of communication that suggest a discriminatory preference or policy of exclusion in violation of the FHA or the Equal Credit Opportunity Act.</p> <p>Ensure real estate-related loan advertisements prominently indicate, in a manner appropriate to the advertising medium and format used, that the credit union makes such loans without regard to race, color, religion, national origin, sex, handicap, or familial status. (Federal credit unions see NCUA Rules and Regulations Section 701.31; state chartered credit unions see HUD guidance on advertising.)</p>
HUD Regulations	Ensure compliance with all HUD regulations implementing the FHA and NCUA Nondiscrimination regulations relating to residential real estate lending. (HUD regulations applicable to all credit unions are located at 12 CFR Parts 100, 103, and 110; and NCUA regulations applicable to federal credit unions are located at 12 CFR Section 701.31)
Equal Housing Lender Poster	Display the Equal Housing Lender poster in the public lobby of the credit union and in the public area of each office where such loans are made

	and must be clearly visible to the general public.
Self-testing	<p>Credit unions have a legal privilege in information developed as a result of self-tests that they would voluntarily conduct to determine their compliance with the FHA. The privilege only applies if the definition of self-test is met and the credit union takes appropriate corrective action as described in the HUD implementing regulations, 12 CFR Part 100, Subpart C.</p> <p>Note: Data or factual information that is available or can be derived from credit or application files is not privileged. Data collection required by law or any government authority is not a voluntary self-test.</p>
Training	Provide training to all employees involved in any aspect of residential real estate, including the financing, selling, renting, advertising, brokering, and appraising of housing. All employees should be provided with training on the basic principles and core requirements of FHA, along with other relevant fair lending laws and regulations.
Monitoring, Internal Review, Audit	<p>Conduct periodic monitoring of the credit union's compliance with the requirements of the FHA, as well as other relevant fair lending laws and regulations.</p> <p>An internal or external audit should be conducted at least annually to assess overall compliance with the FHA and to ensure the credit union's practices conform to its policies and procedures.</p>

FAIR HOUSING ACT (FHA) CHECKLIST

	Yes	No
1. Does the credit union avoid the follow actions based on national origin, religion, sex, familial status or handicap: [§805 (a)]		
• Refuse to make a mortgage loan	_____	_____
• Refuse to provide information regarding loans	_____	_____
• Impose different terms or conditions on a loan	_____	_____
• Discriminate in appraising property	_____	_____
• Refuse to purchase a loan	_____	_____
• Set different terms or conditions for purchasing a loan	_____	_____
2. Does the credit union avoid any statements or advertisements that indicates a limitation or preference based on color, national origin, religion, sex, familial status, or handicap?	_____	_____
3. Does the credit union include in its advertisements of real estate-related loans, that such loans are made without regard to race, color, religion, national origin, sex, handicap, or familial status?[§701.31(d)(1)]	_____	_____
4. If the credit union makes real estate-related loans, does it display a notice of discrimination in the public lobby of the credit union and in the public area of each officer where such loans are made? [§701.31(d)(2)]	_____	_____

Comments _____

FAIR HOUSING ACT (FHA)

DEFINITIONS

Definitions (Section 802)

As used in this title (Title 42 of the United States Code) -

Secretary

The Secretary of Housing and Urban Development.

Dwelling

Any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

Family

Includes a single individual.

Person

Includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11 of the United States Code, receivers, and fiduciaries.

To rent

Includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

Discriminatory housing practice

An act that is unlawful under section 3604, 3605, 3606, or 3617 of this title.

State

Any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

Handicap

with respect to a person-

- (1) a physical or mental impairment which substantially limits one or more of such person's major life activities,
- (2) a record of having such an impairment, or

(3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of title 21 of the United States Code).

Aggrieved person

Includes any person who-

- (1) claims to have been injured by a discriminatory housing practice; or
- (2) believes that such person will be injured by a discriminatory housing practice that is about to occur.

Complainant

The person (including the Secretary) who files a complaint under section 3610 of this title.

Familial status

One or more individuals (who have not attained the age of 18 years) being domiciled with-

- (1) a parent or another person having legal custody of such individual or individuals; or
- (2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

Conciliation

The attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, and the Secretary.

Conciliation agreement

A written agreement setting forth the resolution of the issues in conciliation.

Respondent

- (1) the person or other entity accused in a complaint of an unfair housing practice; and
- (2) any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under section 3610(a) of this title.

Prevailing party

Has the same meaning as such term has in section 1988 of this title.

PRESERVATION OF CONSUMER CLAIMS AND DEFENSES

(HOLDER IN DUE COURSE)

OVERVIEW

Overview

The rule often referred to as the "holder in due course" rule is actually titled "Preservation of Consumer Claims and Defenses." It is a rule issued by the Federal Trade Commission and applies to entities that sell and finance consumer goods. The rule provides that anyone purchasing the credit instrument does so subject to all claims and defenses that the consumer might have against the seller of goods.

The rule eliminates the purchaser's right to claim "Holder in Due Course" status. As a holder in due course, the holder of the note was immune from the consumer's claims and defenses. The rule prevents the creation of sham arrangements between sellers and purchasers of notes (often a related party) that were designed for the sole purpose of cutting off the consumer's ability to sue for damages under the note.

Exemptions

Any seller who has taken or received an open end consumer credit contract before November 1, 1977, is exempt from the requirements of 16 CFR part 433 with respect to that contract, provided the contract does not cut off consumers' claims and defenses.

Associated Risks

Compliance risk can occur when the credit union fails to implement the necessary controls to comply with the Preservation of Consumer Claims and Defenses rule.

Additional Information

Additional information can be obtained from the Federal Trade Commission online at <http://www.ftc.gov>

PRESERVATION OF CONSUMER CLAIMS AND DEFENSES

(HOLDER IN DUE COURSE)

OPERATIONAL REQUIREMENTS

Disclosures/Notices

- The consumer credit contract must contain the following provision in at least ten point, bold face, type:

NOTICE

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

- The creditor must not accept, as full or partial payment for such sale or lease, the proceeds of any purchase money loan (as purchase money loan is defined herein), unless any consumer credit contract made in connection with such purchase money loan contains the following provision in at least ten point, bold face, type:

NOTICE

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

Enforcement / Liability

Administrative Enforcement Authority

The Federal Trade Commission is responsible for enforcement in all credit unions.

Penalties and Liabilities

There are no penalties or liabilities in the regulation.

PRESERVATION OF CONSUMER CLAIMS AND DEFENSES

(HOLDER IN DUE COURSE)

REVIEW CONSIDERATIONS

Review Considerations

Review Area	Requirements / Recommendations
Policy/Procedures	Adopt policy and comprehensive procedures for implementing the Preservation of Consumers' Claims and Defenses rule.
Coverage	This rule applies to entities that sell and finance consumer goods.
Exemptions	Any seller who has taken or received an open end consumer credit contract before November 1, 1977, is exempt from the requirements of 16 CFR part 433 with respect to that contract, provided the contract does not cut off consumers' claims and defenses.
Disclosures	<ul style="list-style-type: none">The consumer credit contract must contain the following provision in at least ten point, bold face, type: <p style="text-align: center;">NOTICE</p><p>ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.</p>The creditor must not accept, as full or partial payment for such sale or lease, the proceeds of any purchase money loan (as purchase money loan is defined herein), unless any consumer credit contract made in connection with such

	<p>purchase money loan contains the following provision in at least ten point, bold face, type:</p> <p style="text-align: center;">NOTICE</p> <p>ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.</p>
<p>Training</p>	<p>Ensure that the lending department is aware of all aspects of the rule.</p>
<p>Updating</p>	<p>Update policies and procedures to reflect changes in the rule.</p>
<p>Internal Review</p>	<p>Conduct an internal review at least annually to assess compliance with the rule and conformity of the credit union's practices with its policies and procedures.</p>

**PRESERVATION OF CONSUMER CLAIMS AND
DEFENSES
(HOLDER IN DUE COURSE)
CHECKLIST**

Yes No

1. If the credit union purchases credit instruments, is the required notice on the consumer credit contract? [§ 433.2(a)]

2. If the credit union purchases credit instruments, does the credit union accept any proceeds of any purchase money loan unless the required notice is on the consumer credit contract? [§ 433.2(b)]

Comments _____

**PRESERVATION OF CONSUMER CLAIMS AND
DEFENSES**

(HOLDER IN DUE COURSE)

DEFINITIONS

Definitions (Section 433.2)

Business arrangement

Any understanding, procedure, course of dealing, or arrangement, formal or informal, between a creditor and a seller, in connection with the sale of goods or services to consumers or the financing thereof.

Consumer

A natural person who seeks or acquires goods or services for personal, family, or household use.

Consumer credit contract

Any instrument which evidences or embodies a debt arising from a "Purchase Money Loan" transaction or a "financed sale".

Contract

Any oral or written agreement, formal or informal, between a creditor and a seller, which contemplates or provides for cooperative or concerted activity in connection with the sale of goods or services to consumers or the financing thereof.

Credit card issuer

A person who extends to cardholders the right to use a credit card in connection with purchases of goods or services.

Creditor

A person who, in the ordinary course of business, lends purchase money or finances the sale of goods or services to consumers on a deferred payment basis; Provided, such person is not acting, for the purposes of a particular transaction, in the capacity of a credit card issuer.

Financing a sale

Extending credit to a consumer in connection with a "Credit Sale" within the meaning of the Truth in Lending Act and Regulation Z.

Person

An individual, corporation, or any other business organization.

Purchase money loan

A cash advance which is received by a consumer in return for a “Finance Charge” within the meaning of the Truth in Lending Act and Regulation Z, which is applied, in whole or substantial part, to a purchase of goods or services from a seller who refers consumers to the creditor or is affiliated with the creditor by common control, contract, or business arrangement.

Seller

A person who, in the ordinary course of business, sells or leases goods or services to consumers.

HOMEOWNER'S PROTECTION ACT (HOPA)

OVERVIEW

Overview

The Homeowner's Protection Act (HOPA) also known as the "PMI Cancellation Act" was passed in 1998, addressing the difficulties homeowners have experienced in canceling private mortgage insurance (PMI). Currently, industry practices and regulatory requirements require borrowers to purchase PMI in connection with loans having a loan to value ratio ("LTV") in excess of 80% (e.g., there is less than 20% equity in the property). The premium for PMI is paid monthly with borrower's regular payment of principal, interest and escrow amounts.

HOPA applies to residential mortgage transactions consummated on or after July 29, 1999, with the purpose of financing the acquisition, initial construction, or refinancing a single family dwelling that serves as a principal residence.

HOPA establishes provisions for the cancellation and termination of PMI, establishes disclosure and notification requirements, and requires the return of unearned premiums. HOPA protects homeowners by prohibiting life of loan PMI for borrower-paid products, and it establishes uniform procedures for cancellation of PMI policies. HOPA also requires certain disclosures at loan closing. These disclosures differ depending on whether the mortgage is a fixed rate mortgage, an adjustable rate mortgage or a high risk loan. Certain annual notices are required in certain cases. Additionally, notices are required upon cancellation or termination of the PMI requirement and upon denial of cancellation or termination.

Termination of PMI

HOPA provides three methods to cancel or terminate PMI:

- Borrower cancellation. Generally, the borrower can request and obtain cancellation on or after the date that the loan reaches 80 percent of the original value of the property securing the loan. The borrower must:
 - Submit a written request for cancellation;
 - Maintain a good payment history with respect to the loan;
 - Maintain a current balance as required by terms of loan (at time of request); and,
 - Satisfy any requirement of the credit union (as of the date of the written request for cancellation) such as evidence (1) of the residence's value, or (2) that the mortgage is unencumbered by other liens.
- Automatic termination. If the borrower is current on loan payments, the credit union must automatically terminate PMI on the date the principal balance of the mortgage is first scheduled to reach 78 percent of the original value of the property securing the

loan according to the initial amortization schedule (or, for adjustable rate mortgages, the amortization schedule in effect).

- Final termination. If the borrower has not cancelled PMI or the credit union has not automatically terminated PMI, the credit union must cancel or terminate it by the first day of the month immediately following the midpoint of the amortization period of the loan if the member is current on payments. The midpoint of the amortization period is defined as the point in time halfway between the consummation of the loan and the end of the amortization schedule.

The credit union may not require any further PMI payments from the member after 30 days of termination or cancellation. Generally within 45 days of termination or cancellation of PMI, the servicer must return all unearned premiums to the member.

High Risk Mortgages

HOPA provides exceptions for high risk loans. Borrower cancellation and automatic termination provisions do not apply to loans designated as high risk at the time of consummation.

High risk mortgages include:

- Conforming loans defined as high risk by the Federal national Mortgage Association and/or the Federal Home Loan Mortgage Corporation; and,
- Non-conforming loans defined as high risk by the lender.

Final termination provisions do apply to high-risk loans.

Associated Risks

Compliance risk can occur when the credit union fails to implement the necessary controls to comply with HOPA.

Reputation risk can occur when the credit union incurs fines and penalties or receives negative publicity or decreased membership confidence as a result of failure to comply with HOPA.

Strategic risk can occur when the board of directors fails to perform necessary due diligence in reviewing existing and prospective products and services for compliance with HOPA.

Additional Information

Additional information is available at the US Codes Title 12 Chapter 49.

HOMEOWNER'S PROTECTION ACT (HOPA)

OPERATIONAL REQUIREMENTS

Disclosures / Notices

Mortgages Requiring PMI [Section 4]

In the case of mortgages requiring PMI, the credit union must disclose at loan consummation the following in writing:

- Initial amortization schedule (fixed rate only);
- Notice of the ways to cancel or terminate PMI; and,
- Notice of the exemptions to the right to cancel and automatic termination.

The loan servicer must also provide annual written statements stating:

- The right to cancel or terminate PMI; and,
- The address and telephone number the member may use to contact the servicer.

Notification of Cancellation or Termination

A. Borrower Requested Cancellation [Section 3(a)]

Upon receipt of a written request from a borrower, a mortgage holder must cancel PMI when:

- The principal loan balance reaches (based on actual payments) or is first scheduled to reach 80% of the original value, irrespective of the outstanding balance, based upon the initial amortization schedule (in the case of a fixed rate loan) or amortization schedules (in the case of an adjustable rate loan);
- The borrower is current;
- The borrower has a good payment history; and,
- The borrower satisfies any requirement of the mortgage holder for: (i) showing 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.

Once PMI is cancelled, the mortgage holder may not require further PMI payments or premiums more than 30 days after the later of: (i) receipt of the written request or (ii) when the borrower satisfies the mortgage holder's requirements for proof and certification of the original value.

B. Automatic Termination [Section 3(b)]

A servicer must automatically terminate PMI for residential mortgage transactions on the earliest date that both:

- The principal balance of the mortgage is first scheduled to reach 78% of the original value of the secured property (based solely on the initial amortization schedule in the case of a fixed rate loan or on the amortization schedules in the case of an adjustable rate loan, irrespective of the outstanding balance); and,
- The borrower is current.

If the borrower is not current on the termination date, termination occurs on the first day of the first month after the borrower becomes current. After termination, the servicer may not require further PMI payments for more than 30 days after the termination date, or the date following the termination date on which the borrower becomes current, whichever is sooner.

In automatic termination, HOPA does not protect the credit union from declines in property value or subordinate liens. For automatic termination, the borrower must be current but need not have a good payment history, in contrast with borrower-requested cancellation.

C. Final Termination [Section 3(c)]

For a residential mortgage transaction, if PMI is not cancelled at the borrower's request or by automatic termination, the servicer must terminate PMI coverage by the first day of the month immediately following the midpoint of the loan's amortization period, if the borrower is 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. For balloon loans, the midpoint should be based on the loan's amortization schedule rather than its term.

D. Notices to Borrowers [Section 4]

Initial notices to borrowers provided at loan consummation must set forth the above standards for borrower-requested and automatic termination and, for fixed rate mortgages, include an amortization schedule. The notices must also state that exemptions to cancellation and termination apply for high-risk loans and whether these exemptions apply to the borrower's loan. For adjustable rate loans, the notice must add that the servicer will notify the borrower when the loan balance reaches the 80 percent LTV as scheduled or as based on actual payments.

The servicer must provide annual written disclosures for residential mortgage transactions, including high-risk loans, that set forth the rights of the borrower to cancellation and termination of PMI and the address and telephone number that the borrower may use to contact the servicer to determine whether the borrower may cancel PMI.

If a mortgagor and mortgagee (or holder of the mortgage) agree to modify the terms or conditions of a residential mortgage transaction loan, the cancellation date, termination date, or final termination shall be recalculated to reflect the modified terms and conditions.

E. Lender Paid Mortgage Insurance (LPMI) Exclusion [Section 6(b)]

Cancellation and termination do not apply to residential mortgage transactions for which LPMI is required.

Exceptions to Cancellation and Termination Provisions for High-Risk Residential Mortgage Transactions [Section 3(g)]

A. Conforming Loans (Fannie Mae/Freddie Mac-Defined High-Risk Loans)

Conforming loans have an original principal balance not exceeding Freddie Mac's conforming loans limit.¹ Fannie Mae and Freddie Mac are authorized to establish a category of residential mortgage transactions not subject to HOPA's requirements for borrower-requested cancellation or automatic termination due to the higher risk.²

PMI on a conforming high-risk loan must be terminated by the first day of the month following the midpoint of the loan's initial amortization schedule (in the case of a fixed rate loan) or amortization schedules (in the case of an adjustable rate loan), if the borrower is current. If the borrower is not current, PMI terminates when the borrower becomes current.

B. Non-Conforming Loans (Lender-Defined High-Risk Loans)

Non-conforming loans are residential mortgage transactions with an original principal balance exceeding Freddie Mac's and Fannie Mae's conforming loan limit. These lender-defined high-risk loans are not subject to borrower-requested cancellation or automatic termination.

For a lender-defined high risk residential mortgage transaction loan, PMI must terminate when the principal balance, based solely on the initial amortization schedule (in the case of a fixed rate loan) or the amortization schedules (in the case of an adjustable rate loan) irrespective of the outstanding balance, is first scheduled to reach 77% of the original value of the property securing the loan.

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.

¹ This limit was \$322,700 in 2003.

² Fannie Mae and Freddie Mac have not defined high risk loans as of this publication.

Annual Disclosures for Existing Residential Mortgages [Section 4(b)]

When PMI is required for a residential mortgage consummated before July 29, 1999, the servicer shall provide to the borrower an annual written notice that:

- States that PMI may be cancelled with the consent of the lender or in accordance with state law; and,
- Provides the servicer's address and telephone number, so that the borrower may contact the servicer to determine whether the borrower may cancel PMI.

Notice to Borrower Upon Cancellation or Termination of PMI [Section 5]

No later than 30 days after PMI is terminated or cancelled, the servicer must notify the borrower in writing that:

- PMI has terminated and the borrower no longer has PMI; and,
- No further premiums, payments or other fees are due or payable by the borrower in connection with PMI.

Lender Paid Mortgage Insurance (LPMI) Notices [Section 6]

Where LPMI is required in a residential mortgage transaction, the lender must provide such written notice to the borrower not later than the date on which a loan commitment is made. The written notice must advise the borrower of the differences between LPMI and borrower paid mortgage insurance (BPMI) by notifying the borrower that LPMI:

- Differs from BPMI because it cannot be cancelled by the borrower or automatically terminated;
- Usually results in a higher loan interest rate than would BPMI; and,
- Terminates only when the mortgage is refinanced, paid off, or otherwise terminated.

The notice must also disclose:

- That LPMI and BPMI both have benefits and disadvantages;
- A general analysis of the costs and benefits of a mortgage in the case of LPMI versus BPMI over a ten-year period, assuming prevailing interest and property appreciation rates; and,
- That LPMI may be tax-deductible for purposes of federal income taxes, if the borrower itemizes expenses for that purpose.

Enforcement / Liability

Enforcement [Section 10]

NCUA may enforce HOPA. NCUA may:

- Notify applicable credit unions of any failure to comply with HOPA;
- Require the credit union to correct the borrower's account to reflect the date on which PMI should have been cancelled or terminated; and,
- Require the credit union 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.

Fees and Penalties [Sections 7 and 8]

The credit union may not impose any fee on the member with respect to the provision of any notice or information required by HOPA.

Penalties for violating this Act include liability to the member to whom the violation relates. Liability may include actual damages, statutory damages, costs of actions, and reasonable attorney fees. Statutory damages are limited to \$2,000 in individual cases and the lesser of \$500,000 or 1 percent of net worth in class action cases.

HOMEOWNER'S PROTECTION ACT (HOPA)

REVIEW CONSIDERATIONS

Review Considerations

Review Area	Requirements / Recommendations
Policies / Procedures	Review the credit union's HOPA policies and procedures; determine the credit union provides the required written disclosures in residential mortgage transactions.
Cancellation and Termination Controls	Determine the credit union has controls in place to ensure proper processing of borrower-requested, automatic, and final termination provisions of HOPA.
High-Risk Residential Mortgage Transactions	Determine compliance for implementation and final termination of conforming and/or non-conforming high-risk loans.
Notification of Cancellation and Termination Controls	Determine the credit union complies with the notification requirements upon termination or cancellation of PMI; determine the credit union provides appropriate disclosures in the cases of lender paid mortgage insurance.
Existing Residential Mortgages (consummated before July 29, 1999)	When PMI is required for a residential mortgage consummated before July 29, 1999, the servicer shall provide an annual written notice stating cancellation terms and contact information.

HOMEOWNER'S PROTECTION ACT (HOPA) CHECKLIST

<u>General</u>	<u>Yes</u>	<u>No</u>
1. Has the credit union assigned clear and definite compliance responsibilities to specific officers and other staff?	_____	_____
a. Have those responsible for compliance received training that is necessary to achieve compliance with HOPA (proper monitoring and disclosures)?	_____	_____
2. Has the credit union established a review mechanism (compliance committee, internal or external auditor review, etc.) designed to monitor the effectiveness of the credit union's efforts to comply with HOPA?	_____	_____
3. Is the credit union providing written disclosures for residential mortgage transactions?	_____	_____
4. Does the credit union have adequate controls in place to ensure it properly processes the automatic termination provisions of HOPA? (HOPA 3(b))	_____	_____
5. Is the credit union properly processing borrower requests for cancellation? (HOPA 3(a))	_____	_____
6. Does the credit union comply with the notification requirements upon termination or cancellation? (HOPA 5(a))	_____	_____
7. Does the credit provide appropriate disclosures in the case of lender paid mortgage insurance? (HOPA 6(c))	_____	_____
8. Does the credit union have controls in place to ensure it properly processes the final termination provisions for those mortgages for which PMI was not cancelled by request nor the automatic termination provisions? (HOPA 3(c))	_____	_____
9. Is the credit union providing annual disclosures? (HOPA 4(a)(3))	_____	_____

HOMEOWNER'S PROTECTION ACT (HOPA)

DEFINITIONS

Definitions (Sections 2 and 6(a))

In this Act, the following definitions shall apply:

Adjustable Rate Mortgage

A residential mortgage that has an interest rate that is subject to change. [NOTE: The statutory definition contains additional language.]

Amortization Schedule Then in Effect

With respect to an adjustable rate mortgage, a schedule established at the time at which the residential mortgage transaction is consummated or, if such schedule has been changed or recalculated, is the most recent schedule under the terms of the note or mortgage, which shows:

- A. the amount of principal and interest that is due at regular intervals to retire the principal balance and accrued interest over the remaining amortization period of the loan; and
- B. the unpaid balance of the loan after each such scheduled payment is made.

Midpoint of the Amortization Period

With respect to a residential mortgage transaction, the point in time that is halfway through the period that begins upon the first day of the amortization period established at the time a residential mortgage transaction is consummated and ends upon the completion of the entire period over which the mortgage is scheduled to be amortized.

Borrower Paid Mortgage Insurance

Private mortgage insurance that is required in connection with a residential mortgage transaction, payments for which are made by the borrower.

Cancellation Date

- A. With respect to a fixed rate mortgage, at the option of the mortgagor, the date on which the principal balance of the mortgage— (i) based solely on the initial amortization schedule for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 80 percent of the original value of the property securing the loan; or (ii) based solely on actual payments, reaches 80 percent of the original value of the property securing the loan; and
- B. With respect to an adjustable rate mortgage, at the option of the mortgagor, the date on which the principal balance of the mortgage—(i) based solely on amortization schedule then in effect for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 80 percent of the original value of the property securing the loan; or (ii) based solely on actual payments, first reaches 80 percent of the original value of the property securing the loan.

Fixed Rate Mortgagee

A residential mortgage that has an interest rate that is not subject to change.

Good Payment History

With respect to a mortgagor, the mortgagor has not:

- (A) made a mortgage payment that was 60 days or longer past due during the 12-month period beginning 24 months before the later of (i) the date on which the mortgage reaches the cancellation date; or (ii) the date that the mortgagor submits a request for cancellation under HOPA Section 3(a)(1).
- (B) made a mortgage payment that was 30 days or longer past due during the 12-month period preceding the later of the date on which the mortgage reaches the cancellation date, or (ii) the date that the mortgagor submits a request for cancellation under HOPA Section 3(a)(1).

Initial Amortization Schedule

A schedule established at the time at which a residential mortgage transaction is consummated with respect to a fixed rate mortgage, showing:

- (A) the amount of principal and interest that is due at regular intervals to retire the principal balance and accrued interest over the amortization period of the loan; and
- (B) the unpaid principal balance of the loan after each scheduled payment is made.

Lender Paid Mortgage Insurance

Private mortgage insurance that is required in connection with a residential mortgage transaction, payments for which are made by a person other than the borrower.

Loan Commitment

A prospective mortgagee's written confirmation of its approval, including any applicable closing conditions, of the application of a prospective mortgagor for a residential mortgage loan.

Mortgage Insurance

Insurance, including any mortgage guaranty insurance, against the nonpayment of, or default on, an individual mortgage or loan involved in a residential mortgage transaction.

Mortgage Insurer

A provider of private mortgage insurance, as described in this Act, that is authorized to transact such business in the State in which the provider is transacting such business.

Mortgagee

The holder of a residential mortgage at the time at which that mortgage transaction is consummated.

Mortgagor

The original borrower under a residential mortgage or his or her successors or assignees.

Original Value

With respect to a residential mortgage transaction, means the lesser of the sales price of the property securing the mortgage, as reflected in the contract, or the appraised value at the time at which the subject residential mortgage transaction was consummated. In the case of a residential mortgage transaction for refinancing the principal residence of the mortgagor, such term means only the appraised value relied upon by the mortgagee to approve the refinance transaction.

Private Mortgage Insurance

Mortgage insurance other than mortgage insurance made available under the National Housing Act, title 38 of the United States Code, or title V of the Housing Act of 1949.

Residential Mortgage

A mortgage, loan, or other evidence of a security interest created with respect to a single-family dwelling that is the principal residence of the mortgagor.

Residential Mortgage Transaction

A transaction consummated on or after July 29, 1999, in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained against a single-family dwelling that is the principal residence of the mortgagor to finance the acquisition, initial construction or refinancing of that dwelling.

Servicer

Has the same meaning as in section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974, with respect to a residential mortgage.

Single Family Dwelling

A residence consisting of 1 family dwelling unit.

Termination Date

- A. with respect to a fixed rate mortgage, the date on which the principal balance of the mortgage, based solely on the initial amortization schedule for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 78 percent of the original value of the property securing the loan; and
- B. with respect to an adjustable rate mortgage, the date on which the principal balance of the mortgage, based solely on amortization schedule then in effect for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 78 percent of the original value of the property securing the loan.

MANAGEMENT OFFICIAL INTERLOCKS

OVERVIEW

Overview

The purpose of Management Interlocks Act (the Interlocks Act), 12 U.S.C. XX3201 is to foster competition by generally prohibiting a management official from serving two nonaffiliated depository organizations in situations where the management interlock likely would have an anticompetitive effect.

The Interlocks Act applies to management officials of federally insured credit unions. Section 3204 of the Interlocks Act and 711.4(c) of NCUA Regulations exempts a management official of a credit union from the prohibitions of the Interlocks Act when the individual serves as a management official of another credit union. Therefore, the Interlocks Act prohibitions only apply to a management official of a credit union when that individual also serves as a management official of another type of depository organization (usually a bank or thrift).

Exemptions

Small market share exemption (§ 711.5)

A management interlock that is prohibited by § 711.3(a) or § 711.3(b) is automatically considered exempt provided:

- The interlock is not prohibited by § 711.3(c); and
- The depository organizations (and their depository institution affiliates) hold, in the aggregate, no more than 20% of the deposits, in each Relevant Metropolitan Statistical Area (RMSA) or community in which the depository organizations (or their depository institution affiliates) are located. The amount of deposits will be determined by reference to the most recent annual Summary of Deposits published by the FDIC. This information is available on the Internet at <http://www.fdic.gov>.

General exemption (§ 711.6)

- If requested in an application, NCUA may, grant a general exemption from the prohibitions in § 711.3, if NCUA finds that the interlock would not result in a monopoly or substantial lessening of competition, and would not present other safety and soundness concerns.
- In reviewing applications for an exemption, NCUA will apply a rebuttable presumption that an interlock will not result in a monopoly or substantial lessening of competition if the depository organization seeking to add a management official:
 - (a) Primarily serves, low- and moderate-income areas;
 - (b) Is controlled or managed by persons who are members of a minority group or women;
 - (c) Is a depository institution that has been chartered for less than two years; or
 - (d) Is deemed to be in “troubled condition” as defined in § 701.14(b)(3).

Prohibitions

Community (§ 711.3(a))

A management official of a depository organization may not serve at the same time as a management official of an unaffiliated depository organization if the depository organizations in question (or a depository institution affiliate thereof) have offices in the same community.

RMSA (§ 711.3(b))

A management official of a depository organization may not serve at the same time as a management official of an unaffiliated depository organization if the depository organizations in question (or a depository institution affiliate thereof) have offices in the same RMSA and each depository organization has total assets of \$20 million or more.

Major assets (§ 711.3(c))

A management official of a depository organization with total assets exceeding \$2.5 billion (or any affiliate thereof) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding \$1.5 billion (or any affiliate thereof), regardless of the location of the two depository organizations. The NCUA will adjust these thresholds, as necessary, based on year-to-year change in the average of the Consumer Price Index for the Urban Wage Earners and Clerical Workers, not seasonally adjusted, with rounding to the nearest \$100 million. The NCUA will announce the revised thresholds by publishing a notice in the Federal Register.

Interlocking Relationships Permitted by Statute

The prohibitions of § 711.3 do not apply in the case of any one or more of the following organizations or to a subsidiary thereof:

- A depository organization that has been placed formally in liquidation, or which is in the hands of a receiver, conservator, or other official exercising a similar function;
- A corporation operating under section 25 or section 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq.* and 12 U.S.C. 611 *et seq.*, respectively);
- A credit union being served by a management official of another credit union;
- A depository organization that does not do business within the United States except as an incident to its activities outside the United States;
- A State-chartered savings and loan guaranty corporation;
- A Federal Home Loan Bank or any other bank organized solely to serve depository institutions (a bankers' bank) or solely for the purpose of providing securities clearing services and services related thereto for depository institutions and securities companies;
- A depository organization that is closed or is in danger of closing as determined by the appropriate Federal depository institutions regulatory agency and is acquired by another depository organization. This exemption lasts for five years, beginning on the date the depository organization is acquired; and

- A diversified savings and loan holding company (as defined in section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) with respect to the service of a director of such company who also is a director of an unaffiliated depository organization if:
 - (1) Both the diversified savings and loan holding company and the unaffiliated depository organization notify their appropriate Federal depository institutions regulatory agency at least 60 days before the dual service is proposed to begin; and
 - (2) The appropriate regulatory agency does not disapprove the dual service before the end of the 60-day period.

The NCUA Board or its designee may disapprove a notice of proposed service if it finds that:

- (1) The service cannot be structured or limited so as to preclude an anticompetitive effect in financial services in any part of the United States;
- (2) The service would lead to substantial conflicts of interest or unsafe or unsound practices; or
- (3) The notificant failed to furnish all the information required by NCUA.

The NCUA Board or its designee may require that any interlock permitted under this paragraph be terminated if a change in circumstances occurs with respect to one of the interlocked depository organizations that would have provided a basis for disapproval of the interlock during the notice period.

Change in Circumstances

Termination (§ 711.7(a))

A management official shall terminate his or her service if a change in circumstances causes the service to become prohibited. A change in circumstances may include, but is not limited to, an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an increase in the aggregate deposits of the depository organization, or an acquisition, merger, consolidation, or reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

Transition period (§ 711.7(b))

A management official described in the paragraph above may continue to serve the depository organization involved in the interlock for 15 months following the date of the change in circumstances. NCUA may shorten this period under appropriate circumstances.

Associated Risks

Compliance risk can occur when the credit union fails to implement the necessary controls to comply with Management Official Interlocks.

Additional Information

Additional information can be found on-line at the NCUA website at <http://www.ncua.gov/> .

MANAGEMENT OFFICIALS INTERLOCKS

OPERATIONAL REQUIREMENTS

Recordkeeping

Small Market Share Exemption

Each depository organization must maintain records sufficient to support its determination of eligibility for the exemption under § 711.5(b), and must reconfirm that determination on an annual basis.

Enforcement / Liability

Administrative Enforcement Authority

NCUA administers and enforces the Interlocks Act with respect to federally insured credit unions, and may refer any case of a prohibited interlocking relationship involving these entities to the Attorney General of the United States to enforce compliance with the Interlocks Act.

Penalties and Liabilities

There are no penalties or liabilities in the regulation.

MANAGEMENT OFFICIALS INTERLOCKS
REVIEW CONSIDERATIONS

Review Considerations

Review Area	Requirements / Recommendations
Policy/Procedures	Adopt policies and procedures implementing the Interlocks Act.
Coverage	The Act applies to management officials of federally insured credit unions. However credit union management officials may serve as management officials of other credit unions.[§711.4(c)] Therefore this restriction only applies to credit union management officials when that individual also serves as a management official for another type of financial institution.
Exemptions	<p><u>Small market share exemption (§ 711.5)</u> An interlock which is usually prohibited due to the two financial institutions being in the same community or Relevant Metropolitan Statistical Area (RMSA), is exempted if the combined deposits do not exceed 20% of the deposits in the community or RMSA. The amount of deposits is determined by reference to the most recent annual Summary of Deposits published by the FDIC, which is available on the internet at http://www.fdic.gov/ .</p> <p><u>General exemption (§ 711.6)</u> NCUA may exempt a credit union from the management officials interlock prohibitions if NCUA finds that the interlock would not result in a monopoly or substantial lessening of competition, and would not present other safety and soundness concerns.</p> <p>Credit unions must apply for this exemption. When reviewing an application for an exemption, NCUA will initially presume that an interlock will not result in a monopoly or substantial lessening of competition if the credit union seeking to add a management official:</p> <p>(a) Primarily serves, low- and moderate-income</p>

	<p>areas;</p> <p>(b) Is controlled or managed by persons who are members of a minority group or women;</p> <p>(c) Is a depository institution that has been chartered for less than two years; or</p> <p>(d) Is deemed to be in “troubled condition” as defined in § 701.14(b)(3).</p>
<p>Prohibitions</p>	<p><u>Community (§ 711.3(a))</u> A management official of a depository organization may not serve at the same time as a management official of an unaffiliated depository organization if both depository organizations have offices in the same community.</p> <p><u>RMSA (§ 711.3(b))</u> A management official of a depository organization may not serve at the same time as a management official of an unaffiliated depository organization if both depository organizations have offices in the same RMSA and each depository organization has total assets of \$20 million or more.</p> <p><u>Major assets (§ 711.3(c))</u> A management official of a depository organization with total assets exceeding \$2.5 billion (or any affiliate thereof) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding \$1.5 billion (or any affiliate thereof), regardless of the location of the two depository organizations. The NCUA will adjust these thresholds, as necessary, based on year-to-year change in the average of the Consumer Price Index for the Urban Wage Earners and Clerical Workers, not seasonally adjusted, with rounding to the nearest \$100 million. The NCUA will announce the revised thresholds by publishing a notice in the Federal Register.</p>
<p>Relationships Permitted</p>	<p>The prohibitions of § 711.3 (above) do not apply in the case of any one or more of the following organizations or to a subsidiary thereof:</p> <ul style="list-style-type: none"> • A depository organization that has been placed formally in liquidation, or which is in the hands of a receiver, conservator, or other official

	<p>exercising a similar function;</p> <ul style="list-style-type: none">• A credit union being served by a management official of another credit union;• A depository organization that does not do business within the United States except as an incident to its activities outside the United States;• A State-chartered savings and loan guaranty corporation;• A Federal Home Loan Bank or any other bank organized solely to serve depository institutions (a bankers' bank) or solely for the purpose of providing securities clearing services and services related thereto for depository institutions and securities companies;• A depository organization that is closed or is in danger of closing as determined by the appropriate Federal depository institutions regulatory agency and is acquired by another depository organization. This exemption lasts for five years, beginning on the date the depository organization is acquired; and• A diversified savings and loan holding company (as defined in section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) with respect to the service of a director of a diversified savings and loan association holding company who also is a director of a credit union if:<ul style="list-style-type: none">(1) Both the diversified savings and loan holding company and the credit union notify their appropriate Federal depository institutions regulatory agency at least 60 days before the dual service is proposed to begin; and(2) The appropriate regulatory agencies do not disapprove the dual service before the end of the 60-day period. <p>The NCUA Board or its designee may disapprove a notice of proposed service if it finds that:</p> <ul style="list-style-type: none">(1) The service cannot be structured or limited so as to preclude an anticompetitive effect in financial services in any part of the United
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	<p>States;</p> <p>(2) The service would lead to substantial conflicts of interest or unsafe or unsound practices; or</p> <p>(3) The person giving notice failed to furnish all the information required by NCUA.</p> <p>The NCUA Board or its designee may require that any interlock permitted under this paragraph be terminated if a change in circumstances occurs with respect to one of the interlocked depository organizations that would have provided a basis for disapproval of the interlock during the notice period.</p>
Change in Circumstance	<p><u>Termination (§ 711.7(a))</u> A management official shall terminate his or her service if a change in circumstances causes the service to become prohibited. A change in circumstances may include, but is not limited to:</p> <ul style="list-style-type: none"> • an increase in asset size of an organization, • a change in the delineation of the RMSA or community, • the establishment of an office, an increase in the aggregate deposits of the depository organization, or • an acquisition, merger, consolidation, or reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited. <p><u>Transition period (§ 711.7(b))</u> A management official described in the paragraph above may continue to serve the depository organization involved in the interlock for 15 months following the date of the change in circumstances. NCUA may shorten this period under appropriate circumstances.</p>
Record Retention	<p><u>Small Market Share Exemption</u> Each depository organization must maintain records sufficient to support its determination of eligibility for this exemption, and must reconfirm that determination on an annual basis.</p>
Training	<p>Ensure that the board is aware of all aspects of the regulation.</p>

Updating	Update policies and procedures to reflect changes in the regulation.
Internal Review	Conduct an internal review at least annually to assess compliance with the regulation and conformity of an institution's practices with its policies and procedures.

MANAGEMENT OFFICIAL INTERLOCKS CHECKLIST

Yes

No

1. Does a management official of this credit union also serve as a management official of another type of depository organization?

Complete the remainder of this checklist if the answer to the above question is "Yes".

2. Does the credit union and the other depository organization of the management official have offices in the same community?

3. Does the credit union and the other depository organization of the management official have offices in the same RMSA and are they both greater than \$20 million in assets?

4. Does the credit union's total assets exceed \$2.5 billion and does the other depository organization have assets greater than \$1.5 billion?

MANAGEMENT OFFICIAL INTERLOCKS

DEFINITIONS

Definitions

Affiliate

The term affiliate in this act refers to common ownership. In order for an affiliate relationship to exist, NCUA must determine that that the affiliation was not established to avoid prohibitions of the Interlocks Act. The most common type of affiliate in a credit union is a CUSO.

Community

This refers to a city, town, or village, and cities, towns, or villages whose borders touch each other or are within 10 miles of each other.

Depository Organization

A commercial bank, savings bank, trust company, savings and loan association, building and loan association, homestead association, cooperative bank, industrial bank, or credit union chartered under the laws of the United States. A United States office of a foreign commercial bank is also a Depository Institution. Bank holding companies and savings and loan holding companies are also Depository Organizations.

Management Official

Any one of the following are management officials:

- A director;
- An advisory or honorary director of a depository organization with assets of \$100 million or more;
- A senior executive officer;
- A branch manager; or
- A trustee of a depository organization.

Relevant Metropolitan Statistical Area (RMSA)

This includes an MSA, a primary MSA, or a consolidated MSA that is not comprised of designated primary MSAs.

United States

This includes any State or territory of the United States of America, the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

NATIONAL FLOOD INSURANCE ACT

OVERVIEW

Overview

Part 760 of the NCUA Rules and Regulations implements the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4129).

NCUA regulations (12 C.F.R. Part 760) require flood insurance for the term of a designated loan that is secured by buildings or mobile homes and any personal property when such property is or will be located in a Standard Flood Hazard Area (SFHA), and the community in which the property will be located participates in the National Flood Insurance Program (NFIP). In other words, if the property is located in a SFHA, and the community is a participating community, then flood insurance is required. A credit union may make a conventional loan in an SFHA in a non-participating community if it chooses to do so. Government-guaranteed or insured loans (e.g., SBA, VA, FHA), however, are not permitted to be made in non-participating communities (see 42 U.S.C. Sec. 4106(a)). Flood insurance coverage is limited to the overall value of the property securing the loan minus the value of the land on which the property is located. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the loan or the maximum limit of coverage available for the particular type of property under the National Flood Insurance Act.

The Act and regulations require a credit union to: (1) provide a written notice to the borrower and servicer; (2) identify the servicer of the loan; (3) use a standard flood hazard determination form; (4) escrow flood insurance premiums in certain circumstances; and (5) “force-place” insurance for the borrower when necessary.

National Flood Insurance Act (Act)

The Act and Part 760 of the NCUA Rules and Regulations apply to loans secured by buildings or mobile homes located, or to be located in areas determined by the Director of Federal Emergency Management Agency (FEMA) to be special flood hazard areas (SFHAs).

Part 760 requires the following:

- A credit union cannot make, increase, extend, or renew any loan secured by a building or mobile home and any personal property securing the loan that is located or will be located in a SFHA, in which flood insurance is available, unless the collateral securing the loan is covered by flood insurance for the term of the loan;

- The amount of the flood insurance must at least equal the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act; and,
- Flood insurance coverage is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.

The flood insurance requirement does not apply with respect to:

- Loans on state-owned property covered under an adequate policy of self-insurance satisfactory to the Director of FEMA or,
- Loans with an original principal balance of \$5,000 or less, and a loan term of one year or less.

Lending in Non-participating Communities

Flood insurance coverage is an important component of prudent underwriting for credit unions that extend loans in at-risk areas. Flood insurance is also a safety and soundness consideration to protect the lender's interest in its collateral. Credit unions with significant lending in nonparticipating communities should take care to monitor and control the risks associated with loans secured by properties in flood hazard areas where flood insurance is not available. Credit unions should note, however, that the flood regulation still applies, although it does not require the borrower to obtain flood insurance. The credit union must make a determination on the Special Flood Hazard Determination Form (SFHDF) to determine if the property is located in an SFHA and notify the borrower.

Second Mortgages and HELOCs

Both second mortgages and home equity loans are transactions that come within the flood rule's purchase provisions. Since only one flood insurance policy can be issued for a building, a credit union should not request a new flood insurance policy if one already exists. Instead, the borrower should contact the insurance agent to inform the agent of the intention to obtain a loan involving a subordinate lien; obtain verification of the existence of a flood insurance policy; and check that the insurance sufficiently covers the principal loan amount.

After obtaining this information, the insurance agent should increase the amount of coverage if necessary and issue an endorsement that will reflect the credit union as a lien holder.

For loans with approved lines of credit that members may access in the future, credit unions may have difficulty calculating the amount of insurance for the loan since the borrower will be drawing down differing amounts on the line at different times. In those instances the borrower must, at a minimum, obtain a policy as a requirement for drawing on the line. As a matter of administrative convenience to ensure compliance with the requirements, a credit union may take the following alternative approaches:

- Review its records periodically so that as the member draws against the line, the appropriate amount of insurance coverage can be maintained; or,
- Require the purchase of flood insurance for the total amount of the loan, or the maximum amount of flood insurance coverage available, whichever is less.

Determination Fees

A credit union or a servicer, acting on behalf of the credit union, may charge a "reasonable fee" to borrowers for determining whether the building or mobile home securing the loan is or will be located in a special flood hazard area, if the determination is made:

- In the making, increasing, extending, or renewing of a loan initiated by the borrower;
- As a result of FEMA's revising or updating of SFHA maps or notice affecting the area in which the building or mobile home is located; and,
- As part of a "force placement" of flood insurance coverage.

Passing along a fee to the borrower is not allowed on a routine portfolio review unless the review results in discovery of a loan for which coverage is specifically required.

A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

Associated Risks

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with the National Flood Insurance Act.
- Reputation risk can occur when the credit union incurs fines and penalties or receives decreased member confidence as a result of failure to comply with the National Flood Insurance Act.

Additional Information

Additional information is available in Part 760 of NCUA Rules and Regulations. Furthermore, management can review FEMA's Mandatory Purchase of Flood Insurance Guidelines on line at <http://www.fema.gov>.

NATIONAL FLOOD INSURANCE ACT

OPERATIONAL REQUIREMENTS

Disclosures / Notices

Standard Flood Hazard Determination Form [12 C.F.R. Section 760.6]

A credit union must use the standard flood hazard determination form developed by FEMA when recording its determination as to whether the building or mobile home offered as collateral for the loan is or will be located in a SFHA. Credit unions may use the standard flood hazard determination form in a printed, computerized or electronic manner. The credit union must retain a copy of the completed form, in either hard copy or electronic format, for the period of time the credit union owns the loan.

If the credit union or borrower has reason to believe that an area has been improperly designated as a SFHA, the borrower may apply to FEMA for a Letter of Map Amendment. Unless the map is revised or a Letter of Map Amendment is obtained, insurance must be purchased.

Reliance on Prior Determination

A credit union can rely on a prior SFHA determination if:

- The previous determination is not more than seven years old;
- The basis for it was recorded on the standard flood hazard determination form; or,
- The loan is a subsequent transaction by the same credit union with respect to the same property, i.e., assumption, refinancing, renewal, or second lien loan.

A new determination is not required, assuming the other requirements are met. A credit union may not rely on a previous determination if: FEMA's map revisions or updates show that the security property is now located in an SFHA; the lender discovers that map revisions or updates affecting the security property were made after the date of the previous determination; or the loan is not a subsequent transaction by the same credit union with respect to the same property (e.g., a lender purchases a loan from another lender.) 42 U.S.C. Sec. 4104c(b)

Required Notices [12 C.F.R. Section 760.9]

When a credit union makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a SFHA, the credit union must mail or deliver a written notice to the borrower and to the servicer, regardless of whether or not flood

insurance is available for the collateral securing the loan. The written notice must include the following information:

- A warning that the building or mobile home is or will be located in a SFHA in a form approved by FEMA;
- A description of the flood purchase requirements set forth in Section 102(b) of the FDPA of 1973, as amended (42 U.S.C. 4012a(b));
- A statement that flood insurance coverage is available under the NFIP, and possibly from private insurers; and,
- A statement as to whether federal disaster relief assistance may be available in the event of damage to the building or mobile home, caused by flooding in a federally-declared disaster.

The credit union must provide the notice to the borrower within a “reasonable time” before the completion of the transaction. Ten days is generally regarded as a “reasonable” time interval.

The credit union must also provide the notice to the servicer as promptly as practicable after notice is given to the borrower and no later than the time the credit union provides other similar notices to the servicer regarding hazard insurance and taxes.

The credit union must retain a record of receipt of the notices.

Notice to FEMA of Servicer’s Identity [12 C.F.R. Section 760.10]

When a credit union makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a SFHA, the credit union must notify the Director of FEMA, or the Director’s designee (the insurance carrier), in writing of the identity of the servicer of the loan. The credit union must notify the Director of FEMA, or the Director’s designee, of any change in the servicer of the loan within 60 days after the effective date of the change. Credit unions may provide this notice electronically, if electronic submission is satisfactory to the Director of FEMA, or the Directors’ designee.

Forced Placement Provisions [12 C.F.R. Section 760.7]

If a credit union, or a servicer acting on its behalf, determines at any time during the term of the loan that the building or mobile home, and any personal property securing the loan, is not covered by flood insurance or is covered in an amount less than the amount required, then the credit union or its servicer must provide notice and an opportunity for the borrower to obtain the necessary amount of flood insurance, at the borrower’s expense. If the borrower fails to obtain flood insurance within 45 days after notification, then the credit union or its servicer must purchase or “force place” flood insurance in the appropriate amount on the borrower’s behalf. The credit union or its servicer may charge the borrower for the cost of the premiums and fees incurred in purchasing the insurance.

Written Programs / Documentation

Escrow Accounts [12 C.F.R. Section 760.5]

If a credit union requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by residential improved real estate or a mobile home that is made, increased, extended or renewed on or after November 1, 1996, it must also require the escrow of all premiums and fees for flood insurance.

Recordkeeping

Retention of form [12 C.F.R. Section 760.6]

A credit union shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the credit union owns the loan.

Enforcement / Liability

Penalties for Non-compliance [42 U.S.C. 4012a(f)]

Penalties exist for violations of non-notice requirements and forced placement insurance requirements. If a credit union is found to have a pattern or practice of committing violations, NCUA shall assess civil penalties in an amount not to exceed \$350 per violation with a total amount against any one credit union not to exceed \$100,000 in any calendar year. Any penalty assessed will be paid into the National Flood Mitigation Fund Liability for violations that cannot be transferred to a subsequent purchaser of a loan.

NATIONAL FLOOD INSURANCE ACT
REVIEW CONSIDERATIONS

Review Considerations

Review Area	Requirements / Recommendations
Policy / Procedures	Adopt a policy for implementing the National Flood Insurance Act and Part 760 of the NCUA Rules and Regulations. Maintain written procedures to ensure compliance with laws and regulations.
Flood Zone Determinations	Prior to making increasing, extending, or renewing any loan secured by a building or a mobile home (affixed foundation), determine whether the secured property is or will be located in a special flood hazard area (SFHA). If the property is located in a SFHA, determine if the community in which the property is located participates in the National Flood Insurance Program (NFIP). Ensure that flood zone determinations are accurately prepared on the Standard Flood Hazard Determination Form (SFHDF). A copy of the completed form must be retained. A credit union may rely on a previous determination (when increasing, extending or renewing a loan) only if the original determination was recorded on the SFHDF within the previous 7-years and there were no map revisions or updates affecting the property since the original determination. Retain SFHDF for as long as the credit union owns the loan.
Purchase Requirements	Prior to loan closing, ensure that sufficient flood insurance is purchased on a loan secured by a building or mobile home that is or will be located in a SFHA in a community participating in the NFIP. Maintain sufficient insurance coverage for the life of the loan. The amount of insurance coverage must be at least equal to the outstanding principal balance of the loan, or the maximum limit of coverage available through the NFIP, whichever is less.

<p>Notice to Borrower and Servicer</p>	<p>If the property securing the loan is or will be located in a SFHA, provide a written notice to the borrower and the servicer, that contains the following information:</p> <ol style="list-style-type: none"> 1. A warning that the building or mobile home is or will be located in a SFHA; 2. A description of the flood insurance purchase requirements; 3. A statement indicating whether flood insurance coverage is available under the NFIP and may also be available from private insurers; and, 4. A statement indicating whether federal disaster relief assistance may be available in the event of damage to the building or mobile home, caused by flooding in a federally declared disaster. <p>The notice must be provided regardless of whether the property is located in a participating or non-participating community. In a transaction involving multiple borrowers, the notice can be provided to any one of the borrowers, but a credit union may provide multiple notices if it chooses within a reasonable time before completion of the transaction (borrower); as promptly as practicable after notice to the borrower (servicer). “Reasonable time” is not defined, but a borrower should receive a timely notice (within 10 days) to ensure that the borrower has the opportunity to become aware of his or her responsibilities under the NFIP and can purchase flood insurance before completion of the loan transaction.</p> <p>A credit union may rely on assurances from a seller or lessor that the seller or lessor has provided the requisite notice to the purchaser or lessee.</p>

<p>Escrowing Flood Insurance Premiums</p>	<p>If the credit union escrows for charges in connection with a loan secured by <i>residential</i> improved real estate or a mobile home, ensure that it also escrows for all premiums and fees for any required flood insurance. The escrow requirement applies to all loans secured by residential improved real estate.</p> <p>In addition, however, the escrow account itself must comply with the requirements of Section 10 of RESPA if it is established for a “federally related mortgage loan,” which is, generally, a loan on a one- to-four-family dwelling.</p> <p>If a credit union makes a loan on the purchase of a condominium over which a “Residential Condominium Building Association Policy” is in place and dues to the condominium association pay the premiums, the escrow requirement is satisfied. If escrow accounts for other purposes are established at the voluntary request of the borrower, the credit union is not required to establish escrow accounts for flood insurance premiums.</p>
<p>Forced Placement of Flood Insurance</p>	<p>A credit union <i>must</i> purchase, or “force place” flood insurance if at any time during the life of the loan it determines that:</p> <ol style="list-style-type: none"> 1. The property securing the loan is located in a SFHA; 2. The community in which the property is located participates in the NFIP; 3. Flood insurance coverage is inadequate or does not exist; and, 4. The borrower fails to purchase flood insurance in the appropriate amount within 45 days after notification. <p>If a property was not located in a SFHA when the first SFHD was made, the regulations do not require “life of the loan” monitoring of the flood status.</p> <p>Purchase flood insurance in an amount equal to</p>

	<p>the difference between the present amount of coverage and the lesser of the outstanding principal balance or the maximum coverage limit available under NFIP. A credit union is responsible for ensuring that when flood insurance is required at loan origination, the borrower renews the flood insurance policy for as long as flood insurance is required. If a borrower allows a policy to lapse, the credit union or its servicer is required to commence force placement procedures.</p> <p>NCUA regulations do not require a credit union to monitor flood maps or make flood hazard determinations at any time other than when making, increasing, ex-tending or renewing a loan. Nonetheless, credit unions that are significantly exposed to flood insurance risks should have as policy, procedures relating to periodic reviews of flood insurance coverage or reviews of flood re-mappings.</p>
Fees and Charges	<p>A credit union may charge the borrower a reasonable fee for the costs associated with determining whether a building or mobile home is or will be located in a SFHA. If a loan is sold or transferred, the fee may be charged to the purchaser or transferee. Ensure that the fee is only charged when:</p> <ol style="list-style-type: none"> 1. The borrower initiates the making, increasing, extending, or renewing of a loan; 2. FEMA revises or updates floodplain areas or risk zones; 3. FEMA publishes a notice that affects the area in which the loan is located or may reasonably require a flood hazard determination; or, 4. The determination results in the purchase of flood insurance under the forced placement provision. <p>Examples of determination fees may include a reasonable fee for the costs of an initial flood hazard determination, for monitoring the flood hazard status of property during the life of the</p>

	loan to make determinations on an ongoing basis, and for re-mappings (even if the property is found not to be in a SFHA).
Training	Offer training sessions for employees on current flood insurance requirements.
Update	Update and revise flood insurance policies and procedures to ensure consistency with the Act and NCUA regulations.
Internal Review	Conduct an internal review at least annually to assess compliance with the Act and NCUA regulations and conformity of the credit union's practices with its policies and procedures.

NATIONAL FLOOD INSURANCE ACT CHECKLIST

	Yes	No
1. Does the credit union offer or extend consumer or business loans (purchase or non-purchase) that are secured by improved real property or manufactured homes affixed to a permanent foundation as defined in the provisions of the National Flood Insurance Program? If yes, complete the following sections. § 760.3	_____	_____
2. Do the method(s) used by the credit union to ascertain whether improved real estate or mobile homes are or will be located in a special flood hazard area, comply with section 42 U.S.C. § 4104 b(d)?	_____	_____
3. Does the process used by the credit union accurately identify special flood hazard areas? 42 U.S.C. § 4104 b(d)	_____	_____
4. Does the credit union determine if the community located in the special flood hazard areas participates in the National Flood Insurance Program? 42 U.S.C. § 4012 a(b)	_____	_____
5. Does the credit union verify that flood zone determinations are accurately prepared on the Standard Flood Hazard Determination Form (SFHDF)? § 760.6	_____	_____
6. Does the credit union rely on a previous determination if it is no more than seven years old, is recorded on the SFHDF, and it is not in a community that has been remapped? 42 U.S.C. § 4104 b(d)	_____	_____
7. Does the credit union retain a copy of the completed SFHDF in either hard copy or electronic form for as long as it owns the loan? § 760.6 (b)	_____	_____
8. For loans that require flood insurance, does the credit union determine that sufficient insurance was obtained prior to loan closing and is maintained for the life of the loan? Appendix to part § 760.	_____	_____

9. If the credit union makes loans insured or guaranteed by a government agency (SBA, VA or FHA), are these loans in a-participating community? _____
42 U.S.C. § 4106 (a) _____

10. Are the fees charged by the credit union for flood zone determinations (absent some other authority such as contract language) charged only when a loan is made to:
• increase, renew or extend;
• in response to a re-mapping by FEMA; or, results in the purchase of flood insurance under the forced placement provisions? _____
§ 760.8 (b) _____

11. If other authority permits the credit union to charge fees for determinations in situations other than the ones listed above, is the credit union consistent in its practice? § 760.8 (a) _____

12. Is the method used by the credit union to assess the borrower a fee for the flood zone determination reasonable? Consider, for example, the relationship of the fees charged to the cost of services provided? § 760.8 (a) _____

13. Does the credit union mail or deliver a notice to the borrower within a reasonable time that the property is or will be located in a standard flood hazard area within a reasonable time prior to loan closing? § 760.9 _____

14. Does the credit union's notice contain:
• Warning that the property securing the loan is or will be located in a SFHA;
• Description of the flood insurance purchase requirements;
• Statement, where applicable, that flood insurance coverage is available under the NFIP; and may also be available from private insurers, if applicable; and,
• A statement whether Federal disaster relief assistance may be available in the event of

damage to the property caused by flooding in a Federally declared disaster, if applicable? § 760.9 (b)

15. Does the credit union obtain satisfactory written assurance that the notice was provided within a reasonable time before completion of the sale or lease transaction?

16. Does the credit union retain a record of receipt of the notice provided to the borrower for as long as it owns the loan? § 760.9 (d)

17. If applicable, does the credit union provide written notice to the servicer of the loan within the prescribed time frames and that the credit union retains a record of receipt of the notice for as long as it owns the loan? § 760.10 (a)

18. If the credit union transfers servicing of loans to another servicer, does the credit union provide notice of the new servicer's identity to the flood insurance carrier (Director of FEMA's designee) within prescribed time frames? § 760.10(b)

19. Does the credit union have policies requiring escrows for property taxes, hazard insurance or other fees on residential buildings?

If yes, does the credit union escrow premiums for flood insurance on those loans closed on or after November 1, 1996? § 760.5

20. If the credit union determines that flood insurance coverage is less than the amount required by the FDPA, does the credit union ascertain that it has appropriate policies and procedures in place to exercise its forced placement authority? § 760.3-760.7

21. If the credit union is required to force place insurance, does the credit union provide written notice to the borrower that flood insurance is required, and that if the required insurance is not purchased by the borrower within 45 days from the time the credit union provided the written notice, that

the credit union will purchase the required insurance on the borrower's behalf? § 760.7 _____

22. If the credit union utilizes a third-party to prepare flood zone determinations, do the contractual documents between the parties provide for the third-party's guarantee of work? _____

Furthermore, does the contract contain provisions to resolve disputes relating to determinations, to allocate responsibility for compliance, and to address which party will be responsible for penalties incurred for noncompliance? 42 U.S.C. § 4104 b(d) _____

23. If the credit union has other authority to charge fees for determinations in situations other than those noted above, is the practice followed consistently? § 760.8 _____

24. If the credit union requires the borrower to obtain life-of-loan monitoring and passes that charge along to the borrower: does it either break out the original determination charge from the charge for life-of-loan monitoring or include the full amount of the charge as a finance charge for those loans subject to TILA? _____

25. If the credit union uses the alternate notice procedures in certain instances as permitted by the regulation, does it obtain the required satisfactory written assurance from the seller or lessor? § 760.9(e) _____

26. If an improved property or mobile home is located in a SFHA and flood insurance is required, does the credit union have the borrower obtain a policy with the credit union as loss payee, in the correct amount, prior to closing? § 760.3 _____

27. Does the credit union provide the appropriate notice to the carrier of the insurance policy (the Director of FEMA's designee) regarding the identity of the servicer of a designated loan? § 760.10(a) _____

28. If the credit union sells or transfers the servicing of designated loans to another party, does it have procedures in place to provide the appropriate notice

to the Director's designee within 60 days of the effective date of the transfer of the servicing? § 760.10(b)

Comments

NATIONAL FLOOD INSURANCE ACT

DEFINITIONS

Definitions

Act

Means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001–4129)

Credit union

Means a Federal or State-chartered credit union that is insured by the National Credit Union Share Insurance Fund

Building

A walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

Community

A state or a political subdivision of a state that has a zoning and building code jurisdiction over a particular area having special flood hazards

Designated loan

A loan secured by a building or mobile home located or to be located in a Special Flood Hazard Area (SFHA) in which flood insurance is available under the Act.

Federal emergency management agency (FEMA)

The federal agency under which the National Flood Insurance Program (NFIP) is administered

National flood insurance program (NFIP)

A Federal program that makes flood insurance available to owners of property in participating communities nationwide through the cooperative efforts of the Federal Government and the private insurance industry.

Nonparticipating community

A community in which the sale of flood insurance is not authorized because the community chooses not to participate in the NFIP

Participating community

Any community that voluntarily elects to participate in the NFIP by adopting and enforcing floodplain management regulations that are consistent with the standards of the NFIP

Special flood hazard area (SFHA)

Darkly shaded area on a Flood Insurance Rate Map (FIRM) or a Flood Hazard Boundary Map (FHBM) that identifies an area that has a 1-percent chance of being flooded in any given year (100-year floodplain)

Standard flood hazard determination form (SFHDF)

FEMA's form 81-93, to be used by all companies performing determinations, in either printed, computerized, or electronic forms.

PRIVACY OF CONSUMER FINANCIAL INFORMATION

OVERVIEW

Overview

Title V, Subtitle A of the Gramm-Leach-Bliley Act (the “GLB Act”) governs the treatment of nonpublic personal information about consumers by financial institutions. Section 502 of Subtitle A, subject to certain exceptions, prohibits a financial institution from disclosing nonpublic personal information about a consumer to nonaffiliated third parties, unless the institution satisfies various notice and opt-out requirements, and provided that the consumer has not elected to opt out of the disclosure. Section 503 requires the institution to provide notice of its privacy policies and practices to its customers. Section 504 authorizes the issuance of regulations to implement these provisions.

As required by law, the federal banking agencies, NCUA, the Secretary of the Treasury, the Securities and Exchange Commission, the Federal Trade Commission, and the Commodity Futures Trading Commission, in consultation with state insurance authorities, prescribed regulations “consistent and comparable” with one another. Part 716 of the NCUA Rules and Regulations implements provisions of the Act governing the privacy of consumer financial information for federally insured credit unions. The regulation contains many defined terms (in quotes below; see Glossary), establishes rules governing a credit union’s duties to provide particular notices, and limits its disclosure of nonpublic personal information, as summarized below:

- A credit union must provide a notice of its privacy policies, and allow a “consumer” to opt out of the disclosure of his or her “nonpublic personal information,” to a “nonaffiliated third party” if the disclosure is outside of the exceptions in NCUA Rules and Regulations §716.13, §716.14 or §716.15;
- Regardless of whether a credit union shares “nonpublic personal information,” the credit union must provide notices of its privacy policies to its “members.” Note this term includes some nonmembers for purposes of this rule (see Glossary);
- A credit union generally may not disclose account numbers to any “nonaffiliated third party” for marketing purposes; and,
- A credit union must follow reuse and redisclosure limitations on any nonpublic personal information it receives from a nonaffiliated financial institution.

Exceptions

Credit unions need not give opt-out notices if the credit unions limit disclosure of nonpublic personal information as follows:

- To a nonaffiliated third party to perform services for the credit union or to function on its behalf, including marketing the credit unions own products or services or those offered jointly by the credit union and another financial institution. This exception is permitted only if the credit union provides notice of these arrangements and by contract prohibits the third party from disclosing or using the information for other than the specified purposes. If the service is covered by the exceptions in §716.14 or §716.15, the credit union does not have to comply with the additional disclosure and confidentiality requirements of §716.13. Disclosure under §716.13 could include sharing information for marketing purposes with an insurance company (§716.14).
- As necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, or under certain other circumstances relating to existing relationships with members. Disclosures under this exception could be in connection with the audit of credit information, administration of a rewards program, or to provide an account statement (§716.14).
- For specified other disclosures that a credit union normally makes, such as to protect against or prevent actual or potential fraud; to the credit union's attorneys, accountants, and auditors; or to comply with applicable legal requirements, such as the disclosure of information to regulators (§716.15).

Associated Risks

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with the GLB Act and Part 716.
- Reputation risk can occur when members of the credit union learn of its failure to comply with the GLB Act and Part 716.

Additional Information

- Part 716 is available on NCUA's website in the Reference Information section under Rules and Regulations, http://www.ncua.gov/ref/rules_and_regs/NCUA4.pdf.
- NCUA's website in the Reference Information section under Consumer Privacy, http://www.ncua.gov/ref/consumer_privacy/consumerprivacy.htm, contains the following documents: [Frequently Asked Questions for the Consumer Privacy Regulation](#); [Consumer Privacy Brochure](#), "Privacy Choices for Your Personal Financial Information;" [Privacy of Consumer Financial Information: Small Credit Union Compliance Guide](#); and [NCUA Letter to Credit Unions No. 02-CU-02](#), NCUA's Privacy of Consumer Financial Information Examination Program.
- The FFIEC website contains an InfoBase on Financial Privacy at <http://www.ffiec.gov/exam/infobase.htm>.

- **The FTC website contains a link called Gramm-Leach-Bliley Act: Financial Privacy, Safeguards, and Pretexting,**
<http://www.ftc.gov/privacy/glbact/index.html>.

PRIVACY OF CONSUMER FINANCIAL INFORMATION

OPERATIONAL REQUIREMENTS

Disclosures / Notices

Initial Privacy Notice to Consumers [§716.4]

Notices must be clear and conspicuous and accurately reflect the credit union's privacy policies and practices and must be provided prior to the consumer providing any information. Notices are only required for consumers who are not members when the credit union is sharing the collected information with nonaffiliated third parties. The credit union must provide to the consumer:

- An initial notice of its privacy policies;
- An opt out notice (including, among other things, a reasonable means to opt out); and,
- A reasonable opportunity, before the credit union discloses the information to the nonaffiliated third party, to opt out.

Special Rule for Loans [§716.4(f)(2)]

A credit union must provide an initial notice to a co-borrower or guarantor on a loan, who has no other member relationship with the credit union, if it shares the nonpublic personal information with nonaffiliated third parties other than as allowed under the exceptions. Credit unions may provide annual notices to the co-borrowers and guarantors jointly.

Initial Privacy Notice to Members [§716.4]

The notice must be clear and conspicuous and accurately reflect the credit union's privacy policies and practices to all members not later than when the member relationship is established. The following is a list of disclosures regarding nonpublic personal information that credit unions must provide in their privacy notices, as applicable:

- Categories of information collected;
- Categories of information disclosed;
- Categories of affiliates and nonaffiliated third parties to whom the credit union may disclose information;
- Policies with respect to the treatment of former members' information;
- Information disclosed to service providers and joint marketers (§ 716. 13);
- An explanation of the opt out right and methods for opting out;
- Any opt out notices the credit union must provide under the Fair Credit Reporting Act with respect to affiliate information sharing;
- Policies for protecting the security and confidentiality of information (see also §748.0 and Part 748, App. A); and

- A statement that the credit union makes disclosures to other nonaffiliated third parties as permitted by law under §716.14 and §716.15.

Subsequent notice is permitted when:

- The member relationship is not established at the member's election (i.e. in the case of a credit union acquiring the consumer's account through a purchase or merger).
- To do otherwise would substantially delay the member's transaction, and the member agrees to the subsequent delivery (i.e. in the case of a student loan or establishing the account by telephone).

Subsequent disclosures must be provided within a reasonable time after establishing a member relationship.

Simplified Privacy Notice [§716.6(e)(5)]

If the credit union shares information only under the exceptions available under 716.14 and 716.15, the privacy notice must include the following:

- A statement to this effect;
- Categories of nonpublic personal information it collects;
- Policies and practices the credit union uses to protect the confidentiality and security of nonpublic personal information (see also §748.0 and Part 748 App. A); and,
- A general statement that the credit union makes disclosures to other nonaffiliated third parties as permitted by law.

Short-Form Initial Privacy Notice with Opt Out Notice [§716.6(c)]

The notice must be clear and conspicuous and state that the credit union's full privacy notice is available on request. It must also explain a reasonable means by which the consumer may obtain the notice.

A reasonable means might include a toll-free telephone number the consumer may call to request the notice, or for the consumer who conducts business in person, having copies available to provide immediately by hand.

Annual Privacy Notice to Members [§716.5]

Notices must be clear and conspicuous and accurately reflect the credit union's privacy policies and practices and must be provided at least once in any period of 12 consecutive months.

Revised Privacy Notices [§716.8]

When a new category of nonpublic personal information is shared or information with a new category of nonaffiliated party is shared, a revised notice and new opt out notice must be given to members.

Opt out Notice to Consumers [§716.7]

- The opt out notice must state:
 - (a) That the credit union discloses or reserves the right to disclose nonpublic personal information about the consumer to a nonaffiliated third party;
 - (b) That the consumer has the right to opt out of that disclosure; and,
 - (c) A reasonable means by which the consumer may opt out.
- The information concerning the consumer's right to opt out must include:
 - (a) All categories of nonpublic personal information the credit union discloses or reserves the right to disclose;
 - (b) All categories of nonaffiliated third parties to whom the information is disclosed;
 - (c) That the consumer has the right to opt out of the disclosure of that information; and,
 - (d) The financial products or services to which the opt out direction would apply.
- The credit union should comply with the consumer's direction to opt out as soon as is reasonably practicable.
- Consumers must be allowed to opt out at any time.
- The credit union must continue to honor the consumer's opt out direction until revoked by the consumer in writing (or electronically if the consumer agrees).
- Opt out directions should be honored even after the member relationship ends.

Delivery Methods

The following are examples of "reasonable means" for delivery (§716.9):

- Hand-delivery of a printed copy;
- Mailing a printed copy to the last known address of the consumer;
- For the consumer who conducts transactions electronically, clearly and conspicuously posting the notice on the credit union's electronic site and requiring the consumer to acknowledge receipt as a necessary step to obtaining a financial product or service; or,

- For isolated transactions, such as ATM transactions, posting the notice on the screen and requiring the consumer to acknowledge receipt as a necessary step to obtaining the financial product or service.

Insufficient or unreasonable means of delivery include: exclusively oral notice, in person or by telephone; branch or office signs or generally published advertisements; and electronic mail to a member who does not obtain products or services electronically.

For annual notices, if the member uses the credit union's web site to access products and services electronically and agrees to receive notices at the web site, the credit union may continuously post the current privacy notice on the web site in a clear and conspicuous manner.

Limits on Disclosure

If the information is obtained under §716.14 or §716.15, the credit union must refrain from using or disclosing the information except:

- To disclose the information to the affiliates of the financial institution from which it received the information;
- To disclose the information to its own affiliates, which are in turn limited by the same disclosure and use restrictions as the credit union; and,
- To disclose and use the information pursuant to an exception in §716.14 or §716.15 in the ordinary course of business to carry out the activity covered by the exception under which the information was received.

If the information is obtained from a nonaffiliated financial institution other than under one of the exceptions in §716.14 or §716.15, the credit union should refrain from disclosing the information except:

- To the affiliates of the financial institution from which it received the information;
- To its own affiliates, which are in turn limited by the same disclosure restrictions as the credit union; and,
- To any other person, if the disclosure would be lawful if made directly to that person by the institution from which the recipient credit union received the information.

A credit union must not disclose an account number or similar form of access number or access code for a credit card, share, or transaction account to any nonaffiliated third party (other than a consumer reporting agency) for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

The disclosure of encrypted account numbers without an accompanying means of decryption, however, is not subject to this prohibition. The regulation also expressly allows disclosures by a credit union to its agent to market the credit union's own products or services (although the credit union must not authorize the agent to directly initiate charges to the member's account). Also not barred are disclosures to participants in

private-label or affinity card programs, where the participants are identified to the member when the member enters the program.

Recordkeeping

There are no record retention requirements mentioned in the privacy regulation. However, a credit union would need to produce evidence to support their defense resulting from allegations of prohibited practices, by NCUA or a consumer. NCUA recommends the credit union retain evidence of compliance for one examination cycle and one audit cycle.

Enforcement / Liability

Administrative Enforcement Authority

NCUA has authority to enforce compliance with the GLB Act and Part 716 for federal credit unions and federally insured credit unions. The FTC has authority to enforce compliance with the GLB Act and FTC's consumer privacy rules for non-federally insured credit unions. If CUSOs are providing consumers with financial products or services, they will also be subject to consumer privacy rules, to be enforced by each federal functional regulator.

Penalties and Liabilities

There are no civil liability provisions in the regulation; however, state law may provide a basis for an individual to sue the credit union for compliance problems.

Relation to State Law [§716.17]

Parties may petition the Federal Trade Commission for a determination, after consultation with NCUA and the other financial regulators, that a state statute, regulation, order, or interpretation is not inconsistent with the GLB Act and consumer privacy regulations. The FTC will then determine, in general, that either the federal or state law or provisions of both apply. See the FTC website link for more information on these preemption issues, <http://www.ftc.gov/privacy/glbact/index.html#Preemption>.

PRIVACY OF CONSUMER FINANCIAL INFORMATION

REVIEW CONSIDERATIONS

Review Considerations

Review Area	Requirements / Recommendations
Policy / Procedures	Adopt a policy to determine what nonpublic information will be shared with whom and how disclosures will be delivered to members and other consumers.
Initial Privacy Notice to Consumers	<p>If the credit union intends to disclose a consumer's information other than under the exceptions, the credit union must provide to the consumer:</p> <ul style="list-style-type: none"> • An initial notice of its privacy policies; • An opt out notice (including, among other things, a reasonable means to opt out); and, • A reasonable opportunity, before the credit union discloses the information to the nonaffiliated third party, to opt out.
Special Rule for Loans	A credit union must provide an initial notice to a co-borrower or guarantor on a loan, who has no other member relationship with the credit union, if it shares the nonpublic personal information with nonaffiliated third parties other than as allowed under the exceptions. Credit unions may provide annual notices to the co-borrowers and guarantors jointly.
Initial Privacy Notice to Members	<p>The notice must be clear and conspicuous and accurately reflect the credit union's privacy policies and practices to all members not later than when the member relationship is established. The following is a list of disclosures regarding nonpublic personal information that credit unions must provide in their privacy notices, as applicable:</p> <ul style="list-style-type: none"> • Categories of information collected; • Categories of information disclosed; • Categories of affiliates and nonaffiliated third

	<p>parties to whom the credit union may disclose information;</p> <ul style="list-style-type: none"> • Policies with respect to the treatment of former members' information; • Information disclosed to service providers and joint marketers (716.13); • An explanation of the opt out right and methods for opting out; • Any opt out notices the credit union must provide under the Fair Credit Reporting Act with respect to affiliate information sharing; • Policies for protecting the security and confidentiality of information (see also §748.0 and Part 748, App. A); and, • A statement that the credit union makes disclosures to other nonaffiliated third parties as permitted by law under section 716.14 and 716.15. <p>Subsequent notice is permitted when:</p> <ul style="list-style-type: none"> • The member relationship is not established at the member's election (e.g., in the case of a credit union acquiring the consumer's account through a purchase or merger). • To do otherwise would substantially delay the member's transaction, and the member agrees to the subsequent delivery (e.g., in the case of a student loan or establishing the account by telephone). <p>Subsequent disclosures must be provided within a reasonable time after establishing a member relationship.</p>
Simplified Privacy Notice	<p>If the credit union shares information only under the exceptions available under 716.14 and 716.15, the privacy notice must include the following:</p> <ul style="list-style-type: none"> • A statement to this effect; • Categories of nonpublic personal information it collects; • Policies and practices the credit union uses to protect the confidentiality and security of nonpublic personal information; and, • A general statement that the credit union makes

	disclosures to other nonaffiliated third parties as permitted by law.
Short-form Notice with Opt Out	<p>The notice must be clear and conspicuous and state that the credit union's full privacy notice is available on request. It must also explain a reasonable means by which the consumer may obtain the notice.</p> <p>A reasonable means might include a toll-free telephone number the consumer may call to request the notice, or for the consumer who conducts business in person, having copies available to provide immediately by hand.</p>
Annual Privacy Notice to Members	Notices must be clear and conspicuous and accurately reflect the credit union's privacy policies and practices and must be provided at least once in any period of 12 consecutive months.
Revised Policy Notices	When a new category of nonpublic personal information is shared or information with a new category of nonaffiliated party is shared, a revised notice and new opt out notice must be given to members.
Opt Out Notice to Consumers	<ul style="list-style-type: none"> • The opt out notice must state: <ul style="list-style-type: none"> (a) That the credit union discloses or reserves the right to disclose nonpublic personal information about the consumer to a nonaffiliated third party; (b) That the consumer has the right to opt out of that disclosure; and, (c) A reasonable means by which the consumer may opt out. • The information concerning the consumer's right to opt out must include: <ul style="list-style-type: none"> (a) All categories of nonpublic personal information the credit union discloses or reserves the right to disclose; (b) All categories of nonaffiliated third parties to whom the information is disclosed; (c) That the consumer has the right to opt out

	<p>of the disclosure of that information; and, (d) The financial products or services to which the opt out direction would apply.</p> <ul style="list-style-type: none"> • The credit union should comply with the consumer's direction to opt out as soon as is reasonably practicable. • Consumers must be allowed to opt out at any time. • The credit union must continue to honor the consumer's opt out direction until revoked by the consumer in writing (or electronically if the consumer agrees). • Opt out directions should be honored even after the member relationship ends.
<p>Delivery Methods</p>	<p>The following are examples of "reasonable means" for delivery (§ 716.9):</p> <ul style="list-style-type: none"> • Hand-delivery of a printed copy; • Mailing a printed copy to the last known address of the consumer; • For the consumer who conducts transactions electronically, clearly and conspicuously posting the notice on the credit union's electronic site and requiring the consumer to acknowledge receipt as a necessary step to obtaining a financial product or service; or, • For isolated transactions, such as ATM transactions, posting the notice on the screen and requiring the consumer to acknowledge receipt as a necessary step to obtaining the financial product or service. <p>Insufficient or unreasonable means of delivery include: exclusively oral notice, in person or by telephone; branch or office signs or generally published advertisements; and electronic mail to a member who does not obtain products or services electronically.</p> <p>For annual notices, if the member uses the credit union's web site to access products and services electronically and agrees to receive notices at the</p>

	<p>web site, the credit union may continuously post the current privacy notice on the web site in a clear and conspicuous manner.</p>
<p>Limits on Disclosure</p>	<p>If the information is obtained under 716.14 or 716.15, the credit union must refrain from using or disclosing the information except:</p> <ul style="list-style-type: none"> • To disclose the information to the affiliates of the financial institution from which it received the information; • To disclose the information to its own affiliates, which are in turn limited by the same disclosure and use restrictions as the credit union; and, • To disclose and use the information pursuant to an exception in 716.14 or 716.15 in the ordinary course of business to carry out the activity covered by the exception under which the information was received. <p>If the information is obtained from a nonaffiliated financial institution other than under one of the exceptions in 716.14 or 716.15, the credit union should refrain from disclosing the information except:</p> <ul style="list-style-type: none"> • To the affiliates of the financial institution from which it received the information; • To its own affiliates, which are in turn limited by the same disclosure restrictions as the credit union; and, • To any other person, if the disclosure would be lawful if made directly to that person by the institution from which the recipient credit union received the information. <p>A credit union must not disclose an account number or similar form of access number or access code for a credit card, share, or transaction account to any nonaffiliated third party (other than a consumer reporting agency) for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.</p> <p>The disclosure of encrypted account numbers</p>

	<p>without an accompanying means of decryption, however, is not subject to this prohibition. The regulation also expressly allows disclosures by a credit union to its agent to market the credit union's own products or services (although the credit union must not authorize the agent to directly initiate charges to the member's account.) Also not barred are disclosures to participants in private-label or affinity card programs, where the participants are identified to the member when the member enters the program.</p>
Record Retention	<p>Retain all records associated with the Privacy of Consumer Financial Information and compliance efforts for at least an examination and audit cycle.</p>
Training	<p>Provide training to employees whose duties are affected by the requirements of the regulation.</p>
Updating	<p>Update policies, procedures, disclosures, and notices if there are changes in shared information.</p> <p>Give revised privacy notices and new opt out notice to members.</p>
Internal Review	<p>Conduct an internal review at least annually to assess compliance with the regulation and conformity of an institution's practices with its policies and procedures.</p>

PRIVACY OF CONSUMER FINANCIAL INFORMATION CHECKLIST

	Yes	No
1. Does the credit union provide initial privacy notices to all members not later than when the relationship is established? [§716.4(a)(1)]	_____	_____
2. Does the credit union provide initial privacy notices to all consumers before disclosing nonpublic personal information about the consumer to a nonaffiliated third party? [§716.4(a)(2)]	_____	_____
3. Is an annual privacy notice delivered to all members? [§716.5]	_____	_____
4. Is the following information included in the initial and annual privacy notices?		
a) The categories of nonpublic personal information that the credit union collects. [§716.6(a)(1)]	_____	_____
b) The categories of nonpublic personal information that the credit union discloses. [§716.6(a)(2)]	_____	_____
c) The categories of affiliates and nonaffiliated third parties to whom the credit union discloses nonpublic personal information. [§716.6(a)(3)]	_____	_____
d) The categories of nonpublic personal information about former members that the credit union discloses and the categories of affiliates and nonaffiliated third parties to whom the credit union discloses it. [§716.6(a)(4)]	_____	_____
e) If the credit union discloses nonpublic personal information to a nonaffiliated third party under §716.13, a separate statement of the categories of information the credit union discloses and the categories of third parties with whom the credit union has contracted. [§716.6(a)(5)]	_____	_____
f) An explanation of the consumer's right to opt out and the method to exercise that right. [§716.6(a)(6)]	_____	_____
g) Any disclosures made under the Fair Credit Reporting Act. [§716.6(a)(7)]	_____	_____
h) The credit union's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information. [§716.6(a)(8); see also §748.0 and Part 748, App. A]	_____	_____

5. If the credit union uses a short-form notice with opt out, is this used only for nonmember consumers? [§716.6(c)] _____

6. Is the short-form notice clear and conspicuous? [§716.6(c)(2)(i)] _____

7. Does the short-form state that the privacy notice is available upon request? [§716.6(c)(2)(ii)] _____

8. Does the short-form explain a reasonable means by which the consumer may obtain the privacy notice? [§716.6(c)(2)(iii)] _____

9. If the credit union uses simplified privacy notices, does it not intend to disclose nonpublic information about members or former members? [§716.6(e)(5)] _____

10. If an opt out notice is required, does it state the following?

a) That the credit union discloses or reserves the right to disclose nonpublic personal information about the consumer to a nonaffiliated third party. [§716.7(a)(1)(i)] _____

b) That the consumer has the right to opt out of that disclosure. [§716.7(a)(1)(ii)] _____

c) A reasonable means by which the consumer may exercise the opt out right. [§716.7(a)(1)(iii)] _____

11. Does the opt out notice explain how the credit union will treat opt out directions by joint consumers? [§716.7(d)] _____

12. If the credit union discloses nonpublic personal information to nonaffiliated third parties, are initial and opt out notices provided to all loan parties, including individual notices to guarantors and co-borrowers? [§716.7(d)(6)] _____

13. Is a revised policy notice and new opt out notice given when a new category of nonpublic personal information to a nonaffiliated party is shared? [§716.8] _____

14. Is the privacy policy and opt out notice delivered by hand or mailed to the last known address of the consumer?

[§716.9(b)]

15. For the consumer who conducts transactions electronically, is the privacy policy or opt out notice posted on the electronic site and is the consumer required to acknowledge receipt? [§716.9(b)(iii)]

16. If information is obtained from a nonaffiliated financial institution other than under the exceptions in §716.14 & §716.15, does the credit union refrain from disclosing the information except to the affiliates from the institution from which it received the information, to its own affiliates or to any other person if the disclosure would be lawful if made directly to that person by the institution from which the recipient credit union received the information? [§716.11(a)(1)]

17. Does the credit union refrain from disclosing account numbers or similar forms of access numbers or access codes to any nonaffiliated third party for marketing purposes? [§716.12]

Comments _____

PRIVACY OF CONSUMER FINANCIAL INFORMATION

DEFINITIONS

Definitions (Section 716.3)

Affiliate

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

Examples:

- (i) An affiliate of a federal credit union is a credit union service organization (CUSO), as provided in 12 CFR Part 712, that is controlled by the federal credit union.
- (ii) An affiliate of a federally-insured, state-chartered credit union is a company that is controlled by the credit union.

Clear and conspicuous

A notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

Examples:

- (i) Reasonably understandable. You make your notice reasonably understandable if you:
 - (A) Present the information contained in the notice in clear, concise sentences, paragraphs and sections;
 - (B) Use short, explanatory sentences or bullet lists whenever possible;
 - (C) Use definite, concrete, everyday words and active voice whenever possible;
 - (D) Avoid multiple negatives;
 - (E) Avoid legal and highly technical business terminology wherever possible; and
 - (F) Avoid explanations that are imprecise and readily subject to different interpretations.
- (ii) Designed to call attention. You design your notice to call attention to the nature and significance of the information in it if you:
 - (A) Use a plain-language heading to call attention to the notice;
 - (B) Use a typeface and type size that are easy to read;
 - (C) Provide wide margins and ample line spacing;
 - (D) Use boldface or italics for key words; and
 - (E) In a form that combines your notice with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars.
- (iii) Notices on web sites. If you provide notices on a web page, you design your notice to call attention to the nature and significance of the information in it if you use text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site (such as text graphics, hyperlinks or sound) do not distract attention from the notice, and you either:

- (A) Place the notice on a screen frequently accessed by consumers, such as a home page or a page on which transactions are conducted; or
- (B) Place a link on a screen frequently accessed by consumers, such as a home page or a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature and relevance of the notice.

Collect

To obtain information that you organize or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

Company

Any corporation, limited liability company, business trust, general or limited partnership, association or similar organization.

Consumer

An individual who obtains or has obtained a financial product or service from you, that is to be used primarily for personal, family or household purposes, or that individual's legal representative.

Examples:

- (i) An individual who provides nonpublic personal information to you in connection with obtaining or seeking to obtain credit union membership is your consumer regardless of whether you establish a member relationship.
- (ii) An individual who provides nonpublic personal information to you in connection with using your ATM is your consumer.
- (iii) If you hold ownership or servicing rights to an individual's loan, the individual is your consumer, even if you hold those rights in conjunction with one or more financial institutions. (The individual is also a consumer with respect to the other financial institutions involved). This applies, even if you, or another financial institution with those rights, hire an agent to collect on the loan or to provide processing or other services.
- (iv) An individual who is a consumer of another financial institution is not your consumer solely because you act as agent for, or provide processing or other services to, that financial institution.
- (v) An individual is not your consumer solely because he or she is a participant or a beneficiary of an employee benefit plan that you sponsor or for which you act as a trustee or fiduciary.

Consumer reporting agency

The same meaning as in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

Control of a company

- (1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;
- (2) Control in any manner over the election of a majority of the directors, trustees or general partners (or individuals exercising similar functions) of the company; or
- (3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the NCUA determines. With respect to state-chartered credit unions, NCUA will consult with the appropriate state regulator prior to making its determination.

Example: NCUA will presume a credit union has a controlling influence over the management or policies of a CUSO, if the CUSO is 67% owned by credit unions.

Credit union

A federal or state-chartered credit union that the National Credit Union Share Insurance Fund insures.

Customer

A consumer who has a customer relationship with a financial institution other than a credit union.

Customer relationship

A continuing relationship between a consumer and a financial institution other than a credit union.

Federal functional regulator

- (1) The National Credit Union Administration Board;
- (2) The Board of Governors of the Federal Reserve System;
- (3) The Office of the Comptroller of the Currency;
- (4) The Board of Directors of the Federal Deposit Insurance Corporation;
- (5) The Director of the Office of Thrift Supervision; and
- (6) The Securities and Exchange Commission.

Financial institution

Any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activity as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

Examples of financial institutions may include, but are not limited to: credit unions; banks; insurance companies; securities brokers, dealers, and underwriters; loan brokers and servicers; tax planners and preparation services; personal property appraisers; real estate appraisers; career counselors for employees in financial occupations; digital signature services; courier services; real estate settlement services; manufacturers of computer software and hardware; and travel agencies operated in connection with financial services.

Financial institution does not include:

- (i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);
- (ii) The Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.); or
- (iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

Financial product or service

Any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

Financial service includes your evaluation or brokerage of information that you collect in connection with a request or an application from a consumer for a financial product or service.

Member

A consumer who has a member relationship with you. For purposes of this part only, it will include certain nonmembers.

Member relationship

A continuing relationship between a consumer and you under which you provide one or more financial products or services to the consumer that are to be used primarily for personal, family or household purposes. As noted in the examples, this will include certain consumers that are not your members.

Examples:

- (i) A consumer has a continuing relationship with you if the consumer:
 - (A) Is your member as defined in your bylaws;
 - (B) Is a nonmember who has a share, share draft, or credit card account with you jointly with a member;
 - (C) Is a nonmember who has a loan that you service;
 - (D) Is a nonmember who has an account with you and you are a credit union that has been designated as a low-income credit union; or
 - (E) Is a nonmember who has an account in a federally-insured, state-chartered credit union pursuant to state law.
- (ii) A consumer does not, however, have a member relationship with you if the consumer is a nonmember and:
 - (A) The consumer only obtains a financial product or service in isolated transactions, such as using your ATM to withdraw cash from an account maintained at another financial institution or purchasing travelers checks; or
 - (B) You sell the consumer's loan and do not retain the rights to service that loan.

Nonaffiliated third party means any person except:

- (i) Your affiliate; or
- (ii) A person employed jointly by you and any company that is not your affiliate (but nonaffiliated third party includes the other company that jointly employs the person).

Nonpublic personal information

- (i) Personally identifiable financial information; and
- (ii) Any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information.

Nonpublic personal information does not include:

- (i) Publicly available information, except as included on a list described in paragraph (q)(1)(ii) of this section; or
- (ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information, other than publicly available information.

Examples of lists:

- (i) Nonpublic personal information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information, other than publicly available information, such as account numbers.
- (ii) Nonpublic personal information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived using personally identifiable financial information, other than publicly available information, either in whole or in part, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a credit union, other than publicly available information.

Personally identifiable financial information

Any information:

- (i) A consumer provides to you to obtain a financial product or service from you;
- (ii) About a consumer resulting from any transaction involving a financial product or service between you and a consumer; or
- (iii) You otherwise obtain about a consumer in connection with providing a financial product or service to that consumer.

Personally identifiable financial information does not include publicly available information.

Examples:

- (i) Information included. Personally identifiable financial information includes:
 - (A) Information a consumer provides to you on an application to obtain membership, a loan, credit card or other financial product or service;

- (B) Account balance information, payment history, overdraft history, and credit or debit card purchase information;
 - (C) The fact that an individual is or has been one of your members or has obtained a financial product or service from you;
 - (D) Any information about your consumer if it is disclosed in a manner that indicates that the individual is or has been your consumer;
 - (E) Any information that a consumer provides to you or that you or your agent otherwise obtain in connection with collecting on a loan or servicing a loan;
 - (F) Any information you collect through an Internet “cookie” (an information collecting device from a web server); and
 - (G) Information from a consumer report.
- (ii) Information not included. Personally identifiable financial information does not include:
- (A) A list of names and addresses of customers of an entity that is not a financial institution; and
 - (B) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

Publicly available information

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

- (i) Federal, state or local government records;
- (ii) Widely distributed media; or
- (iii) Disclosures to the general public that are required to be made by federal, state or local law.

Reasonable basis. You have a reasonable basis to believe that information is lawfully made available to the general public if you have taken steps to determine:

- (i) That the information is of the type that is available to the general public; and
- (ii) Whether an individual can direct that the information not be made available to the general public and, if so, that your member or consumer has not done so.

Examples:

- (i) Government records. Publicly available information in government records includes information in government real estate records and security interest filings.
- (ii) Widely distributed media. Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or site operator requires a fee or a password, so long as access is available to the general public.
- (iii) Reasonable basis:
 - (1) You have a reasonable basis to believe that mortgage information is lawfully made available to the general public if you have determined that the

information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

- (2) You have a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if you have located the telephone number in the telephone book or have been informed by the consumer that the telephone number is not unlisted.

You

A federally-insured credit union.

RECORD RETENTION

OVERVIEW

Overview

Part 749 of the NCUA Rules and Regulations identifies vital records that must be maintained by credit unions. The appendix provides guidance on the length of time credit unions should retain various operational records. Credit unions may retain records in any format that can reconstruct the records, including paper originals, micro-film or fiche, magnetic tape, or other electronic format. NCUA does not regulate on the appropriate length of time to retain operational records, but the Appendix provides guidance to help credit unions with suggested record retention timeframes.

Records to Retain

Vital records, as of the most recent month end, to be retained on and off site include:

- Share, deposit, and loan balances for each member's account;
- A financial report listing all of the credit union's assets and liabilities;
- Bank reconcilements; and
- Listing of the credit union's financial institutions, insurance policies, and investments.

The following records should be retained permanently:

- Charter
- Bylaws and amendments
- Certificates or licenses to operate various government programs (i.e. sale of U.S. Savings Bonds)
- Minutes of meetings for the membership (annual meeting), board of directors, credit committee, and supervisory committee
- NCUA 5300 financial report
- Supervisory committee annual audit
- Supervisory committee records of member account verification
- Applications for membership, including joint share account agreements
- Journal and cash record
- General ledger
- Individual share and loan ledger
- Bank reconcilements
- Listing of records destroyed

Records for Permanent Destruction

The following records may be destroyed after they are made available for the annual audit and NCUA examination:

- Applications of paid loans
- Paid notes
- Various consumer disclosure forms, unless retention is required by law
- Cash received vouchers
- Journal vouchers
- Canceled checks
- Bank statements
- Outdated manuals, cancelled instructions and nonpayment correspondence from NCUA and other government agencies

Retention Times

NCUA does not have any restrictions on the specific length of time that credit unions should maintain records. Each state may impose its own rules, so credit unions should consult with local counsel when setting minimum retention periods.

The three most common types of records should be retained as follows:

- A non-vital record pertaining to a member account may be destroyed after it is verified by the supervisory committee.
- Individual share and loan ledgers should be retained permanently.
- Records for a particular period should not be destroyed until the annual audit and the NCUA examination have been completed for that period.

Associated Risks

- Compliance risk can occur when the credit union fails maintain a records preservation program to identify, store, and reconstruct vital records if the credit union's records are destroyed.
- Reputation risk can occur when the credit union destroyed records that impacted their legal standing to collect on loans or defend themselves in court.

RECORD RETENTION

REVIEW CONSIDERATIONS

Review Considerations

Review Area	Requirements / Recommendations
Policy/Procedures	Ensure the record retention program allows for the identification, storage, and reconstruction of vital records.
Coverage	Part 749 of NCUA Rules & Regulations provides guidance to credit unions for the storage of vital records.
Storage of Vital Records	The regulation is flexible as to the way credit unions want to store their vital records. They may use paper originals, copies, micro-film or fiche, magnetic tape, or any electronic format that accurately reflects the information on the record.
Minimum Retention Times	Each state can impose their own rules, so credit union's should seek local counsel before destroying records. As a general guide, a non-vital record pertaining to a member's account may be destroyed after it is reviewed by the supervisory committee. Individual share and loan ledgers should be retained permanently. Records, for a particular period, should not be destroyed until the annual audit and NCUA examination for the period are completed.
Training	Ensure that all departments are aware the credit union's record retention program.
Updating	Records must be stored every 3 months, within 30 days after the end of the 3-month period. The previously stored records may be destroyed when the current records are stored. The credit union must maintain a records preservation log showing what, where, and when the records were stored.
Internal Review	Review the records preservation log to be sure it is up to date and follows your guidelines established in your records preservation program.

RECORDS RETENTION CHECKLIST

	Yes	No
1. Does the credit union have a board approved records preservation policy? [§749.2]	_____	_____
2. If copies of records are maintained in a format other than paper, i.e. microfilm, microfiche, or an electronic format, are the records accurate, reproducible and accessible in a reasonable time period? [§749 Appendix A, paragraph A]	_____	_____
3. Does the credit union keep the following records permanently:		
- Charter, bylaws, and amendments?	_____	_____
- Certificates or licenses to operate under programs of various agencies?	_____	_____
- Current manuals, circular letters and other official instructions of a permanent character received from NCUA and other governmental agencies?	_____	_____
- Minutes of meetings of the membership, board of directors, credit committee, and supervisory committee?	_____	_____
- A copy of each NCUA 5300 financial report or its equivalent?	_____	_____
- One copy of each supervisory committee comprehensive annual audit report and attachments?	_____	_____
- Supervisory Committee records of account verifications?	_____	_____
- Applications for membership and joint share account agreements?	_____	_____
- Journal and cash record?	_____	_____
- General ledger?	_____	_____
- Copies of the periodic statements of members, or the individual share and loan ledger?	_____	_____
- Bank reconcilements?	_____	_____
- Listing of records destroyed?	_____	_____
[§749 Appendix A, paragraph E]		
4. Does the credit union retain documents required to document compliance with consumer regulations as follows:		
- Reg. B, Equal Credit Opportunities Act for at least twenty-five months? [§202.12]	_____	_____

- Reg. C, HMDA, loan/application register (original and modified) for three years, and disclosure statements for five years? [§203.5(a) and (d)] _____
- Reg. E, Electronic Funds Transfers for two years? [§205.13(b)(1)] _____
- Reg. M, Consumer Leasing, for not less than two years after the date the disclosures are required to be made or the action is required to be taken? [§213.8] _____
- Reg. Z, Truth in Lending for two years after the date disclosures are required to be made, or action is required to be taken? [§226.25(a)] _____
- Reg. CC, Availability of Funds and Collection of checks for at least two years? [§229.21(g)] _____
- TIS, Truth in Savings for two years after the date disclosures are required to be made or action is required to be taken? [§707.9(c)] _____
- OFAC, all reports and blocked or rejected transaction records for five years? _____
- RESPA, Real Estate Settlement and Procedures Act, the completed settlement statements for five years after settlement? [24 C.F.R. §3500.10(e)] _____
- FHA, Fair Housing Act, all appraisals for real estate related loans for 25 months? [§701.31(c)(5)] _____

5. Has the credit union checked to see that local state regulations do not call for longer record retention periods? _____

Comments: _____

RECORD RETENTION

DEFINITIONS

Definitions

Vital Records

These include:

- A list of share, deposit, and loan balances for each member, showing balance individually identified by a name or number. The list must also individually identify multiple loans to one account.
- A financial report including all of the assets and liabilities of the credit union and bank reconcilements
- A list of the credit union's financial institutions, insurance policies, and investments

Vital Records Center

This is a storage facility at any location far enough away from the credit union's offices to avoid simultaneous loss of both sets of records in the event of a disaster.

SERVICEMEMBER'S CIVIL RELIEF ACT

(SCRA)

OVERVIEW

Overview

The Servicemember's Civil Relief Act of 2003 (SCRA) gives relief to individuals who are called to active duty in any of the military branches, including reservists or members of the National Guard. SCRA replaces and expands the Soldiers' and Sailors' Civil Relief Act of 1940.

Major provisions of the SCRA that may affect credit unions include:

- Allowing borrowers to have their interest rates reduced to 6% on loans granted before going on active duty, if the call up to military service materially affected their ability to pay.
- Permitting active duty servicemembers, who are unable to appear in a court or administrative proceeding due to their military duties, to postpone court proceedings for a mandatory minimum of ninety days upon the servicemember's request.
- Prohibiting foreclosures or repossessions without prior court approval, up until three months after leaving active service.
- Prohibiting future adverse credit decisions based on the grant of SCRA relief.

The 6% interest limitation only affects loans granted before the member entered active duty. Any loan granted after the member entered onto active duty would continue to have the terms at the time the loan was granted.

The provisions related to foreclosures and repossessions apply to dependents also. The provision related to the maximum interest rates only apply to a dependent when the member of the military also signed the note, prior to entering active duty.

Associated Risks

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with SCRA.
- Reputation risk can occur when the credit union incurs fines and penalties or receives decreased member confidence as a result of failure to comply with SCRA.

Additional Information

Additional information is available at <http://www.jagcnet.army.mil/legal>.

SERVICEMEMBERS' CIVIL RELIEF ACT

(SCRA)

OPERATIONAL REQUIREMENTS

Disclosures / Notices

Highest interest rates allowed under SCRA

No obligation or liability incurred before entry into military service will bear an interest rate greater than 6 percent per year unless a court determines that the member's ability to pay the higher rate is not materially affected by reason of such military service. [50 U.S.C. App. §526]

Restrictions on repossessing or foreclosing on collateral under SCRA

No sale, foreclosure, or seizure of property for nonpayment of any sum due under an obligation secured by real or personal property, or for any other breach of the terms thereof, will be valid if made during the period of military service or within three months thereafter, unless upon an order previously granted by the court. [§532 (3)]

Restrictions on future adverse actions

Application by a person in military service for, or receipt by a person in military service of a stay, postponement, or suspension pursuant to the provisions of SCRA will not itself (without regard to other considerations) provide the basis for any adverse credit decision or adverse report relating to the creditworthiness of such person. [§518]

Other rights

The SCRA provides service members with other rights that may affect a credit union's ability to collect on the obligations of service members, including rights involving default judgments [§520], stays of proceedings [§§521, 590], the tolling of statutes of limitation [§525], and automobile leases [§531].

Written Programs / Documentation

Procedures for Training and Compliance

A credit union must establish and maintain procedures to ensure its compliance with the SCRA. It must also provide a statement of applicable portions of the procedures to employees who perform tasks subject to the requirements of the SCRA.

Enforcement / Liability

Enforcement

Private Cause of Action – Up to the individual affected.

Civil Liability

Any person who shall knowingly make or cause to be made any sale, foreclosure, or seizure of property described in §532, or resumes possession of property subject to §531, or attempts so to do is guilty of a misdemeanor and may be punished by imprisonment not to exceed one year or by fine not to exceed \$1,000, or both.

**SERVICEMEMBERS' CIVIL RELIEF ACT
(SCRA)**

REVIEW CONSIDERATIONS

Review Considerations

Review Area	Requirements / Recommendations
Policies / Procedures	Adopt a policy for implementing SCRA. Establish procedures ensuring that the credit union responds properly to members requesting relief under SCRA.
Requests for Relief	Provide for procedures to verify the member's eligibility for SCRA. Take steps to ensure that any necessary collection action does not include repossession or foreclosure except as specifically authorized by court order. Reduce interest rates on loans to 6% where appropriate.
Future activity	Ensure that granting relief under SCRA does not adversely affect future credit decisions or credit reporting.
Training	Provide training to all employees performing duties subject to SCRA.
Record Retention	Retain evidence of compliance with the SCRA.

**SERVICEMEMBERS' CIVIL RELIEF ACT
(SCRA)
CHECKLIST**

- | | Yes | No |
|--|-------|-------|
| 1. Did the credit union receive a request for relief under the Servicemembers' Civil Relief Act ? [50 US Code App. §§ 501 to 593] | _____ | _____ |
| 2. Did the credit union reduce the interest rates on loans predating active service to 6% for service members eligible for and requesting relief ? [§ 526] | _____ | _____ |
| 3. Did the credit union flag the account of service members eligible for relief under SCRA, to ensure that the credit union does not begin repossession of collateral securing the loan? [§ 531] | _____ | _____ |

Comments _____

SERVICEMEMBERS' CIVIL RELIEF ACT

(SCRA)

DEFINITIONS

Definitions (Section 511)

Servicemember

A member of the uniformed services, including all members of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

Court

A court or an administrative agency of the United States or of any State (including any political subdivision of a State), whether or not a court or administrative agency of record.

Dependent

The servicemember's spouse, the servicemember's child (as defined in section 101(4) of title 38, United States Code), or an individual for whom the servicemember provided more than one-half of the individual's support for 180 days immediately preceding an application for relief under SCRA.

Military Service

For a servicemember, who is a member of the Air Force, Army, Marine Corps, Navy, or Coast Guard, military service means active duty.

For a servicemember, who is a member of the National Guard, military service includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

For a servicemember, who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, military service means active service.

In addition, military service means any period that a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause

Period of Military Service

The period beginning on the date on which the servicemember enters military service and ending on the date of the servicemember's release from military service or death while in military service.

EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)

OVERVIEW

Overview

The Equal Credit Opportunity Act (ECOA), implemented by Regulation B (12 CFR 202), promotes availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), receipt of public assistance, or good faith exercise of any rights under the Consumer Credit Protection Act.

The basic rule of Regulation B, as found in §202.4, is:

"A creditor shall not discriminate against any applicant on a prohibited basis with respect to any aspect of a credit transaction."

Prohibited basis refers not only to the characteristics of the applicant, but also to the characteristics of individuals with whom the applicant is affiliated or associates. Therefore, a credit union may not discriminate against a member-applicant based on a prohibited basis characteristic of an associated individual. For example, a credit union cannot discriminate against an applicant because of the race of the residents in the neighborhood where the collateral property is located.

Credit transaction means every aspect of an applicant's dealings with a credit union regarding an application for credit or an existing extension of credit including, but not limited to, information requirements, investigation procedures, standards of creditworthiness, terms of credit, furnishing of credit information, revocation, alteration, or termination of credit, and collection procedures.

Regulation B also requires credit unions to do the following:

- Notify applicants of the credit decision within 30 days of receiving a completed application;
- Retain records of credit applications for 25 months after notifying the member of its credit decision;
- Collect information about the applicant's race and other personal characteristics in applications for certain dwelling-related loans; and,
- Provide applicants with copies of appraisal reports used in connection with credit transactions.

Credit Applications

Regulation B prevents credit unions from discouraging prospective applicants from making or pursuing an application.

Credit unions are encouraged to use industry standard form applications. A credit union choosing to use a non-standard credit application form should obtain a legal opinion stating the forms comply with the applicable legal requirements.

The application may request any information, except for the following:

- Information about the member's spouse, unless the spouse will use or is contractually liable on the account or the applicant relies on the spouse's income;
- Information about the member's marital status when applying for unsecured credit; when applying for secured credit, the application may use only the terms married, unmarried, or separated;
- Information about the member's sex, race, color, religion, and national origin; and,
- Information about childrearing or childbearing such as birth control practices, intentions, or capability to bear children.

A credit union may consider any information obtained in the credit application provided it does not use the information to discriminate against an applicant on a prohibited basis. An exception to this rule relates to the consideration of age in determining an applicant's creditworthiness.

Self-Test for Compliance

On April 15, 2003, Regulation B was amended to address the collection of applicants' personal characteristics in connection with non-mortgage credit. The mandatory compliance date is April 15, 2004.

This exception allows creditors to collect personal characteristics in a self-test for compliance with the ECOA in order to allow creditors to develop compliance programs that utilize applicant data in a controlled and targeted manner. A self-test is a program, practice, or study designed and used by a creditor specifically to determine compliance with the ECOA. The creditor must take corrective action when the results of the self-test indicate that "it is more likely than not" that a violation occurred.

Creditors that conduct a self-test and request information about personal characteristics must disclose to applicants the following:

- That providing the information is optional;
- That it is being collected to monitor for compliance with the ECOA;
- That it will not be used in making the credit decision; and,
- If applicable, that information may be noted based on visual observation or surname.

Effects Test

While not specifically mentioned in the ECOA, the legislative history of the ECOA indicates Congress intended an "effects test" concept to apply to a credit union's

determination of creditworthiness. The effects test refers to a credit practice that appears facially neutral, but has a disproportionately negative effect on a prohibited basis, even though the credit union has no intent to discriminate. This type of practice is discriminatory, in effect, unless the credit union can demonstrate the practice meets a legitimate business need that cannot be reasonably achieved by means less disparate in impact.

Answering the following questions should assist in determining if the credit union's credit practices result in a potential violation of the effects test:

1. Does a particular credit practice have a statistically disproportionate impact on a protected group (those covered under the prohibited basis definition)?
2. If so, can the credit union show that the practice serves a genuine business need?
3. If so, is there a less discriminating way to meet that business need?

Appraisals

Federal credit unions are not subject to the appraisal requirements of the ECOA. However, *NCUA Rules and Regulations* §701.31(c)(5) requires a federal credit union to make available to any requesting member a copy of the appraisal used in conjunction with that member's real estate loan application. The credit union must make that appraisal available for 25 months after the member was notified of the action taken on the credit application.

Requirements for nonfederally-chartered credit unions are addressed in the "Appraisal Reports" section of the Operational Requirements portion of this chapter.

Associated Risks

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with the ECOA; and
- Reputation risk can occur when the credit union incurs fines and penalties or receives negative publicity or declined membership confidence as a result of failure to comply with ECOA.

Additional Information

The Federal Reserve Board's website contains additional information at <http://www.federalreserve.gov>. The Publications Services Unit at (202) 452-3245 has copies of the regulation and staff commentaries issued by the Federal Reserve System available.

Please note the ECOA and the Fair Housing Act should be read together in order to fully understand the scope of a credit union's fair lending obligations.

EQUAL CREDIT OPPORTUNITY ACT (REGULATION B) OPERATIONAL REQUIREMENTS

Disclosures / Notices

Appraisal Reports [Section 202.5a]

A creditor must provide a copy of the appraisal report used in connection with an application for credit to be secured by a lien on a dwelling, either as a matter of routine or upon written request of the applicant who has been notified in writing of their right to obtain a copy. The notice of the right to receive a copy of the appraisal report must be given no later than the notice of action taken under Section 202.9. The creditor must mail or deliver a copy of the appraisal report generally within 30 days of the request.

Federal credit unions are not subject to the appraisal requirements of the ECOA and Regulation B. Please see the section in the Overview part of this section regarding “Appraisals.”

Notification of Action Taken [Section 202.9(a)]

The creditor must notify an applicant of the action taken on a credit application, in accordance with the requirements of Section 202.9. The notification must be in writing and must include a statement of the action taken, the name and address of the creditor, a statement of the provisions of Section 701(a) of the ECOA (see Section 202.9(b)), the name and address of the creditor’s federal regulator, and a statement of the specific reasons for the action or the disclosure of the right to obtain such reasons. Generally, the notice must be provided within 30 days after receipt of a completed application. The notification requirements for business credit applicants may vary somewhat as described in Section 202.9(a)(3).

ECOA Notice [Section 202.9(b)]

When providing a notification of action taken in connection with the requirements of Section 202.9(a), the creditor must provide a statement of the provisions of Section 701(a) of the ECOA that is substantially similar to the language contained in Section 202.9(b).

Monitoring Information [Section 202.13]

A creditor must inform applicant(s) for a home mortgage loan that the federal government requests information on race or national origin, sex, marital status, and age for monitoring purposes. The creditor must also inform the applicant(s) that if they choose not to provide the information, the creditor is required to note the race or national origin and sex on the basis of visual observation or surname.

Equal Housing Lender Poster [NCUA Rules and Regulations Section 701.31(d)(2)]

Federal credit unions engaging in real estate-related lending must display a notice of nondiscrimination. The notice (with the prescribed logotype and language) must be placed in the public lobby of the credit union and in the public areas of each office where such loans are made and must be clearly visible to the general public.

Written Programs / Documentation

Written Applications [Section 202.5(e)]

A creditor must take written applications for the types of credit covered by Section 202.13(a), i.e. applications for credit related to the purchase of refinancing of a principal residence secured by the residence.

Recordkeeping

Record Retention [Section 202.12]

Applications, supporting information, and required notifications generally must be retained for 25 months (12 months for business credit) from the date of the notice of action taken. A longer retention period may apply if an investigation or enforcement proceeding is underway.

Creditors must retain for 25 months certain records related to prescreened solicitations, such as the list of criteria used to select potential customers.

Advertising

No Discouraging Applications on a Prohibited Basis [Section 202.5(a)]

A credit union must not make any oral or written statement that discourage applicants or prospective applicants on a prohibited basis from making or pursuing an application.

Nondiscriminatory Advertising [NCUA Rules and Regulations Section 701.31(d)]

No federal credit union may engage in any form of advertising of real estate-related loans that indicates the credit union discriminates on a prohibited basis. Advertisements must not contain any words, symbols, models or other forms of communication that suggest a discriminatory preference or policy of exclusion.

Advertisements of real estate products must include a facsimile of the prescribed equal housing lender logotype (for written advertisements) or prescribed language (for oral advertisements).

Reports

Reporting Credit Information [Section 202.10(c)]

If a credit union reports credit information to a consumer reporting agency or in response to a credit inquiry, and the account reflects the participation of both spouses, the credit union must furnish the information in a manner that enables access to or provides the information for the particular spouse in question.

Enforcement / Liability

Administrative Enforcement Authority [Section 704 of the ECOA]

The National Credit Union Administration Board has responsibility for enforcement among federal credit unions, while the Federal Trade Commission enforces Regulation B for state-chartered credit unions.

Penalties and Liabilities [Section 202.14(b)]

Regulation B provides for actual damages, as well as for punitive damages of up to \$10,000 in individual lawsuits and up to the lesser of \$500,000 or one percent of the institution's net worth in class action suits. Court costs and reasonable attorney fees may also be awarded to an aggrieved applicant in a successful action.

EQUAL CREDIT OPPORTUNITY ACT
(REGULATION B)

Review Considerations

Review Area	Requirements / Recommendations
Policies / Procedures	Ensure the policy for implementing ECOA (Reg B) does not tolerate discrimination in any aspect of the credit transaction process.
No Discrimination on a Prohibited Basis	Ensure employees do not discriminate on a prohibited basis regarding any aspect of a credit transaction. Prohibited bases: race, color, religion, national origin, sex, marital status, age (provided the applicant has capacity to contract), receipt of public assistance, or exercise of rights under the Consumer Credit Protection Act
No Discouraging of Applications	Ensure employees do not discourage applicants or prospective applicants on a prohibited basis from making or pursuing an application.
Inquiries Concerning a Spouse	Ensure employees do not request information concerning the spouse or former spouse except when the spouse has rights of access to the account, is liable on the account, or the applicant is relying on spousal income, support or property as a basis for repayment.
Inquiries Concerning Marital Status	Ensure employees do not inquire about the marital status of an applicant who is applying for individual unsecured credit. For applicants residing in a community property state or relying on property located in such a state, limit applicant marital status information to the categories: married, unmarried, and separated.
Inquiries Concerning Other Income	Ensure employees do not inquire whether income stated in application is derived from alimony, child support, or separate maintenance payments unless applicant is given choice as to whether such information is to be considered in the determination of creditworthiness.
Inquiries Concerning Applicant's Sex	Ensure employees do not inquire about the applicant's sex; however, an applicant can be requested to designate a title (such as Ms., Miss, Mr. or Mrs.), if the form discloses that such a designation is optional.
Inquiries on Childbearing,	Ensure employees do not inquire about

All reviews need not be full-scope but may be focused to the areas posing the most risk to the credit union.

Childrearing	childbearing or rearing or about birth control practices. Information about dependents may be requested if sought from all applicants.
Written Applications	Written applications must be taken for credit related to the purchase or refinancing of a principal residence secured by the residence. (Note: these are the same types of credit for which monitoring information must be collected.)
Rules on Use of Information	<p>Creditors are not permitted to take the following into account when evaluating an applicant's creditworthiness:</p> <ol style="list-style-type: none"> 1. Any prohibited basis, except as provided by the ECOA and Reg B; 2. Age or receipt of public assistance (with exceptions noted in Section 202.6(b)); 3. Assumptions or statistics related to childbearing or childrearing; or 4. Telephone listing in name of applicant. <p>Also note the following limits on the use of information:</p> <ol style="list-style-type: none"> 1. Income – no discounting/exclusion of income if derived from part-time employment, annuity, pension, public assistance, alimony, or child support. 2. Credit History – consider accounts that the applicant and the applicant's spouse use or on which they are contractually liable. Also consider information offered by applicants concerning inaccuracies in their credit history. 3. Immigrant Status – may consider applicant's immigration status as it relates to rights/remedies regarding repayment.
Credit Scoring Systems: Use of Age	Use of a credit scoring system that scores age as a predictive variable is permissible only when it is empirically derived and is demonstrably and statistically sound. The age of an elderly applicant may not be assigned a negative factor or value.
Self-test	<p>Use information gathered in a controlled and targeted manner to specifically determine compliance with the ECOA.</p> <p>The following must be disclosed to applicants:</p> <ul style="list-style-type: none"> • Providing the information is optional; • It is being collected to monitor for compliance with the ECOA;

All reviews need not be full-scope but may be focused to the areas posing the most risk to the credit union.

	<ul style="list-style-type: none"> • It will not be used in making the credit decision; and, if applicable, • Information may be noted based on visual observation or surname.
Action on Open-End Accounts	<p>Creditors are restricted from terminating, changing account terms, or requiring reapplications for open-end accounts on the basis of changes of age or retirement status. Reapplications may not be required for a change of marital status (where spouse had no liability and spousal income had no impact on credit decision).</p>
Spousal Signatures	<p>Creditors are restricted from requiring the signature of an applicant's spouse or other person on any credit instrument if the applicant qualifies for the amount and terms of credit requested.</p>
Insurance	<p>Creditors may not refuse to extend credit and may not terminate an account because credit life, health, accident, disability or other credit-related insurance is not available based on the applicant's age.</p>
Furnishing Credit Information	<p>Creditors reporting credit information must abide by requirements enabling separate tracking of spouses and their individual and/or joint credit histories.</p>
Providing Appraisals	<p>Creditors must provide a copy of the appraisal report used in connection with an application for credit to be secured by a lien on a dwelling, either as a matter of routine or upon written request of applicants who have been notified in writing of their right to obtain a copy. (Federal credit unions are governed by NCUA Rules and Regulations Section 701.31)</p>
Notification of Action Taken	<p>Creditors must provide written notice of action taken on credit applications that include a statement of specific reasons for the action (or disclosure of right to obtain such reasons), name and address of creditor, and name and address of creditor's federal regulatory agency. The notice must also contain a statement of the provisions of Section 202.9(b).</p> <p>There are special provisions concerning:</p> <ol style="list-style-type: none"> 1. Notification to business credit applicants (Section 202.9(a)(3))

All reviews need not be full-scope but may be focused to the areas posing the most risk to the credit union.

	<p>2. Incomplete applications (Section 202.9(c))</p> <p>3. Applications submitted through third party (Section 202.9(g))</p>
Monitoring Information	<p>In connection with applications for the purchase or refinancing of a principal residence secured by the residence, the application must request information regarding the applicant(s) race or national origin, sex, marital status, and age.</p> <p>If the applicant(s) chooses not to provide some or all of the information, the creditor should note that fact and, to the extent possible, should also note the race and sex of the applicant(s) based on visual observation or surname.</p> <p>See also additional information that must be disclosed to applicants concerning the collection and use of the monitoring information. (Section 202.13(c))</p>
Record Retention	<ul style="list-style-type: none"> • Preserve applications, monitoring information, information used in evaluating the application and required notifications. Generally, required for 25 months after date of notice of action taken. • Retain records relating to prescreened solicitations for 25 months.
Self-Testing	<p>Institutions have a legal privilege in information developed as a result of self-tests that they voluntarily conduct to determine their compliance with the ECOA and Reg B. The privilege applies only if the definition of self-test is met and the creditor takes appropriate corrective actions as described in Section 202.15.</p>
Training	<p>Provide training to all employees involved in any aspect of taking, evaluating, acting on a credit application, or furnishing/maintaining credit information. In addition, persons involved in marketing and credit operations should receive appropriate instruction relative to their responsibilities.</p>
Monitoring, Internal Review, Audit	<p>Monitor the various phases of the credit application process on a periodic basis, including taking and evaluating applications, providing appraisal reports, and reporting credit histories. This process should focus on the credit union's compliance with the substantive</p>

All reviews need not be full-scope but may be focused to the areas posing the most risk to the credit union.

	<p>nondiscrimination requirements as well as its adherence to the technical provisions of the ECOA and Reg B.</p> <p>An internal or external audit should be conducted at least annually to assess overall compliance.</p>
--	--

All reviews need not be full-scope but may be focused to the areas posing the most risk to the credit union.

EQUAL CREDIT OPPORTUNITY ACT (REGULATION B) CHECKLIST

- | | Yes | No |
|--|-------|-------|
| 1. Does the credit union prohibit its employees from making statements that would discourage, on a prohibited basis, applicants from making or pursuing an application? [§202.5] | _____ | _____ |
| 2. Does the credit union refrain from requesting information concerning the applicant's spouse or former spouse unless such person will be permitted to use or be contractually liable or the applicant is relying on community property, the spouse's income, alimony, child support, or maintenance payments for repayment of the debt? [§202.5(c)(2)] | _____ | _____ |
| 3. Regarding applications for individual unsecured loans, does the credit union refrain from inquiring as to the marital status of the loan applicant (unless community property is involved)? [§202.5(d)(1)] | _____ | _____ |
| 4. For secured loans, are inquiries into marital status limited to the terms "married," "unmarried," or "separated?" [§202.5(d)(1)] | _____ | _____ |
| 5. When income derived from alimony, child support, or maintenance payments is disclosed, is there evidence that the credit union properly informed the applicant that such income need not be revealed? [§202.5(d)(2)] | _____ | _____ |
| 6. When a title such as Ms., Miss, Mrs., or Mr. is shown on the application, does the form appropriately disclose that such designation is optional? [§202.5(d)(3)] | _____ | _____ |
| 7. Are requests for information relative to birth control, childbearing, or rearing intentions of applicants prohibited? [§202.5(d)(4)] | _____ | _____ |
| 8. If the credit union considers age or the fact that an applicant's income is derived from a public assistance program, does it do so only to determine a pertinent element of creditworthiness? [§202.6(b)(2)(iii)] | _____ | _____ |

9. If the age of an elderly applicant is considered, is such age used only to favor the elderly applicant? [§202.6(b)(2)(iv)] _____

10. When evaluating the applicant's creditworthiness, does the credit union refrain from considering aggregate statistics or assumptions relative to the likelihood of bearing or rearing children? [§202.6(b)(3)] _____

11. Does the credit union refrain from discounting or excluding income on a prohibited basis or because the income is derived from part-time employment, or a retirement benefit? [§202.6(b)(5)] _____

12. Does the credit union consider income from alimony, child support, or maintenance payments to the extent it is likely to be consistently received? [§202.6(b)(5)] _____

13. When considering an applicant's credit history, does the credit union consider:

a. all accounts designated as accounts that the applicant and applicant's spouse are permitted to use or for which both are contractually liable? [§202.6(b)(6)(i)] _____

b. at the applicant's request, any information the applicant may present regarding past credit performance which indicates that such performance does not accurately reflect the applicant's willingness to pay? [§202.6(b)(6)(ii)] _____

c. at the applicant's request, any credit information in the name of the applicant's spouse or former spouse which demonstrates the applicant's willingness to pay? [§202.6(b)(6)(iii)] _____

14. Does the credit union grant loans to creditworthy applicants regardless of sex, marital status or membership in any other protected group? [§202.7(a)] _____

15. Does the credit union allow the granting of loans in maiden names or combinations of maiden and married names? [§202.7(b)] _____

16. When the credit union requires cosigners, is the requirement based on factors other than the applicant's sex, marital status or other prohibited basis of discrimination? (State law may be considered when determining the necessity for cosigners.)

[Commentary to §202.7(d)(5)]

17. Are restrictions on spousal signatures observed?
[§202.7(d)]

18. If a loan can only be approved with a cosigner, could an applicant volunteer any other person and not be limited to a spouse? [§202.7(d)(5)]

19. Is business credit available separately to principals of corporations, partners, and proprietors without requiring spouses' signatures?
[Commentary to §202.7(d)(6)]

20. Does the credit union refrain from refusing credit because credit life, health, accident, disability, or other credit-related insurance is not available due to the applicant's age? [§202.7(e)]

21. Does the credit union notify applicants of action taken within:

a. 30 days of receipt of a completed application?
[§202.9(a)(1)(i)]

b. 30 days after taking adverse action on an incomplete application? [§202.9(a)(1)(ii)]

c. 30 days after taking adverse action on an existing account? [§202.9(a)(1)(ii)]

d. 90 days after notifying the applicant of a counteroffer if applicant does not expressly accept or use the credit offered? [§202.9(a)(1)(iv)]

e. a reasonable period, not more than 30 days, after an oral request to complete an incomplete application?
[§202.9(c)]

22. Are notices of adverse action: [§202.9(a)(2)]

a. in writing?

b. do they contain the name and address of the credit union?

c. do they contain an accurate statement of action taken?

d. do they contain a statement of the provisions of Section 701(a) of the Equal Credit Opportunity Act in a form substantially similar to that contained in § 202.9(b)(1) of the regulation?

e. do they contain the name and address of the credit union's federal regulator?

f. do they contain an accurate statement of specific reasons for the action taken or disclosure of the applicant's right to such a statement as specified in §202.9(a)(2)?

23. Do statements of specific reasons for adverse action contain the principal, specific reasons for such actions? [§202.9(b)(2)]

24. Has the credit union established procedures for the identification, and designation as such, of existing and future loans upon which both spouses are or will be contractually liable? [§202.10(a)]

25. When furnishing credit information on designated accounts to a consumer reporting agency, does the credit union report the designation and furnish the information in a manner that provides access to such information in the name of each spouse? [§202.10(b)]

26. When furnishing credit information regarding a designated account in response to an inquiry regarding a particular applicant, is the information furnished in the name of such applicant? [§202.10(c)]

27. Does the credit union retain for 25 months after notice of action taken or notice of incompleteness: [§202.12(b)]

a. the application and all supporting material?

b. all information obtained for monitoring purposes?

c. the notification of action taken?

d. a statement of specific reasons for adverse action?

e. discrimination complaints under Regulation B?

28. Is all information relative to an investigative action retained until final disposition of the matter? [§202.12(b)(4)]

29. If the credit union engages in a special purpose credit program, is it in compliance with Section 202.8 of the Regulation?

30. Has the credit union adopted procedures to comply with notification and record retention requirements on

business credit? [§202.9(a)(3)] and [§202.12] _____

31. Does the credit union make available, to any requesting member, a copy of the appraisal used in connection with the member's real estate-related loan application? [§202.5a(b)] and [701.31(c)(5)] _____

32. Does the credit union include in its advertisements of real estate-related loans, that such loans are made without regard to race, color, religion, national origin, sex, handicap, or familial status? [701.31(d)(1)] _____

33. If the credit union makes real estate-related loans, does it display a notice of discrimination in the public lobby of the credit union and in the public area of each office where such loans are made? [701.31(d)(2)] _____

34. Does the credit union collect monitoring information (race, sex, marital, status, age) as required by §202.13? _____

35. If the credit union collects data in a self-test for compliance with the ECOA, does it disclose to the applicants that providing the information is optional, that it is being collected to monitor for compliance with the ECOA, that it will not be used in making the credit decision, and, where applicable, that information may be noted based on visual observation or surname? [§202.5(1)] _____

36. Is the self-test designed and used specifically to determine compliance with the ECOA? [§202.15(b)(i)] _____

37. Does the credit union retain records related to a self-test for 25 months? [§202.15(b)(6)] _____

38. Does the credit union retain records related to prescreened solicitations for 25 months? [§202.12(b)(7)] _____

Comments _____

EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)

DEFINITIONS

Definitions (Section 202.2)

For the purposes of Regulation B, unless the context indicates otherwise, the following definitions apply.

Account

An extension of credit. When employed in relation to an account, the word use refers only to open-end credit.

Act

The Equal Credit Opportunity Act (title VII of the Consumer Credit Protection Act).

Adverse action

(1)(i) a refusal to grant credit in substantially the amount or on substantially the terms requested in an application unless the creditor makes a counteroffer (to grant credit in a different amount or on other terms) and the applicant uses or expressly accepts the credit offered;

(ii) a termination of an account or an unfavorable change in the terms of an account that does not affect all or a substantial portion of a class of the creditor's accounts; or

(iii) a refusal to increase the amount of credit available to an applicant who has made an application for an increase.

(2) Adverse action does not include:

(i) a change in the terms of an account expressly agreed to by an applicant;

(ii) any action or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that account;

(iii) a refusal or failure to authorize an account transaction at a point of sale or loan, except when the refusal is a termination or an unfavorable change in the terms of an account that does not affect all or a substantial portion of a class of the creditor's accounts, or when the refusal is a denial of an application for an increase in the amount of credit available under the account;

(iv) a refusal to extend credit because applicable law prohibits the creditor from extending the credit requested; or

(v) a refusal to extend credit because the creditor does not offer the type of credit or credit plan requested.

(3) An action that falls within the definition of both paragraphs (1) and (2) is governed by paragraph (2).

Age

Refers only to the age of natural persons and means the number of fully elapsed years from the date of an applicant's birth.

Applicant

Any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may become contractually liable regarding an extension of credit. For purposes of section 202.7(d), the term includes guarantors, sureties, endorsers and similar parties.

Application

An oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested. The term does not include the use of an account or line of credit to obtain an amount of credit that is within a previously established credit limit. A completed application means an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral). The creditor shall exercise reasonable diligence in obtaining such information.

Business credit

Refers to extensions of credit primarily for business or commercial (including agricultural) purposes, but excluding extensions of credit of the types described in section 202.3(a), (b), and (d).

Consumer credit

Credit extended to a natural person primarily for personal, family, or household purposes.

Contractually liable

Expressly obligated to repay all debts arising on an account by reason of an agreement to that effect.

Credit

The right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefore.

Credit card

Any card, plate, coupon book, or other single credit device that may be used from time to time to obtain money, property, or services on credit.

Creditor

A person who, in the ordinary course of business, regularly participates in the decision of whether or not to extend credit--The term includes a creditor's assignee, transferee, or subrogee who so participates. For purposes of sections 202.4 and 202.5(a) the term also includes a person who, in the ordinary course of business, regularly refers applicants or prospective applicants to creditors, or selects or offers to select creditors to whom requests for credit may be made. A person is not a creditor regarding any violation of the

act or this regulation committed by another creditor unless the person knew or had reasonable notice of the act, policy, or practice that constituted the violation before becoming involved in the credit transaction. The term does not include a person whose only participation in a credit transaction involves honoring a credit card.

Credit transaction

Every aspect of an applicant's dealings with a creditor regarding an application for credit or an existing extension of credit (including, but not limited to, information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information; revocation, alteration, or termination of credit; and collection procedures).

Discriminate against an applicant means to treat an applicant less favorably than other applicants.

Elderly

Age 62 or older.

Empirically derived and other credit scoring systems.

(1) A credit scoring system is a system that evaluates an applicant's creditworthiness mechanically, based on key attributes of the applicant and aspects of the transaction, and that determines, alone or in conjunction with an evaluation of additional information about the applicant, whether an applicant is deemed creditworthy. To qualify as an empirically derived, demonstrably and statistically sound, credit scoring system, the system must be

(i) based on data that are derived from an empirical comparison of sample groups or the population of creditworthy and non-creditworthy applicants who applied for credit within a reasonable preceding period of time;

(ii) developed for the purpose of evaluating the creditworthiness of applicants with respect to the legitimate business interests of the creditor utilizing the system (including, but not limited to, minimizing bad debt losses and operating expenses in accordance with the creditor's business judgment);

(iii) developed and validated using accepted statistical principles and methodology; and

(iv) periodically revalidated by the use of appropriate statistical principles and methodology and adjusted as necessary to maintain predictive ability.

(2) A creditor may use an empirically derived, demonstrably and statistically sound, credit scoring system obtained from another person or may obtain credit experience from which to develop such a system. Any such system must satisfy the criteria set forth in paragraph (1) (i) through (iv) of this section; if the creditor is unable during the development process to validate the system based on its own credit experience in accordance with paragraph (1) of this section, the system must be validated when sufficient credit experience becomes available. A system that fails this validity test is no longer an empirically derived, demonstrably and statistically sound, credit scoring system for that creditor.

Extend credit and extension of credit

The granting of credit in any form (including, but not limited to, credit granted in addition to any existing credit or credit limit; credit granted pursuant to an open-end credit plan; the refinancing or other renewal of credit, including the issuance of a new credit card in place of an expiring credit card or in substitution for an existing credit card; the consolidation of two or more obligations; or the continuance of existing credit without any special effort to collect at or after maturity).

Good faith

Honesty in fact in the conduct or transaction.

Inadvertent error

A mechanical, electronic, or clerical error that a creditor demonstrates was not intentional and occurred notwithstanding the maintenance of procedures reasonably adapted to avoid such errors.

Judgmental system of evaluating applicants

Any system for evaluating the creditworthiness of an applicant other than an empirically derived, demonstrably and statistically sound, credit scoring system.

Marital status

The state of being unmarried, married, or separated, as defined by applicable state law. The term "unmarried" includes persons who are single, divorced, or widowed.

Negative factor or value, in relation to the age of elderly applicants, means utilizing a factor, value, or weight that is less favorable regarding elderly applicants than the creditor's experience warrants or is less favorable than the factor, value, or weight assigned to the class of applicants that are not classified as elderly and are most favored by a creditor on the basis of age.

Open-end credit

Credit extended under a plan under which a creditor may permit an applicant to make purchases or obtain loans from time to time directly from the creditor or indirectly by use of a credit card, check, or other device.

Person

A natural person, corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

Pertinent element of creditworthiness, in relation to a judgmental system of evaluating applicants, means any information about applicants that a creditor obtains and considers and that has a demonstrable relationship to a determination of creditworthiness.

Prohibited basis

Race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); the fact that all or part of the applicant's income derives from any public assistance program; or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act or any state law upon which an exemption has been granted by the Board.

State

Any state, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

HOME MORTGAGE DISCLOSURE ACT (REGULATION C)

OVERVIEW

Overview

The Home Mortgage Disclosure Act (HMDA), implemented by Regulation C (12 CFR 203), requires financial institutions, including credit unions, to compile and disclose data about home purchase loans, home improvement loans, and refinancings that it originates or purchases, or for which it receives applications. Data to be recorded on reportable transactions include:

- Application or loan number
- Date application received
- Loan type
- Property type
- Purpose
- Owner occupancy status
- Loan amount
- Request for preapproval
- Type of action taken and date
- Property location (by metropolitan statistical area, state, county, and census tract)
- Applicant information (ethnicity, race, sex, and gross annual income)
- Type of purchaser of loan
- Rate spread (effective January 1, 2004)
- Home Ownership and Equity Protection Act of 1994 (HOEPA) status (effective January 1, 2004)

The purpose of Regulation C is to provide the public with data that can be used to:

- Help determine whether credit unions are serving the housing needs of their communities;
- Assist public officials in distributing public-sector investments so as to attract private investment to areas where it is needed; and,
- Assist in identifying possible discriminatory lending patterns and enforcing compliance with anti-discrimination statutes.

Regulation C is not intended to encourage unsound lending practices or the allocation of credit.

Note: For purposes of HMDA, the term “metropolitan statistical area” (MSA) is interchangeable with “metropolitan area” (MA).

Exempt Institutions

A credit union is exempt from the requirements of the regulation for a given calendar year if on the preceding December 31:

- It had neither a home office nor a branch office in a metropolitan statistical area (MSA); or
- Total assets were at or below the threshold established by the Federal Reserve Board (Board); or
- It made no first-lien home purchase loans (including refinancings of home purchase loans) on one-to-four family dwellings in the preceding calendar year.

The Board adjusts the threshold based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million. NCUA notifies credit unions about the asset threshold change each year in a Regulatory Alert.

Disclosure and Reporting

A non-exempt credit union must maintain a loan/application register (LAR) on which it will enter data about each application received and each loan originated and purchased. The credit union must send the LAR to NCUA HMDA Processing (done by the Federal Reserve Board on behalf of the Federal Financial Institutions Examination Council (FFIEC)) by March 1 following the calendar year for which loan data is compiled.

Using data from the LAR, the FFIEC will prepare and send to the credit union a series of tables that will comprise the public mortgage loan disclosure statement for that credit union. The credit union must make its disclosure statement available to the public at its home office no later than three business days after receiving it. In addition, if a credit union has branch offices in other MSAs, it must make the disclosure statement available using one of two options:

- It can make the disclosure statement available in at least one office in each of those MSAs, within ten business days of receipt from the FFIEC; or
- It can send a copy of the disclosure statement if someone makes a written request, within fifteen calendar days of receiving the request. If the credit union chooses

this option, it must post the address for requesting copies in each branch office in an MSA.

The disclosure statements need only contain data relating to the metropolitan area for which the request is made.

Enforcement

NCUA enforces compliance with HMDA for all credit unions required to report and may impose administrative sanctions for failure to comply, including the imposition of civil money penalties. NCUA does not consider an error in compiling or recording required data a violation of the regulation if it was unintentional and occurred despite the credit union's maintenance of procedures reasonably adapted to avoid such errors.

Associated Risks

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with HMDA,
- Reputation risk can occur when the credit union incurs fines and penalties as a result of failure to comply with HMDA or poor publicity as a result of negative trends displayed by the disclosure statement, and
- Strategic risk can occur when the credit union fails to perform adequate planning and due diligence in regard to HMDA.

Additional Information

Credit unions engaged in mortgage lending should obtain the publication: *A Guide to HMDA Reporting: Getting it Right!* It is available from the NCUA publications office and can be downloaded from the NCUA web site at www.ncua.gov.

HOME MORTGAGE DISCLOSURE ACT (REGULATION C)

OPERATIONAL REQUIREMENTS

Disclosures / Notices

Modified Loan Application Register (LAR) [Sections 203.5 (c) and (d)]

A lender must make its LAR available for public inspection upon request after modifying it to protect the privacy interest of applicants and borrowers by deleting:

1. the application or loan number,
2. the date of receipt of the application, and
3. the date of action taken.

The modified LAR must be available following the calendar year for which the data relates, no later than March 31 for requests received on or before March 1 and within 30 days for requests received after March 1. The modified register need only contain data relating to the metropolitan statistical area (MSA) for which the request is made. The lender must make its modified register available for a three year period.

Mortgage Loan Disclosure Statement [Section 203.5 (b)]

The disclosure statement, prepared by the Federal Financial Institutions Examination Council (FFIEC), must be made available to the public for inspection and copying at the lender's home office within three business days after receiving it from the FFIEC.

In addition, a lender must do either one of the following:

- make the statement available in at least one office in each additional MSA where it has offices within ten business days of receipt from the FFIEC, or
- post the address for sending written requests for the statement in the lobby of each branch office in an MSA where it has offices, and mail or deliver a copy of the statement within fifteen calendar days of receipt of a written request.

The lender must make the disclosure statement available to the public for a five year period.

Lobby Notice [Section 203.5 (e)]

The lender must post a general notice about the availability of its HMDA data in the lobby of its home office and of each branch office located in an MSA.

Recordkeeping

Record Retention [Section 203.5]

A copy of the Loan Application Register (LAR) must be retained for a period of at least three years.

The modified LAR must be available to the public for a period of three years.

The disclosure statement must be available to the public for a period of five years.

Reports

Reporting Requirements [Section 203.5 (a)]

A credit union must submit its complete loan application register (LAR) by March 1 following the calendar year for which the loan data is compiled to:

Federal Reserve Board
Attention: NCUA HMDA Processing
Fifth Floor
1709 New York Avenue, NW
Washington, DC 20006

Enforcement / Liability

Administrative Enforcement Authority

The National Credit Union Administration Board has responsibility for enforcement of HMDA for both federal credit unions and state-chartered credit unions.

Penalties and Liabilities

Administrative sanctions, including civil money penalties, may result from violations of the regulation.

HOME MORTGAGE DISCLOSURE ACT (REGULATION C)
REVIEW CONSIDERATIONS

Review Considerations

Review Area	Requirements / Recommendations
General Coverage	<p>Determine whether the credit union is subject to the requirements of HMDA / Regulation C.</p> <p>Credit unions are exempt from reporting requirements for a given year if on the preceding December 31:</p> <ul style="list-style-type: none"> • The credit union did not have a home or branch office in an MSA; or • The credit union’s total asset were at or below the asset threshold; or • The credit union did not make a first lien home purchase loan (or refinancing) on a one-to-four family dwelling in the preceding calendar year.
Policies / Procedures	<p>Ensure policy and procedures for implementing HMDA are in place for collecting and maintaining accurate data of covered loans and applications.</p>
Collection of Data	<p>Compile data on applications for, and originations and purchases of, home purchase and home improvement loans (including refinancings of both).</p> <p>The required information must be retained on a loan application register (LAR) in the format prescribed in Appendix A to Regulation C.</p>
Data on Race or National Origin, Sex, and Income	<p>Ensure information on race or national origin and sex is collected in the manner prescribed in Appendix B to Regulation C.</p> <p>If the application is taken in person, the lender must ask for this information. If the applicant chooses not to provide this information for an application taken in person, the lender must note this fact on the form and note the data based on the basis of visual observation or surname, to the extent possible.</p>

	<p>A lender need not ask for information about race or national origin and sex if an application is taken entirely by telephone. Also, this information need not be collected when an application is by mail, or Internet, if the applicant does not complete the portions of the application requesting this information.</p> <p>Information on race or national origin, sex, and income need not be collected for purchased loans.</p>
Excluded Data	<p>Ensure certain transactions are excluded from being reported, including:</p> <ul style="list-style-type: none"> ▪ Loans originated or purchased in a fiduciary capacity ▪ Loans on unimproved land ▪ Temporary financing (e.g. construction loans) ▪ The purchase of an interest in a pool of loans (e.g. mortgage-backed securities) ▪ The purchase solely of loan servicing rights ▪ Loans acquired as part of a merger or acquisition
Reporting Requirements	<p>Submit the completed HMDA-LAR to NCUA HMDA Processing at the Federal Reserve Board by March 1 following the calendar year for which loan data is compiled.</p>
Modified Loan Application Register	<p>Ensure the modified register is made available to the public after removing the following information: application or loan number, date the application was received, and date of action taken.</p>
Disclosure Statements	<p>Ensure the disclosure statement prepared by the FFIEC is made available to the public for inspection and copying at its home office within three business days of receipt from the FFIEC.</p> <p>If a credit union has branches in other MSAs, it must make disclosure statements available using one of two options (not described here).</p>
Lobby Notice	<p>Post a general notice regarding availability of HMDA data in the lobby of its home office and each branch office located in a MSA.</p>
Training	<p>Provide training to employees whose duties are impacted by HMDA.</p>
Monitoring	<p>Ensure collection of data for the HMDA-LAR is</p>

	being properly recorded within the required timeframes.
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HOME MORTGAGE DISCLOSURE ACT CHECKLIST

1. Did the credit union originate, in the preceding calendar year, at least one home-purchase loan (other than temporary financing such as a construction loan) or refinancing of a home purchase loan secured by a first lien on a one- to four-family dwelling? [§ 203.2(e) (1)]

Yes _____ No _____

2. Did the credit union have a home or branch office in a Metropolitan Statistical Area (MSA) on December 31 of the preceding year? [§ 203.3(a)(1)(i)]

Yes _____ No _____

3. Did the credit union have assets of more than \$33 million as of December 31 of the preceding year? [§203.3(a)(1)(ii)]

Yes _____ No _____

Note: The Federal Reserve Board adjusts the asset-size exemption threshold annually.

If all of the answers to questions 1, 2, & 3 are "Yes," the credit union is subject to HMDA and the remainder of the checklist should be completed (unless exempt by virtue of similar state law).¹ If the answer to any one of the questions is "No," then the credit union is exempt from HMDA.

4. Is the credit union ensuring data regarding applications for, and originations and purchases of, home purchase loans (including refinancings) and home improvement loans for each calendar year are properly compiled? [§ 203.4(a)]

Yes _____ No _____

5. Does the credit union maintain the necessary records to compile the required data?

Yes _____ No _____

6. Is there an adequate audit trail to test the accuracy of the data compiled?

Yes _____ No _____

7. Is accurate census tract information available for the compilation of data? (Beginning January 1, 2003, HMDA

¹ Credit unions that are not federally insured are subject to HMDA only if they answered "Yes" to questions 1, 2, & 3 and at least one of the loans in question 1 was insured, guaranteed, or supplemented by a federal agency or was intended by the credit union for sale to Fannie Mae or Freddie Mac. §203.2(e) (1) (iv).

reporters must begin using 2000 census data rather than 1990 census data)

8. Are loan/application registers (Form FR HMDA-LAR) completed fully and accurately? [§ 203.4(a) and Appendix A]

9. Is the credit union properly collecting data on ethnicity, race, sex, and income? [§ 203.4(b) and Appendix B]

If an applicant chooses not to provide information, for applications taken in person, on ethnicity, race, or sex, is this fact noted on the form and is this data noted, based on visual observation or surname, to the extent possible? [§203.4(b)(1) and Appendix B]

10. Does the credit union avoid reporting data on transactions excluded by the regulation? [§203.4(d)]

11. If the credit union reports 26 or more entries, is the credit union submitting data in an automated, machine readable format conforming to form FR HMDA LAR no later than March 1 following the calendar year for which data was compiled? [§ 203.5(a) and Appendix A]

If the credit union reports 25 or fewer entries on their HMDA-LAR and submits reports in paper form, does the credit union submit two copies that are typed or computer printed in the format of form FR HMDA-LAR?

12. Are applications and loans recorded on the credit union's register within thirty calendar days after the end of the calendar quarter in which final action is taken? [§ 203.4(a) and Appendix A]

13. Is the disclosure statement prepared by the FFIEC made available to the public at the credit union's home office no later than 3 business days after receiving it from the FFIEC? [§ 203.5(b)]

14. Is the disclosure statement made available to the public, within ten business days of receiving it, in at least one branch office in each other metropolitan area (MSA) where the credit union has offices? [§ 203.5(b)]

OR

14. Does the credit union post the address for sending written requests in the lobby of each branch office in other MSAs where the credit union has offices and mail or deliver a copy of the disclosure statement within fifteen calendar days of receiving a written request? [§ 203.5(b)] _____

15. Does the credit union make its modified loan application register available to the public after removing the application or loan date, the date the application was received, and the date action was taken? [§ 203.5(c)] _____

16. Are the disclosure statements and modified registers available to anyone for inspection and copying during normal public business hours? [§ 203.5(d)] _____

17. Are disclosure statements made available to the public for five years and modified registers made available to the public for three years? [§ 203.5(d)] _____

18. Has the credit union posted a general notice about the availability of its HMDA data in the lobby of its home office and of each branch office located in a metropolitan area? [§ 203.5(e)] _____

19. Are policies, procedures and training adequate, on an ongoing basis, to ensure compliance with HMDA? _____

20. Does management ensure that affected personnel are aware of the requirements of HMDA? _____

Comments _____

HOME MORTGAGE DISCLOSURE ACT (REGULATION C)

DEFINITIONS

Definitions (Section 203.2)

Application

(1) In general, an application means an oral or written request for a home purchase loan, a home improvement loan, or a refinancing that is made in accordance with procedures used by a financial institution for the type of credit requested.

(2) Preapproval programs - A request for preapproval for a home purchase loan is an application under paragraph (1) if the request is reviewed under a program in which the financial institution, after a comprehensive analysis of the creditworthiness of the applicant, issues a written commitment to the applicant valid for a designated period of time to extend a home purchase loan up to a specified amount. The written commitment may not be subject to conditions other than:

- (i) Conditions that require the identification of a suitable property;
- (ii) Conditions that require that no material change has occurred in the applicant's financial condition or creditworthiness prior to closing; and
- (iii) Limited conditions that are not related to the financial condition or creditworthiness of the applicant that the lender ordinarily attaches to a traditional home mortgage application (such as certification of a clear termite inspection).

Branch office

(1) Any office of a bank, savings association, or credit union that is approved as a branch by a federal or state supervisory agency,¹ but excludes free-standing electronic terminals such as automated teller machines; and

(2) Any office of a for-profit mortgage-lending institution (other than a bank, savings association, or credit union) that takes applications from the public for home purchase loans, home improvement loans, or refinancing.

Dwelling

Residential structure (whether or not attached to real property) located in a state of the United States of America, the District of Columbia, or the Commonwealth of Puerto Rico. The term includes an individual condominium unit, cooperative unit, or mobile or manufactured home.

Financial institution

(1) A bank, savings association, or credit union that:

- (i) On the preceding December 31 had assets in excess of the asset threshold

¹ There is no law or regulation that requires NCUA approve credit union branch offices established within the United States, and NCUA does not issue such approvals. Accordingly, a domestic credit union branch office may qualify as a HMDA branch office without approval by a federal or state regulatory agency.

established and published annually by the Board for coverage by the act, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve month period ending in November, with rounding to the nearest million;

(ii) On the preceding December 31, had a home or branch office in a metropolitan area;

(iii) In the preceding calendar year, originated at least one home purchase loan (excluding temporary financing such as a construction loan) or refinancing of a home purchase loan, secured by a first lien on a one- to four- family dwelling, and

(iv) Meets one or more of the following three criteria:

(A) The institution is federally insured or regulated;

(B) The mortgage loan referred to in paragraph (iii) of this section was insured, guaranteed, or supplemented by a federal agency; or

(C) The mortgage loan referred to in paragraph (iii) of this section was intended by the institution for sale to Fannie Mae or Freddie Mac.

[NOTE: The definition of “financial institutions” also includes other provisions covering types of institutions that are not credit unions, and these provisions are not repeated here.]

Home-equity line of credit

Open-end credit plan secured by a dwelling as defined in Regulation Z (Truth in Lending), 12 CFR 226.

Home improvement loan

(1) A loan secured by a lien on a dwelling that is for the purpose, in whole or in part, of repairing, rehabilitating, remodeling, or improving a dwelling or the real property on which it is located; and

(2) A non-dwelling secured loan that is for the purpose, in whole or in part, of repairing, rehabilitating, remodeling, or improving a dwelling or the real property on which it is located, and that is classified by the financial institution as a home improvement loan.

Home purchase loan

A loan secured by and made for the purpose of purchasing a dwelling.

Manufactured home

Any residential structure as defined under regulations of the Department of Housing and Urban Development establishing manufactured home construction and safety standards (24 CFR 3280.2).

Metropolitan area

A metropolitan area as defined by the U.S. Office of Management and Budget.

Refinancing

A new obligation that satisfies and replaces an existing obligation by the same borrower, in which:

- (1) For coverage purposes, the existing obligation is a home purchase loan (as determined by the lender, for example, by reference to available documents; or as stated by the applicant), and both the existing obligation and the new obligation are secured by first liens on dwellings; and
- (2) For reporting purposes, both the existing obligation and the new obligation are secured by liens on dwellings.

Additional Information

For more information and clarification regarding definitions of terms used see the publication: *A Guide to HMDA Reporting: Getting it Right!* It is available from the NCUA publications office and can be downloaded from the NCUA web site at <http://www.ncua.gov/>

RESERVES ON TRANSACTION ACCOUNTS (REGULATION D)

OVERVIEW

Overview

Regulation D establishes the required amount a depository institution must reserve based on the level of transaction accounts on deposit. A transaction account is an account from which a member is allowed to make transfers or withdrawals by negotiable order, check, telephone, or similar device for making third party payments. Examples include demand deposit accounts, NOW Accounts, share draft accounts, savings accounts with automatic transfer service capabilities, and time deposits where the financial institution does not impose a penalty for early withdrawal. A net transaction account is a transaction account less any deductions as allowed in 12 CFR 204.3(f). Institutions are required to maintain a certain level of reserves to assist the Federal Reserve Board in handling monetary policy.

The following chart details the current required reserve levels:

Net Transactional Accounts	Reserve Requirement
\$0 - \$6.6 million	0 percent
Over \$6.6 million - \$45.4 million	3 percent
Over \$45.4 million	\$1,164,000 plus 10 percent of amount over \$45.4 million

These reserve requirements are effective for 2004. The Federal Reserve Board usually adjusts the reserving levels annually.

Three options are available for the retention of necessary reserves. The required funds must be:

- On deposit with the Federal Reserve Bank;
- Held in vault cash; or
- In a pass through account.

Exempt Transactions

Credit unions with net transactional accounts (primarily share draft accounts) less than \$6.6 million are exempt from reserving.

Disclosure and Reporting

Credit unions file a report of deposits directly with the Federal Reserve Bank of its District. The Federal Reserve Bank notifies the credit union of its reserving requirements.

Enforcement

The Federal Reserve Bank is responsible for enforcing compliance for all credit unions.

Associated Risks

Compliance risk can occur when the credit union fails to maintain deposits in compliance with Regulation D.

Additional Information

For additional information visit The Federal Reserve Bank online at www.frb.gov.

RESERVES FOR TRANSACTION ACCOUNTS (REGULATION D)

OPERATIONAL REQUIREMENTS

Written programs/Documentation

Reserve requirement ratios (§204.9)

- Reserve percentages. The following reserve ratios are prescribed for all credit unions:

Category	Reserve requirement
Net transaction accounts:	
\$0 to \$6.6 million	0 percent
Over \$6.6 million to \$45.4 million	3 percent of amount.
Over \$45.4 million	\$1,164,000 plus 10 percent of amount over \$45.4 million.

- For 2004, each credit union is subject to a zero percent reserve requirement on an amount of its transaction accounts subject to the low reserve tranche in paragraph (a) of this section not in excess of \$6.6 million determined in accordance with Section 204.3(a)(3).

Recordkeeping

Record retention

No specific time frame is provided in the regulation for record retention. However, institutions should maintain documentation (typically a copy of the report filed) for examiner review. Examiners should also be able to determine timeliness of the reports based on credit union records.

Reports

Reporting (§204.3)

- Every credit union with total deposits of \$6.6 million or more must file a report of deposits directly with the Federal Reserve Bank of its District.
- A Federal Reserve Bank will notify the credit union of its reserve requirements
- The credit union can hold reserves in the form of vault cash, a balance maintained directly with the Federal Reserve Bank in the Federal Reserve District in which it is located, or in a pass-through account.
- Reporting time periods based on net transactional accounts and total deposits are as follows (as of September 2004):

- Credit unions with total deposits less than \$6.6 million are not required to file deposit reports.
- Credit unions must file Form 2910a **annually** if they have net transaction accounts of \$6.6 million or less but have total deposits greater than \$6.6 million but less than \$1.074 billion.
- Credit unions must file Form 2900 **quarterly** if they have net transaction accounts over \$6.6 million but have total deposits of less than \$161.2 million.
- Credit unions must file Form 2900 **weekly** if they have net transaction accounts:
 - over \$6.6 million and have total deposits of at least \$161.2 million or
 - of \$6.6 million or less but have total deposits of at least \$1.074 billion

Deductions [§204.3(f)]

In determining the reserve balance required, the amount of cash items in process of collection and balances subject to immediate withdrawal due from other depository institutions located in the United States may be deducted from the amount of gross transaction accounts.

Mergers (§204.4)

Special reserve calculations are used in cases of mergers of credit unions. See section 204.4 for further information.

Emergency reserve (§204.5)

Emergency reserves can be imposed by the Board. See section 204.5 for further information.

Supplemental reserve (§204.6)

Supplement reserves can be imposed by the Board after consultation with the Board of Directors of the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration Board. See section 204.6 for further information.

Enforcement / Liability

If a deficiency exists with the reserves required to be maintained by a financial institution, the Federal Reserve Bank can assess penalties at a rate of 2 percent per year above the lowest rate for borrowing from the Federal Reserve Bank. The borrowing rate used is the rate in effect on the first day of the month in which the deficiency occurred. Violations of Regulation D could also result in assessment of civil money penalties or cease-and-desist proceedings.

**RESERVES ON TRANSACTION ACCOUNTS
(REGULATION D)**

REVIEW CONSIDERATIONS

Review Considerations

Review Area	Requirements / Recommendations
Policy/Procedures	Adopt policy and comprehensive procedures for implementing Regulation D.
Coverage	Regulation D establishes the required amount a depository institution must reserve based on the level of transaction accounts on deposit. Institutions are required to maintain a certain level of reserves to assist the Federal Reserve Board in handling monetary policy.
Exemptions	Credit unions with net transactional accounts (primarily share draft accounts) less than \$6.6 million are exempt from reserving.
Reporting	<ul style="list-style-type: none"> • Every credit union with <u>total deposits</u> of \$6.6 million or more must file a report of deposits directly with the Federal Reserve Bank of its District. • A Federal Reserve Bank will notify the credit union of its reserve requirements • The credit union can hold reserves in the form of vault cash, a balance maintained directly with the Federal Reserve Bank in the Federal Reserve District in which it is located, or in a pass-through account. • Reporting time periods according to net transactional accounts are as follows:
Deductions	In determining the reserve balance required, the amount of cash items in process of collection and balances subject to immediate withdrawal due from other depository institutions located in the United States may be deducted from the amount of gross transaction accounts.
Reserve Requirement Calculations	The following reserve ratios are prescribed for all Credit unions:

Internal Review

Conduct an internal review at least annually to assess compliance with the regulation and conformity of an institution's practices with its policies and procedures.

RESERVES ON TRANSACTION ACCOUNTS CHECKLIST

- | | Yes | No |
|--|-------|-------|
| 1. If the credit union has <u>net transaction accounts</u> of \$6.6 million or less, but has <u>total deposits</u> greater than \$6.6 million but less than \$1.074 billion, does it file a report with the Federal Reserve Bank annually?
(This threshold is subject to change annually. Credit union staff should evaluate the threshold annually to ensure compliance.) [§204.3] | _____ | _____ |
| 2. If the credit union has <u>net transaction accounts</u> over \$6.6 million, but has <u>total deposits</u> of less than \$161.2 million, does it file a report with the Federal Reserve Bank quarterly? [§204.3] | _____ | _____ |
| 3. If the credit union has <u>net transaction accounts</u> :
a. over \$6.6 million <u>and</u> has <u>total deposits</u> of at least \$161.2 million <u>or</u>
b. of \$6.6 million or less but has <u>total deposits</u> of at least \$1,074 billion,
does it file a report with the Federal Reserve Bank weekly? [§204.3] | _____ | _____ |
| 4. Does the credit union hold the required reserves in the form of vault cash, with the Federal Reserve Bank or in a pass-through account? [§204.3] | _____ | _____ |
| 5. Does the credit union deduct the amount of cash items in process of collection and balances subject to immediate withdrawal due from other depository institutions located in the United States when determining the reserve balance required? [§204.3(f)] | _____ | _____ |
| 6. Does the credit union maintain proper reserves during a merger? [§204.4] | _____ | _____ |
| 7. Is the credit union following the reserve requirement ratio as prescribed in section 204.9? [§204.9] | _____ | _____ |

Comments _____

RESERVES ON TRANSACTION ACCOUNTS (REGULATION D)

DEFINITIONS

Definitions (Section 204.2)

Depository Institution

Any state or federally chartered financial institution that is federally insured or eligible for federal insurance.

Demand Deposit

A deposit that is payable on demand, a deposit issued with an original maturity or required notice of less than 7 days, or funds which the depository bank does not reserve the right to prior notice of at least 7 days before funds are withdrawn. Examples of demand deposits include share drafts, cashier's checks, traveler's checks, and money orders that are primary obligations of the issuing institution.

Savings Deposit

A deposit or account where the member is not required by the deposit contract to provide prior notice of withdrawal, but where the credit union can require at least 7 days advance notice at any time and it is not payable on a specific date. The term "savings deposit" includes regular share accounts with credit unions.

Transaction Accounts

Deposits from which a member is allowed to make transfers or withdrawals by negotiable order, check, telephone, or similar device for making third party payments. Examples include demand deposit accounts, NOW Accounts, share draft accounts, savings accounts with automatic transfer service capabilities, and time deposits where the financial institution does not impose a penalty for early withdrawal.

Pass Through Account

An account held in: an institution that maintains a required reserve balance with the Fed; a Federal Home Loan Bank; the NCUA CLF; or an institution authorized by the Fed to pass through required reserve balances (usually a corporate credit union).

Time deposit

(a) A deposit that the depositor does not have a right and is not permitted to make withdrawals from within six days after the date of deposit unless the deposit is subject to an early withdrawal penalty of at least seven days' simple interest on amounts withdrawn within the first six days after deposit. A time deposit from which partial early withdrawals are permitted must impose additional early withdrawal penalties of at least seven days' simple interest on amounts withdrawn within six days after each partial withdrawal. If such additional early withdrawal penalties are not imposed, the

account ceases to be a time deposit. The account may become a savings deposit if it meets the requirements for a saving deposit; otherwise it becomes a transaction account. Time deposit includes funds--

- (i) Payable on a specified date not less than seven days after the date of deposit;
 - (ii) Payable at the expiration of a specified time not less than seven days after the date of deposit;
 - (iii) Payable only upon written notice that is actually required to be given by the depositor not less than seven days prior to withdrawal;
 - (iv) Held in club accounts (such as Christmas club accounts and vacation club accounts that are not maintained as savings deposits) that are deposited under written contracts providing that no withdrawal shall be made until a certain number of periodic deposits have been made during a period of not less than three months even though some of the deposits may be made within six days from the end of the period; or
 - (v) Share certificates and certificates of indebtedness issued by credit unions, and certificate accounts and notice accounts issued by savings and loan associations;
- (b) A savings deposit;
- (c) An IBF time deposit meeting the requirements of Sec. 204.8(a)(2); and
- (d) Borrowings, regardless of maturity, represented by a promissory note, an acknowledgment of advance, or similar obligation described in Sec. 204.2(a)(1)(vii) that is issued to, or any bankers' acceptance (other than the type described in 12 U.S.C. 372) of the depository institution held by--
- (i) Any office located outside the United States of another depository institution or Edge or agreement corporation organized under the laws of the United States;
 - (ii) Any office located outside the United States of a foreign bank;
 - (iii) A foreign national government, or an agency or instrumentality thereof, engaged principally in activities which are ordinarily performed in the United States by governmental entities;
 - (iv) An international entity of which the United States is a member; or
 - (v) Any other foreign, international, or supranational entity specifically designated by the Board.

A time deposit may be represented by a transferable or nontransferable, or a negotiable or nonnegotiable, certificate, instrument, passbook, or statement, or by book entry or otherwise.

Cash item in process of collection

- (a)(i) Checks in the process of collection, drawn on a bank or other depository institution that are payable immediately upon presentation in the United States, including checks forwarded to a Federal Reserve Bank in process of collection and checks on hand that will be presented for payment or forwarded for collection on the following business day;
- (ii) Government checks drawn on the Treasury of the United States that are in the process of collection; and

- (iii) Such other items in the process of collection, that are payable immediately upon presentation in the United States and that are customarily cleared or collected by depository institutions as cash items, including:
 - (A) Drafts payable through another depository institution;
 - (B) Matured bonds and coupons (including bonds and coupons that have been called and are payable on presentation);
 - (C) Food coupons and certificates;
 - (D) Postal and other money orders, and traveler's checks;
 - (E) Amounts credited to deposit accounts in connection with automated payment arrangements where such credits are made one business day prior to the scheduled payment date to insure that funds are available on the payment date;
 - (F) Commodity or bill of lading drafts payable immediately upon presentation in the United States;
 - (G) Returned items and unposted debits; and
 - (H) Broker security drafts.
- (b) Cash item in process of collection does not include items handled as noncash collections and credit card sales slips and drafts.

Net transaction accounts

The total amount of a depository institution's transaction accounts less the deductions allowed under the provisions of Sec. 204.3.

Vault cash

- (a) United States currency and coin owned and held by a depository institution that may, at any time, be used to satisfy depositors' claims.
- (b) Vault cash includes United States currency and coin in transit to a Federal Reserve Bank or a correspondent depository institution for which the reporting depository institution has not yet received credit, and United States currency and coin in transit from a Federal Reserve Bank or a correspondent depository institution when the reporting depository institution's account at the Federal Reserve or correspondent bank has been charged for such shipment.
- (c) Silver and gold coin and other currency and coin whose numismatic or bullion value is substantially in excess of face value is not vault cash for purposes of this part.

Member bank

A depository institution that is a member of the Federal Reserve System.

United States

The States of the United States and the District of Columbia.

Teller's check

A check drawn by a depository institution on another depository institution, a Federal Reserve Bank, or a Federal Home Loan Bank, or payable at or through a depository institution, a Federal Reserve Bank, or a Federal Home Loan Bank, and which the drawing depository institution engages or is obliged to pay upon dishonor.

ELECTRONIC FUNDS TRANSFER ACT (REGULATION E)

OVERVIEW

Overview

Regulation E implements the provisions of the Electronic Funds Transfer Act (EFTA). The regulation establishes the basic rights, liabilities, and responsibilities of consumers who use electronic fund transfer services and of credit unions that offer these services. The primary objective of the regulation is the protection of individual consumers engaging in electronic fund transfers.

The term electronic fund transfer (EFT) means any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a credit union to debit or credit an account. The term includes, but is not limited to:

- Point-of-sale transfers;
- Automated teller machine transfers;
- Direct deposits or withdrawals of funds;
- Transfers initiated by telephone; and
- Transfers resulting from debit card transactions, whether or not initiated through an electronic terminal.

The term electronic fund transfer does not include:

- Checks - Any transfer of funds originated by check, draft, or similar paper instrument; or any payment made by check, draft, or similar paper instrument at an electronic terminal.
- Check guarantee or authorization – Any transfer of funds that guarantees payment or authorizes acceptance of a check, draft, or similar paper instrument but that does not directly result in a debit or credit to a member's account.
- Wire or other similar transfers - Any transfer of funds through Fedwire or through a similar wire transfer system that is used primarily for transfers between financial institutions or between businesses.
- Securities and commodities transfers – Any transfer of funds the primary purpose of which is the purchase or sale of a security or commodity under certain conditions.
- Automatic transfers by account-holding institution - Any transfer of funds under an agreement between a member and a credit union which provides that the credit union will initiate individual transfers without a specific request from the member.
- Telephone-initiated transfers - Any transfer of funds that is initiated by a telephone communication between a member and a credit union making the

- transfer; and does not take place under a telephone bill-payment or other written plan in which periodic or recurring transfers are contemplated.
- Small institutions – Any preauthorized transfer to or from an account if the assets of the account-holding credit union were \$100 million or less on the preceding December 31. Preauthorized transfers exempt remain subject to Section 205.10 (e) regarding compulsory use and Sections 915 and 916 of the Act regarding civil and criminal liability.

Access Devices

An access device is a card, code, or other means of access to a member's account, or any combination thereof, that may be used by the member to initiate electronic fund transfers.

A credit union may issue a solicited access device:

- In response to an oral or written request for the device; or
- As a renewal of, or in substitution for, an accepted access device whether issued by the institution or a successor.

A credit union may only issue an unsolicited access device if it is:

- Not validated, meaning that the credit union has not yet performed all the procedures that would enable a member to initiate an electronic fund transfer using the access device;
- Accompanied by a clear explanation that the access device is not validated and how the consumer may dispose of it if validation is not desired;
- Accompanied by the initial disclosures of the member's rights and liabilities that will apply if the access device is validated; and
- Validated only in response to the member's oral or written request for validation, after the credit union has verified the member's identity by a reasonable means.

Disclosures

Regulation E requires credit unions to provide members with an initial disclosure at the time the member contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving the member's account. The disclosure must contain the following information:

- Liability of the member;
- Telephone number and address of the office to be notified in the case of an unauthorized electronic fund transfer;
- Business days;
- Types of transfers and limitations;
- Fees;
- Summary of the member's right to receipts and periodic statements;

- Stop payment rights;
- Liability of the credit union;
- Circumstances in which the credit union may provide information about the member's account to third parties;
- Error resolution; and
- ATM fees.

If there are adverse changes in fees, the member's liability, types of transfers available, or limits on transfers, the credit union must provide a change-in-terms notice at least 21 days before the changes take effect. The credit union must periodically send a reminder of the error-resolution procedures. It may send a detailed notice annually or provide an abbreviated notice with each account statement.

Members must receive a receipt when they initiate an electronic transfer and monthly in the form of periodic statements. Both documents must include the type of electronic transfer, the amount and date of the transaction, and the location of the terminal.

Member Liability for Unauthorized Transfers

Loss or Theft

- If a member gives notice within two business days of learning of loss or theft, the member's liability will not exceed the lesser of \$50 or the amount of unauthorized transfers that occur before notifying the credit union.
- If member fails to notify credit union within two business days of learning of loss or theft, members liability will not exceed the lesser of \$500 or the sum of \$50 or the amount of unauthorized transfers that occurred during the two business days, whichever is less, plus the amount of unauthorized transfers that occurred after the first two business days that the credit union can establish would not have occurred if the member had given notice within two business days.

Periodic statement

- A member must notify credit union within 60 days of the credit union's transmittal of a periodic statement that shows an unauthorized transfer to avoid liability for subsequent transfers.
- If the member fails to notify the credit union within 60 days, the member will be liable up to the amount of the unauthorized transfers that occur after the close of the 60 days and before notice is given to the credit union, as long as the credit union can establish that the transfers would not have occurred had the member given notice within 60 days. Notice may be considered constructively given if the credit union becomes aware of circumstances leading to a reasonable belief that an unauthorized transfer has been made.

Associated Risks

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with Regulation E.

Additional Information

Additional information is available on the Federal Reserve Board's website at <http://www.federalreserve.gov/>

ELECTRONIC FUNDS TRANSFER ACT
(REGULATION E)
OPERATIONAL REQUIREMENTS

Disclosures / Notices

Initial Disclosures [Section 205.7]

At the time a member contracts for an electronic fund transfer (EFT) service or before the first EFT is made involving a member's account, a credit union must provide certain initial disclosures to the member concerning the terms, conditions, charges, liability, and other matters outlined in Section 205.7(b) relating to the use of EFT service. The disclosures must be clear and readily understandable, in writing, and in a form the member may keep. See Appendix A of Regulation E for model disclosure forms.

Change in Terms Notice [Section 205.8(a)]

A credit union must provide members with written notice at least 21 days before the effective date of any change in a term or condition required to be disclosed under Section 205.7(b) if the change would result in (1) increased member fees, (2) increased member liability, (3) fewer types of available EFTs, or (4) stricter limits on the frequency or dollar amount of transfers. Prior notice need not be given if an immediate change is needed for security reasons.

Error Resolution Notice [Section 205.8(b)]

For each account to or from which EFTs can be made, a credit union must provide the member annually (or in abbreviated form with each periodic statement), a description of the manner for resolving errors in connection with EFT services. See Appendix A of Regulation E for model forms.

Electronic Terminal Receipts [Section 205.9(a)]

At the time a member initiates an electronic transfer at an electronic terminal by a member, the credit union shall provide the member a written receipt showing the amount of the transfer, date of transfer, type of transfer and account(s) accessed, location of terminal, and other information outlined in Section 205.9(a). Note: the amount of the transfer may include a transaction fee if the amount of the fee is disclosed on the receipt and displayed on or at the terminal.

Periodic Statements [Section 205.9(b) & (c)]

For any account to or from which electronic fund transfers can be made, the credit union

shall provide a monthly statement (quarterly, if no transfers have occurred or access is limited to receipt of preauthorized transfers) including a record of each transfer made in the period with date, accounts accessed, location and other information.

Passbook Entries [Section 205.9(c)]

For passbook accounts that only receive preauthorized transfers, the credit union may substitute entry of information on presentation of the passbook by the member in place of providing a periodic statement.

Notice for Preauthorized Transfers [Section 205.10]

Except where the payor provides positive notice to the member that a transfer has been made to his account, the credit union shall provide oral or written notice within two days or a readily available telephone line that the member may call to confirm the status of a preauthorized transfer, as described in Section 205.10(a).

Preauthorized electronic fund transfers (EFTs) from a member's account may be authorized only by a writing signed or similarly authenticated by the member. Members may stop payment of a preauthorized EFT from their account by notifying the credit union orally or in writing at least three business days before the scheduled date of the transfer (and a credit union may require written confirmation of a stop payment order within 14 days of oral notification).

Error Investigation Results and Correction [Section 205.11]

Within 10 days (or 45 days if provisional credit has been given), a credit union must notify the member of the results of the investigation of an alleged error and any required correction that was made. If the credit union determines that no error occurred or that an error occurred in a manner or amount that is different from that described by the member, the credit union must include a written explanation of its findings and note the member's right to request the documents relied upon in making its decision. Upon debiting a provisionally credited amount, the credit union must (i) notify the member of the date and amount of the debiting and (ii) notify the member that the credit union will honor checks and preauthorized transfers for five business days after the notification.

Recordkeeping

Record Retention [Section 205.13(b)]

The credit union must retain evidence of compliance with the requirements of the Regulation for a period of not less than two years from the date disclosures are required to be made or action is required to be taken. The period may be extended in the event of an investigation, action, or proceeding.

Advertising

Unsolicited Distribution of Access Devices [Section 205.5(b)]

A credit union may distribute an access device to a member on an unsolicited basis provided that the device is not validated, required disclosures are made and the device may be validated only in response to the member's oral or written request, which is verified by the credit union. In addition, the access device must be accompanied by a clear explanation that the device is not validated and how the member may dispose of it if validation is not desired.

Enforcement / Liability

Administrative Enforcement Authority

The National Credit Union Administration Board has responsibility for enforcement among federal credit unions, while the Federal Trade Commission enforces Regulation E for state-chartered credit unions.

Civil Liability [15 U.S.C. §1693m]

A credit union may be liable under the Act for (1) actual damages and statutory damages between \$100 and \$1,000 in the case of individual actions or (2) actual damages and statutory damages up to the lesser of \$500,000 or one percent of the credit union's net worth in the case of class action suits. In successful individual and class actions, the member may also recover court costs and reasonable attorney fees.

Criminal Liability [15 U.S.C. §1693n]

Criminal penalties run from a \$5,000 fine and one year's imprisonment for knowing and willful failures to comply with the EFTA, to a \$10,000 fine and 10 years imprisonment for the fraudulent use of a debit instrument.

ELECTRONIC FUNDS TRANSFER ACT
(REGULATION E)

REVIEW CONSIDERATIONS

Review Considerations

Review Area	Requirements / Recommendations
Coverage	<p>Regulation E applies to any electronic fund transfer that authorizes a credit union to debit or credit a consumer's account.</p> <p>Note: Stored value cards are covered by Regulation E when the transaction accesses a member's account, such as when value is loaded onto the card from the member's deposit account through the use of an electronic terminal or personal computer.</p>
Exclusions from Coverage	<p>The term EFT does not include:</p> <ul style="list-style-type: none">• Checks• Check guarantee or authorization services• Wire transfers• Transfers primarily to purchase or sell regulated securities or commodities• Automatic transfers by account-holding credit unions• Non-recurring transfers initiated by a telephone direction from the member to an employee of the credit union• Preauthorized transfers involving credit unions with total assets of \$100 million or less.
Policy / Procedures	<p>Adopt a policy for implementing Regulation E. Ensure comprehensive procedures are in place covering the credit union's responsibilities in connection with all electronic fund transfers.</p>
Issuance of Access Devices	<p>Issue an access device only upon an oral or written request or application, or as a substitute for, or renewal of, an existing access device.</p> <p>An unsolicited access device may be distributed if it is:</p>

	<p>(1) not validated; and</p> <p>(2) accompanied by a clear explanation that the device is not validated and how the member may dispose of it if validation is not wanted; and</p> <p>(3) accompanied by appropriate initial disclosures of the member's rights and liabilities if validated, and</p> <p>(4) validated only upon the member's oral or written request after verifying the member's identity.</p>
Liability for Unauthorized Transfers	<p>Adhere to limitations on member liability for unauthorized EFTs.</p> <ul style="list-style-type: none"> • Generally, members providing notice within two business days after learning of the loss or theft of an access device are liable for the lesser of \$50 or the amount of unauthorized transfers occurring before the notice. If the member fails to provide notice within the two business days, liability cannot exceed \$500. • Unauthorized EFTs appearing on periodic statements must be reported within 60 days of transmittal of the statement to avoid liability for subsequent transfers. Members will be liable for all transfers that occur after the 60 day period until they notify the credit union, if they fail to provide notice within the 60 day period. The credit union must establish that the unauthorized transfer would not have occurred had the member notified the credit union within the 60 day period. The credit union may be deemed to have constructive notice if it becomes aware of circumstances leading to a reasonable belief that an unauthorized transfer has been made.
Form of Disclosures	Ensure disclosures required under Regulation E are clear and readily understandable in writing and in a form that the member may keep.
Content of Initial Disclosures	Ensure initial disclosures contain required items and are made available at the time a member contracts for an EFT service or before the first EFT is made involving the member's account.
Change In Terms	Provide a written notice to member if a change in

	<p>EFT terms or condition would result in increased fees or charges, increased liability for the member, fewer types of EFTs, or stricter limitations on the frequency or dollar amount of transfers.</p> <p>Note: Prior notice need not be given if an immediate change is necessary for security reasons.</p> <p>Mail or deliver at least 21 days before the effective date of the change.</p>
Error Resolution Notice	Inform account holder of error resolution procedures.
Receipts at Electronic Terminals	Provide receipts for EFTs conducted at electronic terminals at the time an EFT is initiated.
Periodic Statements	Document EFTs in periodic statements. Provide periodic statements for each monthly cycle in which an EFT has occurred. Provide at least quarterly if no EFT has occurred or if access is limited to receipt of preauthorized transfers.
Preauthorized Transfers to Account	For preauthorized EFTs to a member's account occurring at least once every 60 days, notify member or provide a telephone number for member verification of transfer.
Preauthorized Transfers from Account	<p>Preauthorized transfers from an account can only occur with prior written authorization of the member.</p> <p>Allow members to stop payment of a preauthorized transfer from their account upon oral or written notification to the credit union (written confirmation may be required when stop payment is initiated orally).</p>
Error Resolution Procedures	<p>Provide an error resolution procedure that permits oral or written notice by the member within 60 days of the periodic statement.</p> <p>Investigate claimed error and report conclusion within ten business days or provide provisional credit to account and investigate within 45 days.</p> <p>Correct errors and inform member of correction or follow prescribed procedures if a determination is made that no error occurred or a</p>

	different error occurred following the investigation.
Training / Updating	Provide training to all affected employees and update policies and procedures as needed to reflect regulatory changes.
Monitoring / Audit	Monitor compliance with Regulation regarding member liability limitations, disclosure requirements, preauthorized transfer rules, and error resolution procedures.
Record Retention	Maintain evidence of compliance for not less than two years from the date disclosures are required to be made or action taken.

ELECTRONIC FUNDS TRANSFER ACT CHECKLIST

	Yes	No
1. Does the credit union issue access devices to a member only:		
a. in response to an oral or written request for the device [§205.5(a)(1)]; or,	_____	_____
b. as a renewal or substitution for an accepted access device? [§205.5(a)(2)]	_____	_____
2. Does the credit union issue unsolicited access devices only when the devices are:		
a. not validated [§205.5(b)(1)]; and,	_____	_____
b. accompanied by an explanation that the access device is not validated and how the member may dispose of it if the member does not want it [§205.5(b)(2)]; and,	_____	_____
c. accompanied by disclosures required by §205.7, of the member's rights and liabilities that apply if the access device is validated? [§205.5(b)(3)]; and,	_____	_____
d. validated only in response to the member's oral or written request for validation after proper identification is made? [§205.5(b)(4)]	_____	_____
3. Does the credit union verify the member's identity by a reasonable means? (such as photograph, personal visit, or signature) [§205.5(b)(4)]	_____	_____
4. Does the credit union impose liability on the member for unauthorized transfer only: [§205.6 (a)]		
a. if an accepted device is used ; and,	_____	_____
b. if the credit union has provided a means to identify the member to whom it was issued; and,	_____	_____
c. if the credit union has provided the disclosures required by §205.7(b)(1)(2) and (3)? (liability of member, telephone number and address for reporting, credit union's business days)	_____	_____
5. Is the member's liability for unauthorized use of a lost or stolen access device limited to the lesser of \$50 or actual loss if the member notifies the credit union within two business days of discovery of loss or theft of the access device? [§205.6(b)(1)]	_____	_____

6. If the member fails to notify the credit union of loss or theft of an access device within two business days of discovery of loss or theft, is member liability limited to \$500, as follows: [§205.6(b)2]

- a. the lesser of \$50 or actual loss within the first two business days; and,
- b. unauthorized transfer amounts that occur after the two business days and before notification (provided the credit union proves that these unauthorized transfers could have been prevented had notification been given within the two business days)?

7. If a member fails to notify the credit union of an unauthorized transfer within 60 days of transmittal of the periodic statement upon which that transfer appears, is member liability limited to: [§205.6(b)3]

- a. the lesser of \$50 or actual loss that appears on the statement or occurs during the 60-day period; and,
- b. the amount of unauthorized transfers that occur after the close of 60 days and before notice to the credit union (provided the credit union proves the unauthorized transfers could have been prevented had notification occurred within the 60 days)?

8. Does the credit union make the following initial disclosures:

- a. A summary of the member's liability under Section 205.6 (or lesser liability under state law or agreement)? [§205.7(b)1]
- b. The telephone number and address of the person or office to be notified when the member believes an unauthorized EFT has been or may be made? [§205.(b)2]
- c. The credit union's business days, as determined under Section 205.2(d)? [§205.7(b)3]
- d. The type of EFTs that the member may make and any limitations on the frequency and dollar amount of transfers? [§205.7(b)4]
(If details on the limitations on frequency and dollar amount of transfers are essential to maintain the security of the system, they need not be disclosed.)
- e. Any fees for EFTs or for the right to make

- transfers? [§205.7(b)(5)] _____
 - f. A summary of the member's right to receive documentation of EFTs, as provided in Sections 205.9, 205.10(a), and 205.10(d)? [§205.7(b)(6)] _____
 - g. A summary of the member's right to stop payment of a preauthorized EFT and the procedure for placing a stop-payment order, as provided in Section 205.10(c)? [§205.7(b)(7)] _____
 - h. A summary of the credit union's liability to the member for its failure to make or to stop certain transfers under Section 910 of the Act? [§205.7(b)(8)] _____
 - i. The circumstances under which the credit union, in the ordinary course of business, may provide information concerning the member's account to third parties? [§205.7(b)(9)] _____
 - j. An error resolution notice that is substantially similar to Model Form A-3 in Appendix A of the regulation? [§205.7(b)(10)] _____
 - k. A notice that a fee may be imposed by an automated teller machine operator, when the member initiates an EFT or makes a balance inquiry, and by any network used to complete the transaction? [§205.7(b)(11)]? _____
9. Has the credit union made any changes in a term or condition since the last review that required a written notice to a consumer? [§205.8(a)(1)] _____
 (A change that resulted in increased fees, increased liability for the member, fewer EFT's available, and stricter limitations on the frequency or dollar amount of transfers.)
- If so, was the notice provided at least 21 days before the effective date of such change? [§205.8(a)(1)] _____
10. Does the credit union provide either the long-form error resolution notice at least once every calendar year or the short-form error resolution notice on each periodic statement? [§205.8(b)] _____
11. Does the credit union make a receipt available to the member at the time an EFT is initiated? [§205.9(a)] _____
12. Does the receipt contain the following items as applicable: [§205.9(a)]
- a. the amount of the transfer (amount may be combined

- with any transaction fee if certain conditions are met); [§205.9(a)(1)] _____
- b. the calendar date the transfer was initiated; [§205.9(a)(2)] _____
- c. the type of transfer and account to or from which funds are transferred; [§205.9(a)(3)]
(The type of account may be omitted if the access device used can only access one account.) _____
- d. a number or code that identifies one of the following:
 - the member's account, or
 - the access device used; [§205.9(a)(4)]
(The number or code need not exceed four digits or letters to comply.) _____
- e. identification or location of the terminal [§205.9(a)(5)] _____
- f. the name of any third party to or from whom funds are transferred unless the name is provided in a non-machine readable form. [§205.9(a)(6)] _____
13. Does the credit union mail or deliver a periodic statement for each monthly or shorter cycle in which an EFT has occurred? [§205.9(b)] _____
14. If no EFTs have occurred, has the credit union mailed or delivered a periodic statement at least quarterly for non-passbook accounts? [§205.9(b)] _____
15. Does the periodic statement or accompanying documents contain the following items: [§205.9(b)(1)]
- a. The amount of the transfer [205.9(b)(1)(i)] _____
- b. The date the transfer was posted to the member's account; [§205.9(b)(1)(ii)] _____
- c. The type of transfer and type of account to or from which funds were transferred; [205.9(b)(1)(iii)] _____
- d. The location of the terminal; [§205.9(b)(1)(iv)] _____
- e. The name of any third party to or from whom funds were transferred; [§205.9(b)(1)(v)] _____
- f. The account number(s); [§205.9(b)(2)] _____
- g. The total amount of any fees or charges assessed during the statement period for EFTs, the right to make EFTs, or for account maintenance (does not include a finance charge imposed on the account during the statement period) [§205.9(b)(3)] _____

- h. The beginning and ending account balances; [§205.9(b)(4)] _____
- i. The address and telephone number to be used for inquiries or notice of errors? [§205.9(b)(5)] _____
- j. The telephone number for preauthorized transfers? [§205.9(b)(6)] _____

16. For passbook accounts that only receive preauthorized transfers, does the credit union upon presentation by the member enter in a passbook or on a separate document the amount and date of each EFT made since the passbook was last presented? [§205.9(c)(1)(i)] _____

17. If a member's account is to be credited by a preauthorized EFT from the same payor at least once every 60 days, does the credit union provide oral or written notice, within two business days, after the transfer occurs or was scheduled to occur, that the transfer did or did not occur? [§205.10(a)(1)] _____

18. Does the credit union credit the member's account for preauthorized EFTs as of the day the funds are received? [§205.10(a)(3)] _____

19. Does the credit union obtain authorization from the member for preauthorized EFTs? [§205.10(b)] _____

20. Does the credit union comply with Section 205.10(c) regarding stop payment orders? _____

21. If a preauthorized EFT from a member's account varies in amount from the previous transfer under the same authorization or preauthorized amount, does the credit union provide written notice of the amount and date of the transfer at least ten days before the scheduled date of transfer? [§205.10(d)] _____

(Note: If the designated payee makes the notification, the credit union is absolved from this requirement.)

22. Does the credit union refrain from conditioning an extension of credit to a member on repayment by preauthorized EFTs? [§205.10(e)(1)] _____

23. Does the credit union refrain from requiring a member to establish an account with a particular institution for receipt of EFTs as a condition of employment or receipt of a government benefit? [§205.10(e)(2)]

24. If the credit union requires a written confirmation of an error within ten business days of an oral notice, is the member informed of the requirement and provided the address where confirmation must be sent when the member gives the oral notification? [§205.11(b)(2)]

25. Has an error resolution procedure been implemented that will promptly investigate and resolve alleged errors within ten business days of receiving a notice of error? [§205.11(c)(1)]

26. Does the credit union inform the member of results of the investigation within three business days after completing its investigation? [§205.11(c)(1)]

27. Does the credit union correct the error within one business day after determining that an error occurred? [§205.11(c)(1)]

28. If the credit union needs more time and informs the member that it may take up to 45 days, does the credit union: [§205.11(c)(2)]

a. provisionally credit the member's account within ten business days of receiving the error notice? [§205.11(c)(2)(i)]

b. inform the member within two business days of the amount and date of the provisional credit and give the member full use of the funds during the investigation? [§205.11(c)(2)(ii)]

c. correct the error, if any, within one business day after determining an error occurred? [§205.11(c)(2)(iii)]

d. report the results to the member within three business days after completing its investigation (including, if applicable, notice that a provisional credit has been made final)? [§205.11(c)(2)(iv)]

29. If the credit union determines that an error has occurred, have procedures been established to:

a. promptly (within one business day) correct the error

(including crediting interest or refunding fees)
[§205.11(c)(2)(iii)]; and,

- b. promptly (within three business days) notify the member of the correction and provide notice that a provisional credit has been made final? [§205.11(c)(2)(iv)]

30. If the credit union determines that no error has occurred, have procedures been established to:

- a. promptly (within three business days of concluding the investigation) provide a written explanation of its findings and note the member's right to request the documents the credit union relied on in making its determination? [§205.11(d)(1)]
- b. upon request, does the credit union promptly provide copies of the documentation? [§205.11(d)(1)]
- c. upon debiting a provisionally credited amount, notify the member of the date and amount of the debit and that the credit union will honor checks, drafts, or similar instruments and preauthorized transfers from the member's account for five business days after notification? [§205.11(d)(2)]

31. Has the credit union retained evidence of compliance with the requirements of the Act for a two year period or longer, if required? [§205.13(b)]

32. Does the credit union that imposes a fee on a member for initiating an EFT or a balance inquiry:

- a. provide notice that a fee will be imposed? [§205.16(b)(1)]
- b. disclose the amount of the fee? [§205.16(b)(2)]

33. Does the credit union comply with notice requirements as prescribed in §206.16(c)?

Note: Through December 31, 2004, the notice requirement does not apply to an ATM that lacks the technical capability to provide such information.

34. Does the credit union impose a fee for initiating an EFT or balance inquiry only if: [§205.16(e)(1)and(2)]

- a. notices are provided, and
- b. the member elects to continue the transaction or inquiry after receiving such notice?

35. Does the credit union that uses electronic communication to provide disclosures in accordance with the E-Sign Act,

a. send the disclosure to the member's electronic address? [§205.17(c)(1)] or

b. make the disclosure available at another location such as an Internet website, by: [§205.17(c)(2)]

• alerting the member of the disclosure's availability by sending a notice to the member's electronic address? [§205.17(c)(2)(i)] and

• making the disclosure available for at least 90 days from the date the disclosure first becomes available? [§205.17(c)(2)(ii)]

36. When a disclosure provided by electronic communication is returned to a credit union undelivered, does the credit union take reasonable steps to attempt redelivery using information in its files? [§205.17(d)]

Note: The redelivery requirement is satisfied if, for example, the credit union sends the disclosure to a different e-mail address or postal address that the credit union has on file for the member. Sending the disclosure a second time to the same electronic address is not sufficient if the credit union has a different address for the member on file.

Comments: _____

ELECTRONIC FUNDS TRANSFER ACT
(REGULATION E)
DEFINITIONS

Definitions (Section 205.2)

For purposes of this part, the following definitions apply:

Access device

- (1) A card, code, or other means of access to a consumer's account, or any combination thereof, that may be used by the consumer to initiate electronic fund transfers.
- (2) An access device becomes an accepted access device when the consumer:
 - (i) Requests and receives, or signs, or uses (or authorizes another to use) the access device to transfer money between accounts or to obtain money, property, or services;
 - (ii) Requests validation of an access device issued on an unsolicited basis; or
 - (iii) Receives an access device in renewal of, or in substitution for, an accepted access device from either the financial institution that initially issued the device or a successor.

Account

A demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held either directly or indirectly by a financial institution and established primarily for personal, family, or household purposes.

The term does not include an account held by a financial institution under a bona fide trust agreement.

Act

The Electronic Fund Transfer Act (title IX of the Consumer Credit Protection Act, 15 USC 1693 et seq.).

Business day

Any day on which the offices of the consumer's financial institution are open to the public for carrying on substantially all business functions.

Consumer

A natural person.

Credit

The right granted by a financial institution to a consumer to defer payment of debt, incur debt and defer its payment, or purchase property or services and defer payment therefore.

Electronic fund transfer, as defined in Section 205.3:

Any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes, but is not limited to:

- (1) Point-of-sale transfers;
- (2) Automated teller machine transfers;
- (3) Direct deposits or withdrawals of funds;
- (4) Transfers initiated by telephone; and
- (5) Transfers resulting from debit card transactions, whether or not initiated through an electronic terminal.

Exclusions from coverage include:

(1) Checks. Any transfer of funds originated by check, draft, or similar paper instrument; or any payment made by check, draft, or similar paper instrument at an electronic terminal.

(2) Check guarantee or authorization. Any transfer of funds that guarantees payment or authorizes acceptance of a check, draft, or similar paper instrument but that does not directly result in a debit or credit to a consumer's account.

(3) Wire or other similar transfers. Any transfer of funds through Fedwire or through a similar wire transfer system that is used primarily for transfers between financial institutions or between businesses.

(4) Securities and commodities transfers. Any transfer of funds the primary purpose of which is the purchase or sale of a security or commodity, if the security or commodity is:

(i) Regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission;

(ii) Purchased or sold through a broker-dealer regulated by the Securities and Exchange Commission or through a futures commission merchant regulated by the Commodity Futures Trading Commission; or

(iii) Held in book-entry form by a Federal Reserve Bank or federal agency.

(5) Automatic transfers by account-holding institution. Any transfer of funds under an agreement between a consumer and a financial institution which provides that the institution will initiate individual transfers without a specific request from the consumer:

(i) Between a consumer's accounts within the financial institution;

(ii) From a consumer's account to an account of a member of the consumer's family held in the same financial institution; or

(iii) Between a consumer's account and an account of the financial institution, except that these transfers remain subject to Sec. 205.10(e) regarding compulsory use and sections 915 and 916 of the act regarding civil and criminal liability.

(6) Telephone-initiated transfers. Any transfer of funds that:

(i) Is initiated by a telephone communication between a consumer and a financial institution making the transfer; and

(ii) Does not take place under a telephone bill-payment or other written plan in which periodic or recurring transfers are contemplated.

(7) Small institutions. Any preauthorized transfer to or from an account if the assets of the account-holding financial institution were \$100 million or less on the preceding December 31. If assets of the account-holding institution subsequently exceed \$100 million, the institution's exemption for preauthorized transfers terminates one year from the end of the calendar year in which the assets exceed \$100 million. Preauthorized transfers exempt under this paragraph (c)(7) remain subject to Sec. 205.10(e) regarding compulsory use and sections 915 and 916 of the act regarding civil and criminal liability.

Electronic terminal

An electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer. The term includes, but is not limited to, point-of-sale terminals, automated teller machines, and cash dispensing machines.

Financial institution

A bank, savings association, credit union, or any other person that directly or indirectly holds an account belonging to a consumer, or that issues an access device and agrees with a consumer to provide electronic fund transfer services.

Person

A natural person or an organization, including a corporation, government agency, estate, trust, partnership, proprietorship, cooperative, or association.

Preauthorized electronic fund transfer

An electronic fund transfer authorized in advance to recur at substantially regular intervals.

State

Any state, territory, or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; or any political subdivision of the above.

Unauthorized electronic fund transfer

An electronic fund transfer from a consumer's account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit. The term does not include an electronic fund transfer initiated:

- (1) By a person who was furnished the access device to the consumer's account by the consumer, unless the consumer has notified the financial institution that transfers by that person are no longer authorized;
- (2) With fraudulent intent by the consumer or any person acting in concert with the consumer; or
- (3) By the financial institution or its employee.

CONSUMER LEASING ACT (REGULATION M)

OVERVIEW

Overview

Regulation M implements the consumer leasing portions of the Truth in Lending Act. The purpose is to assure that lessees of personal property are given accurate and meaningful disclosures of the terms and conditions of personal property leases. These disclosures allow consumers to compare various lease terms or to compare lease terms with credit terms. Regulation M also places limits on the size of balloon payments and requirements on leasing advertisements.

Regulation M only applies to leases:

- Longer than four months in duration;
- Valued at no more than \$25,000;
- For personal property to be used primarily for personal, family, or household use; and
- Made to a natural person.

Part 714 of NCUA's Rules and Regulations covers additional standards and requirements that a federal credit union must follow when engaged in the leasing of personal property.

Exempt Transactions

Regulation M does not apply to leases:

- To an organization;
- Of property to be used for commercial or agricultural purposes;
- Of personal property that is incidental to the lease of real property;
- Of real property; or
- That meet the definition of credit sale.

Associated Risks

Compliance risk can occur when the credit union fails to implement the necessary controls to comply with the Consumer Leasing Act.

Reputation risk can occur when the credit union incurs decreased member confidence as a result of failures resulting from leases, or incurs fines and penalties.

Strategic risk occurs when the board of directors fails to perform necessary due diligence in reviewing existing and prospective products and services for compliance.

Additional Information

For additional information visit the Federal Trade Commission online at www.ftc.gov.

CONSUMER LEASING ACT (REGULATION M)

OPERATIONAL REQUIREMENTS

Disclosures / Notices

Initial Disclosures (12 CFR 213.3 and 12 CFR 213.4)

Disclosures must be made before the lease is consummated and must contain the following:

- A dated, written statement clearly identifying the lessor and lessee;
- A brief description of the leased property;
- The total amount of any advance payments made by the lessee;
- The number, amount, and timing of payments scheduled under the lease and the total amount of payments;
- The total amount of all other charges that are not already included in the periodic payments;
- Identification of insurance (if any) required in connection with the lease;
- Identification of any express warranty or guarantee available to the lessee;
- Identification of the party responsible for maintenance of the leased property;
- A description of any security interest retained by the lessor;
- The amount, or method of determining the amount, of penalties for delinquent or defaulted payments;
- A statement whether the lessee has the option to purchase the leased property and at what price;
- A statement of the conditions under which the lease may be terminated by either party; and
- The lessee's liability at early termination or at the end of the lease term.

If any of the required disclosure information is not known at the time of disclosure, the lessor must provide an estimate of the unknown information and clearly identify it as an estimate.

Subsequent Disclosures (12 CFR 213.5)

- **Renegotiation**
A renegotiation occurs when a consumer lease subject to this part is satisfied and replaced by a new lease undertaken by the same consumer. A renegotiation requires new disclosures, except as provided in the exceptions section below.
- **Extension**
An extension is a continuation, agreed to by the lessor and the lessee, of an existing consumer lease beyond the originally scheduled end of the lease term, except when the continuation is the result of a renegotiation. An extension that exceeds six months requires new disclosures, except as provided in the exceptions section below.

- **Assumption**
New disclosures are not required when a consumer lease is assumed by another person, whether or not the lessor charges an assumption fee.
- **Exceptions**
New disclosures are not required for the following, even if they meet the definition of a renegotiation or an extension:
 - (a) A reduction in the rent charge;
 - (b) The deferment of one or more payments, whether or not a fee is charged;
 - (c) The extension of a lease for not more than six months on a month-to-month basis or otherwise;
 - (d) A substitution of leased property with property that has a substantially equivalent or greater economic value, provided no other lease terms are changed;
 - (e) The addition, deletion, or substitution of leased property in a multiple-item lease, provided the average periodic payment does not change by more than 25 percent; or
 - (f) An agreement resulting from a court proceeding.

Recordkeeping

Record retention (12 CFR 213.8)

A lessor shall retain evidence of compliance with the requirements imposed by this part, other than the advertising requirements under 12 CFR 213.7, for a period of not less than two years after the date the disclosures are required to be made or an action is required to be taken.

Advertising

Advertising (12 CFR 213.7) Only lease terms that are, or will be, available in the future may be advertised. If the advertisement uses certain triggering terms (the amount of any payment, including a down payment or a statement that no down payment or other payment is required before delivery), it must also state the following:

- That the transaction advertised is a lease;
- The total amount due prior to or at consummation or delivery;
- The number, amounts, and timing of scheduled payments;
- Whether or not a security deposit is required; and
- Whether the lessee may be assessed an extra charge at the end of the lease term based on the difference between the estimated residual value of the leased property at lease end and its realized value at lease end.

Enforcement / Liability

Administrative Enforcement Authority (15 U.S.C. §1607)

NCUA has authority to enforce compliance with the Consumer Leasing Act for all federal credit unions. The FTC has authority to enforce compliance with the Consumer Leasing Act for all other credit unions.

Penalties and Liabilities

Failure to comply with the Consumer Leasing Act may result in both criminal and civil penalties similar to those applicable under the Truth in Lending Act.

CONSUMER LEASING ACT (REGULATION M)

REVIEW CONSIDERATIONS

Review Considerations

Review Area	Requirements / Recommendations
Policy/Procedures	Adopt policy and comprehensive procedures for implementing Regulation M.
Coverage	Regulation M applies only to leases: <ul style="list-style-type: none">• Longer than four months in duration;• Valued at no more than \$25,000;• For personal property to be used primarily for personal, family, or household use; and• Made to a natural person.
Exemptions	Regulation M does not apply to leases: <ul style="list-style-type: none">• To any organization;• Of property to be used for commercial or agricultural purposes;• Of personal property that is incidental to the lease of real property;• Of real property; or• That meet the definition of credit sale.
Initial Disclosures	Disclosures must be made before the lease is consummated and must contain the following: <ul style="list-style-type: none">• A dated, written statement clearly identifying the lessor and lessee;• A brief description of the leased property;• The total amount of any advance payments made by the lessee;• The number, amount, and timing of payments scheduled under the lease and the total amount of payments;• The total amount of all other charges that are not already included in the periodic payments;• Identification of insurance (if any) required in connection with the lease;• Identification of any express warranty or guarantee available to the lessee;• Identification of the party responsible for maintenance of the leased property;• A description of any security interest retained by the lessor;• The amount, or method of determining the amount, of penalties for delinquent or defaulted

	<p>payments;</p> <ul style="list-style-type: none"> • A statement whether the lessee has the option to purchase the leased property and at what price; • A statement of the conditions under which the lease may be terminated by either party; and • The lessee’s liability at early termination and at the end of the lease term. <p>If any of the required disclosure information is not known at the time of disclosure, the lessor must provide an estimate of the unknown information and clearly identify it as an estimate.</p>
Subsequent Disclosures	<ul style="list-style-type: none"> • Renegotiation A renegotiation occurs when a consumer lease subject to this part is satisfied and replaced by a new lease undertaken by the same consumer. A renegotiation requires new disclosures, except as provided in the exceptions section below. • Extension An extension is a continuation, agreed to by the lessor and the lessee, of an existing consumer lease beyond the originally scheduled end of the lease term, except when the continuation is the result of a renegotiation. An extension that exceeds six months requires new disclosures, except as provided in the exceptions section below. • Assumption New disclosures are not required when a consumer lease is assumed by another person, whether or not the lessor charges an assumption fee. • Exceptions New disclosures are not required for the following, even if they meet the definition of a renegotiation or an extension: <ul style="list-style-type: none"> (a) A reduction in the rent charge; (b) The deferment of one or more payments, whether or not a fee is charged; (c) The extension of a lease for not more than six months on a month-to-month basis or

	<p>otherwise;</p> <p>(d) A substitution of leased property with property that has a substantially equivalent or greater economic value, provided no other lease terms are changed;</p> <p>(e) The addition, deletion, or substitution of leased property in a multiple-item lease, provided the average periodic payment does not change by more than 25 percent;</p> <p>or</p> <p>(f) An agreement resulting from a court proceeding.</p>
Advertising	<p>Only lease terms that are, or will be, available in the future may be advertised. If the advertisement uses certain triggering terms (the amount of any payment, including a down payment, or a statement that no down payment or other payment is required before delivery), it must also state the following:</p> <ul style="list-style-type: none"> • That the transaction advertised is a lease; • The total amount due prior to or at consummation or delivery; • The number, amounts, and timing of scheduled payments; • Whether or not a security deposit is required; and • Whether the lessee may be assessed an extra charge at the end of the lease term based on the difference between the estimated residual value of the leased property at lease end and its realized value at lease end.
Record Retention	<p>A lessor shall retain evidence of compliance with the requirements imposed by Regulation M, other than the advertising requirements under Sec. 213.7, for a period of not less than two years after the date the disclosures are required to be made or an action is required to be taken.</p>
Training	<p>Provide training to employees involved in the granting and advertising consumer leases.</p>
Updating	<p>Update policies, procedures, disclosures, and notices as necessary to reflect changes in the regulation or changes in lease terms.</p>
Internal Review	<p>Conduct an internal review at least annually to assess compliance with the regulation and conformity of an institution's practices with its</p>

	policies and procedures.
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CONSUMER LEASING ACT CHECKLIST

	Yes	No
1. Does the credit union make leases for longer than four months in duration, valued at no more than \$25,000, for personal property to be used for personal, family or household use and to a natural person? [§213.2(e)(1) and (h)]	_____	_____
2. Is the disclosure given before the lease is consummated? [§213.3(a)(3)]	_____	_____
3. Does the initial disclosure contain the following: [§213.3 and §213.4]		
a. A dated, written statement clearly identifying the lessor and the lessee?	_____	_____
b. A brief description of the leased property?	_____	_____
c. The total amount of any advance payments scheduled under the lease and the total amount of payments?	_____	_____
d. The number, amount and timing of payments scheduled under the lease and the total amount of payments?	_____	_____
e. Identification of insurance (if any) required in connection with the lease?	_____	_____
f. A description of any security interest retained by the lessor?	_____	_____
g. Identification of any express warranty or guarantee available to the lessee?	_____	_____
h. Identification of the party responsible for maintenance of the leased property?	_____	_____
i. The amount, or method of determining the amount, of penalties for delinquent or defaulted payments?	_____	_____
j. A statement whether the lessee has the option to purchase the leased property and at what price?	_____	_____
k. A statement of the conditions under which the lease may be terminated by either party?	_____	_____

1. The lessee's liability at early termination and at the end of the lease term? _____

4. If any of the required disclosure information is not known at the time of the disclosure, does the credit union provide an estimate of the unknown information and clearly identify it as an estimate? [§213.3(d)] _____

5. Are new disclosures given if a renegotiation occurs, except as provided in §213.5(d)? [§213.5(a)] _____

6. If an extension exceeds six months, are new disclosures given, except as provided in §213.5(d)? [§213.5(b)] _____

7. If an advertisement include(s) specific terms, does the credit union usually and customarily lease the property on those terms? [§213.7(a)] _____

8. Are any of the triggering terms used in the advertisement (e.g., the amount of any payment, or that no down payment or other payment is required prior to consummation or delivery)? [§213.7(d)] _____

9. If triggering terms are used, does the advertisement state the following:

a. That the transaction advertised is a lease? [§213.7(d)(2)(i)] _____

b. The total amount due prior to consummation or delivery? [§213.7(d)(2)(ii)] _____

c. The number, amounts, and timing of scheduled payments? [§213.7(d)(2)(iii)] _____

d. Whether or not a security deposit is required? [§213.7(d)(2)(iv)] _____

e. Whether the lessee may be assessed an extra charge at the end of the lease term based on the difference between the estimated residual value of the leased property at lease end and its realized value at lease end? [§213.7(d)(2)(v)] _____

Comments _____

CONSUMER LEASING ACT (REGULATION M)

DEFINITIONS

Definitions (Section 213.2)

Act

The Truth in Lending Act (15 U.S.C. 1601 et seq.). The Consumer Leasing Act is chapter 5 of the Truth in Lending Act.

Advertisement

A commercial message in any medium that directly or indirectly promotes a consumer lease transaction.

Board

Refers to the Board of Governors of the Federal Reserve System.

Closed-end lease

A consumer lease other than an open-end lease as defined in this section.

Consumer lease

A contract in the form of a bailment or lease for the use of personal property by a natural person primarily for personal, family, or household purposes, for a period exceeding four months and for a total contractual obligation not exceeding \$25,000, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease. Unless the context indicates otherwise, in this part “lease” means “consumer lease.”

- The term does not include a lease that meets the definition of a credit sale in Regulation Z (12 CFR 226.2(a)). It also does not include a lease for agricultural, business, or commercial purposes or a lease made to an organization.
- This part does not apply to a lease transaction of personal property which is incident to the lease of real property and which provides that:
 - (a) The lessee has no liability for the value of the personal property at the end of the lease term except for abnormal wear and tear; and
 - (b) The lessee has no option to purchase the leased property.

Gross capitalized cost

The amount agreed upon by the lessor and the lessee as the value of the leased property and any items that are capitalized or amortized during the lease term, including but not limited to taxes, insurance, service agreements, and any outstanding prior credit or lease balance. Capitalized cost reduction means the total amount of any rebate, cash payment, net trade-in allowance, and noncash credit that reduces the gross capitalized cost. The adjusted capitalized cost equals the gross capitalized cost less the capitalized cost reduction, and is the amount used by the lessor in calculating the base periodic payment.

Lessee

A natural person who enters into or is offered a consumer lease.

Lessor

A person who regularly leases, offers to lease, or arranges for the lease of personal property under a consumer lease. A person who has leased, offered, or arranged to lease personal property more than five times in the preceding calendar year or more than five times in the current calendar year is subject to the act and this part.

Open-end lease

A consumer lease in which the lessee's liability at the end of the lease term is based on the difference between the residual value of the leased property and its realized value.

Organization

A corporation, trust, estate, partnership, cooperative, association, or government entity or instrumentality.

Person

A natural person or an organization.

Personal property

Any property that is not real property under the law of the state where the property is located at the time it is offered or made available for lease.

Realized value

- The price received by the lessor for 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 term, as estimated or assigned at consummation by the lessor, used in calculating the base periodic payment.

Security interest and security

Any interest in property that secures the payment or performance of an obligation.

State

Any state, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

REIMBURSEMENT FOR PROVIDING FINANCIAL RECORDS

(REGULATION S)

OVERVIEW

Overview

Regulation S, 12 C.F.R. Part 219, provides for reimbursement of costs of producing member records requested by a government authority under §1115 of the Right to Financial Privacy Act (RFPA), 12 U.S.C. 3415.

The costs allowed include staff time and the cost of reproducing records, at rates set by the Federal Reserve Board, transportation costs, and, if the records are stored at an independent storage facility, the costs charged by that facility to reproduce the records.

Reimbursement Schedule	
Reproductions:	
Photocopy, per page	\$0.25
Paper copies of microfiche, per frame	\$0.25
Duplicate microfiche, per microfiche	\$0.50
Computer Diskette	\$5.00
Search and Processing:	
Clerical/Technical, hourly rate	\$11.00
Manager/Supervisory, hourly rate	\$17.00

Exceptions

Some exceptions to this rule include, but are not limited to:

- The costs of reproducing records needed to perfect a security interest, prove a claim in bankruptcy, collect a debt, or process an application with regard to a government loans
- The costs of reproducing records needed by a supervisory agency (NCUA) to perform an examination.
- The costs of reproducing records sought by a government authority in connection with a lawful proceeding, investigation, examination, or inspection directed at the financial institution in possession of such records.

Associated Risks

Compliance risk can occur when the credit union fails to implement the necessary controls to comply with Regulation S

Additional Information

For additional information visit the Federal Reserve Bank online at

<http://www.federalreserve.gov/regulations/default.htm#s> .

REIMBURSEMENT FOR PROVIDING FINANCIAL RECORDS (REGULATION S)

OPERATIONAL REQUIREMENTS

Written Programs / Documentation

Procedures for Training and Compliance

A credit union must establish and maintain procedures to ensure its compliance with the regulation. It must also provide a statement of applicable portions of the procedures to employees who perform tasks subject to the requirements of the regulation.

Release of Records [§3403 (b)]

On receipt of a written certification of compliance with the RFPA from the government authority, the RFPA requires the credit union to release the requested records.

Members Request [§3404 (c)]

Upon a member's request, the credit union must provide the member with a copy of the records disclosed to a government authority, unless the government authority obtains a court order to delay this disclosure to the member

Recordkeeping

Record Retention

Maintain a record of records turned over to government authorities.

Enforcement / Liability

Enforcement

Federal Reserve Board is responsible for enforcing Regulation S in all credit unions.

REIMBURSEMENT FOR PROVIDING FINANCIAL RECORDS

(REG S)

REVIEW CONSIDERATIONS

Review Considerations

Review Area	Requirements / Recommendations
Policies/Procedures	Ensure policy and procedures for implementing Regulation S are in place for collecting the costs involved with assembling and copying the subpoenaed members' records.
Fees payable	Generally a government authority, or a court issuing an order or subpoena in connection with a grand jury proceeding is required to reimburse the credit union for reasonable fees incurred in searching for, reproducing, or transporting financial records of members.
Record keeping	Ensure that the credit union maintains a record of the staff time, the computer costs, the costs of reproduction, and transportation costs involved in assembling the required copies.
Training	Provide appropriate training to those employees who would be responsible for responding to inquiries from government agencies.
Coverage	Regulation S provides for reimbursement of costs of producing member records requested by a government authority.
Exceptions	Regulation S does not include reimbursement for: <ul style="list-style-type: none">- The costs of reproducing records needed to perfect a security interest, prove a claim in bankruptcy, collect a debt, or process an application with regard to government loans.- The costs of reproducing records needed by the supervisory agency to perform examinations- The costs of reproducing records sought by a government authority in connection with a lawful proceeding, investigation, examination, or inspection directed at the financial institution in possession of such records.

REIMBURSEMENT FOR PROVIDING FINANCIAL RECORDS - CHECKLIST

	Yes	No
1. Does the credit union track the cost of producing copies of financial records in response to a written request, subpoena, or search warrant issued by a government authority?	_____	_____
2. Is the credit union billing the government authority for the time spent in locating, retrieving, reproducing, and preparing the records for shipment, not for the time for spent in analysis of material or legal advice? [§219.3(a)(1)]	_____	_____
3. If the credit union utilizes an independent storage facility, is the fee charged by that facility included as a direct cost? [§219.3 (a)]	_____	_____
4. Does the cost include the actual costs of extracting information stored by a computer in the format in which it is normally produced? This includes computer time and supplies. [§219.3(b)(2)]	_____	_____
5. Does the cost include reimbursement for transportation costs directly incurred to transport personnel to locate and retrieve the requested information, and to convey such material to the place of examination?	_____	_____

Comments _____

**REIMBURSEMENT FOR PROVIDING FINANCIAL
RECORDS (REGULATION S)
DEFINITIONS**

Definitions

Not Applicable.

CREDIT BY BANK OR PERSONS OTHER THAN BROKERS OR DEALERS FOR THE PURPOSE OF PURCHASING OR CARRYING MARGIN STOCKS

(REGULATION U)

OVERVIEW

Overview

Regulation U applies to credit unions that make loans secured by margin stock. Margin stock includes any equity security registered on a national securities exchange, such as the New York Stock Exchange or the American Stock Exchange; any over-the-counter (OTC) security trading in the NASDAQ Stock Market's National Market; any debt security convertible into a margin stock; and most mutual funds.

Regulation U requires that when a credit union makes a loan for the purpose of buying or carrying margin stock and is secured by that stock or other margin stock, the maximum amount of the loan may not exceed the "maximum loan value" of the collateral. For the margin stock portion of the collateral, the maximum loan value is 50 percent of the value of the margin stock collateral. Puts, calls, and combinations of puts and calls that do not qualify as margin stock have no loan value. The maximum loan value of all other collateral is its "good faith loan value." "Good faith loan value" means the amount, not to exceed 100%, that a lender exercising good judgment would lend against that collateral in connection with unrelated transactions. §221.2 and §221.7.

A credit union becomes subject to Regulation U and must register with the Federal Reserve Bank in whose District it is located, using Federal Reserve Forms FR G-1 and G-4, when it meets one of two threshold tests for the amount of margin-stock-secured credit extended or outstanding:

- If \$200,000 or more in such credit was extended in the most recent calendar quarter; or,
- If at any time in the most recent calendar quarter the amount of margin-stock-secured credit outstanding was \$500,000 or more.

A credit union must also ensure that any member who borrows money from the credit union secured directly or indirectly by any margin stock completes Federal Reserve Form FR G-3. §221.3(c)(1)(ii).

Exempt Transactions:

A credit union may extend and maintain purpose credit without regard to the provisions of Regulation U, except for 221.3(b)(1) and (3), if such credit is extended to an

employee stock ownership plan (ESOP) qualified under section 401 of the Internal Revenue Code (26 U.S.C. 401). [221.4(c)].

Associated Risks

Compliance risk can occur when the credit union fails to implement the necessary controls to comply with Regulation U.

Additional Information

For additional information visit the Federal Reserve online at <http://www.federalreserve.gov/> .

CREDIT BY BANKS OR PERSONS OTHER THAN BROKERS OR DEALERS FOR THE PURPOSE OF PURCHASING OR CARRYING MARGIN STOCKS (REGULATION U)

OPERATIONAL REQUIREMENTS

Disclosures / Notices

Borrower's Statement [Section 221.3(c)(1)(ii)]

Federal Reserve Form G-3 must be completed when a credit union registered under Regulation U extends credit secured by any margin stock. This form must be completed and signed by both the borrower and the credit union.

Written Programs / Documentation

Maximum Loan Value [Section 221.7]

- The maximum loan value of any margin stock is fifty percent of its current market value.
- The maximum loan value of non-margin stock and all other collateral except puts, calls, or combinations thereof is their good faith loan value.
- Maximum loan value of options. Except for options that qualify as margin stock, puts, calls, and combinations thereof have no loan value.

Recordkeeping

Record Retention

No specific time frame is provided in the regulation for record retention. However, institutions should maintain documentation (typically a copy of the report filed) for examiner review. Examiners should also be able to determine timeliness of the reports based on credit union records.

Reports

Registration [Section 221.3(b)]

A credit union becomes subject to Regulation U and must register with the Federal Reserve Bank in whose District it is located when it meets one of two threshold tests for the amount of margin-stock-secured credit extended or outstanding:

- If \$200,000 or more in such credit was extended in the most recent calendar quarter; or,

- If at any time in the most recent calendar quarter the amount of margin-stock-secured credit outstanding was \$500,000 or more.

To register, a credit union must complete Federal Reserve Form G-1 within 30 days of the end of the calendar quarter in which one of the two threshold tests is met.

Deregistration Statement [Section 221.3(b)(2)]

A credit union is eligible to deregister if, during the preceding six calendar months, no more than \$200,000 of credit secured by margin stock is outstanding. Federal Reserve Form G-2 is the Deregistration Statement.

Annual Report [Section 221.3(b)(3)]

A credit union must file an annual report, Federal Reserve Form G-4, within thirty days of June 30. This form will be supplied by the Reserve Bank before June 30.

Enforcement / Liability

Administrative Enforcement Authority

The Federal Reserve Board is responsible for enforcing Regulation U.

Penalties and Liabilities

Regulation U does not list any penalties or liabilities.

**CREDIT BY BANKS AND PERSONS OTHER THAN
BROKERS OR DEALERS FOR THE PURPOSE OF
PURCHASING OR CARRYING MARGIN STOCK
(REGULATION U)**

REVIEW CONSIDERATIONS

Review Considerations

Review Area	Requirements / Recommendations
Policy/Procedures	Adopt policy and comprehensive procedures for implementing Regulation U.
Coverage	Regulation U applies to credit unions that make loans secured by margin stock.
Exemption	<p>A credit union may extend and maintain purpose credit without regard to the provisions of this part, except for Sec. 221.3(b)(1) and (3), if such credit is extended:</p> <ul style="list-style-type: none">• To an employee stock ownership plan (ESOP) qualified under section 401 of the Internal Revenue Code (26 U.S.C. 401).
Reporting	<p><u>Registration (§221.3(b))</u> A credit union becomes subject to Regulation U and must register with the Federal Reserve Bank in whose District it is located when it meets one of two threshold tests for the amount of margin-stock-secured credit extended or outstanding:</p> <ul style="list-style-type: none">• If \$200,000 or more in such credit was extended in the most recent calendar quarter; or• If at any time in the most recent calendar quarter the amount of margin-stock-secured credit outstanding was \$500,000 or more. <p>To register, a credit union must complete Federal Reserve Form G-1 within 30 days of the end of the calendar quarter in which one of the two threshold tests is met.</p> <p><u>Annual Report (§221.3(b)(3))</u> A registered credit union must file an annual report, Federal Reserve Form G-4, within thirty</p>

	<p>days of June 30. This form will be supplied by the Reserve Bank before June 30.</p> <p><u>Borrower's Statement (§221.3(c)(1)(ii))</u> Federal Reserve Form G-3 must be completed when a registered credit union extends credit secured by any margin stock. This form must be completed and signed by both the borrower and the credit union.</p> <p><u>Deregistration Statement (§221.3(b)(2))</u> A registered credit union is eligible to deregister if, during the preceding six calendar months, no more than \$200,000 of credit secured by margin stock is outstanding. Federal Reserve Form G-2 is the Deregistration Statement.</p>
Maximum loan value	<ul style="list-style-type: none"> • The maximum loan value of any margin stock is fifty percent of its current market value. • The maximum loan value of nonmargin stock and all other collateral except puts, calls, or combinations thereof is their good faith loan value. • Maximum loan value of options. Except for options that qualify as margin stock, puts, calls, and combinations thereof have no loan value.
Record Retention	<p>No specific time frame is provided in the regulation for record retention. However, institutions should maintain documentation (typically a copy of the report filed) for examiner review. Examiners should also be able to determine timeliness of the reports based on credit union records.</p>
Training	<p>Provide training to loan officers involved in making margin-stock-secured loans.</p>
Updating	<p>Update policies and procedures to reflect changes in the regulation.</p>
Internal Review	<p>Conduct an internal review at least annually to assess compliance with the regulation and conformity of the credit union's practices with its policies and procedures.</p>

**CREDIT BY BANK OR PERSONS OTHER THAN
BROKERS OR DEALERS FOR THE PURPOSE OF
PURCHASING OR CARRYING MARGIN STOCKS
(REGULATION U)
CHECKLIST**

- | | Yes | No |
|--|-------|-------|
| 1. Does the credit union make loans secured by margin stock? [§221] | _____ | _____ |
| 2. If the credit union has met one of the two threshold tests for the amount of margin-stock-secured credit extended or outstanding: | | |
| a. Has the credit union registered with the Federal Reserve Bank within 30 days of the end of the calendar quarter? [§221.3(b)] | _____ | _____ |
| b. Does the credit union file an annual report within 30 days of the end of June 30? [§221.3(b)(3)] | _____ | _____ |
| c. Is Federal Reserve Form G-3 completed and signed by the credit union and borrower? [§221.3(c)(1)(ii)] | _____ | _____ |
| 3. If during the preceding six calendar months, no more than \$200,000 of credit secured by margin stock is outstanding, is a deregistration statement filed? [§221.3(b)(2)] | _____ | _____ |
| 4. Does the credit union policy state that the maximum loan value of any margin stock is fifty percent of its current market value? [§221.7] | _____ | _____ |
| 5. Does the credit union policy set the maximum loan value of any collateral that is not margin stock at no more than its good faith loan value? [§221.7] | _____ | _____ |

Comments _____

**CREDIT BY BANKS OR PERSONS OTHER THAN
BROKERS OR DEALERS FOR THE PURPOSE OF
PURCHASING OR CARRYING MARGIN STOCKS
(REGULATION U)**

DEFINITIONS

Definitions (Section 221.2)

Affiliate

Any person who, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with the lender. The regulation contains an additional, different definition for affiliates of bank lenders.

Carrying credit

Credit that enables a customer to maintain, reduce, or retire indebtedness originally incurred to purchase a security that is currently a margin stock.

Current market value of a security

- (a) If quotations are available, the closing sale price of the security on the preceding business day, as appearing on any regularly published reporting or quotation service; or,
- (b) If there is no closing sale price, the lender may use any reasonable estimate of the market value of the security as of the close of business on the preceding business day; or,
- (c) If the credit is used to finance the purchase of the security, the total cost of purchase, which may include any commissions charged.

Current market value of any collateral (other than a security)

A value determined by any reasonable method.

Customer

Excludes an exempted borrower and includes any person or persons acting jointly, to or for whom a lender extends or maintains credit.

Examining authority

- (a) The national securities exchange or national securities association of which a broker or dealer is a member; or,
- (b) If a member of more than one self-regulatory organization, the organization designated by the Securities and Exchange Commission as the examining authority for the broker or dealer.

Exempted borrower

A member of a national securities exchange or a registered broker or dealer, a substantial portion of whose business consists of transactions with persons other than brokers or dealers, and includes a borrower who:

- (a) Maintains at least 1000 active accounts on an annual basis for persons other than brokers, dealers, and persons associated with a broker or dealer;
- (b) Earns at least \$10 million in gross revenues on an annual basis from transactions with persons other than brokers, dealers, and persons associated with a broker or dealer; or,
- (c) Earns at least 10 percent of its gross revenues on an annual basis from transactions with persons other than brokers, dealers, and persons associated with a broker-dealer.

Good faith

With respect to:

- (a) The loan value of collateral means that amount (not exceeding 100 per cent of the current market value of the collateral) which a lender, exercising sound credit judgment, would lend, without regard to the customer's other assets held as collateral in connection with unrelated transactions.
- (b) Making a determination or accepting a statement concerning a borrower means that the lender or its duly authorized representative is alert to the circumstances surrounding the credit, and if in possession of information that would cause a prudent person not to make the determination or accept the notice or certification without inquiry, investigates and is satisfied that it is correct.

In the ordinary course of business

Occurring or reasonably expected to occur in carrying out or furthering any business purpose, or in the case of an individual, in the course of any activity for profit or the management or preservation of property.

Indirectly secured

- (a) Includes any arrangement with the customer under which:
 - (i) The customer's right or ability to sell, pledge, or otherwise dispose of margin stock owned by the customer is in any way restricted while the credit remains outstanding; or,
 - (ii) The exercise of such right is or may be cause for accelerating the maturity of the credit.
- (b) Does not include such an arrangement if:
 - (i) After applying the proceeds of the credit, not more than 25 percent of the value (as determined by any reasonable method) of the assets subject to the arrangement is represented by margin stock;
 - (ii) It is a lending arrangement that permits accelerating the maturity of the credit as a result of a default or renegotiation of another credit to the customer by another lender that is not an affiliate of the lender;
 - (iii) The lender holds the margin stock only in the capacity of custodian, depositary, or trustee, or under similar circumstances, and, in good faith, has not relied upon the margin stock as collateral; or,

- (iv) The lender, in good faith, has not relied upon the margin stock as collateral in extending or maintaining the particular credit.

Lender

- (a) Any bank; or
- (b) Any person subject to the registration requirements of Regulation U. (Credit unions would be a “non-bank” lender (person) subject to Reg. U if they met the registration requirements – had more \$500,000 in loans secured by margin stock, or granted more than \$200,000 in loans secured by margin stock in the most recent quarter.)

Margin stock

- (a) Any equity security registered or having unlisted trading privileges on a national securities exchange;
- (b) Any OTC security designated as qualified for trading in the National Market System under a designation plan approved by the Securities and Exchange Commission (NMS security);
- (c) Any debt security convertible into a margin stock or carrying a warrant or right to subscribe to or purchase a margin stock;
- (d) Any warrant or right to subscribe to or purchase a margin stock; or,
- (e) Any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), other than:
 - (i) A company licensed under the Small Business Investment Company act of 1958, as amended (15 U.S.C. 661); or,
 - (ii) A company which has at least 95 percent of its assets continuously invested in exempted securities (as defined in 15 U.S.C. 78c(a)(12)); or,
 - (iii) A company which issues face-amount certificates as defined in 15 U.S.C. 80a-2(a)(15), but only with respect of such securities; or,
 - (iv) A company which is considered a money market fund under SEC Rule 2a-7 (17 CFR 270.2a-7).

Maximum loan value

The percentage of current market value assigned by the Federal Reserve Board under Sec. 221.7 (the Supplement) to specified types of collateral. The maximum loan value of margin stock is stated as a percentage of its current market value. Puts, calls and combinations thereof that do not qualify as margin stock have no loan value. All other collateral has good faith loan value.

Non-bank lender

Any person subject to the registration requirements of Regulation U.

Purpose credit

Any credit for the purpose, whether immediate, incidental, or ultimate, of buying or carrying margin stock.

REAL ESTATE SETTLEMENT PROCEDURES ACT

(REGULATION X)

OVERVIEW

Overview

The Real Estate Settlement Procedures Act (RESPA) 12 U.S.C. 2601 et seq., as implemented by the U.S. Department of Housing and Urban Development's Regulation X (24 C.F.R. § 3500), is designed to effect certain changes in the settlement process for residential real estate that will result:

- In more effective advance disclosure to home buyers and sellers of settlement costs;
- In the elimination of kickbacks or referral fees that tend to unnecessarily increase the costs of certain settlement services;
- In a reduction in the amounts home buyers are required to place in escrow accounts established to insure the payment of real estate taxes and insurance; and,
- In significant reform and modernization of local recordkeeping of land title information.

RESPA applies to all "federally related mortgage loans," which includes any loan made by a federally insured financial institution secured by a first or subordinate lien on residential real property (including a refinance of such a loan) upon which there is located or placed a structure designed for one to four family occupancy (including individual units of condominiums or cooperatives). Limited exemptions to RESPA coverage are set forth in Regulation X.

In addition to the standard information and documentation that must be provided during the application and settlement stages of a mortgage loan transaction, RESPA requires that lenders furnish detailed disclosures concerning the transfer, sale, or assignment of mortgage servicing rights. The lender must also provide certain disclosures for mortgage escrow accounts at closing and annually thereafter, itemizing the charges to be paid by the borrower and the funds disbursed or to be disbursed from the account by the servicer. Detailed rules imposed by RESPA and Regulation X regulate the management of escrow accounts and reveal when affiliated business arrangements will not constitute a violation of the prohibitions against kickbacks and unearned fees.

Exempt Transactions

RESPA provisions found at 12 U.S.C. §2606(a) exempt extensions of credit that are:

- Primarily for business, commercial, or agricultural purposes; or,
- To government or governmental agencies or instrumentalities.

Regulation X provisions found at 24 C.F.R. §3500.5(b) also exempt transactions that are:

- A loan on property of 25 acres or more.
- Business purpose loans. An extension of credit primarily for a business, commercial, or agricultural purpose, as defined by Regulation Z, 12 CFR 226.3(a)(1). Persons may rely on Regulation Z in determining whether the exemption applies.
- Temporary financing. Temporary financing, such as a construction loan. The exemption for temporary financing does not apply to a loan made to finance construction of 1- to 4-family residential property if the loan is used as, or may be converted to, permanent financing by the same lender or is used to finance transfer of title to the first user.
- Secured by vacant land. Any loan secured by vacant or unimproved property, unless within two years from the date of the settlement of the loan, a structure or a manufactured home will be constructed or placed on the real property using the loan proceeds. If a loan for a structure or manufactured home to be placed on vacant or unimproved property will be secured by a lien on that property, the transaction is covered by this part.
- Assumption without lender approval. Any assumption in which the lender does not have the right expressly to approve a subsequent person as the borrower on an existing federally related mortgage loan. Any assumption in which the lender's permission is both required and obtained is covered by RESPA and Regulation X, whether or not the lender charges a fee for the assumption.
- Loan conversions. Any conversion of a federally related mortgage loan to different terms that are consistent with provisions of the original mortgage instrument, as long as a new note is not required, even if the lender charges an additional fee for the conversion.
- Secondary market transactions. A bona fide transfer of a loan obligation in the secondary market is not covered by RESPA and Regulation X, except as set forth in section 6 of RESPA (12 U.S.C. §2605) and §3500.21. In determining what constitutes a bona fide transfer, HUD will consider the real source of funding and the real interest of the funding lender. Mortgage broker transactions that are table-funded are not secondary market transactions. Neither the creation of a dealer loan or dealer consumer credit contract, nor the first assignment of such loan or contract to a lender, is a secondary market transaction (see §3500.2.)

Disclosure and Reporting

The specific disclosures and other documentation that the lender is required by RESPA to provide to consumers include the following:

- A copy of the Special Information Booklet on settlement costs;
- A copy of the Good Faith Estimate of Settlement Costs;
- Uniform Settlement Statement (HUD-1 or HUD-1A);
- Computer Loan Original Fee Disclosure, where applicable;
- An Affiliated Business Arrangement Disclosure Statement, where applicable;
- Notice of Transfer of Servicing, where applicable;

- An Initial Escrow Account Notice, where applicable;
- Annual Escrow Statements, where applicable;
- Short year statement, where applicable; and,
- The Mortgage Servicing Transfer Disclosure Statement (concerning the lender's right to assign, sell or transfer the loan).

The specific content of these documents and the prescribed time periods for their delivery to consumers and the retention by the lender is set forth in Regulation X.

Enforcement

The Department of Housing and Urban Development (HUD) is responsible for enforcing compliance for all credit unions.

Associated Risks

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with RESPA.
- Reputation risk can occur when the credit union incurs fines and penalties as a result of failure to comply with RESPA.
- Strategic risk can occur when the board of directors fails to perform necessary due diligence in reviewing existing and prospective products and services for compliance with RESPA.

Additional Information

For additional information visit The Department of Housing and Urban Development online at <http://www.hud.gov/> .

REAL ESTATE SETTLEMENT PROCEDURES ACT

(REGULATION X)

OPERATIONAL REQUIREMENTS

Disclosures / Notices

Special Information Booklet (24 C.F.R. §3500.6)

A credit union must provide the borrower with a copy of the Special Information booklet either at the time a written application is submitted, or no later than three business days after the application is received.

- Part One of the booklet describes the settlement process and the nature of charges, and suggests questions to be asked of lenders, attorneys, and others to clarify their services. It also contains information on the rights and remedies available under RESPA and alerts the borrower to unfair or illegal practices.
- Part Two of the booklet contains an itemized explanation of settlement services and costs, and sample forms and worksheets for cost comparisons.
- The Appendix of the Special Information Booklet contains a listing of government offices from which to obtain consumer information and literature on home purchasing and other related topics.

Good Faith Estimates (GFE) of Settlement Costs (24 C.F.R. §3500.7)

A credit union must provide, in a clear and concise form, a good faith estimate of the amount of, or range of, settlement charges the borrower is likely to pay.

1. The GFE must include all charges that will be listed in section L of the HUD-1 Settlement Statement.
2. The GFE must be provided no later than three business days after receipt of the written application.
3. The GFE may disclose either an estimate of the dollar amount or a range of dollar amounts for each settlement service.
4. The estimate of the amount or range for each charge must:
 - Bear a reasonable relationship to the borrower's ultimate cost for each settlement charge.
 - Be based upon experience in the locality in which the property involved is located.

Uniform Settlement Statement (HUD-1 or HUD-1A) (24 C.F.R. §3500.8)

The HUD-1 and HUD-1A must be completed by the person conducting the closing (settlement agent) and must conspicuously and clearly itemize all charges related to the transaction. The HUD-1 is used for transactions in which there is a borrower and seller. For transactions in which there is a borrower and no seller (refinancings and subordinate lien loans), the HUD-1 may be completed by using the borrower's side of the settlement statement. Alternatively, the HUD-1A may be used. However, no settlement statement is required for open-end home equity plans subject to the Truth in Lending Act and Regulation Z. Appendix A of 24 CFR 3500 contains the instructions for completing the forms.

The completed HUD-1 or HUD-1A must be delivered to the borrower, the seller, and the lender at or before settlement. However, the borrower may waive the right of delivery by executing a written waiver at or before settlement. The HUD-1 or HUD-1A shall be mailed or delivered as soon as practicable after settlement if the borrower or borrower's agent does not attend the settlement.

Computer Loan Originations (CLO)

A borrower that intends to pay for the service of a CLO operator should be given the computer loan origination fee disclosure. This disclosure should include the charges to be paid, the services to be rendered, and a disclosure that the fee may be avoided by contacting directly a lender or mortgage broker. (See Appendix E of the regulation for a sample CLO disclosure form.)

Affiliated Business Arrangements (24 C.F.R. §3500.15)

RESPA and Regulation X prohibit a lender from receiving kickbacks or unearned fees. 12 U.S.C. §2607, 24 C.F.R. §3500.14. If the credit union has either an affiliate relationship or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services and the credit union directly or indirectly refers business to the provider, it is a controlled business arrangement that violates RESPA and Regulation X, unless:

- The credit union discloses on a separate piece of paper either at the time of loan application or with the GFEs:
 1. The nature of the relationship (explaining the ownership and financial interest) between the provider and the credit union.
 2. The estimated charge or range of charges generally made by such provider.
- The credit union does not require the use of such a provider, with the following exceptions: the credit union may require a buyer, borrower, or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by the credit union to represent its interest.
- The credit union receives only a return on ownership or franchise interest or payment otherwise permitted by RESPA in section 3500.14(g).

Initial Escrow Account Statement (24 C.F.R. §3500.17(g))

After analyzing each escrow account, the servicer must submit an initial escrow account statement to the borrower at settlement or within 45 calendar days of settlement for escrow accounts that are established as a condition of the loan. The initial escrow account statement must include:

- The monthly mortgage payment;
- The portion going to escrow;
- Itemized estimated taxes, insurance, premiums, and other charges;
- The anticipated disbursement dates of those charges;
- The amount of the cushion; and,
- A trial running balance.

A credit union may incorporate the initial escrow statement into the HUD-1 or HUD-1A settlement statement. If not, the credit union must issue the initial escrow statement in a separate document in the format suggested in HUD Public Guidance available in accordance with 24 C.F.R. §3500.3.

Annual Escrow Account Statement

A servicer shall submit to the borrower an annual statement for each escrow account within 30 days of the completion of the computation year. The servicer must conduct an escrow account analysis before submitting an annual escrow account statement to the borrower. Annual escrow account statements must contain:

- The account history;
- Projections for the next year;
- Current mortgage payment and portion going to escrow;
- Amount of last year's mortgage payment and the portion going to escrow;
- Total amount paid into the account during the past year;
- Amount paid from the account with each charge separately identified;
- Balance at the end of the period;
- Explanation of how the surplus, shortage, or deficiency is being handled; and, if applicable; and,
- The reasons why the estimated low monthly balance was not reached.

Short-year Statements

Short-year statements will end the escrow account computation year and establish the beginning date of the new computation year. Short-year statements may be provided upon the transfer of servicing and are required upon loan payoff. The statement is due to the borrower within 60 days after receiving the pay-off funds.

Mortgage Servicing Transfer Disclosures (24 C.F.R. §3500.21)

The disclosures related to the transfer of mortgage servicing are required for first mortgage liens of federally related mortgage loans, including all refinancing transactions

of such loans. HUD has exempted from the requirements of this section any subordinate lien and has excluded all open-end lines of credit (home equity plans), whether secured by a first or subordinate lien, that are covered under the Truth in Lending Act and Regulation Z. In addition, these requirements shall not apply when the application for credit is denied within three business days after receipt of the application.

A credit union that receives an application for a federally related mortgage loan is required to disclose to the borrower at the time of application, or within three business days after its submission:

- Whether the servicing of the loan may be assigned, sold, or transferred.
- The percentages of loans (rounded to the nearest quartile (25 percent)) made by the credit union in each of the last three calendar years for which servicing has been assigned, sold or transferred or, in the alternative, a statement that the credit union has previously assigned, sold, or transferred the servicing of federally related mortgage loans.
- The best available estimate of the percentage of loans to be made by the credit union that may be assigned, sold, or transferred during the 12-month period beginning on the date of origination.
- A summary of the information that will be provided to the borrower if the loan is transferred.
- A disclosure of the duty of the credit union to:
 1. Provide a written acknowledgment of the borrower's qualified written request for information relating to the loan within 20 business days.
 2. Make corrections, if necessary, or provide a written explanation of why the account is correct, within 60 days of notice.
 3. Withhold, during the 60-day period, information about any overdue payment to a credit reporting agency.
- A written acknowledgment that the applicant has read and understood the disclosure, evidenced by the signature of the applicant.

When the servicing of a federally related mortgage loan is assigned, sold, or transferred, the transferor servicer (present servicer) must provide a disclosure not less than 15 days before the effective date of the transfer. The same notice from the transferee servicer (new servicer) must be provided not more than 15 days after the effective date of the transfer. Both notices may be combined into one notice delivered to the borrower not less than 15 days before the effective date of the transfer. The disclosure must include:

- The effective date of the transfer of servicing.
- The name, address for consumer inquiries, and toll-free or collect-call telephone number of the transferee servicer.
- A toll-free or collect-call telephone number for a person employed by the transferor servicer that can be contacted by the borrower to answer servicing questions.
- The date on which the transferor servicer will cease accepting payments relating to the loan and the date on which the transferee servicer will begin to accept such payments. These dates must either be the same or consecutive dates.
- Any information about the effect of the transfer on the availability of optional insurance and any action the borrower must take to maintain coverage.

- A statement that the transfer does not affect any other terms or conditions of the mortgage, except as related directly to servicing. During the 60-day period beginning on the date of transfer, no late fee can be imposed on a borrower who has made the payment to the wrong servicer. The following transfers are not considered an assignment, sale, or transfer of mortgage loan servicing for purposes of this requirement if there is no change in the payee, address to which payment must be delivered, account number, or amount of payment due:
- Transfers between affiliates.
- Transfers resulting from mergers or acquisitions of servicers or subservicers.
- Transfers between master servicers, when the subservicer remains the same.

Prohibition of Fees for Preparing Federal Disclosures (24 C.F.R. §3500.12)

For loans subject to RESPA, no fee may be charged for preparing the settlement statement or the escrow account statement or any disclosures required by the Truth in Lending Act.

Written Programs / Documentation

Prohibition Against Kickbacks and Unearned Fees (24 C.F.R. §3500.14)

Any person who, pursuant to any agreement or understanding, gives or receives a fee or a thing of value (including payments, commissions, fees, gifts, or special privileges) for the referral of settlement business violates RESPA. Payments in excess of the reasonable value of goods provided or services rendered are considered kickbacks.

Title Companies (24 C.F.R. §3500.16 and 12 U.S.C. §2608)

Credit unions that hold legal title to the property being sold (i.e., sellers of property) are prohibited from requiring borrowers, either directly or indirectly, to use a particular title company.

Escrow Accounts (24 C.F.R. §3500.17)

The amount of escrow funds that can be collected at settlement is restricted to an amount sufficient to pay charges, such as taxes and insurance, that are attributable to the period from the date such payments were last paid until the initial payment date. Throughout the life of an escrow account, the servicer may charge the borrower a monthly sum equal to one-twelfth of the total annual escrow payments that the servicer reasonably anticipates paying from the account. In addition, the servicer may add an amount to maintain a cushion no greater than one-sixth of the estimated total annual payments from the account.

- **Escrow Account Analysis**
Before establishing an escrow account, a servicer must conduct an analysis to determine the periodic payments and the amount to be deposited. The servicer shall

use an escrow disbursement date that is on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty. The servicer shall analyze each account anew at the completion of the computation year to determine the borrower's monthly payments for the next computation year.

- **Escrow Accounting Methods**
Servicers shall use only aggregate accounting to conduct an escrow analysis. The rule prescribes the arithmetic operations for both the aggregate analysis and the single-item accounting methods.
- **Transfer of Servicing**
If the new servicer changes the payment or accounting method, it must provide an initial escrow account statement within 60 days of the date of servicing transfer. When a new servicer provides an initial escrow account statement upon the transfer, it shall use the effective date of the transfer of servicing to establish the new escrow account computation year.
- **Shortages, Surpluses, and Deficiencies**
Servicers must analyze escrow accounts to determine whether a surplus, shortage, or deficiency exists prior to adjusting the account. Adjustments must be made according to the requirements outlined in §3500.17(f). A servicer must notify the borrower at least once during the escrow account computation year if a shortage or deficiency exists in the account.
- **Timely Payments**
The servicer shall pay escrow disbursements by the disbursement date. In calculating the disbursement date, the servicer must use a date on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty.

Servicers Must Respond to Borrower's Inquiries (24 C.F.R. §3500.21)

A credit union servicer must respond to a borrower's qualified written inquiry and take appropriate action within established time frames after receipt of the inquiry. Generally, the credit union must provide written acknowledgment within 20 business days and take certain specified actions within 60 business days of receipt of such inquiry. During the 60-business-day period following receipt of a qualified written request from a borrower relating to a disputed payment, a credit union may not provide information on any overdue payment, or relating to this period or the qualified written request, to any consumer reporting agency.

Recordkeeping

HUD-1 or HUD-1A Retention (24 C.F.R. §3500.10(e))

The credit union must retain each completed HUD-1 or HUD-1A and related documents for five years after settlement, unless the credit union disposes of its interest in the

mortgage and does not service it. If the loan is transferred, the credit union shall provide a copy of the HUD-1 or HUD-1A to the owner or servicer of the mortgage as part of the transfer. The owner or servicer shall retain the HUD-1 or HUD-1A for the remainder of the five-year period.

Kickbacks and Unearned Fees Retention (24 C.F.R. §3500.14(h))

Documents must be retained for five years from the date of execution.

Affiliated Business Arrangements Retention (24 C.F.R. §3500.15(d))

Documents must be retained for five years after the date of execution.

Servicing Disclosure Statement Retention (24 C.F.R. §3500.21(c))

The applicant's signed acknowledgment of the Servicing Disclosure Statement must be retained for five years after the date of settlement.

Record Keeping for Escrow Accounts (24 C.F.R. §3500.17(l))

Each servicer shall keep records that are easily retrievable, reflecting the servicer's handling of each borrower's escrow account. The servicer shall maintain the records for each escrow account for at least five years after the servicer last serviced the account.

Short Year Statements (24 C.F.R. §3500.17)

Each servicer shall keep records that are easily retrievable, reflecting the servicer's handling of each borrower's escrow account. The servicer shall maintain the records for each escrow account for at least five years after the servicer last serviced the account.

Enforcement / Liability

Administrative Enforcement Authority

The Department of Housing and Urban Development (HUD) is responsible for enforcing compliance for all credit unions.

Penalties and Liabilities

Escrow Accounts

A servicer's failure to submit to a borrower an initial or annual escrow account statement shall constitute a violation of RESPA. For each such violation a civil penalty of \$55 may be assessed, except that the total of the assessed penalties shall not exceed \$110,000 for any one servicer for violations that occur during any consecutive 12-month period. If the violation is due to intentional disregard, a penalty of \$110 is assessed for each failure to submit the statement, without any annual cap on liability.

Kickbacks

Civil and criminal liability is provided for violating the prohibition against kickbacks and unearned fees, including:

- Civil liability to the parties affected, equal to three times the amount of the referral fee, kickback, or unearned fee.
- The possibility that the costs associated with any court proceeding and reasonable attorney's fees could be recovered.
- A fine of no more than \$10,000 or imprisonment for no more than 1 year or both, for each violation.

Mortgage Servicing

In an action brought by an individual, failure to comply with any provision of §3500.21 will result in actual damages, attorneys fees, and additional damages (in the case of a pattern or practice of noncompliance), as the court allows, up to \$1,000. In class action suits, each borrower will receive actual and additional damages, as the court allows, up to \$1,000 for each member of the class, except that the total amount of damages in any class action may not exceed the lesser of \$500,000 or 1 percent of the net worth of the servicer.

Title Companies

Civil liability to the buyer for violating the provision that a credit union (seller) cannot require a borrower to use a particular title company is an amount equal to three times all charges made for the title insurance.

**REAL ESTATE SETTLEMENT PROCEDURES ACT
(REGULATION X)**

REVIEW CONSIDERATIONS

Review Considerations

Review Area	Requirements / Recommendations
Policy/Procedures	Adopt policy and comprehensive procedures for implementing RESPA and Regulation X, including an explanation of the coverage of the regulation, exemptions, disclosure requirements, Section 8 prohibitions, and other relevant requirements.
Coverage	<p>RESPA applies to “federally-related mortgage loans,” which includes, for example, any loan:</p> <ul style="list-style-type: none"> • Made by a lender that is regulated by, or whose deposits are insured by, the Federal government; • Secured by a first or subordinate lien on residential real property (including a refinance of such a loan); • Secured by property designed principally for occupancy of from one to four families; and • Located in a state. <p>Note: An installment sales contract, land contract or contract for deed may also constitute a federally related mortgage loan.</p> <p>Exemptions:</p> <ul style="list-style-type: none"> • Loan secured by 25 acres or more (even if it has a residential structure); • Business purpose loans (excluding loans to persons involving residential rental property); • Temporary financing such as construction loans without permanent end financing or not

	<p>involving the transfer of title to land (note exceptions);</p> <ul style="list-style-type: none"> • Bridge loans or swing loans; • Loan secured by vacant land unless a structure is constructed or placed on the property using loan proceeds; • Assumptions without lender approval; • Conversion of a federally related mortgage loan to different terms where no new note required; and • Secondary market transactions (not including “table funded” transactions).
<p>Special Information Booklet</p>	<p>Provide loan applicants with the HUD Special Information Booklet describing the nature and costs of settlement services.</p> <p>Note: If a borrower uses a mortgage broker, the mortgage broker must provide the booklet and the lender need not do so.</p> <p>In the case of open end credit plan (home equity lines of credit) subject to Regulation Z, a lender can provide brochure entitled “When Your Home is on the Line: What You Should Know About Home Equity Lines of Credit” instead of the booklet.</p> <p>No booklet required for:</p> <ol style="list-style-type: none"> 1. Refinancing transactions; 2. Closed-end subordinate lien loans; 3. Reverse mortgages; and 4. Any other mortgage loan not involving a 1-4 family residential purchase.
<p>Good Faith Estimate</p>	<p>Provide loan applicants with Good Faith Estimate (GFE) of the amount or range of charges for the specific settlement services the borrower is likely to incur in connection with the settlement. This</p>

	<p>document should be prepared in accordance with the regulatory requirements.</p> <p>If lender requires use of a particular provider of a settlement service and requires borrower to pay any portion of the costs, the GFE must provide additional information as provided in the regulation.</p> <p>Mortgage brokers and dealer loans:</p> <ul style="list-style-type: none"> • If mortgage broker is not an exclusive agent of lender, broker provides GFE and lender verifies compliance. • If broker is an exclusive agent, either lender or broker may provide GFE. • In the case of dealer loans, lender must provide GFE, either directly or by the dealer. <p>For open-end lines of credit (home equity plans) covered under Regulation Z, no GFE need be given if disclosures required by 12 C.F.R. §226.5b are provided to borrower.</p>
<p>Affiliated Business Arrangement</p>	<p>In the case of “affiliated business arrangements,” the person making the referral must provide a written disclosure to each person whose business is referred at the time of referral or the time of application (if the lender requires use of a particular provider). This disclosure must be provided on a separate sheet of paper. The disclosure is designed to (i) specify the relationship between the parties giving and receiving the referral and (ii) describe the estimated charges generally made by the provider of settlement services.</p> <p>An “affiliated business arrangement” is an arrangement in which: (1) a person who is in a position to refer settlement business has either an affiliate relationship with or an ownership interest of more than one percent in a provider of settlement services and (2) such person refers business to that provider or affirmatively influences the selection of that provider.</p>

Directing Use of Title Company	If a lender holds legal title to property being sold, the lender as seller may not directly or indirectly require the borrower to purchase title insurance from any particular title company as condition for selling the property.
HUD-1 / HUD-1A Settlement Statement	<p>A HUD-1 or HUD-1A (if no seller involved) Settlement Statement must be used in every settlement involving a federally-related mortgage loan, itemizing all charges imposed on borrower and seller by the lender. The HUD-1 or HUD-1A must be completed in accordance with the instructions set forth in Appendix A of Regulation X.</p> <p>The HUD-1 or HUD-1A is not required for open-end lines of credit (home equity plans) covered by the Truth in Lending Act and Regulation Z.</p>
Escrow Accounts	<p>When a borrower is required to make payments into an escrow account to pay taxes, insurance premiums, or other charges with respect to a federally related mortgage loan, the lender must:</p> <ul style="list-style-type: none"> • Provide an Initial Escrow Statement (may be included in HUD-1 or HUD-1A). (See §3500.17(g) and (h) for required information and format.) • Provide an Annual Escrow Statement. (See §3500.17(i) and (j) for required information and format.) • Follow limits on amounts which may be required to be paid into escrow. • Conduct escrow account analysis at closing and end of computation year to determine payments into escrow. • Shortages/Deficiencies/Surpluses <ul style="list-style-type: none"> a. If escrow analysis reveals a shortage or a deficiency, choose one of options provided in §3500.17(f). b. Notify borrower at least annually of

	<p>shortage or deficiency in the escrow account. The notice may be part of the annual escrow account statement or it may be a separate document.</p> <p>c. If escrow analysis reveals surplus, provide refund to borrower.</p> <ul style="list-style-type: none"> • Ensure that all payments from escrow accounts are made in a timely manner. • Adhere to aggregate accounting method (except “pre-rule accounts”). <p>Note that §3500.17 sets out detailed requirements for establishing and maintaining escrow accounts, including acceptable accounting methods that may be utilized.</p>
<p>Servicing Disclosure Statement</p>	<p>Provide loan applicants with a Servicing Disclosure Statement which explains the process of transferring servicing rights in the form described in §3500.21. Obtain signed acknowledgment of the applicant.</p>
<p>Servicing Transfer Notice</p>	<p>If servicing is assigned, sold or transferred, both the transferor and transferee servicers must provide either separate notices or a combined notice of the transfer to the borrower in the manner set forth in the regulation.</p> <p>An extended notice period is allowed where the transfer of servicing is preceded by:</p> <ul style="list-style-type: none"> a. Termination of the loan servicing contract for cause; b. Commencement of proceedings for bankruptcy of the servicer; or c. NCUA proceedings for conservatorship or receivership of the servicer. <p>Special provisions apply in connection with the transfer of servicing, relating to:</p> <ul style="list-style-type: none"> 1. Treatment of loan payments during transfer period;

	<p>2. Handling of borrower inquiries (if inquiry is a “qualified written request”); and</p> <p>3. Protection of credit rating.</p>
Kickbacks and Unearned Fees	<p>Ensure that the prohibition against kickbacks and unearned fees with regard to settlement services is accurately reflected in the policy statement and is adhered to by all personnel involved in the origination and/or processing federally-related mortgage loans.</p> <ul style="list-style-type: none"> • No referral fees. • No splitting charges except for actual services performed.(See §3500.14) <p>Note regulatory exemptions for:</p> <p>1. Fees, salaries, or other consideration as described in the regulation.</p> <p>2. “Affiliated Business Arrangements” (defined in Section 3 of RESPA) if three specific conditions are met:</p> <p>(i) Separate written disclosure using the format in Appendix D specifying the nature of the relationship and estimating charges for the referral;</p> <p>(ii) No requirement to use any particular provider (except that a lender may chose the attorney, credit reporting agency, and/or real estate appraiser);</p> <p>(iii) The only thing of value received other than payments for services actually rendered is a return on an ownership or franchise relationship. (See §3500.15)</p>
No Fee	<p>No fee can be charged by a lender for preparing the HUD-1 or HUD-1A Settlement Statement, escrow account statements, or required Truth-in-Lending disclosures.</p>
Record Retention	<p>Retain copy of completed HUD-1 or HUD-1A and related documents.</p> <p>Retain documents provided pursuant to §3500.14</p>

	<p>(Prohibition Against Kickbacks and unearned Fees).</p> <p>Retain documents provided pursuant to §3500.15 (Affiliated Business Arrangements).</p> <p>Retain records reflecting the handling of each borrower's escrow account.</p> <p>Retain the applicant's acknowledgment of the Servicing Disclosure Statement as part of the loan file for every settled loan.</p> <p>Although not specified in the regulation, maintenance of other notices and disclosures such as the Servicing Transfer Notice and the Good Faith Estimate is recommended.</p>
Training	<p>Provide training to employees involved in the origination or processing of federally related mortgage loans or whose duties are otherwise impacted by the requirements of RESPA and Regulation X.</p>
Updating	<p>Update policies, procedures, disclosures, and notices as necessary to reflect changes in the regulation or changes in equipment or internal operations/processes as appropriate. Ensure effective communication and distribution of updated notices and disclosures.</p>
Internal Review	<p>Conduct an internal review at least annually to assess compliance with the regulation and conformity of an institution's practices with its policies and procedures.</p>

**REAL ESTATE SETTLEMENT PROCEDURES ACT
(REGULATION X)
CHECKLIST**

- | | Yes | No |
|---|-------|-------|
| 1. Within 3 business days after receiving a written application for a Federally Related Mortgage Loan, does the credit union provide the applicant with a copy of the Special Information Booklet? [24 C.F.R. §3500.6(a)] | _____ | _____ |
| 2. Are good faith estimates of settlement costs provided to all applicable loan applicants within 3 business days following the written application? [24 C.F.R. §3500.7(a)] | _____ | _____ |
| a. Do the good faith estimates provided to an applicant bear a reasonable relationship to the charges the applicant will likely be required to pay at settlement? [24 C.F.R. §3500.7(b)] | _____ | _____ |
| b. Does the form on which the credit union provides its Good Faith Estimates include the credit union's name, and set forth in bold type substantially the statement required by 24 C.F.R. §3500.7(d)(1)? | _____ | _____ |
| c. Does the form include all charges that will be listed in Section L of the HUD 1 settlement statement? [24 C.F.R. §3500.7] | _____ | _____ |
| 3. Where the credit union requires that a particular individual, firm or company be used to provide legal services, title examination services or title insurance, or to conduct settlement, and requires the borrower to pay for any portion of the cost of such services, does the good faith estimate: | | |
| a. clearly indicate which estimated charge is to be imposed by each designated provider? [24 C.F.R. §3500.7(e)] | _____ | _____ |
| b. state the name, address and telephone number of each designated provider, the services to be rendered by each such provider, and the fact that the credit union's estimate for the services is based upon the charges of the designated provider? [24 C.F.R. §3500.7(e)(1)] | _____ | _____ |

c. state whether each designated provider has a business relationship with the credit union?

[24 C.F.R. §3500.7(e)(2)]

4. Does the credit union use and properly prepare the HUD-1 for settlements of applicable loans? [24 C.F.R. § 3500.8(a)]

a. Does the HUD-1 show itemized charges to be paid by the borrower and seller, including and/or excluding contract charges to be paid outside of settlement which were imposed by the credit union? [24 C.F.R. §3500.8(b)]

b. During the business day immediately preceding the day of settlement is the borrower permitted, upon request, to inspect the HUD-1 Or HUD-1A completed as to those items known at the time to the person who will conduct the settlement? [24 C.F.R. §3500.10(a)]

c. Unless waived or exempt, is the HUD-1 delivered or mailed to the borrower and seller or their agents at or before settlement? [24 C.F.R. §3500.10(b)]

d. Does the credit union retain a copy of the Uniform Settlement Statement for 2 years after the date of settlement? [24 C.F.R. §3500.8(c)]

5. Does the credit union refrain from charging a fee for the preparation and distribution of HUD-1 or documents required under the Truth in Lending Act? [24 C.F.R. §3500.12]

6. Does the credit union observe, both at settlement and with each monthly installment payment, the limitations placed on amounts that may be required to be deposited in an escrow account for the payment of taxes, insurance premiums or other expenses? [12 U.S.C. §2609]

7. Is the credit union aware of, and in compliance with, the prohibitions against kickbacks and unearned fees? [24 C.F.R. §3500.14]

8. Does the credit union have an affiliate relationship or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services and does the

lender directly or indirectly refer business to the provider?
[24 C.F.R. §3500.14]

a. Does the credit union disclose the nature of the relationship and estimate of charges made by such provider?

b. Does the credit union require the use of such a provider?

c. Does the credit union receives only a return or payment permitted by RESPA? [24 C.F.R. §3500.14(g)]

9. Does the credit union require borrowers to use a particular title company when the credit union holds title to the property being sold? [24 C.F.R. §3500.16]

10. Does the credit union provide the required initial escrow statement within 45 days of the establishment of the escrow account? [24 C.F.R. §3500.17(g)(1)]

a. Does the initial escrow statement include (1) the monthly mortgage payment; (2) the portion going to escrow; (3) itemized estimated taxes, insurance, premiums and other charges; (4) the anticipated disbursement dates of those charges; (5) the amount of the cushion; and (6) a trial running balance? [24 C.F.R. §3500.17(g)]

11. Does the credit union perform annual escrow account analysis and refund any surplus exceeding \$50 within 30 days of performing the analysis? [24 C.F.R. §3500.17(f)]

12. Does the credit union provide annual statements not less than once each 12-month period and not more than 30 days after the end of each 12-month period? [24 C.F.R. §3500.17(i)]

a. Does the annual escrow account statement contain (1) the account history; (2) projections for the next year; (3) current mortgage payment and portion going to escrow; (4) amount of last year's mortgage payment and the portion going to escrow; (5) total amount paid into the account during the past year; (6) amount paid from the account; (7) balance at the end of the period; (8) explanation of how the surplus, shortage, or deficiency is being handled; and, if applicable, (9) the reasons why the

estimated low monthly balance was not reached?
[24 C.F.R. §3500.17(i)]

13. Does it appear the borrowers are notified at least annually of any shortage of funds in the escrow account?
[24 C.F.R. §3500.17(f)]

14. Does the credit union pay escrow disbursements by the disbursement date? [24 C.F.R. §3500.10(b)]

15. Does the credit union provide the required transfer of servicing disclosure within 3 days after receipt of the application and is there a written acknowledgment that the applicant has read and understood the transfer of service disclosure? [24 C.F.R. §3500.21]

16. When servicing is sold, or purchased, does the credit union provide the required disclosures in a timely manner? [24 C.F.R., §3500.21(d)]

Comments _____

REAL ESTATE SETTLEMENT ACT (REGULATION X)

DEFINITIONS

Definitions (Section 3500.2)

Affiliated business arrangement

An arrangement in which:

- (A) A person who is in a position to refer business incident to or a part of a real estate settlement service involving a federally related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services; and,
- (B) Either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider.

Application

The submission of a borrower's financial information in anticipation of a credit decision, whether written or computer-generated, relating to a federally related mortgage loan. If the submission does not state or identify a specific property, the submission is an application for a pre-qualification and not an application for a federally related mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a federally related mortgage loan. Business day means a day on which the offices of the business entity are open to the public for carrying on substantially all of the entity's business functions.

Associate

One who has one or more of the following relationships with a person in a position to refer settlement business:

- (A) A spouse, parent, or child of such person;
- (B) A corporation or business entity that controls, is controlled by, or is under common control with such person;
- (C) An employer, officer, director, partner, franchisor, or franchisee of such person; or,
- (D) Anyone who has an agreement, arrangement, or understanding, with such person, the purpose or substantial effect of which is to enable the person in a position to refer settlement business to benefit financially from the referrals of such business.

Dealer

In the case of property improvement loans, a seller, contractor, or supplier of goods or services. In the case of manufactured home loans, "dealer" means one who engages in the business of manufactured home retail sales.

Dealer loan or dealer consumer credit contract

Generally, any arrangement in which a dealer assists the borrower in obtaining a federally related mortgage loan from the funding lender and then assigns the dealer's legal interests

to the funding lender and receives the net proceeds of the loan. The funding lender is the lender for the purposes of the disclosure requirements of this part. If a dealer is a "creditor" as defined under the definition of "federally related mortgage loan" in this part, the dealer is the lender for purposes of this part.

Effective date of transfer

Defined in section 6(i)(1) of RESPA (12 U.S.C. 2605(i)(1)). In the case of a home equity conversion mortgage or reverse mortgage as referenced in this section, the effective date of transfer is the transfer date agreed upon by the transferee servicer and the transferor servicer.

Federally related mortgage loan or mortgage loan

- (1) Any loan (other than temporary financing, such as a construction loan):
- (i) That is secured by a first or subordinate lien on residential real property, including a refinancing of any secured loan on residential real property upon which there is either:
 - (A) Located or, following settlement, will be constructed using proceeds of the loan, a structure or structures designed principally for occupancy of from one to four families (including individual units of condominiums and cooperatives and including any related interests, such as a share in the cooperative or right to occupancy of the unit); or,
 - (B) Located or, following settlement, will be placed using proceeds of the loan, a manufactured home; and,
 - (ii) For which one of the following paragraphs applies. The loan:
 - (A) Is made in whole or in part by any lender that is either regulated by or whose deposits or accounts are insured by any agency of the Federal Government;
 - (B) Is made in whole or in part, or is insured, guaranteed, supplemented, or assisted in any way:
 - (1) By the Secretary or any other officer or agency of the Federal Government; or,
 - (2) Under or in connection with a housing or urban development program administered by the Secretary or a housing or related program administered by any other officer or agency of the Federal Government;
 - (C) Is intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation (or its successors), or a financial institution from which the loan is to be purchased by the Federal Home Loan Mortgage Corporation (or its successors);
 - (D) Is made in whole or in part by a "creditor", as defined in section 103(f) of the Consumer Credit Protection Act (15 U.S.C. 1602(f)), that makes or invests in residential real estate loans aggregating more than \$1,000,000 per year. For purposes of this definition, the term "creditor" does not include any agency or instrumentality of any State, and the term "residential real estate loan" means any loan secured by residential real property, including single-family and multifamily residential property;

- (E) Is originated either by a dealer or, if the obligation is to be assigned to any maker of mortgage loans specified in paragraphs (1)(ii) (A) through (D) of this definition, by a mortgage broker; or,
 - (F) Is the subject of a home equity conversion mortgage, also frequently called a "reverse mortgage," issued by any maker of mortgage loans specified in paragraphs (1)(ii) (A) through (D) of this definition.
- (2) Any installment sales contract, land contract, or contract for deed on otherwise qualifying residential property is a federally related mortgage loan if the contract is funded in whole or in part by proceeds of a loan made by any maker of mortgage loans specified in paragraphs (1)(ii) (A) through (D) of this definition.
- (3) If the residential real property securing a mortgage loan is not located in a State, the loan is not a federally related mortgage loan.

Good faith estimate

An estimate, prepared in accordance with section 5 of RESPA (12 U.S.C. 2604), of charges that a borrower is likely to incur in connection with a settlement.

HUD-1 or HUD-1A settlement statement (also HUD-1 or HUD-1A)

The statement that is prescribed by the Secretary in this part for setting forth settlement charges in connection with either the purchase or the refinancing (or other subordinate lien transaction) of 1- to 4- family residential property.

Lender

The secured creditor or creditors named in the debt obligation and document creating the lien. For loans originated by a mortgage broker that closes a federally related mortgage loan in its own name in a table funding transaction, the lender is the person to whom the obligation is initially assigned at or after settlement. A lender, in connection with dealer loans, is the lender to whom the loan is assigned, unless the dealer meets the definition of creditor as defined under "federally related mortgage loan" in this section. See also Sec. 3500.5(b)(7), secondary market transactions.

Managerial employee

An employee of a settlement service provider who does not routinely deal directly with consumers, and who either hires, directs, assigns, promotes, or rewards other employees or independent contractors, or is in a position to formulate, determine, or influence the policies of the employer. Neither the term "managerial employee" nor the term "employee" includes independent contractors, but a managerial employee may hold a real estate brokerage or agency license.

Manufactured home

Defined in 24 C.F.R. §3280.2.

Mortgage broker

A person (not an employee or exclusive agent of a lender) who brings a borrower and lender together to obtain a federally related mortgage loan, and who renders services as described in the definition of "settlement services" in this section. A loan correspondent

approved under Sec. 202.8 of this title for Federal Housing Administration programs is a mortgage broker for purposes of this part.

Mortgaged property

The real property that is security for the federally related mortgage loan.

Person

Individuals, corporations, associations, partnerships, and trusts.

Public Guidance Documents

Documents that HUD has published in the Federal Register, and that it may amend from time-to-time by publication in the Federal Register. These documents are also available from HUD at the address indicated in 24 CFR 3500.3.

Refinancing

A transaction in which an existing obligation that was subject to a secured lien on residential real property is satisfied and replaced by a new obligation undertaken by the same borrower and with the same or a new lender. The following shall not be treated as a refinancing, even when the existing obligation is satisfied and replaced by a new obligation with the same lender (this definition of "refinancing" as to transactions with the same lender is similar to Regulation Z, 12 CFR 226.20(a)):

- (1) A renewal of a single payment obligation with no change in the original terms;
- (2) A reduction in the annual percentage rate as computed under the Truth in Lending Act with a corresponding change in the payment schedule;
- (3) An agreement involving a court proceeding;
- (4) A workout agreement, in which a change in the payment schedule or change in collateral requirements is agreed to as a result of the consumer's default or delinquency, unless the rate is increased or the new amount financed exceeds the unpaid balance plus earned finance charges and premiums for continuation of allowable insurance; and,
- (5) The renewal of optional insurance purchased by the consumer that is added to an existing transaction, if disclosures relating to the initial purchase were provided.

Regulation Z

The regulation issued by the Board of Governors of the Federal Reserve System (12 C.F.R. Part 226) to implement the Federal Truth in Lending Act (15 U.S.C. 1601 et seq.), and includes the Commentary on Regulation Z.

Required use

A situation in which a person must use a particular provider of a settlement service in order to have access to some distinct service or property, and the person will pay for the settlement service of the particular provider or will pay a charge attributable, in whole or in part, to the settlement service. However, the offering of a package (or combination of settlement services) or the offering of discounts or rebates to consumers for the purchase of multiple settlement services does not constitute a required use. Any package or discount must be optional to the purchaser. The discount must be a true discount below

the prices that are otherwise generally available, and must not be made up by higher costs elsewhere in the settlement process.

RESPA

The Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601 et seq.

Secretary

The Secretary of Housing and Urban Development.

Servicer

The person responsible for the servicing of a mortgage loan (including the person who makes or holds a mortgage loan if such person also services the mortgage loan). The term does not include:

- (1) The Federal Deposit Insurance Corporation (FDIC) or the Resolution Trust Corporation (RTC), in connection with assets acquired, assigned, sold, or transferred pursuant to section 13(c) of the Federal Deposit Insurance Act or as receiver or conservator of an insured depository institution; and,
- (2) The Federal National Mortgage Corporation (FNMA); the Federal Home Loan Mortgage Corporation (Freddie Mac); the RTC; the FDIC; HUD, including the Government National Mortgage Association (GNMA) and the Federal Housing Administration (FHA) (including cases in which a mortgage insured under the National Housing Act (12 U.S.C. 1701 et seq.) is assigned to HUD); the National Credit Union Administration (NCUA); the Farmers Home Administration or its successor agency under Public Law 103-354 (FmHA); and the Department of Veterans Affairs (VA), in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by termination of the contract for servicing the loan for cause, commencement of proceedings for bankruptcy of the servicer, or commencement of proceedings by the FDIC or RTC for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

Servicing

Receiving any scheduled periodic payments from a borrower pursuant to the terms of any mortgage loan, including amounts for escrow accounts under section 10 of RESPA (12 U.S.C. 2609), and making the payments to the owner of the loan or other third parties of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract. In the case of a home equity conversion mortgage or reverse mortgage as referenced in this section, servicing includes making payments to the borrower.

Settlement

The process of executing legally binding documents regarding a lien on property that is subject to a federally related mortgage loan. This process may also be called “closing” or “escrow” in different jurisdictions.

Settlement service

Any service provided in connection with a prospective or actual settlement, including, but not limited to, any one or more of the following:

- (1) Origination of a federally related mortgage loan (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of such loans);
- (2) Rendering of services by a mortgage broker (including counseling, taking of applications, obtaining verifications and appraisals, and other loan processing and origination services, and communicating with the borrower and lender);
- (3) Provision of any services related to the origination, processing or funding of a federally related mortgage loan;
- (4) Provision of title services, including title searches, title examinations, abstract preparation, insurability determinations, and the issuance of title commitments and title insurance policies;
- (5) Rendering of services by an attorney;
- (6) Preparation of documents, including notarization, delivery, and recordation;
- (7) Rendering of credit reports and appraisals;
- (8) Rendering of inspections, including inspections required by applicable law or any inspections required by the sales contract or mortgage documents prior to transfer of title;
- (9) Conducting of settlement by a settlement agent and any related services;
- (10) Provision of services involving mortgage insurance;
- (11) Provision of services involving hazard, flood, or other casualty insurance or homeowner's warranties;
- (12) Provision of services involving mortgage life, disability, or similar insurance designed to pay a mortgage loan upon disability or death of a borrower, but only if such insurance is required by the lender as a condition of the loan;
- (13) Provision of services involving real property taxes or any other assessments or charges on the real property;
- (14) Rendering of services by a real estate agent or real estate broker; and,
- (15) Provision of any other services for which a settlement service provider requires a borrower or seller to pay.

Special information booklet

The booklet prepared by the Secretary pursuant to section 5 of RESPA (12 U.S.C. 2604) to help persons understand the nature and costs of settlement services. The Secretary publishes the form of the special information booklet in the Federal Register. The Secretary may issue or approve additional booklets or alternative booklets by publication of a Notice in the Federal Register.

State

Any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

Table funding

A settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds. A table-funded transaction is not a secondary market transaction (see 24 C.F.R. §3500.5(b)(7)).

Thing of value

Includes any payment, advance, funds, loan, service, or other consideration.

Title company

Any institution, or its duly authorized agent, that is qualified to issue title insurance.

TRUTH IN LENDING ACT

(REGULATION Z)

OVERVIEW

Overview

The Truth in Lending Act is intended to ensure that credit terms are disclosed in a meaningful way so consumers can compare credit terms more readily and knowledgeably. Before its enactment, consumers were faced with a bewildering array of credit terms and rates. It was difficult to compare loans because they were seldom presented in the same format. Now, all credit unions must use the same credit terminology and expressions of rates. In addition to providing a uniform system for disclosures, the act is designed to:

- Protect consumers against inaccurate and unfair credit billing and credit card practices;
- Provide consumers with rescission rights;
- Provide for disclosure of rate caps on certain dwelling-secured variable-rate loans; and,
- Impose limitations on home equity lines of credit and certain closed-end Home mortgages.

The TILA and Regulation Z do not, however, otherwise tell credit unions how much interest they may charge or whether they must grant a consumer a loan.

Regulation Z

Regulation Z, which implements the Truth in Lending Act (TILA), generally promotes the informed use of consumer credit by requiring disclosures about its terms and cost. The disclosure rules credit unions must follow differ depending on whether the credit union is offering open-end credit, such as credit cards or home-equity lines, or closed-end credit, such as car loans or mortgages. Noncompliance with the requirements of Regulation Z can result in administrative actions, civil liability, and/or criminal liability. Administrative actions based on inaccurate (understated) disclosures of finance charges or annual percentage rates may result in a requirement that a credit union reimburse affected customers. Regulation Z is formatted into the following sections:

- Subpart A General
- Subpart B Open-end Credit
- Subpart C Closed-end Credit
- Subpart D Miscellaneous
- Subpart E Special Rules for Certain Home Mortgage Transactions
- Subpart F Electronic Communication

Subpart A – General Information [§ 226.1 through 226.4]

Subpart A of the regulation provides general information that applies to open-end and closed-end credit transactions. It sets forth definitions and stipulates which transactions are covered and which are exempt from the regulation. It also contains the rules for determining which fees are finance charges.

Open End and Closed End Credit

Subpart A defines “open-end” credit and “closed-end” credit. Open-end credit involves consumer credit extended under a plan in which: (i) repeated transactions are contemplated; (ii) a finance charge may be imposed on outstanding unpaid balances; and (iii) credit extensions are available to the extent that any outstanding balance is repaid (examples: credit card accounts, home equity lines of credit). Closed-end credit encompasses all consumer credit transactions not extended under an open-end plan (examples: residential mortgage transactions, automobile loans).

Exempt Transactions

The following transactions are exempt from Regulation Z:

- Credit extended primarily for a business, commercial, or agricultural purpose;
- Credit extended to other than a natural person;
- Credit in excess of \$25 thousand not secured by real or personal property used as the principal dwelling of the consumer;
- Public utility credit;
- Credit extended by a broker-dealer registered with the Securities and Exchange Commission (SEC) or the Commodity Futures Trading Commission (CFTC), involving securities or commodities accounts;
- Home fuel budget plans; and
- Certain student loan programs.

If a credit card is involved, generally exempt credit (e.g., business or agricultural purpose credit) is still subject to requirements that govern the issuance of credit cards and liability for their unauthorized use. As provided in Subpart B, credit cards must not be issued on an unsolicited basis and, if a credit card is lost or stolen, the cardholder must not be held liable for more than \$50 for the unauthorized use of the card.

When determining whether credit is for business purposes, the credit union must evaluate all of the following:

- Any statement obtained from the borrower describing the purpose of the proceeds.
 1. For example, a statement that the proceeds will be used for a vacation trip would indicate a consumer purpose, rather than a business purpose.

2. If the loan has a mixed-purpose (e.g., proceeds will be used to buy a car that will be used for personal and business purposes), the lender must look to the primary purpose of the loan to decide whether disclosures are necessary. A statement of purpose from the borrower will help the lender make that decision.
 3. A checked box indicating that the loan is for a business purpose, absent any documentation showing the intended use of the proceeds could be insufficient evidence that the loan had a business purpose.
- The borrower's primary occupation and how it relates to the use of the proceeds. The higher the correlation between the borrower's occupation and the property purchased from the loan proceeds, the greater the likelihood that the loan has a business purpose. For example, proceeds used to purchase dental supplies for a dentist would indicate a business purpose.
 - Personal management of the assets purchased from proceeds. The lower the degree of the borrower's personal involvement in the management of the investment or enterprise purchased by the loan proceeds, the less likely the loan will have a business purpose. For example, money borrowed to purchase stock in an automobile company by an individual who does not work for that company would indicate a personal investment and a consumer purpose.
 - The size of the transaction. The larger the size of the transaction, the more likely the loan will have a business purpose. For example, if the loan is for a \$5,000,000 real estate transaction, that might indicate a business purpose.
 - The amount of income derived from the property acquired by the loan proceeds relative to the borrower's total income. The lesser the income derived from the acquired property, the more likely the loan will have a consumer purpose. For example, if the borrower has an annual salary of \$100,000 and receives about \$500 in annual dividends from the acquired property, that would indicate a consumer purpose.

All five factors must be evaluated before the lender can conclude that disclosures are not necessary. Normally, no one factor, by itself, is sufficient reason to determine the applicability of Regulation Z. In any event, the credit union may routinely furnish disclosures to the consumer. Disclosure under such circumstances does not control whether the transaction is covered, but can assure protection to the credit union and compliance with the law. The Federal Reserve Board's official staff interpretation contains additional information on determining the purpose. 12 C.F.R. Part 226, Supplement I, Paragraph 3(a).

Finance Charge (Open-End and Closed-End Credit) Definition

The finance charge is a measure of the cost of consumer credit represented in dollars and cents. Along with APR disclosures, the disclosure of the finance charge is central to the uniform credit cost disclosure envisioned by the TILA.

Finance charges include any charges or fees payable directly or indirectly by the consumer and imposed directly or indirectly by the credit union either as an incident to or as a condition of an extension of consumer credit. The finance charge on a loan always

includes any interest charges and often other charges. The finance charge does not include any charge of a type payable in a comparable cash transaction. Examples of charges payable in a comparable cash transaction may include taxes, title, license fees, or registration fees paid in connection with an automobile purchase. Regulation Z includes examples, applicable both to open-end and closed-end credit transactions, of what must, must not, or need not be included in the disclosed finance charge [(226.4(b))].

Calculating the Finance Charge

One of the more complex tasks under Regulation Z is determining whether a charge associated with an extension of credit must be included in, or excluded from, the disclosed finance charge. The finance charge initially includes any charge that is, or will be, connected with a specific loan. Charges imposed by third parties are finance charges if the credit union requires use of a third party, even if the consumer can choose the third party; or the lender retains a portion of the third-party charge, to the extent of the portion retained. In addition, charges imposed by settlement or closing agents are finance charges if the credit union requires the specific service that gave rise to the charge and the charge is not otherwise excluded.

Prepaid Finance Charges

A prepaid finance charge is any finance charge paid separately to the credit union or to a third party, in cash or by check before or at closing, settlement, or consummation of a transaction, or withheld from the proceeds of the credit at any time. Prepaid finance charges effectively reduce the amount of funds available for the consumer's use; usually before or at the time the transaction is consummated. Examples of finance charges frequently prepaid by consumers are borrower's points, loan origination fees, real estate construction inspection fees, odd days' interest (interest attributable to part of the first payment period when that period is longer than a regular payment period), mortgage guarantee insurance fees paid to the Federal Housing Administration, private mortgage insurance (PMI) paid to such companies as the Mortgage Guaranty Insurance Company (MGIC), and, in non-real-estate transactions, credit report fees.

Precomputed Finance Charges

A precomputed finance charge includes, for example, interest added to the note amount that is computed by the add-on, discount, or simple interest methods. If reflected in the face amount of the note as part of the consumer's obligation, finance charges that are not viewed as prepaid finance charges are treated as precomputed finance charges that are earned over the life of the loan.

Subpart B-Open-end Credit [§(226.5 through 226.16)]

Open-end credit plans include credit card and overdraft checking accounts. Disclosures for open-end credit accounts differ substantially from those for closed-end credit.

Open-end credit involves a plan under which repeated extensions of credit are contemplated, often with a credit limit. Under an open-end plan the credit union may impose a finance charge on an outstanding unpaid balance. In addition, credit is generally made available as the consumers outstanding balance is repaid on the plan.

A line of credit is self-replenishing even though the plan has a fixed expiration date, as long as during the plan's existence the consumer may use the line, repay and reuse the credit. If the credit union elects to verify the credit information for security reasons, the plan is still considered open-end credit. Two basic types of disclosures are required:

- Those to be made before the first transaction on the account; and
- Those to be made on each periodic billing statement for transactions occurring during the period.

Subpart B of the regulation contains rules for disclosures for home-equity loans, credit and charge card accounts, and other open-end credit. Subpart B also covers rules for resolving billing errors, calculating annual percentage rates, credit balances, and advertising open-end credit. Special rules apply to credit card transactions only, such as certain prohibitions on the issuance of credit cards and restrictions on the right to offset a cardholder's indebtedness. Additional special rules apply to home-equity lines of credit, such as certain prohibitions against closing accounts or changing account terms.

Finance Charge (Open-End Credit)

Each finance charge imposed must be individually itemized. The aggregate total amount of the finance charge need not be disclosed. Some of the more important disclosure requirements under 226.6 follow.

Required Initial Disclosures: Disclosures must be reasonably understandable and readily noticeable.

- Finance charge;
- Periodic rate(s);
- Annual Percentage Rate(s) corresponding to disclosed periodic rate(s);
- Statement of billing rights;
- Charges (other than finance charges), or explanation of how the charge is determined;
- If a security interest has been or will be taken in property purchased under the plan, or in other property identified by item or type.

Initial disclosures must also disclose when and how a finance charge will be imposed, including:

- When finance charges begin to accrue.
- Whether there is any grace period for repayment without incurring a finance charge.
- Disclosure of each periodic rate used to compute the finance charge (there may be different rates for purchases versus cash advances). When different rates apply, the type of the transaction pertaining to each rate must be identified.
- The method used to determine the balance on which the finance charge will be computed.

- The method used to calculate the finance charge.

Finance Charge Resulting from Two or More Periodic Rates

Some credit unions use more than one periodic rate in computing the finance charge. For example, one rate may apply to balances up to a certain amount and another rate to balances more than that amount. If two or more periodic rates apply, the credit union must disclose all rates and conditions. The range of balances to which each rate applies also must be disclosed. It is not necessary, however, to break the finance charge into separate components based on the different rates.

Annual Percentage Rate

The APR is a measure of the cost of credit, expressed as a nominal yearly rate. It relates the amount and timing of value received by the consumer to the amount and timing of payments made. The disclosure of the APR is central to the uniform credit cost disclosure envisioned by the TILA.

Credit costs may vary depending on the interest rate, the amount of the loan and other charges, the timing and amounts of advances, and the repayment schedule. The APR, which must be disclosed in nearly all consumer credit transactions, is designed to take into account all relevant factors and to provide a uniform measure for comparing the cost of various credit transactions.

The APR is often considered to be the finance charge expressed as a percentage. However, two loans could require the same finance charge and still have different APRs because of differing values of the amount financed or of payment schedules. For example, the APR is 12 percent on a loan with an amount financed of \$5,000 and 36 equal monthly payments of \$166.07 each. It is 13.26 percent on a loan with an amount financed of \$4,500 and 35 equal monthly payments of \$152.18 each and final payment of \$152.22. In both cases the finance charge is \$978.52. The APRs on these example loans are not the same because an APR does not only reflect the finance charge. It relates the amount and timing of value received by the consumer to the amount and timing of payments made. The APR is a function of:

- The amount financed, which is not necessarily equivalent to the loan amount. If the consumer must pay at closing a separate 1 percent loan origination fee (prepaid finance charge) on a \$100,000 residential mortgage loan, the loan amount is \$100,000, but the amount financed would be \$100,000 less the \$1,000 loan fee, or \$99,000.
- The finance charge, which is not necessarily equivalent to the total interest amount.
 1. If the consumer must pay a \$25 credit report fee for an auto loan, the fee must be included in the finance charge. The finance charge in that case is the sum of the interest on the loan (i.e., interest generated by the application of a percentage rate against the loan amount) plus the \$25 credit report fee.

2. If the consumer must pay a \$25 credit report fee for a home improvement loan secured by real property, the credit report fee must be excluded from the finance charge. The finance charge in that case would be only the interest on the loan.
 3. Interest, which is defined by state or other federal law, is not defined by Regulation Z.
- The payment schedule, which does not necessarily include only principal and interest (P + I) payments. If the consumer borrows \$2,500 for a vacation trip at 14 percent simple interest per annum and repays that amount with 25 equal monthly payments beginning one month from consummation of the transaction, the monthly P + I payment will be \$115.87, if all months are considered equal, and the amount financed would be \$2,500. If the consumer's payments are increased by \$2.00 a month to pay a non-financed \$50 loan fee during the life of the loan, the amount financed would remain at \$2,500 but the payment schedule would be increased to \$117.87 a month, the finance charge would increase by \$50, and there would be a corresponding increase in the APR. This would be the case whether or not state law defines the \$50 loan fee as interest.

Annual Percentage Rate (Open-End Credit) Accuracy Tolerance

The disclosed annual percentage rate (APR) on an open-end credit account is accurate if it is within one-eighth of 1 percentage point of the APR calculated under Regulation Z, §226.14.

Determination of APR

The regulation states two basic methods for determining the APR in open-end credit transactions. The first involves multiplying each periodic rate by the number of periods in a year. This method is used for disclosing:

- The corresponding APR in the initial disclosures;
- The corresponding APR on periodic statements;
- The APR in early disclosures for credit card accounts;
- The APR in early disclosures for home-equity plans;
- The APR in advertising; and
- The APR in oral disclosures.

The corresponding APR is prospective. In other words, it does not involve any particular finance charge or periodic balance. The second method is the "quotient" method used in computing the APR for periodic statements. [(226.14(c)(2)] This method refers to a composite APR when different periodic rates apply to different balances. This rate will differ from the corresponding APR if the credit union applies minimum, fixed, or transaction charges to the account during the cycle. If the finance charge is determined by applying one or more periodic rates to a balance, and does not include any of the charges just mentioned, the credit union may compute the APR using the quotient method.

Alternatively, the credit union may use the method of multiplying each periodic rate by the number of periods in the year for computing the corresponding APR. If the finance charge includes a minimum, fixed, or transaction charge, the credit union must use the appropriate variation of the quotient method.

The regulation also contains a computation rule for small finance charges. If the finance charge includes a minimum, fixed, or transaction charge, and the total finance charge for the cycle does not exceed 50 cents, the credit union may multiply each applicable periodic rate by the number of periods in a year to compute the APR. Optional calculation methods also are provided for accounts involving daily periodic rates. [(226.14(d))]

Subpart C—Closed-end Credit [§s 226.17 through 226.24]

Subpart C includes provisions for closed-end credit. Closed-end credit plans include direct installment loans by financial institutions, purchased dealer paper, single payment (time) loans, mortgage loans, demand loans or any other credit arrangement that does not fall within the definition of open-end credit. Subpart C also contains disclosure rules for regular and variable rate loans, refinancings and assumptions, credit balances, calculating annual percentage rates, and advertising closed-end credit.

Finance Charge (Closed-End Credit)

The aggregate total amount of the finance charge must be disclosed. Each finance charge imposed need not be individually itemized and must not be itemized with the segregated disclosures.

Construction Loans

Construction and certain other multiple advance loans pose special problems in computing the finance charge and APR. In many instances, the amount and dates of advances are not predictable with certainty since they depend on the progress of the work. Regulation Z provides that the APR and finance charge for such loans may be estimated for disclosure. Additional guidance for construction loans can be found within the regulation and staff commentary.

Annual Percentage Rate Accuracy Tolerance (Closed-End Credit)

Whichever method is used by the credit union, the rate calculated will be accurate if it is able to “amortize” the amount financed while it generates the finance charge under the accrual method selected. Credit unions also may rely on minor irregularities and accuracy tolerances in the regulation, both of which effectively permit somewhat imprecise, but still legal, APRs to be disclosed

The disclosed APR on a closed-end transaction is accurate for:

- Regular transactions (which include any single advance transaction with equal payments and equal payment periods, or an irregular first payment period and/or a

first or last irregular payment), if it is within one-eighth of 1 percentage point of the APR calculated under Regulation Z §226.22(a)(2).

- Irregular transactions (which include multiple advance transactions and other transactions not considered regular), if it is within one-quarter of 1 percentage point of the APR calculated under Regulation Z §226.22(a)(3).

Regulation Z provides finance charge tolerances for legal accuracy that should not be confused with those provided in the TILA for reimbursement under regulatory agency orders. As with disclosed APRs, if a disclosed finance charge is legally accurate, it would not be subject to reimbursement. Under Regulation Z, finance charge disclosures for open-end credit must be accurate. However, since closed-end credit transactions occur in many forms and may have numerous complexities, Regulation Z permits various finance charge accuracy tolerances for closed-end credit. Tolerances for the finance charge and other disclosures affected by any finance charge are generally \$5 if the amount financed is less than or equal to \$1,000 and \$10 if the amount financed exceeds \$1,000. For certain transactions consummated on or after September 30, 1995, those tolerances are superseded.

- Credit secured by real property or a dwelling (closed-end credit only):
 1. The disclosed finance charge is considered accurate if it does not vary from the actual finance charge by more than \$100.
 2. Overstatements are not violations.
- Rescission rights after the three-business-day rescission period (closed end credit only):
 1. The disclosed finance charge is considered accurate if it does not vary from the actual finance charge by more than one-half of 1 percent of the credit extended.
 2. The disclosed finance charge is considered accurate if it does not vary from the actual finance charge by more than 1 percent of the credit extended for the initial and subsequent refinancings of residential mortgage transactions when the new loan is made at a different credit union. NOTE: This excludes high cost mortgage loans subject to 12 CFR 226.32, transactions in which there are new advances, and new consolidations.

Rescission rights in foreclosure: The disclosed finance charge is considered accurate if it does not vary from the actual finance charge by more than \$35. Overstatements are not considered violations. NOTE: Normally, the finance charge tolerance for a rescindable transaction is either 0.5 percent of the credit transaction or, for certain refinancings, 1 percent of the credit transaction. However, in the event of a foreclosure, the consumer may exercise the right of rescission if the disclosed finance charge is understated by more than \$35.

Special Requirements

Proper calculation of the finance charge and APR are of primary importance. The regulation requires that the terms “finance charge” and “annual percentage rate” be disclosed more conspicuously than any other required disclosure. The finance charge and

APR, more than any other disclosures, enable consumers to understand the cost of the credit and to comparison shop for credit. A credit union's failure to disclose those values accurately can result in significant monetary damages to the credit union, either from a class action law suit or from a regulatory agency's order to reimburse consumers for violations of law. If an annual percentage rate or finance charge is disclosed incorrectly, the error is not, in itself, a violation of the regulation if:

- The error resulted from a corresponding error in a calculation tool used in good faith by the credit union.
- Upon discovery of the error, the credit union promptly discontinues use of that calculation tool for disclosure purposes.
- The credit union notifies the Federal Reserve Board in writing of the error in the calculation tool.

When a credit union claims a calculation tool was used in good faith, the credit union assumes a reasonable degree of responsibility for ensuring that the tool in question provides the accuracy required by the regulation. For example, the credit union might verify the results obtained using the tool by comparing those results to the figures obtained by using another calculation tool. The credit union might also verify that the tool, if it is designed to operate under the actuarial method, produces figures similar to those provided by the examples in appendix J to the regulation. The calculation tool should be checked for accuracy before it is first used and periodically thereafter.

Calculating the Annual Percentage Rate

The APR must be determined under one of the following:

- The actuarial method, which is defined by Regulation Z and explained in appendix J.
- The Federal Reserve's Regulation Z Annual Percentage Rate Tables 226.22(b).
- The accrual method, U.S. Rule.

Variable Rate Information

If the terms of the legal obligation allow the credit union, after consummation of the transaction, to increase the APR, the credit union must furnish the consumer with certain information on variable rates. Graduated payment mortgages and step-rate transactions without a variable rate feature are not considered variable rate transactions. In addition, variable rate disclosures are not applicable to rate increases resulting from delinquency, default, assumption, acceleration, or transfer of the collateral. Some of the more important variable rate disclosure requirements under 226.19(b) follow.

- Booklet titled "Consumer Handbook on Adjustable Rate Mortgages" or suitable substitute (when secured by principal residence).
- The fact that the interest rate, payment, or term of the loan can change.

- The index or formula used in making adjustments and the source of information about the index or formula.
- How the interest rate and payment will be determined, including how the index is adjusted (such as by addition of a margin).
- A statement that the consumer should ask about the current margin and interest rate, or that the interest rate is discounted and the amount of discount.
- The frequency of interest rate and payment changes.
- Any rules relating to changes in index, interest rate, payment amount, and outstanding loan balance, including for example, an explanation of interest rate or payment limitations, negative amortization, and interest rate carryover.
- A 15-year historical example, using the most recent 15 years, based on a \$10,000 loan, illustrating how payments and loan balance would have been affected by interest rate changes implemented according to the terms of the loan program. All significant loan program terms will be considered in the example.
- How the consumer may calculate the payments for the loan amount to be borrowed based on the most recent payment shown in the historical example.
- Maximum interest rate and payment for a \$10,000 loan originated at the most recent interest rate shown in the historical example, assuming maximum periodic increases in rates and payments under the program; and the initial interest rate and payment for the loan.
- That the loan program contains a demand feature.
- The type of information provided in adjustment notices, and timing of the notices.
- A statement that the disclosure forms are available for the creditor's other variable-rate loan programs.

Amount Financed- Definition

The amount financed is the net amount of credit extended for the consumer's use. It should not be assumed that the amount financed under the regulation is equivalent to the note amount, proceeds, or principal amount of the loan. The amount financed normally equals the total of payments less the finance charge. To calculate the amount financed, all amounts and charges connected with the transaction, either paid separately or included in the note amount, must first be identified. Any prepaid, precomputed, or other finance charge must then be determined.

The amount financed must not include any finance charges. If finance charges have been included in the obligation (either prepaid or precomputed), they must be subtracted from the face amount of the obligation when determining the amount financed. The resulting value must be reduced further by an amount equal to any prepaid finance charge paid separately. The final resulting value is the amount financed. When calculating the amount financed, finance charges (whether in the note amount or paid separately) should not be subtracted more than once from the total amount of an obligation. Charges not in the note amount and not included in the finance charge (e.g., an appraisal fee paid separately in cash on a real estate loan) are not required to be disclosed under Regulation Z and must not be included in the amount financed.

Required Deposit

A required deposit, with certain exceptions, is one which the credit union requires the consumer to maintain as a condition of the specific credit transaction. It can include a compensating balance or a deposit balance that secures the loan. The effect of a required deposit is not reflected in the APR. Also, a required deposit is not a finance charge since it is eventually released to the consumer. A deposit that earns at least 5 percent per year need not be considered a required deposit.

Refinancings

Generally, when an obligation is satisfied and replaced by a new obligation undertaken by the same consumer, it must be treated as a refinancing for which a complete set of new disclosures must be furnished. A refinancing may involve the consolidation of several existing obligations, disbursement of new money to the consumer, or the rescheduling of payments under an existing obligation. In any form, the new obligation must completely replace the earlier one to be considered a refinancing under the regulation. The finance charge on the new disclosure must include any unearned portion of the old finance charge that is not credited to the existing obligation, §226.20(a). The following transactions are not considered refinancings even if the existing obligation is satisfied and replaced by a new obligation undertaken by the same consumer:

- A renewal of an obligation with a single payment of principal and interest or with periodic interest payments and a final payment of principal with no change in the original terms.
- An APR reduction with a corresponding change in the payment schedule.
- An agreement involving a court proceeding.
- Changes in credit terms arising from the consumer's default or delinquency.
- The renewal of optional insurance purchased by the consumer and added to an existing transaction, if required disclosures were provided for the initial purchase of the insurance.

However, even if it is not accomplished by the cancellation of the old obligation and substitution of a new one, a new transaction subject to new disclosures results if the credit union:

- Increases the rate based on a variable rate feature that was not previously disclosed;
or
- Adds a variable rate feature to the obligation.

Subpart D Miscellaneous [§s 226.25 through 226.30]

Subpart D applies to both open-end and closed-end credit. It sets forth the duty of credit unions to retain evidence of compliance with the regulation. It also clarifies the relationship between the regulation and state law and requires credit unions to set and disclose a cap for variable rate transactions secured by a consumer's dwelling.

Use of Annual Percentage Rate in Oral Disclosures. [§226.26]

- (a) Open-end credit. In an oral response to a consumer's inquiry about the cost of open-end credit, only the annual percentage rate or rates shall be stated, except that the periodic rate or rates also may be stated. If the annual percentage rate cannot be determined in advance because there are finance charges other than a periodic rate, the corresponding annual percentage rate shall be stated, and other cost information may be given.
- (b) Closed-end credit. In an oral response to a consumer's inquiry about the cost of closed-end credit, only the annual percentage rate shall be stated, except that a simple annual rate or periodic rate also may be stated if it is applied to an unpaid balance. If the annual percentage rate cannot be determined in advance, the annual percentage rate for a sample transaction shall be stated, and other cost information for the consumer's specific transaction may be given.

Relationship to State Law

State law provisions are preempted to the extent that they contradict the requirements in the following chapters of the TILA and the implementing sections of Regulation Z:

- Chapter 1, "General Provisions," which contains definitions and acceptable methods for determining finance charges and annual percentage rates. For example, a state law would be preempted if it required a credit union to include in the finance charge any fees that the federal law excludes, such as seller's points.
- Chapter 2, "Credit Transactions," which contains disclosure requirements, rescission rights, and certain credit card provisions. For example, a state law would be preempted if it required a credit union to use the terms "nominal annual interest rate" in lieu of "annual percentage rate."
- Chapter 3, "Credit Advertising," which contains consumer credit advertising rules and annual percentage rate oral disclosure requirements.

Conversely, state law provisions may be appropriate and are not preempted under federal law if they call for, without contradicting chapters 1, 2, or 3 of the TILA or the implementing §§ of Regulation Z, either of the following:

- Disclosure of information not otherwise required. A state law that requires disclosure of the minimum periodic payment for open-end credit, for example, would not be preempted because it does not contradict federal law.
- Disclosures more detailed than those required. A state law that requires itemization of the amount financed, for example, would not be preempted, unless it contradicts federal law by requiring the itemization to appear with the disclosure of the amount financed in the segregated closed-end credit disclosures.

Limitation on rates [§226.30]

A credit union shall include in any consumer credit contract secured by a dwelling and subject to the act and this regulation the maximum interest rate that may be imposed during the term of the obligation when:

- In the case of closed-end credit, the annual percentage rate may increase after consummation, or
- In the case of open-end credit, the annual percentage rate may increase during the plan.

Subpart E --Special Rules for Certain Home Mortgage Transactions [§s 226.31 through 226.33]

Subpart E includes disclosure and other requirements for home mortgage transactions having rates or fees above a certain percentage or amount (closed-end credit only) and disclosure requirements for reverse mortgage transactions (open-end and closed-end credit).

Subpart F –Electronic Communication [§ 226.36]

Subpart F allows creditors to deliver disclosures electronically if they obtain borrowers' consent in accordance with the Electronic Signatures in Global and National Commerce Act (E-Sign Act). In addition, the regulation allows creditors to provide disclosures in foreign languages. It does not affect any requirement imposed under this part other than a requirement that disclosures be in a paper form, and it does not affect the content or timing of disclosures. Electronic disclosures are subject to the regulation's format, timing and retainability rules and the clear and conspicuous standard.

Clear and conspicuous standard

A creditor must provide electronic disclosures using a clear and conspicuous format. Also in accordance with the E-Sign Act the creditor must:

- The credit must disclose the requirements for accessing and retaining disclosures in that format;
- The borrower must demonstrate the ability to access the information electronically and consent to electronic delivery.
- The creditor must provide the disclosures in accordance with the specified requirements.

Timing and effective delivery when a borrower becomes obligated on-line

When a creditor permits the borrower to consummate a closed-end transaction on-line, the borrower must be required to access the disclosures required under § 226.18 before becoming obligated. A link to the disclosures satisfies the timing rule if the borrower

cannot bypass the disclosures prior to becoming obligated. Or the creditor may use the option to automatically display the disclosures on the screen. The creditor is not required to confirm that the borrower has read the disclosures.

For disclosures that are not required to be separated and may be combined into the text of another document, the creditor may satisfy the requirement to provide the disclosures if the document appears automatically or via a nonbypassable link.

Timing and effective delivery for disclosures provided periodically

Disclosures provided by e-mail are timely based on when the disclosures are sent. Disclosures posted at an Internet web site such as periodic statements, or change-in-terms and other notices are timely when the creditor has made both disclosures available and sent a notice alerting the borrower that the disclosures are posted. For example, under § 226.9, creditors offering open-end plans must provide a change-in-terms notice to borrowers at least 15 days in advance of certain changes. For a change-in-terms notice posted on the Internet, a creditor must post both the notice and notify borrowers to its availability at least 15 days in advance of the change.

Retainability of disclosures

Creditors satisfy the requirement that disclosures be in a form that the borrower may keep if electronic disclosures are delivered in a format that is capable of being retained by printing or storing electronically. The format must also be consistent with the information required to be provided under section 101 (c)(1)(C)(i) of the E-Sign Act (15 U.S.C. 7001 (c)(1)(C)(i)) about the hardware and software requirements for accessing and retaining electronic disclosures.

Disclosures provided on creditor's equipment

A creditor that controls the equipment providing electronic disclosures to borrowers (for example, a computer terminal in the creditor's lobby) must ensure that the equipment satisfies the regulation's requirements to provide timely disclosures in a clear and conspicuous format and in a form that the borrower may keep.

Electronic address

A borrower's electronic address is an e-mail address that is not limited to receiving communications transmitted solely by the creditor.

Identifying accounts

A creditor may identify a specific account in a variety of ways and is not required to identify an account by reference to the account number.

90 day rule

The actual disclosures provided to a borrower must be available for at least 90 days, but the creditor has discretion to determine whether they should be available at the same location for the entire period.

E-mail returned as undeliverable

If an e-mail to the borrower (containing an alert notice or other disclosure) is returned undeliverable, the redelivery requirement is satisfied if the creditor sends the disclosure to a different e-mail address or postal address that the creditor has on file for the borrower. Sending the disclosures a second time to the same electronic address is not sufficient if the creditor has a different address on file.

Associated Risks

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with Regulation Z;
- Transaction risk can occur when the credit union does not have adequate internal controls in place and as a result suffers a loss;
- Reputation risk can occur when the credit union incurs fines and penalties or receives decreased member confidence as a result of failure to comply with Regulation Z; and
- Strategic risk occurs when the board of directors fails to perform necessary due diligence in reviewing existing and prospective products and services for compliance.

Additional Information

Refer to the Home Ownership and Equity Protection Act (HOEPA) for additional requirements on certain real estate transactions. Additional information is available on the Federal Reserve Board's website at <http://www.federalreserve.gov/>.

TRUTH IN LENDING ACT (REGULATION Z)

OPERATIONAL REQUIREMENTS

Disclosures / Notices

Open-end Disclosures / Notices

Early Disclosures: Credit Card Applications and Solicitations [§ 226.5a]

The credit union must disclose the items listed under § 226.5a(b) on or with a solicitation or an application to open a credit or charge card account. Most of the disclosed items must be provided in a prominent location in the form of a table with headings, content, and format substantially similar to any of the applicable tables found at Appendix G of the regulation. The other disclosures must be provided either in the table or clearly and conspicuously elsewhere on or with the application or solicitation. Note special rules for disclosures in connection with:

- Direct-mail and electronic applications and solicitations § 226.5a(c)
- Telephone applications and solicitations § 226.5a(d)
- Applications and solicitations made available to the general public § 226.5a(e)

Early Disclosures: Home-Equity Plan Applications [§ 226.5b]

The credit union must provide:

- The disclosures set forth in § 226.5b(d) (grouped together and segregated from all unrelated information), and
- The home equity brochure referenced in § 226.5b(e) in connection with applications for open-end credit plans secured by the consumer's dwelling.

The disclosures and brochure must be provided at the time the application is furnished to the consumer, or no later than three business days after receiving a telephone application, an application from a magazine or other publication, or an application through an intermediary agent or broker.

Initial Disclosure Statement [§ 226.5(b)(1) and 226.6]

The credit union must provide the initial disclosure statement containing the items described in § 226.6 before the first transaction is made under the open-end credit plan.

Periodic Statement [§s 226.5(b)(2) and 226.7]

In connection with open-end credit transactions, the credit union must mail or deliver a periodic statement for each billing cycle ending with a debit or credit balance of more than \$1 or on which a finance charge has been imposed. The periodic statement must be delivered at least 14 days prior to the date by which or the time period within which the new balance (or any portion thereof) must be paid to avoid additional finance charges.

The periodic statement must include the items specified in § 226.7, to the extent applicable.

Disclosures: Supplemental Credit Devices and Additional Features [§ 226.9(b)]

If a credit union adds a credit feature or furnishes a credit device on the same finance charge terms after 30 days following delivery of the initial disclosure statement, the credit union must disclose that it is for use in obtaining credit under the terms previously disclosed before the consumer uses the feature or device for the first time. If a credit feature is added or a credit device furnished, and the finance charge terms for the feature or device differ from the previously disclosed, the credit union must provide the applicable disclosures from § 226.6(a) before the consumer uses the new feature or device.

Change in Terms Notice [§ 226.9(c)(1) and (2)]

The credit union must provide a 15 day advance written notice to each consumer affected by a change in any term disclosed in the initial disclosure statement or an increase in the required minimum periodic payment. No notice is required in the case of late-payment charges, over-the-limit charges, consumer default or delinquency, or any other related occurrences detailed in § 226.9(c)(2).

Notice for Home-Equity Plans [§ 226.9(c)(3)]

If a credit union prohibits additional extensions of credit or reduces the credit limit applicable to a home-equity plan (based on § 226.5b(f)(3)(i) or (vi)), written notice of the action must be mailed or delivered to each affected consumer not later than three business days after the action is taken. The notice must contain specific reasons for the action, and if reinstatement of credit privileges must be requested by the consumer, the notice must state that fact.

Disclosures upon Renewal of Credit Card [§ 226.9(e)]

A card issuer that imposes any annual or other periodic fee for the renewal of a credit card account (including fees based on account activity or inactivity) must mail or deliver written notice of the renewal to the cardholder, containing the information and provided within time frame set forth in § 226.9(e).

Change in Credit Card Account Insurance Provider [§ 226.9(f)]

A card issuer must mail or deliver written notice of any intended change in the provider of insurance for repayment of all or part of the outstanding balance of an open-end credit card account not less than 30 days before the change occurs. The notice must include the items specified in § 226.9(f)(1), as applicable. The card issuer must also provide written notice after the change, including certain additional information specified in § 226.9(f)(2), as applicable. A combined notice may be provided if mailed or delivered not less than 30 days before the change.

Liability of Cardholder for Unauthorized Use [§ 226.12(b)]

A cardholder may not be held liability for unauthorized use of a credit card unless the card issuer has provided “adequate notice” of (1) the cardholder’s maximum potential

liability and (2) the means by which the card issuer may be notified of loss or theft of the card. The notice must state that the cardholder's liability will not exceed \$50 (or a lesser amount) and that the cardholder may give oral or written notification. It must also describe a means of notification, such as a telephone number, an address, or both. "Adequate notice" means a printed notice that clearly lays out the pertinent facts so that the cardholder may reasonably be expected to have noticed it and understood its meaning. It may be given by any means reasonably assuring receipt by the cardholder.

Notification to Card Issuer Regarding Unauthorized Use [§ 226.12(b)(3)]

A cardholder is considered to have furnished notification to a card issuer when reasonable steps have been taken to provide the card issuer with the pertinent information about the loss, theft, or possible unauthorized use of a credit card. Notification may be given in person, by telephone, or in writing.

Billing Error Notice [§ 226.13(b)]

A consumer may assert that the occurrence of a "billing error" (see § 226.13(a) for specific definition) by providing a written notice that (1) is received by the credit union within 60 days after transmission of the periodic statement reflecting the error; (2) enables the credit union to identify the consumer's name and account number; and (3) indicates the perceived reasons that an error exists and the type, date and amount of the error.

Credit union Response to Billing Error Investigation [§ 226.13(c), (e), (f), and (g)]

The credit union must provide, within the required time periods, the appropriate notification(s) to the consumer in response to a billing error notice following a reasonable investigation. The type of notice(s) to be delivered depends upon whether the credit union determines that a billing error has occurred as asserted or whether a different billing error or no billing error has occurred.

Notice of Right to Rescind [§ 226.15]

In any transaction subject to rescission, the credit union must deliver two copies of the notice of the right to rescind to each consumer entitled to rescind which contains the information and is in the format specified in § 226.15(b).

Notice of Exercise of Right of Rescission [§ 226.15(a)]

To exercise the right to rescind, the consumer must notify the credit union of the rescission by mail, telegram, or other means of written communication within the specified time period.

Consumer's Waiver of Right to Rescind [§ 226.15(e)]

The consumer may modify or waive the right to rescind if the consumer determines that the credit extension is needed to meet a bona fide personal emergency. To modify or waive the right to rescind, the consumer must take the following action: provide the credit union a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signatures of all the consumers entitled to rescind.

Use of Annual Percentage Rate in Oral Disclosure [§ 226.26(a)]

In response to a consumer's inquiry about the cost of open-end credit, the credit union is allowed to state only the annual percentage rate(s), except that the periodic rate(s) also may be stated.

Closed-End Credit Disclosures [§s 226.17 and 18]

Prior to the consummation of a closed-end credit transaction, the credit union must provide the disclosures required by § 226.18 in a clear and conspicuous written form that the consumer may keep. The disclosures must be grouped together and may not contain any unrelated information.

Early Good Faith Estimates of Disclosures [§ 226.19(a)]

In a residential mortgage transaction subject to RESPA, the credit union must make good faith estimates of the disclosures required by § 226.18 prior to consummation or must mail or deliver them not later than three business days after receipt of the consumer's written application, whichever is earlier. Redislosure is required at the time of consummation under certain circumstances described in paragraph (a)(2).

Disclosures for Certain Variable Rate Transactions [§ 226.19(b)]

If the APR may increase after consummation of a transaction secured by the consumer's principal dwelling with a term greater than one year, the credit union must provide, at the time of application or before the consumer pays a nonrefundable fee (whichever is earlier), the following information detailed in § 226.19(b): (1) the Consumer Handbook on Adjustable Rate Mortgages and (2) a loan program disclosure for each variable-rate program of interest to the consumer containing the information described in § 226.19(b)(2).

Disclosures for Refinancings [§ 226.20(a)]

New disclosures must be provided to a consumer in connection with any "refinancing." A refinancing occurs when an existing obligation previously subject to Subpart C of Regulation Z is satisfied and replaced by a new obligation undertaken by the same consumer.

Disclosures for Assumptions [§ 226.20(b)]

Prior to the occurrence of an "assumption," the credit union must make new disclosures to the subsequent consumer, based on the remaining obligation. An "assumption" occurs when a credit union expressly agrees in writing with a subsequent consumer to accept that consumer as a primary obligor on an existing residential mortgage transaction.

Notice of Right to Rescind [§ 226.23]

In a transaction subject to rescission, the credit union must deliver two copies of the notice of the right to rescind to each consumer entitled to rescind which contains the information and is in the format specified in § 226.23(b).

Notice of Exercise of Right of Rescission [§ 226.23(a)]

To exercise the right to rescind, the consumer must notify the credit union of the rescission by mail, telegram, or other means of written communication within the specified time period.

Consumer's Waiver of Right to Rescind [§ 226.23(e)]

The consumer may modify or waive the right to rescind if the consumer determines that the credit extension is needed to meet a bona fide personal emergency by taking the following action: provide the credit union a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signature of all the consumers entitled to rescind.

Use of Annual Percentage Rate in Oral Disclosure [§ 226.26(b)]

In response to a consumer's inquiry about the cost of closed-end credit, the credit union is allowed to state only the annual percentage rate, except that a simple annual rate or periodic rate may also be stated if it is applied to an unpaid balance.

Spanish language disclosures. [§ 226.27]

Disclosures required by Regulation Z may be made in a language other than English, provided that the disclosures are made available in English upon the consumer's request. This requirement for providing English disclosures on request shall not apply to advertisements subject to § 226.16 and 226.24 of Regulation Z. Also, if a creditor in Puerto Rico provides initial disclosures in Spanish, subsequent disclosures need not be in Spanish. For example, periodic statements and change-in-terms notices may be made in English.

Disclosures for Certain Closed-End and Reverse Mortgages [§ 226.31, 32 and 33]

Special disclosure requirements apply in the case of (i) certain closed-end home mortgages (where the APR or total points and fees payable by the consumer exceed a prescribed amount) as described in § 226.32 and (ii) reverse mortgages as defined in § 226.33. The content of the disclosures for these two types of mortgages is defined in §§ 226.32 and 226.33, respectively, and the form, timing and other aspects of these disclosures are described in § 226.31.

The appendices to the regulation set forth model forms and clauses that credit unions may use when providing open-end and closed-end disclosures. The appendices also contain detailed rules for calculating the APR for open-end credit (appendix F) and closed-end credit (appendixes D and J). Official staff interpretations of the regulation are published in a commentary that is normally updated annually in March. Good faith compliance with the commentary protects credit unions from civil liability under the act. It is difficult to comply with Regulation Z without reference to and reliance on the commentary.

Written Programs / Documentation

Procedures for Employee Training and Compliance

A credit union must establish and maintain procedures to ensure its compliance with the regulation. It must also provide a statement of applicable portions of the procedures to

employees who perform tasks subject to the requirements of the regulation.

Recordkeeping

Record Retention [§226.25]

The credit union is required to retain evidence of compliance with the regulation (other than the advertising requirements of [§s 226.16 and 226.24]) for two years after the date the disclosures are required to be made or action is required to be taken. The record retention period may be extended in the event that enforcement proceedings are initiated against the institution.

Advertising [§ (226.24)]

(a) Actually available terms. If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the credit union.

(b) Advertisement of rate of finance charge. If an advertisement states a rate of finance charge, it shall state the rate as an "annual percentage rate," using that term. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. The advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

(c) Advertisement of terms that require additional disclosures.

(1) If any of the following terms are set forth in an advertisement, the advertisement shall meet the requirements of paragraph (c)(2) of this section:

- (i) The amount or percentage of any down payment; or
- (ii) The number of payments or period of repayment; or
- (iii) The amount of any payment; or
- (iv) The amount of any finance charge.

(2) An advertisement stating any of the terms in paragraph (c)(1) of this section shall state the following terms, as applicable: An example of one or more typical extensions of credit with a statement of all the terms applicable to each may be used.

- (i) The amount or percentage of the down payment.
- (ii) The terms of repayment.
- (iii) The annual percentage rate, using that term, and, if the rate may be increased after consummation, that fact.

(d) Catalogs and multiple-page advertisements.

(1) If a catalog or other multiple-page advertisement gives information in a table or

schedule in sufficient detail to permit determination of the disclosures required by paragraph (c)(2) of this section, it shall be considered a single advertisement if:

- (i) The table or schedule is clearly set forth; and
- (ii) Any statement of the credit terms in paragraph (c)(1) of this section appearing anywhere else in the catalog or advertisement clearly refers to the page on which the table or schedule begins.

(2) A catalog or multiple-page advertisement complies with paragraph (c)(2) of this section if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

Enforcement / Liability

Administrative Enforcement Authority

The TILA authorizes the National Credit Union Administration to require credit unions to make monetary and other adjustments to the consumers' accounts when the true finance charge or APR exceeds the disclosed finance charge or APR by more than a specified accuracy tolerance. The NCUA has discretion to order account adjustments for certain unintentional errors, including isolated violations (e.g., an error that occurred only once or errors, often without a common cause, that occurred infrequently and randomly.) TILA requires federal regulatory agencies to order financial institutions to reimburse consumers when an understatement of the APR or finance charge involves:

- Patterns or practices of violations (e.g., errors that occurred, often with a common cause, consistently or frequently, reflecting a pattern with a specific type or types of consumer credit),
- Gross negligence, or
- Willful noncompliance intended to mislead the person to whom the credit was extended.

Any proceeding that may be brought by a regulatory agency against a credit union may be maintained against any assignee of the credit union if the violation is apparent on the face of the disclosure statement or other documents assigned, except where the assignment was involuntary.

Civil Liability [§226.1(e), 15 U.S.C. §1640]

If a credit union fails to comply with any requirements of the TILA, other than with the advertising provisions of chapter 3, it may be held liable to the consumer for:

- Actual damage(s), and
- In a successful action, the cost of any legal action together with reasonable attorney's fees as determined by the court.

If it violates certain requirements of the TILA, the credit union also may be held liable for either of the following:

- In an individual action, twice the amount of the finance charge involved or, for closed-end credit secured by real property or a dwelling, not less than \$200 or more than \$2,000;
- In a class action, such amount as the court may allow. The total amount of recovery, however, cannot be more than \$500,000 or 1 percent of the credit union's net worth, whichever is less.

Civil actions that may be brought against a credit union also may be maintained against any assignee of the credit union if the violation is apparent on the face of the disclosure statement or other documents assigned, except where the assignment was involuntary.

Criminal Liability [15 U.S.C. §1611]

Anyone who willingly and knowingly fails to comply with any requirement of the TILA may be fined not more than \$5,000 or imprisoned not more than one year, or both.

Specific Defenses

Defense Against Civil, Criminal, and Administrative Actions. A credit union in violation of TILA may avoid liability by:

- Discovering the error before an action is brought against the credit union, or before the consumer notifies the credit union, in writing, of the error;
- Notifying the consumer of the error within 60 days of discovery; and
- Making the necessary adjustments to the consumer's account, also within 60 days of discovery. (The consumer will pay no more than the lesser of the finance charge actually disclosed or the dollar equivalent of the APR actually disclosed.)

The above three actions also may allow the credit union to avoid a regulatory order to reimburse the borrower.

When a disclosure error occurs, the credit union is not required to re-disclose after a loan has been consummated or an account has been opened. If the credit union corrects a disclosure error by merely re-disclosing required information accurately, without adjusting the consumer's account, the credit union may still be subject to civil liability and an order to reimburse from its regulator. The circumstances under which a credit union may avoid liability under the TILA do not apply to violations of the Fair Credit Billing Act (chapter 4 of the TILA).

Additional Defenses Against Civil Actions

The credit union may avoid liability in a civil action if it shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error that occurred despite the maintenance of procedures to avoid the error. A bona fide error may include a clerical, calculation, computer malfunction, programming, or printing error. It does not include an error of legal judgment. Showing that a violation occurred unintentionally could be difficult if the credit union is unable to produce evidence that explicitly indicates it has an internal controls program designed to ensure compliance.

The credit union's demonstrated commitment to compliance and its adoption of policies and procedures to detect errors before disclosures are furnished to consumers could strengthen its defense.

TRUTH IN LENDING ACT
(REGULATION Z)
REVIEW CONSIDERATIONS

Review Considerations

Applicable to Both Closed-End and Open-End Extensions of Credit

Review Area	Requirements / Recommendations
Policies / Procedures	Adopt a policy for implementing the TILA and Regulation Z. Ensure that comprehensive procedures are maintained and that actual practices are consistent with the procedures.
Coverage	<p>Ensure a firm understanding of coverage requirements of Regulation Z. Basically, the regulation applies to any individual or business offering/extending credit if:</p> <ol style="list-style-type: none"> 1. the credit is offered or extended to consumers; 2. the offering or extension of credit occurs regularly; 3. the credit is subject to a finance charge or is payable by a written agreement in more than four installments; and 4. the credit is primarily for personal, family, or household purposes.
Exempt Transactions include:	<ol style="list-style-type: none"> 1. Business, commercial, agricultural, or organizational credit (unless tied to a credit card); 2. Credit over \$25,000 not secured by real property or personal property used as principal dwelling; 3. Public utility credit; 4. Securities or commodities accounts in which credit is extended by a registered broker dealer; 5. Home fuel budget plans; and

	6. Student Loan Programs.
Finance Charge	Ensure that the concept of “Finance Charge” is clearly understood by appropriate employees. It represents the cost of consumer credit as a dollar amount, including any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge that would be payable in a comparable cash transaction. § 226.4 provides: (i) specific examples of finance charges; (ii) charges excluded from the finance charge; and (iii) insurance and debt cancellation coverage.
Calculations	In preparing disclosures, notices, periodic statements, and internal account records, ensure that all calculation devices are in proper working order and that employees are properly trained to use these devices. Also ensure that completed disclosures reflect the terms of the legal contract between the credit union and borrower. The most important of these calculations include: <ol style="list-style-type: none"> 1. “Annual Percentage Rate” as described in §§ 226.14 and 226.22 (and Appendices F and J); 2. “Finance Charge” as described in § 226.4; and 3. Determination of account balances to which periodic rates apply.
General Disclosure Requirements	Disclosures must be made clearly and conspicuously in writing, in a form that the borrower may keep. The terms “finance charge” and “annual percentage rate,” when required to be disclosed with a corresponding amount or percentage rate, must be more conspicuous than any other required disclosure. (For exceptions, see footnotes to §§ 226.5(a) and 226.17(a)). Timing of disclosures depends upon the specific type of transaction disclosed.
Right of Rescission	In a credit transaction in which a security interest is or will be retained or acquired in a consumer’s principal dwelling, any consumer with an ownership interest has the right to rescind

	<p>(cancel) the transaction until midnight of the third business day following the latest of:</p> <ol style="list-style-type: none"> 1. consummation of a closed-end transaction [§ 226.23(a)] or the opening of a credit plan for an open-end transaction (or one of the other triggering events described in § 226.15(a) including extending credit under the plan, adding or increasing a security interest in an existing plan, or increasing the credit limit on the plan); 2. delivery of all the material disclosures; or 3. delivery of the required rescission notice. <p>Ensure that each person with the right to cancel a credit transaction is given two copies of the rescission notice and that no funds are disbursed until the rescission period has expired.</p> <p>§s 226.15 (open end) and 226.23 (closed end) include the content requirements for rescission notices that the credit union must deliver, the manner in which the right may be exercised, the effect of rescission, and the consumer’s waiver of the right to rescind.</p>
Advertising	<p>Ensure that credit advertisements, including those found on or in newspapers, radio, television, Internet, brochures, and billboards comply with §s 226.16 (open end) and 226.24 (closed end) and:</p> <ol style="list-style-type: none"> 1. state only those terms arranged or offered by the creditor (no “bait” advertising); 2. include all required disclosures when “triggering terms” are present; and 3. follow requirements for catalogs and multiple page advertisements.
Record Retention	<p>Retain evidence of compliance with the regulation for two years after the date disclosures are required to be made or action is required to be taken.</p>
Training	<p>Provide initial and ongoing training to employees</p>

	involved in the origination, processing or marketing of consumer credit as well as to any other personnel who may be involved in various functions that relate to consumer credit or residential real estate transactions.
Updating	Update policies, procedures, loan origination and operation manuals, and disclosure forms as necessary to reflect changes in the TILA and/or Regulation Z as well as changes in the hardware and/or software used to generate disclosures. Ensure effective notification and distribution of updated information.
Internal Review	Conduct an internal review or audit at least annually to assess compliance with the regulation and conformity of a credit union's practices with its policies and procedures. Correct errors detected during the review or audit.

Applicable to Open-End Credit.

Identification of "Open-End Credit"	<p>Consumer credit extended by a creditor under a plan in which:</p> <ol style="list-style-type: none"> 1. the creditor reasonably contemplates repeated transactions; 2. the creditor may impose a finance charge from time to time on an outstanding unpaid balance; and 3. the amount of credit extended to the consumer during the term of the plan is generally made available to the extent that any outstanding balance is repaid.
Disclosures Required in Connection with Credit or Charge Card Applications and Solicitations	<p>The following items must be disclosed on or with an application or solicitation to open a credit or charge card account (in the form and manner described in §226.5a):</p> <ol style="list-style-type: none"> 1. Annual Percentage Rate (APR); 2. Fees for issuance or availability; 3. Minimum finance charge;

	<ol style="list-style-type: none"> 4. Transaction charges; 5. Grace period; 6. Balance-computation method; 7. Statement on charge card payments; 8. Cash-advance fee; 9. Late-payment fee; 10. Over-the-limit fee; and 11. Balance transfer fee.
<p>Early Disclosures Required in Connection with Home-Equity Plan Applications</p>	<p>The following disclosures, as applicable, must be provided in connection with open-end credit plans secured by the consumer's dwelling (in the form and manner described in § 226.5b):</p> <ol style="list-style-type: none"> 1. Statement about retention of disclosures; 2. Conditions for disclosed terms; 3. Security interest and risk to home; 4. Possible actions by creditor; 5. Payment terms; 6. APR; 7. Fees imposed by creditor; 8. Fees imposed by third parties to open plan; 9. Negative amortization; 10. Transaction requirements; 11. Tax implications; and 12. Disclosures for variable-rate plans. <p>In addition, the "home equity brochure"</p>

	<p>published by the Federal Reserve Board (or suitable substitute) must be provided.</p> <p>Note the various limitations and other requirements imposed on home equity plans as reflected in § 226.5b (f), (g), and (h).</p>
Initial Disclosures	<p>The following disclosures must be delivered before the consumer becomes obligated under an open-end credit plan:</p> <ol style="list-style-type: none"> 1. Finance charge: <ul style="list-style-type: none"> • When finance charges begin to accrue; • Periodic rates and corresponding APR; • Method used to determine the balance; • How finance charge determined. 2. Other charges; 3. Security interests acquired by creditor; 4. Statement of billing rights; and 5. Home-equity plan information. See §226.6(e) for details.
Periodic Statements	<p>Periodic statements must contain the following information, as applicable:</p> <ol style="list-style-type: none"> 1. Previous balance; 2. Identification of transactions (in accordance with § 226.8); 3. Credits (including amount and date); 4. Periodic rates to compute finance charges; 5. Balance used to compute finance charge; 6. Amount of finance charge; 7. APR; 8. Other charges; 9. Closing date of billing cycle; new balance;

	<p>10. Free ride period; and</p> <p>11. Address for notice of billing errors.</p>
Subsequent Disclosures	<p>Subsequent disclosures are required in connection with the following:</p> <ol style="list-style-type: none"> 1. Statement of billing rights; 2. Adding certain supplemental credit devices and other features to the account; 3. Certain changes in terms; 4. Renewal of credit or charge card when fees imposed for renewal; or 5. Change in credit card account insurance provider. <p>See § 226.9 for details concerning the content and timing of the disclosures (annually or on each periodic statement).</p>
Prompt Crediting of Payment	<p>Ensure that payments to the consumer's account are credited as of the day of receipt.</p>
Liability of Cardholder for Unauthorized Use and Other Special Credit Card Provisions	<p>A cardholder's liability for unauthorized use of a credit card may not exceed the lesser of \$50 or the amount of money, property, labor, or services obtained by the unauthorized use before notification to the card issuer under § 226.12 (b)(3).</p> <p>Note also special credit card rules contained in § 226.12 relating to:</p> <ol style="list-style-type: none"> 1. Right of cardholder to assert claims or defenses against card issuer; 2. Prompt crediting of refunds; and 3. Discounts and tie-in arrangements.
Billing Error Resolution	<p>Ensure that billing error resolution procedures are correctly applied, as described in § 226.13. Note in particular:</p> <ol style="list-style-type: none"> 1. Definition of "billing error";

	<ol style="list-style-type: none"> 2. Explanation of “billing-error notice”; 3. Time period for resolution; 4. Rules pending resolution; 5. Procedures if billing error occurred as asserted; 6. Procedures if different or no billing error occurred; 7. Creditor’s rights and duties after resolution; and 8. Relation to Electronic Fund Transfer Act and Regulation E.
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Applicable to Closed End Credit

Identification of “Closed-End Credit”	Consumer credit other than “open-end credit” as defined above and in § 226.2(a)(20).
General Disclosure Requirements	<p>Ensure that the following terms are disclosed in connection with closed-end transactions as described in § 226.18:</p> <ol style="list-style-type: none"> 1. Identity of creditor; 2. Amount financed; 3. Itemization of amount financed; 4. Finance charge; 5. APR; 6. Variable rate information, when necessary; 7. Payment schedule; 8. Total of payments; 9. Demand feature, when applicable; 10. Total sale price, when applicable;

	<p>11. Prepayment information;</p> <p>12. Late payment information;</p> <p>13. Security interest information;</p> <p>14. Insurance, debt cancellation information;</p> <p>15. Certain security interest charges;</p> <p>16. Contract reference;</p> <p>17. Assumption policy; and</p> <p>18. Required deposit information. See also § 226.17 (c) and (d) concerning:</p> <ul style="list-style-type: none"> • The basis of disclosures and use of estimates. • Transactions involving multiple creditors or consumers.
<p>Early Disclosures for Certain Variable-Rate Transactions</p>	<p>In cases where the APR may increase after consummation in a transaction secured by the consumer’s principal dwelling with a term greater than one year, § 226.19 requires that the following disclosures be provided:</p> <ol style="list-style-type: none"> 1. Consumer Handbook on Adjustable Rate Mortgages published by the FRB and the Federal Home Loan Bank Board, or a suitable substitute. 2. Loan program disclosure for each variable rate program of interest to the consumer, containing the information described in § 226.19(b)(2).
<p>Subsequent Disclosure Requirements</p>	<p>Ensure that appropriate disclosures, as described in § 226.20 are made for:</p> <ol style="list-style-type: none"> 1. “Refinancings” – new disclosures are required when an existing obligation subject to Subpart C of Regulation Z is satisfied and replaced by a new obligation undertaken by the same consumer (§ 226.20(a)); and

	<p>2. “Assumptions” – new disclosures are required when a creditor expressly agrees to accept a subsequent consumer as a primary obligor on an existing residential mortgage transaction (§ 226.20(b)). The new disclosures are based on the remaining obligation.</p> <p>Ensure that required disclosures are provided when adjusting the interest rate in a variable rate transaction subject to § 226.19(b), in the manner prescribed by § 226.20(c).</p>
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TRUTH IN LENDING ACT (REGULATION Z) CHECKLIST

<u>General</u>	<u>Yes</u>	<u>No</u>
1. Has the credit union assigned clear and definite compliance responsibilities to specific officers and other staff?	_____	_____
2. Has the credit union established procedures and controls (forms, instructions, etc.) reasonably adapted to assure compliance with applicable requirements?	_____	_____
3. Have those responsible for compliance received training that is adequate as to the requirements of Regulation Z and the procedures and practices (use of forms, computations to be made, etc.) necessary to achieve compliance?	_____	_____
4. Has the credit union established a review mechanism (compliance committee, internal or external auditor review, etc.) designed to monitor the effectiveness of the credit union's efforts to comply with Regulation Z?	_____	_____
 <u>Open-End Credit</u>		
5. Does the credit union make the required open-end credit disclosures clearly and conspicuously in a form the consumer can keep as required by § 226.5(a)(1)?	_____	_____
6. Do the terms "finance charge" and "annual percentage rate," when required to be disclosed with a corresponding amount or percentage, appear more conspicuously than any other required disclosure? [§226.5(a)(2)]	_____	_____
7. Is the credit union a credit or charge card issuer under §§ 226.2(a)(7) and 226.2(a)(15)?	_____	_____

If yes, answer the following questions:

8. Does the credit union furnish, in a tabular format, on or with creditor-initiated direct mail applications and pre-approved solicitations to open-end credit card accounts, the following written disclosures:

a. The annual percentage rate or rates for purchases? [§ 226.5a(b)(1)] _____

b. Any annual or periodic fee that may be imposed for issuance or availability of a card, including a onetime membership fee, periodic membership fees or fees based on account activity or inactivity? [§226.5a(b)(2)] _____

c. Any minimum or fixed finance charge that could be imposed during a billing cycle? [§ 226.5a(b)(3)] _____

d. Any transaction fee that may be imposed for the use of the card for purchases? [§ 226.5a(b)(4)] _____

e. The length or range of any "grace period" or the fact that there is none? [§ 226.5a(b)(5)] _____

f. The name (or an explanation, if applicable) of the balance computation method? [§ 226.5a(b)(6)] _____

g. The amount (or range, if different from state to state) of any cash advance fee imposed for an extension of credit? [§ 226.5a(b)(8)] _____

h. Any late payment charge (or range, if different from state to state)? [§ 226.5a(b)(9)] _____

i. Any fee (or range, if different from state to state) that may be charged for exceeding the credit limit? [§ 226.5a(b)(10)] _____

9. Does the credit union provide, with creditor-initiated telephone applications and solicitations for open-end credit card accounts, oral disclosures of items 8a through 8f above?[§ 226.5a(d)] _____

If not, does the credit union alternatively provide written disclosure within 30 days after the consumer requests the card, but no later than the delivery of the card, of the following:

a. Items under 8a through 8i above?

b. The fact that the member need not accept the card or pay any fee disclosed unless the member uses the card?

10. Does the credit union disclose with creditor-initiated applications and solicitations of open credit card accounts, available to the public by means other than by mail or telephone (e.g., "take one" applications), any one of the following? [§ 226.5a(e)]

a. On the application or solicitation (accurate as of printing date), the items under 8a through 8i (for variable APRs the fully indexed rate used within 30 days of the printing date); the date the required information was printed, including a statement that the information was accurate as of that date and is subject to change; a statement that the consumer should contact the credit union for any changes in the information disclosed and a toll free telephone number or mailing address for the consumer to obtain information about changes in required disclosures?;

b. On the application or solicitation (accurate as of the time made available to the public), the disclosures required by 8a through 8g above; a statement that the consumer should contact the credit union for any changes in the information disclosed?; or

c. On the application or solicitation, if the credit union does not contain any information required to be disclosed under items 8a through 8i, a statement that costs are associated with the use of credit cards; a statement that the applicant may contact the credit union to request disclosure of specific cost information by calling a toll free telephone number or by writing to an address specified in the application; and a toll free telephone number and mailing address for the consumer to obtain cost information?

11. Does the credit union, in response to a member's request for cost information, disclose (orally or in writing) the required credit disclosures within 30 days of receiving the request? [§ 226.5a(e)(4)]

Home Equity Plans

12. Does the credit union offer home equity lines of credit (HELOC) secured by the consumer's dwelling? [§ 226.5b] _____

If yes, answer the following questions:

13. Does the credit union deliver the home equity brochure or a suitable substitute at the time the application is provided to the consumer or within three business days of receiving an application contained in magazines or other publications, received by telephone or through a third party (intermediary agent or broker)? [§ 226.5b(b)] _____

If yes, does the disclosure contain: [§ 226.5b(d)]

a. a statement that the consumer should make or retain a copy of the disclosures? _____

b. the time which an application must be submitted to obtain the specific disclosed terms? _____

c. an identification of any disclosed term that is subject to change before the plan opens? _____

d. the fact that the consumer may receive a refund of all fees if the consumer elects not to enter into the plan due to change in terms before the agreement is final (other than index fluctuations in a variable-rate plan)? _____

e. the fact that the consumer's dwelling secures the HELOC and in case of default, the loss of the dwelling may occur? _____

f. the creditor's rights under certain conditions to terminate the plan, require immediate repayment and impose fees upon terminating, prohibit additional extensions of credit, reduce the credit limit and implement changes in the plan as specified in the initial agreement? _____

g. a statement that the consumer may receive, on request, the conditions that might trigger the actions listed under 14f above? _____

h. the payment terms (if the terms for the draw and repayment period are different, the terms for each must be disclosed) including: the length of the draw and any repayment period, an explanation of how the minimum periodic payment will be computed, the timing of the period payments, whether a balloon payment may or will result, a \$10,000 example using a recent annual percentage rate (APR) showing the minimum periodic payment, any balloon payment and the time to pay off the balance?

i. for fixed-rate HELOCs, the recent corresponding APR and a disclosure that the APR does not include costs other than interest?

j. an itemization of fees imposed by the credit union (in dollars or percentage) to open, use or maintain the plan and when the fees are payable?

k. a good faith estimate of any fees that might be imposed by third parties to open the account?

l. a statement that the consumer may receive, on request and as soon as reasonably possible, a good faith itemization of third party fees?

m. a statement that negative amortization might occur?

n. transaction requirements under the plan including limitations on the number of advances that may be obtained during any time period, or on the amount of credit that may be obtained during any time period, and minimum outstanding balance or draw requirements?

o. a statement that the consumer should consult a tax advisor regarding deductibility of interest and charges under the plan?

p. for variable-rate HELOCs, the following:

- that the APR, payment or term may change?
- that the APR excludes costs other than interest?
- identification and source of the index used?

- how the rate will be determined? _____
- that the consumer should ask about current index value, margin, discount or premium, and APR? _____
- that the initial APR is not based on the index and margin used to make later rate adjustments, and the period of time the initial APR will be in effect? _____
- the frequency of APR changes? _____
- rules relating to changes in the index value and APR and resulting changes in the payment amount? _____
- the limitations on APR changes? _____
- minimum periodic payment requirements? _____
- a 15-year historical table? _____
- that rate information will be provided on or with each periodic statement? _____

14. Does the credit union: [§ 226.5b(f)(1)-(3)]

a. base variable rate changes in the APR on an index that is available to the public and not under the credit union's control? _____

b. not terminate an account and demand payment, in advance of the original term, for repayment of the balance unless: there is fraud or material representation, failure to meet the repayment terms of the plan, or the consumer takes actions or fails to act in a manner that adversely affects the credit union's security of the plan or any right in the security? _____

c. not change the account terms, after the agreement has been entered into unless:

- the credit union is permitted to terminate the account under 15b above? _____
- the change will unequivocally benefit the consumer? _____
- a specified change occurs when a specific event takes place, as provided in the initial agreement? _____
- the index or margin is changed because the original index is no longer available? _____
- the consumer specifically agrees to a certain change in writing at the time of the change? _____
- the change is insignificant? _____

d. not reduce the credit limit and does not prohibit additional extensions of credit, except during any period in which: _____

- the value of the dwelling securing the plan declines significantly (consumer's unencumbered equity declines by 50% or more)? _____
- the consumer's financial circumstances change materially? _____
- the consumer defaults on any material obligation under the agreement? _____
- government action restricts an APR increase? _____
- the credit union's security interest is adversely affected due to government action and the security value is less than 120% of the credit line? _____
- the credit union is notified by a regulatory agency that continued advances constitute an unsafe and unsound practice? _____
- the maximum APR is reached? _____

15. Does the credit union refund all fees when a consumer decides not to enter the plan as a result of a change in a disclosed term (other than a change due to fluctuations in the index) between the time the early disclosures are provided and before the plan is opened? [§ 226.5b(g)] _____

a. Are these refunded fees paid to the creditor or directly to third parties, such as credit-report fees and appraisal fees? [§ 226.5b(g)] _____

b. Are these fees refunded even if terms are guaranteed by the creditor under § 226.5b(d)(2)(i)? [§ 226.5b(g)] _____

16. Does the credit union collect only refundable fees from the consumer in connection with an application for a HELOC before the end of 3 business days after the consumer receives the disclosures and brochure, or before the end of 6 days after the mailing of the disclosures and brochure? [§ 226.5b(h)] _____

17. Does the credit union refund any fees that it collects from the consumer before it delivers the required disclosures if within 3 days of receiving the required disclosures, the consumer decides not to enter into the agreement (even if there is no change in the disclosed terms)? [§ 226.5b(h)] _____

Initial Disclosures

18. Does the credit union furnish initial disclosure

statements to new account members before the first transaction is made under the open-end plan? [§ 226.5(b)(1)]

19. Do the initial disclosure statements furnished under each open-end plan contain the following as applicable:

a. An accurate description of when finance charges begin to accrue, including an explanation of whether any period exists within which any credit extended may be repaid without incurring a finance charge? [§226.6(a)(1)]

b. A disclosure of each periodic rate that may be used to compute the finance charge, the range of balances to which each is applicable, and the corresponding annual percentage rates? [§ 226.6(a)(2)]

c. If different periodic rates apply to different types of transactions, the types of transactions to which each periodic rate applies? [§ 226.6(a)(2)]

d. An explanation of the method used to determine the balance on which the finance charge may be computed? [§ 226.6(a)(3)]

e. An explanation of how the amount of any finance charge will be determined? [§ 226.6(a)(4)]

f. A statement of the amount of any charge other than a finance charge or an explanation of how the charge will be determined? [§ 226.6(b)]

g. A statement that the credit union has or will acquire a security interest in property purchased under the plan, or in other property identified by item or type? [§226.6(c)]

h. A statement that outlines the consumer's rights and the credit union's responsibilities regarding the right of a cardholder to assert claims or defenses against a card issuer and the procedures for the resolution of billing errors? [§ 226.6(d)]

20. For home equity plans, is the credit union providing along with the open-end credit disclosures under

226.5b(d), the following written disclosures of home equity plan information in a form the consumer can keep: [§§ 226.6(e)(1)-(7)]

a. Notification of the conditions which may: terminate the plan, require immediate repayment and impose fees for termination, prohibit additional extensions of credit, reduce the credit limit and implement certain changes in the plan as specified in the initial agreement?

b. The payment terms such as the length of the draw and any repayment period, an explanation of how the minimum periodic payment will be computed, the timing of the periodic payments and if a balloon payment may or will result?

c. A statement that negative amortization might occur?

d. A statement of any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum outstanding balance and draw requirements, (stated as dollar amount or percentages) under the plan?

e. A statement that the consumer should consult a tax advisor?

f. A statement that the APR does not include other costs other than interest?

g. A \$10,000 example (if not already provided to the consumer to keep) using a recent APR showing the minimum periodic payment, any balloon payment, and the time to pay off the balance?

h. For variable-rate HELOCs, the rules relating to changes to the index, APR, and payment amount including limitations, negative amortization and carryover, a statement that rate information will be provided on or with each periodic statement and (if not already provided to the consumer to keep) the minimum payment required when the maximum APR is in effect for a \$10,000 balance, when the maximum APR may be imposed and a 15-year historical table?

Periodic Statements

21. Do the periodic statements furnished to consumers under each open-end credit plan disclose the following, as applicable:

a. The balance in the account at the beginning of the billing cycle? [§ 226.7(a)] _____

b. An identification of each transaction on or with each periodic statement? [§§ 226.7(d) and 226.8] _____

c. The amount and date of any credit to the account? [§226.7(a)] _____

d. Each periodic rate used to compute the finance charge, the range of balances to which each is applicable, and the corresponding annual percentage rate? [§ 226.7(d)] _____

e. If different periodic rates apply to different types of transactions, the types of transactions to which each periodic rate applies? [§ 226.7(d)] _____

f. The balance amount to which each periodic rate was applied and an explanation of how that balance was determined? [§ 226.7(e)] _____

g. If a balance is determined without first deducting all credits and payments made during the billing cycle, that fact and the amount of the credits and payments? [§ 226.7(e)] _____

h. The amount of any finance charge debited or added to the account during the billing cycle, using the term "finance charge"? [§ 226.7(f)] _____

i. The components of the finance charge individually itemized and identified to show the amount(s) due to the application of a periodic rate and the amount(s) of any other type of finance charge? [§ 226.7(f)] _____

j. If a finance charge was imposed during the billing cycle, the annual percentage rate(s) using the term "annual percentage rate"? [§ 226.7(g)] _____

k. The amounts, itemized and identified by type, of any charges other than finance charges debited to the account during the billing cycle? [§ 226.7(h)] _____

l. The closing date of the billing cycle and the account balance on that date? [§ 226.7(i)] _____

m. The date by which or period within which the new balance or any portion of that balance must be paid to avoid additional finance charges? [§ 226.7(j)] _____

n. The address to be used for notice of billing errors? (Alternatively, the address may be provided, as permitted under § 226.9(a)(2), on the summary statement of billing rights.) [§ 226.7(k)] _____

Subsequent Disclosure Requirements

22. Does the credit union furnish a proper statement of billing rights in a timely fashion? [§ 226.9(a)] _____

23. If the terms of any open-end credit accounts were changed since the date of the previous review, did the credit union comply with advance notice requirements? [§ 226.9(c)(1)] _____

24. For home equity plans, does the credit union mail or deliver written notice of adverse action to the consumer within 3 business days of prohibiting additional extensions of credit or reducing the consumer's credit limit? [§226.9(c)(3)] _____

a. If the adverse action notice requires the consumer to request reinstatement of the line, does the credit union respond appropriately when the consumer makes such a request? _____

b. If the adverse action notice does not require the consumer to request reinstatement of the line, does the credit union respond appropriately when the conditions which caused the reduction in the credit limit or freezing of the account no longer exist? _____

25. If the credit union imposes an annual fee or other periodic fee based on account activity or inactivity, to renew a credit or charge card account subject to

§226.5a, does the credit union provide (at least 30 days or one billing cycle, whichever is less, before the renewal date): [§ 226.9(e)(1)]

a. renewal statements containing the disclosures contained in §s 226.5a(b)(1)through (7) that would apply if the account were renewed? _____

b. a statement as to how and when the cardholder may terminate credit availability under the account to avoid paying the renewal fee? _____

26. If the credit union offers credit insurance and decides to change insurance providers, are cardholders informed of the proposed change in providers and of any increase in rate or substantial decrease in coverage? [§226.9(f)(1)] _____

a. As a result of the change, are cardholders given an opportunity to discontinue the insurance? [§ 226.9(f)(2)] _____

Prompt Crediting of Payments

27. Does the credit union credit payments as of the date of receipt (unless a delay in crediting does not result in the imposition of finance or other charge)? [§ 226.10(a)] _____

28. Are statements received from merchants for refunds credited to customers' accounts within three business days of receipt? [§ 226.12(e)(2)] _____

29. If credit balances in excess of \$1 are created in consumer accounts, does the credit union credit the balance amounts to those accounts, refund the amounts upon receipt of a written request and make a good faith effort to refund, without receipt of a request, any credit balance remaining in the account after 6 months? [§ 226.11] _____

Special Credit Card Provisions

30. Does the credit union send credit cards only in response to oral or written requests, applications, or as renewals of, or substitutes for, accepted credit cards? [§ 226.12(a)] _____

31. Does the credit union adhere to the \$50 liability limit for unauthorized use? [§ 226.12(b)] _____

32. Does the credit union observe the cardholder's right to assert against the credit union claims and defenses which the cardholder could assert against the merchant in a transaction? [§ 226.12(c)(1)] _____

33. Does the credit union avoid reporting any disputed amount as delinquent before the dispute is settled or judgment is rendered? [§ 226.12(c)(2)] _____

34. Does the credit union observe requirements which prohibit the offset of any credit card indebtedness against the deposit accounts of cardholders? [§ 226.12(d)(1)] _____

35. Are merchant agreements or arrangements void of any tie-in arrangements or of any prohibitions or restrictions on the offering of discounts to cash customers as a condition of participation in a credit card plan? [§ 226.12(f)(1)and (2)] _____

Billing Error Resolution

36. Does the credit union follow the billing error resolution procedures, including applicable time limits? [§ 226.13] _____

Right of Rescission

37. If a security interest is or will be retained or acquired in a consumer's principal dwelling as a result of advances under an open-end credit plan, does the credit union follow the applicable rescission procedures, including furnishing the notice of the right to rescind and delaying the credit union's performance? [§ 226.15] _____

Closed-End Credit

38. Does the credit union routinely furnish completed disclosure statements before consummation and, in the case of residential mortgage transactions subject to RESPA, are early disclosures furnished within 3 business days of receipt of a written application but in no event later than consummation? [§§ 226.17(b)and

226.19(a)] _____

39. Does the credit union group the required disclosures together, segregated from other material, and are the disclosures made clearly and conspicuously in writing in a form the consumer may keep? [§ 226.17(a)(1)] _____

40. Is any itemization of the amount financed separated from the other disclosures in 226.18(c)(1)? [§§ 226.17(a)(1) and 226.18(c)(1)] _____

41. Do the terms "finance charge" and "annual percentage rate," when required to be disclosed with a corresponding amount or percentage rate appear more conspicuously than any other disclosure? [§ 226.17(a)(2)] _____

42. Are the following disclosures made accurately in the manner prescribed:

a. The identity of the creditor making the disclosures? [§226.18(a)] _____

b. The "amount financed," using that term, and a brief description, such as "the amount of credit provided to you or on your behalf"? [§ 226.18(b)] _____

c. A separate, written itemization of the amount financed except where there is included a statement that the consumer has the right to receive a written itemization and the consumer has not indicated in a space provided that such an itemization is requested? [§ 226.18(c)] _____

d. The "finance charge," using that term, and a brief description, such as "the dollar amount the credit will cost you"? [§ 226.18(d)] _____

e. The "annual percentage rate," using that term, and a brief description, such as "the cost of your credit as a yearly rate"? [§ 226.18(e)] _____

f. The variable rate disclosures if the annual percentage rate may increase after consummation? [§ 226.18(f)] _____

g. The number, amounts, and timing of payments scheduled to repay the obligation? [§ 226.18(g)] _____

h. The "total of payments," using that term, and a descriptive explanation, such as "the amount you will have paid when you have made all scheduled payments"? [§ 226.18(h)].

i. If the obligation has a demand feature, that fact and also that the disclosures are based on an assumed maturity of one year if no alternate maturity date is stated? [§ 226.18(i)]

j. In a credit sale, the "total sale price," using that term, and a description (including the amount of any down payment), such as "the total price of your purchase on credit, including your down payment of \$ _____" [§ 226.18(j)]

k. If the obligation includes finance charge computed from time to time by application of a rate to the unpaid principal balance, a statement indicating whether a penalty may be imposed if the obligation is prepaid in full or, alternatively, if the obligation includes any other type of finance charge, a statement indicating whether the consumer is entitled to a rebate of any finance charge if the obligation is prepaid in full? [§ 226.18(k)]

l. Any dollar or percentage charge that may be imposed before maturity due to a late payment? [§ 226.18(l)]

m. The fact that the creditor has or will acquire a security interest in property purchased as part of the transaction, or in other property identified by item or type? [§ 226.18(m)]

n. The disclosures required to exclude certain insurance premiums from the finance charge? [§§ 226.18(n), 226.4(d)]

o. The disclosures required to exclude certain security interest charges from the finance charge? [§§ 226.18(o), 226.4(e)]

p. A statement that the consumer should refer to the appropriate contract document for information about nonpayment, default, the right to accelerate the

maturity of the obligation, and repayment rebates and penalties? [§ 226.18(p)]

q. In a residential mortgage loan transaction, a statement whether a subsequent purchaser of the dwelling may be permitted to assume the remaining obligation on its original terms? [§ 226.18(q)]

r. If the credit union requires the consumer to maintain a deposit as a condition of the specific transaction, a statement that the annual percentage rate does not reflect the effect of the required deposit? [§226.18(r)]

43. Does the credit union make the required disclosures for refinancing? [§ 226.20(a)]

44. Does the credit union make the required disclosures for assumptions? [§ 226.20(b)]

45. If credit balances in excess of \$1 are created in consumer accounts, does the credit union:

a. credit the balance amounts to the consumer accounts [§ 226.21(a)]?

b. refund the amounts upon receipt of a written request [§ 226.21(b)]?

c. make a good faith effort to refund the amounts after 6 months without receipt of any request [§ 226.21(c)]?

46. For any credit transactions that give rise to the right of rescission, does the credit union comply with applicable requirements, including furnishing the notice of the right to rescind to each party having an ownership interest in the principal dwelling and delaying its performance? [§§ 226.23(a), (b), (c) and (d)]?

47. If any consumers waived their right to rescind, do the dated statements describing the personal financial emergencies justify the waivers? [§ 226.23(e)]

48. Were the waivers written and dated on other than a printed form and signed by each consumer entitled to rescind? [§226.23(e)(1)]

Advertising (Open-End and Closed-End)

49. Do any advertisements placed by the credit union state only rates or other terms that were actually being offered at the time? [§§ 226.16(a) and 226.24(a)]

50. If "triggering terms" were advertised, were the other prescribed credit terms disclosed? [§§ 226.16(b) and 226.24(c)]

51. If any annual percentage rate was subject to increase after consummation, was that fact disclosed?[§ 226.24(b)]

52. Were all rates of finance charge expressed only as an "annual percentage rate" using that term, or, as alternatively permitted, using the abbreviation "APR"? [§§ 226.16(b)(2) and 226.24(b)]

53. If credit terms are advertised, do they include the term "annual percentage rate" or APR? [commentary provisions to §§ 226.16 and 226.24(b)]

54. Does the credit union's HELOC advertising include any:

a. triggering terms, and if so, does the ad include information on any loan fee that is a percentage of the credit limit; any fees for opening the plan (stated as a single dollar amount or range); the annual percentage rate or rates; whether the plan provided for a variable rate and, if so, the highest APR that may be imposed; any minimum, fixed, activity or transaction charges; and, any membership fee? [§ 226.16(d)(1) and § 226.16(b)]

b. discounted or premium rates, and if so, does the ad state how long the rate will be in effect and state a reasonably current, fully indexed rate with equal prominence? [§ 226.16(d)(2)]

c. minimum periodic payment, and if so, does the ad disclose that a balloon payment may result, if applicable? [§ 226.16(d)(3)]

d. reference to tax deductibility, and if so, is the ad not

misleading? [§ 226.16(d)(5)]

55. Does the credit union refrain from using misleading terms, such as referring to HELOCs as "free money" in its advertising? [§ 226.16(d)(5)]

Miscellaneous (Open-End and Closed-End)

56. Does the credit union retain evidence of compliance for 2 years after the date disclosures were required to be made or other action was required to be taken? [§226.25(a)]

57. Is the credit union making proper oral disclosures in response to consumer inquiries about the cost of open-ended and closed-end credit? [§ 226.26]

58. Has the credit union included maximum interest rate provisions in its consumer credit contracts secured by a dwelling when: [§ 226.30]

a. the APR may increase after consummation in closed end credit; or

b. the APR may increase during the life of an open-end credit plan?

Comments: _____

TRUTH IN LENDING ACT
(REGULATION Z)
DEFINITIONS

Definitions (Section 226.2)

Act

The Truth in Lending Act (15 U.S.C. 1601 et seq.).

Advertisement

A commercial message in any medium that promotes, directly or indirectly, a credit transaction.

Billing cycle or cycle

The interval between the days or dates of regular periodic statements. These intervals shall be equal and no longer than a quarter of a year. An interval will be considered equal if the number of days in the cycle does not vary more than 4 days from the regular day or date of the periodic statement.

Board

The Board of Governors of the Federal Reserve System.

Business day

A day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under § 226.15 and §226.23, and for purposes of § 226.31, the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

Card issuer

A person that issues a credit card or that person's agent with respect to the card.

Cardholder

A natural person to whom a credit card is issued for consumer credit purposes, or a natural person who has agreed with the card issuer to pay consumer credit obligations arising from the issuance of a credit card to another natural person. For purposes of §226.12(a) and (b), the term includes any person to whom a credit card is issued for any purpose, including business, commercial, or agricultural use, or a person who has agreed with the card issuer to pay obligations arising from the issuance of such a credit card to another person.

Cash price

The price at which a creditor, in the ordinary course of business, offers to sell for cash the property or service that is the subject of the transaction. At the creditor's option, the term may include the price of accessories, services related to the sale, service contracts and taxes and fees for license, title, and registration. The term does not include any finance charge.

Closed-end credit

Consumer credit other than open-end credit as defined in this section.

Consumer

A cardholder or a natural person to whom consumer credit is offered or extended. However, for purposes of rescission under §§ 226.15 and 226.23, the term also includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest.

Consumer credit

Credit offered or extended to a consumer primarily for personal, family, or household purposes.

Consummation

The time that a consumer becomes contractually obligated on a credit transaction.

Credit

The right to defer payment of debt or to incur debt and defer its payment.

Credit card

Any card, plate, coupon book, or other single credit device that may be used from time to time to obtain credit. **Charge card** means a credit card on an account for which no periodic rate is used to compute finance charge.

Credit sale

A sale in which the seller is a creditor. The term includes a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer:

- (i) Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and
- (ii) Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

Creditor means:

(i) A person

- (A) who regularly extends consumer credit¹ that is subject to a finance charge or is payable by written agreement in more than 4 installments (not including a down payment), and
- (B) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.
- (ii) For purposes of § 226.4(c)(8) (discounts), §226.9(d) (Finance charge imposed at time of transaction), and § 226.12(e) (Prompt notification of returns and crediting of refunds), a person that honors a credit card.
- (iii) For purposes of subpart B, any card issuer that extends either open-end credit or credit that is not subject to a finance charge and is not payable by written agreement in more than 4 installments.
- (iv) For purposes of subpart B (except for the credit and charge card disclosures contained in § 226.5(a) and §226.9(e) and (f), the finance charge disclosures contained in § 226.6(a) and §226.7 (d) through (g) and the right of rescission set forth in § 226.15) and subpart C, any card issuer that extends closed-end credit that is subject to a finance charge or is payable by written agreement in more than 4 installments.

Down payment

An amount, including the value of any property used as a trade-in, paid to a seller to reduce the cash price of goods or services purchased in a credit sale transaction. A deferred portion of a down payment may be treated as part of the down payment if it is payable not later than the due date of the second otherwise regularly scheduled payment and is not subject to a finance charge.

Dwelling

A residential structure that contains 1 to 4 units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

Open-end credit

Consumer credit extended by a creditor under a plan in which:

- (i) The creditor reasonably contemplates repeated transactions;
- (ii) The creditor may impose a finance charge from time to time on an outstanding unpaid balance; and
- (iii) The amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

¹ A person regularly extends consumer credit only if it extended credit (other than credit subject to the requirements of § 226.32) more than 25 times (or more than 5 times for transactions secured by a dwelling) in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year. A person regularly extends consumer credit if, in any 12-month period, the person originates more than one credit extension that is subject to the requirements of § 226.32 or one or more such credit extensions through a mortgage broker.

Periodic rate

A rate of finance charge that is or may be imposed by a creditor on a balance for a day, week, month, or other subdivision of a year.

Person

Means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

Prepaid finance charge

Any finance charge paid separately in cash or by check before or at consummation of a transaction, or withheld from the proceeds of the credit at any time.

Residential mortgage transaction

A transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in the consumer's principal dwelling to finance the acquisition or initial construction of that dwelling.

Security interest

An interest in property that secures performance of a consumer credit obligation and that is recognized by State or Federal law. It does not include incidental interests such as interests in proceeds, accessions, additions, fixtures, insurance proceeds (whether or not the creditor is a loss payee or beneficiary), premium rebates, or interests in after-acquired property. For purposes of disclosure under § 226.6 and §226.18, the term does not include an interest that arises solely by operation of law. However, for purposes of the right of rescission under § 226.15 and § 226.23, the term does include interests that arise solely by operation of law.

State

Any state, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

EXPEDITED FUNDS AVAILABILITY ACT

(REGULATION CC)

OVERVIEW

Overview

Regulation CC implements the requirements of the Expedited Funds Availability Act (EFAA). The purpose of the regulation is to ensure prompt availability of funds and to expedite the return of checks.

The major provisions of Regulation CC:

- Establish maximum holds that credit unions can place on deposits; and
- Require credit unions to disclose their funds availability policies to members.

In general, deposited funds fall into one of three categories of availability.

Next Day Availability

Certain types of funds must be made available for withdrawal not later than the business day after the banking day the funds were deposited. The following types of funds generally meet the standards for next-day availability:

- Cash deposits made in person to an employee of the credit union.
- Electronic payments.
- Checks drawn on the Treasury of the United States or a state or local government.
- U.S. Postal Service money order.
- Cashier's, certified, or teller's check.
- Check drawn on a Federal Reserve Bank or Federal Home Loan Bank.
- Checks deposited in a branch of the credit union and drawn on the same or another branch of the same credit union if both branches are located in the same state or the same check-processing region.

In most cases, the types of funds listed above must be deposited in person to an employee of the credit union and in an account of the payee.

Second Day Availability

Except as provided under "exceptions" below, a credit union must make funds deposited in an account by check available for withdrawal not later than the second business day following the banking day the funds are deposited, in the case of:

- A local check;
- A check drawn on the Treasury of the United States that is not governed by the next-day availability requirements;
- A U.S. Postal Service money order that is not governed by the next-day availability requirements
- A check drawn on a Federal Reserve Bank or Federal Home Loan Bank; a check drawn by a state or unit of general local government; or a cashier's, certified, or teller's check; if any check referred to is a local check that is not governed by the next-day availability requirements.

Fifth Day Availability

Except as provided under "exceptions" below, a credit union must make funds deposited in an account by a check available for withdrawal not later than the fifth business day following the banking day funds are deposited, in the case of:

- A non local check;
- A check drawn on a Federal Reserve Bank or Federal Home Loan Bank; a check drawn by a state or unit of general local government; or a cashier's, certified, or teller's check; or a check deposited in a branch of the depository credit union and drawn on the same or another branch of the same credit union; if any check referred to is a nonlocal check that is not governed by the next-day availability requirements; and funds deposited in an account at a nonproprietary ATM by cash or check.

Exceptions

Exceptions to the availability schedule apply in the case of:

- Withdrawal by cash or similar means;
- New accounts;
- Large deposits (\$5,000 or greater);
- Redeposited checks;
- Repeated overdrafts;
- Reasonable cause to doubt collectibility; and,
- Emergency conditions.

Payment of Interest

A credit union shall begin to accrue interest or dividends on funds deposited in an interest-bearing account not later than the business day on which the credit union receives credit for the funds unless the credit union meets the Special Rule for Credit Unions in §229.14(b). This provision provides an exemption from the payment of interest requirements for credit unions that do not begin to accrue interest or dividends on their member accounts until a later date than the day the credit union receives credit for those

deposits, including cash deposits. The credit union is exempt from the payment of interest requirements, as long as it provides notice of its interest accrual policies in accordance with §229.16(d) (must contain an explanation of when interest or dividends on deposited funds begin to accrue).

The EFAA limits this exemption to credit unions; other types of financial institutions must comply with the payment of interest requirements. In addition, credit unions that compute interest from the day of deposit or day of credit should not change their existing practices in order to avoid compliance with the requirement that interest accrue from the day the credit union receives credit.

Disclosure Requirements

A credit union shall make disclosures clearly and conspicuously in writing. Disclosures, other than those posted at locations where employees accept consumer deposits and ATMs and the notice on preprinted deposit slips, must be in a form that the member may keep. The disclosures shall be grouped together and shall not contain any information not related to the disclosures. If contained in a document that sets forth other account terms, the disclosures shall be highlighted within the document.

Associated Risks

- Transaction risk can occur when proper “holds” are not enforced, resulting in a loss to the credit union,
- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with Regulation CC, and
- Reputation risk can occur when the credit union incurs fines and penalties or receives decreased member confidence as a result of failure to comply with Regulation CC.

Additional Information

Additional information is available on the Federal Reserve Board’s website at <http://www.federalreserve.gov/>

EXPEDITED FUNDS AVAILABILITY ACT

(REGULATION CC)

OPERATIONAL REQUIREMENTS

Disclosures / Notices

New Account Availability Disclosure [Sections 229.16(b) and 229.17]

Potential members must be provided with a specific availability policy disclosure prior to opening an account. The content of this disclosure must follow the requirements of Section 229.16, which describes the policy as to when funds deposited in an account are available for withdrawal.

Requesting an Account Availability Disclosure [Section 229.18(d)]

A credit union must provide a copy of its specific availability policy disclosure described in Section 229.16 to any person, upon oral or written request.

Notice of Case-by-Case Holds [Section 229.16 (c)(1) and (2)]

A credit union that has a policy of making deposited funds available for withdrawal sooner than required by the regulation may extend the time when funds are available up to the time periods allowed if:

- (1) the credit union provides notice of the possible extension of time for the withdrawal of deposited funds on a case-by-case basis within its specific availability policy disclosure as described in Section 226.16(c)(1); and
- (2) the credit union provides a written notice to the member when it actually extends the time when funds will be available on a case-by-case basis for withdrawal in the manner prescribed by Section 229.16(c)(2).

Notice of Exception Hold [Section 229.13(g)]

A credit union extending the time when funds will be available for withdrawal based on the application of an exception contained in Section 229.13(b)(f), must provide the depositor with a written notice as described therein. These exceptions include large deposits, redeposited checks, repeated overdrafts, reasonable cause to doubt collectibility, and emergency conditions.

Deposit Slip Notice [Section 229.18(a)]

A notice must be included on all preprinted deposit slips furnished to members which provides that deposits may not be available for immediate withdrawal.

Lobby Notice [Section 229.18(b)]

A credit union must post a notice in a conspicuous place in each location where its employees accept deposits to consumer accounts which sets forth the time periods applicable to the availability of funds deposited in a consumer account.

Automated Teller Machine Notice [Section 229.18(c)]

A credit union must post a notice at each ATM location that funds deposited in the ATM may not be available for immediate withdrawal.

Credit unions operating an off-premises ATM from which deposits are not removed more than two times each week must disclose at or on the ATM the days on which deposits made at the ATM will be considered received.

Notice of Changes in Policy [Section 229.18(e)]

A credit union must deliver a notice to holders of consumer accounts at least 30 days prior to implementing a change to its availability policy regarding such accounts, except that a change resulting in expedited availability may be disclosed not later than 30 days after implementation.

Notice of Nonpayment [Section 229.33(d)]

A credit union receiving a returned check or notice of nonpayment must send notice to its member of the facts by midnight of the banking day following the banking day that it received the returned check or notice, or within a longer reasonable time.

Written Programs / Documentation

Procedures for Employee Training and Compliance [Section 229.19(f)]

A credit union must establish and maintain procedures to ensure its compliance with the regulation. It must also provide a statement of applicable portions of the procedures to employees who perform tasks subject to the requirements of the regulation.

Recordkeeping

Record Retention [Section 229.21(g)]

A credit union must retain evidence of compliance with the regulation for at least two years. This record-retention period may be extended in the event of civil actions and enforcement proceedings brought against the credit union.

Enforcement / Liability

Administrative Enforcement Authority [Section 229.3(a)(3)]

The National Credit Union Administration has responsibility for enforcement among both federal and state-chartered credit unions.

Civil Liability [Section 229.21]

Civil liability may be imposed against a credit union for failure to comply with the regulatory requirements in an amount equal to actual damages sustained, additional amounts of up to \$1,000 per individual action, and reasonable attorney's fees. In the case of a class action, recovery may not exceed the lesser of \$500,000 or one percent of the net worth of the credit union.

**EXPEDITED FUNDS AVAILABILITY ACT
(REGULATION CC)**

REVIEW CONSIDERATIONS

Review Considerations

Review Area	Requirements / Recommendations
Policies / Procedures	Adopt a policy for implementing Regulation CC. Establish procedures ensuring the credit union is in compliance with all regulatory requirements.
Funds Availability Policy	<p>Prepare the Specific Availability Disclosure and distribute to potential members prior to opening a new transaction account or to any person upon request.</p> <p>Describe the credit union's policy as to when funds deposited in an account are available for withdrawal.</p> <p>Disclosures must be clear and conspicuous and in a form that members may keep.</p> <p>Ensure funds are available in accordance with Regulation CC and the credit union's policy and procedures.</p>
Notices of Changes in Availability Policy	Provide notices to existing holders of consumer accounts either prior to, or in some cases, after implementing a change to the availability policy.
Notice of Funds Availability	Ensure proper notices are provided on deposit slips, at teller areas, and at ATM locations.
Case-by-Case Holds	Provide notice when case-by-case holds are placed on deposited funds and includes information regarding member account number, date of deposit, amount of deposit being delayed, and date funds will be available for withdrawal.
Exception Holds	Provide written notice when exception holds are placed on deposited funds. Exception holds include: large deposits, repeated overdrafts, reasonable cause to doubt collectibility, and emergency conditions.
New Account Holds	Holds may be placed on certain types of funds deposited into new accounts.
Notices Involving One-Time	One-time notices may be provided for exceptions

Exception and Repeated Overdrafts	based on large deposits or redeposited checks, under certain circumstances.
Payment of Interest	Interest on funds deposited into an interest-bearing account must begin to accrue interest not later than the business day provisional credit is received unless the credit union meets the conditions under the Special Rule for Credit Unions.
Training	Provide training to all employees performing duties subject to Regulation CC.
Record Retention	Retain evidence of compliance with the regulation (including documentation supporting reasonable cause holds) for at least two years.

EXPEDITED FUNDS AVAILABILITY ACT CHECKLIST

Yes No

Operations

Date of Deposit

1. Does the credit union have a cut-off, for receipt of deposits, of 2 p.m. or later for offices and 12 noon or later for ATMs? [§ 229.19(a)(5)(ii)]

2. Does the credit union consider every day except Saturday, Sunday, or Federal Holidays, as a "business day"? [§ 229.2(g)]

3. Does the credit union consider as a "banking day," only those business days upon which an office of the credit union is open for substantially all of its business? [§229.2(f)]

4. Does the credit union consider a deposit to be made:

a. on the date it is received by the credit union either by mail, over the counter or at ATMs?
[§§229.19(a)(1)and (2)]

b. when the deposits are removed from the night depository, lock box, or similar facility and are available for processing? [§ 229.19(a)(3)]

c. as of the date the deposits are removed by the credit union from an off-premise ATM (not within 50 feet of the credit union) that is not serviced more than twice a week? [§ 229.19(a)(4)]

d. on the next "banking day" when the deposit is made on a day that is not a "banking day"?
[§229.19(a)(5)(i)]

e. on the next "banking day" when the deposit is received at 2 p.m. or later in credit union offices or 12 p.m. or later at ATMs or off-premise facilities?
[§229.19(a)(5)(ii)]

5. Does the credit union start its "business day" (for the purposes of funds availability) at the later of 9 a.m. or at the time the credit union's teller facilities (including ATMs) are available for account withdrawals?
[§§229.19(b)(1)and (2)]

Required Next Day Availability

6. Does the credit union make funds deposited on a "banking day" available on the following "business day" for the following types of deposits:

- a. Electronic payments? [§229.10(b)] _____
- b. Checks drawn on the U.S. Treasury and deposited to the payee's account? [§229.10(c)(1)(i)] _____
- c. "On Us" checks or checks that are drawn on and deposited in branches of the same credit union in the same state or check processing region? [§229.10(c)(1)(vi)] _____

7. Does the credit union make funds from the following deposits available no later than the first business day after the day of the deposit, if the deposit is made in person to a credit union employee, or no later than the second business day if the deposit is not made in person to a credit union employee:

- a. Cash deposits? [§229.10(a)(1)and (2)] _____
- b. U.S. Postal Service money orders deposited in an account held by the payee of the check? [§229.10(c)(1)(ii)] _____
- c. Checks drawn on a Federal Reserve Bank or Federal Home Loan Bank deposited in an account held by the payee of the check? [§229.10(c)(1)(iii)] _____
- d. Checks drawn by a state or local governmental unit and deposited: _____

- in an account held by the payee of the check [§229.10(c)(1)(iv)(A)]; _____
- in a depository institution located in the same state as the governmental unit issuing the check [§229.10(c)(1)(iv)(B)]; _____
- in person to an employee of the credit union [§229.10(c)(1)(iv)(C)]; _____
- and accompanied by a special deposit slip or deposit envelope (if required by the credit union to make the funds available on the next business day)? [§229.10(c)(1)(iv)(D)]. _____

The credit union may either provide the special deposit slips or deposit envelopes to its members, or inform its members how the slips or envelopes may be prepared or obtained. Any such slips or envelopes must be readily available. [§229.10(c)(3)(ii)]

- e. Cashier's checks, certified checks, teller's checks (as

defined in §229.2) deposited in an account held by the payee of the check when the check is accompanied by a special deposit slip or deposit envelope (if required by the credit union to make the funds available on the next business day)? [§229.10(c)(1)(v)]

8. If the credit union requires the special deposit slip or deposit envelope, does it provide it to its members, or inform its members how to prepare or obtain the slips or envelopes? [§229.10(c)(3)(ii)]

Are the special deposit slips reasonably available? [§229.10(c)(3)(ii)]

9. Does the credit union make available the first \$100 of a day's aggregate check deposits not subject to the next-day availability rules, on the next "business day"? [§229.10(c)(1)(vii)]

10. Is the \$100 in addition to other deposited amounts with required next day availability? [§229.10(c)(1)(vii)]

Local Checks and Certain Other Deposits

11. Are funds from deposited local checks generally available no later than the second "business day" after the "banking day" of deposit? [§229.12(b)(1)]

12. Does the credit union make funds available no later than the second business day after the date of deposit for the following (if they do not meet the criteria for next-day or second day availability)? [§229.12(b)(2) and (3)]

- Treasury Checks
- U.S. Postal money orders
- Checks drawn on the Federal Reserve Bank or the Federal Home Loan Bank
- Checks drawn by state or local government
- Cashier's checks, certified checks or teller's checks

13. Are funds deposited by cash or check at a nonproprietary ATM available no later than the fifth business day after the banking day of deposit? [§229.12(f)]

14. If a credit union limits cash withdrawals: [§229.12(d)]

a. is the \$100 available on the next business day after

the day of deposit for withdrawal in cash or by check?

b. is the \$400 available for cash withdrawal sometime before 5 p.m. on the second business day after the day of deposit?

c. are any remaining funds available for withdrawal the business day after the \$400 was made available?

Nonlocal Checks

15. Are funds from deposited nonlocal checks generally available for withdrawal no later than the fifth "business day" after the "banking day" of deposit?

[\$229.12(c)(1)(i)]

16. If the credit union is located in a city listed in Appendix B, does it have procedures to make funds for nonlocal checks available on a shorter schedule as required by the Appendix? [\$229.12(c)(2)]

17. If the credit union limits cash withdrawals: [\$ 229.12(d)]

a. is \$100 available on the next business day after the day of deposit for withdrawal in cash or by check?

b. is \$400 available for cash withdrawal sometime before 5 p.m. on the fifth business day after the day of deposit?

c. are any remaining funds available for cash withdrawal the business day after the \$400 was made available?

18. Does the credit union disclose how a customer can distinguish between a proprietary and a nonproprietary ATM in its specific availability policy and disclosure?

[\$229.16(b)(5)]

Extended Holds

Case-by-Case Holds

19. Does the credit union's specific availability policy disclosures indicate that case-by-case holds may be placed? [\$229.16(b)(4)]

20. When case-by-case holds are placed, does the credit union provide the member with a written notice of the hold? [\$229.16(c)(2)(i)]

21. Does the notice include:

a. the member's account number? [§229.16(c)(2)(i)(A)]

b. the date of the deposit? [§229.16(c)(2)(i)(B)]

c. the amount of the deposit that is being delayed?

[§229.16(c)(2)(i)(C)]

d. the day the funds will be available for withdrawal?

[§229.16(c)(2)(i)(D)]

22. Does the credit union provide the notice at the time the deposit is made, if the deposit is made to an employee of the depository credit union? [§229.16(c)(2)(ii)]

23. If the notice is not given at the time of deposit, does the depository credit union mail or deliver the notice to the member not later than the first business day following the banking day the deposit is made? [§229.16(c)(2)(ii)]

24. If the credit union does not provide the notice at the time of the deposit upon extending the time when funds will be available for withdrawal on a case-by-case basis or a reasonable cause to doubt collectibility basis, does it refrain from charging the member overdraft or return check fees if: [§229.13(e)(2) and §229.16(c)(3)]

a. the overdraft or other fee would not have occurred if the deposited check had not been delayed; and

b. the deposited check was paid by the paying bank?

25. If the credit union does not provide the notice at the time of deposit and charges overdraft fees, does it notify the member of the right to a refund of such fees and how to obtain the refund? [§229.16(c)(3)]

a. Does the credit union refund the fees if the conditions listed in question 24 above are met and the member requests a refund? [§229.16(c)(3)]

Exception Based Holds

26. When invoking an exception hold for other than new accounts, does the bank provide the member with a written notice which includes:

a. the member's account number? [§229.13(g)(1)(i)(A)]

- b. the date of deposit? [§ 229.13(g)(1)(i)(B)] _____
- c. the amount of the deposit that is being delayed? [§229.13(g)(1)(i)(C)] _____
- d. the reason the exception was invoked? [§229.13(g)(1)(i)(D)] _____
- e. the time period within which the funds will be available for withdrawal (unless the emergency conditions exception is invoked and the credit union does not know when the funds will become available)? [§229.13(g)(1)(i)(E)] _____

27. Does the credit union refrain from delaying funds availability beyond a reasonable time period? [§229.13(h)(4)] _____

Note: An extension of up to 5 business days for local checks and 6 days for nonlocal checks is reasonable.

Exceptions

New Accounts

28. Does the credit union's definition of a new account comply with the definition under §229.13(a)(2)? _____

Note: If a member has had another account at the credit union within 30 calendar days before opening an account, the member does not qualify for the "new account" exception. [§229.13(a)(2)]

29. Are cash deposits made in person to a credit union employee made available for withdrawal on the first business day following the banking day of deposit? [§229.13(a)(1)(i)] and [§229.10(a)(1)] _____

30. Are cash deposits not made in person to a credit union employee available for withdrawal on the second business day following the banking day of deposit? [§229.13(a)(i)] and [§229.10(a)(2)] _____

31. Are electronic payments (including wire transfers and ACH credit transfers) into new accounts available for withdrawal on the business day following the banking day on which the transfer is received? [§229.13(a)(1)(i)] and [§229.10(b)(1)] _____

32. Is the first \$5,000 from any of the following types of

check deposits available for withdrawal from a new account not later than the first business day after the banking day on which the funds are deposited, if the deposit is subject to §229.10(c):

[§229.13(a)(1)(ii)]

- a. Treasury checks? [§229.10(c)(1)(i)] _____
- b. U.S. Postal service money orders? [§229.10(c)(1)(ii)] _____
- c. Federal Reserve or Federal Home Loan Bank checks? [§229.10(c)(1)(iii)] _____
- d. State or local government checks? [§229.10(c)(1)(iv)] _____
- e. Cashier's, Certified and Teller's checks? [§229.10(c)(1)(v)] _____

33. Is the amount of any deposit type listed in question 32 exceeding \$5,000 available for withdrawal no later than the ninth business day following the banking day on which funds are deposited? [§229.13(a)(1)(ii)] _____

Large Deposits

34. If the credit union invokes the large deposit rule, does it do so only to that portion of local and nonlocal deposits which in the aggregate exceed \$5,000 on any one banking day? [§229.13(b)] _____

35. Does the credit union refrain from applying this exception to deposits made in cash, by electronic payment, or to checks which must receive next day availability under Section 229.10(c)? [Commentary to §229.13(b)] _____

36. Does the credit union provide members with a written notice of the longer delay? [§229.13(g)(1)] _____

Is the notice: [§229.13(g)(1)(ii)]

- a. provided at the time of the deposit, when the deposit is received in person by an employee of the bank, or
- b. mailed on or before the first business day after the day the bank learns of the facts giving rise to the exception? _____

Redeposited Checks

37. Does the credit union refrain from applying the redeposited exception to:

a. checks which are returned due to a missing endorsement and are subsequently endorsed and redeposited?

[\$229.13(c)(1)]

b. checks which were returned because they were postdated, but are not postdated when redeposited?

[\$229.13(c)(2)]

38. Does the credit union consider the day the check was redeposited to be the day of deposit when determining when funds must be made available for withdrawal?

[Commentary to §229.13(c)]

Repeated Overdrafter Exception

39. Does the credit union lengthen its availability schedule for depositors who have a history of overdrafts?

If yes, complete the rest of the section, if no, skip to next section.

Note: A depository credit union may consider a member's account to be repeatedly overdrawn if (1) within the last six months, on six or more banking days, the account balance is negative, or would have been negative had checks or other charges been paid or (2) within the last six months, on two or more banking days, the account balance is negative, or would have been negative in the amount of \$5,000 or more had checks or other charges been paid.

40. Is this practice articulated in the credit union's written policy and initial disclosure statement? [§229.16(b)(3)] and [§229.16(a)]

41. When the credit union imposes the longer delay period, is the depositor notified of the reason, in writing, at the time of deposit? If not, is a notice mailed on or before the first business day after the day of the deposit or the day the credit union learns of the facts giving rise to the exception? [§229.13(g)(1)(ii)]

42. Does the credit union invoke the repeated overdraft exception only when the account balance is negative (or would have been negative had checks or other charges been paid):

a. on 6 or more banking days within the preceding 6

months? [§229.13(d)(1)] or
b. on 2 or more banking days within the preceding 6
months, if the amount of any negative balance would
have been \$5,000 or more? [§229.13(d)(2)]

43. Does the credit union return to the normal availability
schedule when the account is no longer repeatedly
overdrawn?

Reasonable Cause to Doubt Collectibility

44. When the credit union invokes a reasonable cause
exception, does it provide the member with a written
notice of exception at the time the deposit was made, if
the deposit was made in person to an employee of the
credit union? [§229.13(g)(1)(ii)]

45. If the deposit was not made in person to an employee of
the bank, or if the hold was placed because of
information learned subsequent to the receipt of the
deposit, does the credit union mail the exception notice
to the member? [§229.13(g)(1)(ii)]

46. Does the credit union retain copies of each reasonable
cause exception notice, along with a brief statement of
the facts which lead to the hold, for a period of 2 years?
[§229.13(g)(5)]

47. Does the depository credit union refrain from invoking
the reasonable cause exception based on the race or
national origin of the depositor or the class of the check?
[Commentary to §229.13(e)]

48. Does the credit union refrain from assessing a fee for
any subsequent overdraft, returned check, or other
unpaid charge (or advise members of their right to a
refund of such fees and refund them upon request) if all
of the following are met:

a. the depository credit union extended the availability
period based on its belief that the check was
uncollectible [§229.13(e)(1)];

b. the depositor was not provided with the written notice
required by §229.13(g)(1) at time of deposit
[§229.13(e)(2)];

c. the overdraft or return would not have occurred

except for the fact that the deposited funds were delayed [§229.13(e)(2)(i)];

d. the deposited check was paid by the paying bank? [§229.13(e)(2)(ii)]

49. Does the exception notice inform the member where to direct a request for a refund of the overdraft fees?

Emergency Conditions

50. Does the credit union invoke the emergency conditions exception only in the following circumstances when the credit union has exercised such diligence as the circumstances require: [§229.13(f)]

- a. An interruption of communications or computer or other equipment facilities,
- b. Suspension of payments by another bank,
- c. War, or
- d. An emergency condition beyond the control of the credit union when the credit union has exercised such diligence as the circumstances require?

51. Does the credit union make funds available for withdrawal no later than a reasonable period after the emergency has ended or within the time period established in Sections 229.10(c) and 229.12, whichever is later? [§229.13(h)(3)]

Note: An extension of up to 5 business days for local checks and 6 days for nonlocal checks is reasonable.

52. Does the credit union provide members with a written notice of the delay in a reasonable form and within a reasonable time given the circumstances? [§229.13(g)(4)]

53. Does the notice include: [§229.13(g)(4)]

- the reason the exception was invoked, and
- the time period which funds are available for withdrawal (unless the credit union does not know, in good faith, at the time the notice is given the duration of the emergency and, when the funds must be made available).

Note: The credit union is not required to provide a notice if the

funds subject to the exception become available before the notice must be sent.

Miscellaneous

Calculated Availability – Nonconsumer Transaction Accounts [§229.19(d)]

54. Does the credit union calculate funds availability for nonconsumer accounts based on a sample of the member's deposits? If yes, obtain a copy of the credit union's formula for determining its availability schedule or interest accrual. Review a sample of checks similar to that used by the credit union to calculate funds availability and answer the following:

a. Is the sample of checks large enough to accurately utilize the formula?

b. Does the formula accurately represent the average composition of the member's deposits?

c. Does the specified percentage of available funds appear reasonable?

d. Is a set percentage available the next business day, with remaining funds available according to the member's deposit mix?

55. Based on the sample, are the terms of availability equivalent or more prompt than the terms outlined in §229.19?

56. Does the credit union display a notice of its availability policy in a conspicuous place at locations where employees receive member deposits? [§229.18(b)]

NOTE: Drive-up windows, night depositories, and locations where deposits are not taken do not require the notice.

57. Does the credit union display a notice at each of its proprietary ATMs stating that the funds deposited in the ATM may not be available for immediate withdrawal? [§229.18(c)(1)]

58. If the credit union has off-premise ATMs from which funds are not collected more than twice a week, does the credit union disclose on or at the ATM, the days on which the deposits made at the ATM will be considered “received.” [§229.18(c)(2)]

59. Does the credit union include a notice on all preprinted deposit slips that the deposited funds may not be available for

immediate withdrawal? [§229.18(a)]

Payment of Interest

60. Review the credit union's availability schedule or check deposits credited through the Reserve Bank or its correspondent. Determine the time that the credit union receives provisional credit for check deposits.

61. For each interest-bearing transaction account offered by the credit union, does the credit union begin to accrue interest on the funds deposited no later than the business day on which the credit union receives provisional credit for the funds? [§229.14]

a. If not, does the credit union follow the Special Rule for Credit Unions and provide notice of their accrual policies in accordance with §229.16(d)?

Deposits at Noncontinental U.S. Offices

The credit union may extend the time periods set forth in §229.12 by one business day in the case of any deposit, other than a deposit discussed in §229.10 (next day availability), that is:

- Deposited in an account at a branch of a depository credit union if the branch is located in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands; and
- Deposited by a check drawn on or payable at or through a paying bank not located in the same state as the depository credit union.

62. For offices located in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands does the credit union extend availability for check deposits drawn on banks in other states? [§229.12(e)]

a. If yes, is the extension limited to one day? [§229.12(e)]

b. Is the extension available only for local checks, nonlocal checks and deposits at nonproprietary ATMs? [Commentary to §229.11(e)]

c. Is the extension limited to such deposits only if the paying credit union is in a different jurisdiction? [§229.12(e)(2)]

Comments: _____

EXPEDITED FUNDS AVAILABILITY ACT

(REGULATION CC)

DEFINITIONS

Definitions (Section 229.2)

Definitions used in this part, unless the context requires otherwise:

Account

A deposit as defined in Regulation D – Reserve Requirements of Depository Institutions, §204.2(a)(1)(i) that is a transaction account as described in Regulation D, §204.2(e). As defined in these sections, "account" generally includes accounts at a bank from which the account holder is permitted to make transfers or withdrawals by negotiable or transferable instrument, payment order of withdrawal, telephone transfer, electronic payment, or other similar means for the purpose of making payments or transfers to third persons or others. "Account" also includes accounts at a bank from which the account holder may make third-party payments at an ATM, remote service unit, or other electronic device e, including by debit card, but the term does not include savings deposits or accounts described in §204.2(d)(2) even though such accounts permit third-party transfers. An account may be in the form of:

- (1) A demand deposit account,
- (2) A negotiable order of withdrawal account,
- (3) A share draft account,
- (4) An automatic transfer account, or
- (5) Any other transaction account described in §204.2(e).

"Account" does not include an account where the account holder is a bank, where the account holder is an office of an institution described in paragraphs (e) (1) through (e) (6) of this section or an office of a "foreign bank" as defined in section 1(b) of the International Banking Act (12 USC 3101) that is located outside the United States, or where the direct or indirect account holder is the Treasury of the United States.

Automated clearinghouse or ACH

A facility that processes debit and credit transfers under rules established by a Federal Reserve Bank operating circular on automated clearinghouse items or under rules of an automated clearinghouse association.

Automated teller machine or ATM

An electronic device at which a natural person may make deposits to an account by cash or check and perform other account transactions.

Available for withdrawal

Available for withdrawal with respect to funds deposited means available for all uses generally permitted to the customer for actually and finally collected funds under the bank's account agreement or policies, such as for payment of checks drawn on the account, certification of checks drawn on the account, electronic payments, withdrawals by cash, and transfers between accounts.

Bank

- (1) An "insured bank" as defined in section 3 of the Federal Deposit Insurance Act (12 USC 1813) or a bank that is eligible to apply to become an insured bank under section 5 of that Act (12 USC 1815);
- (2) A "mutual savings bank" as defined in section 3 of the Federal Deposit Insurance Act (12 USC 1813);
- (3) A "savings bank" as defined in section 3 of the Federal Deposit Insurance Act (12 USC 1813);
- (4) An "insured credit union" as defined in section 101 of the Federal Credit Union Act (12 USC 1752) or a credit union that is eligible to make application to become an insured credit union under section 201 of that Act (12 USC 1781);
- (5) A "member" as defined in section 2 of the Federal Home Loan Bank Act (12 USC 1422);
- (6) A savings association as defined in section 3 of the Federal Deposit Insurance Act (12 USC 1813) that is an insured depository institution as defined in section 3 of that Act (12 USC 1813(c)(2)) or that is eligible to apply to become an insured depository institution under section 5 of that Act (12 USC 1815); or
- (7) An "agency" or "branch" of a "foreign bank" as defined in section 1(b) of the International Banking Act (12 USC 3101).

For purposes of subpart C of this part and, in connection therewith, subpart A, the term "bank" also includes any person engaged in the business of banking, as well as a Federal Reserve Bank, a Federal Home Loan Bank, and a state or unit of general local government to the extent that the state or unit of general local government acts as a paying bank. Unless otherwise specified, the term "bank" includes all of a bank's offices in the United States, but not offices located outside the United States.

Banking day

That part of any business day on which an office of a bank is open to the public for carrying on substantially all of its banking functions.

Business day

A calendar day other than a Saturday or a Sunday, January 1, the third Monday in January, the third Monday in February, the last Monday in May, July 4, the first Monday in September, the second Monday in October, November 11, the fourth Thursday in November, or December 25. If January 1, July 4, November 11, or December 25 fall on a Sunday, the next Monday is not a business day.

Cash

United States coins and currency.

Cashier's check

A check that is:

- (1) Drawn on a bank;
- (2) Signed by an officer or employee of the bank on behalf of the bank as drawer;
- (3) A direct obligation of the bank; and
- (4) Provided to a customer of the bank or acquired from the bank for remittance purposes.

Certified check

A check with respect to which the drawee bank certifies by signature on the check of an officer or other authorized employee of the bank that:

- (1) (i) The signature of the drawer on the check is genuine; and
(ii) The bank has set aside funds that-
 - (A) Are equal to the amount of the check, and
 - (B) Will be used to pay the check; or
- (2) The bank will pay the check upon presentment.

Check

- (1) A negotiable demand draft drawn on or payable through or at an office of a bank;
- (2) A negotiable demand draft drawn on a Federal Reserve Bank or a Federal Home Loan Bank;
- (3) A negotiable demand draft drawn on the Treasury of the United States;
- (4) A demand draft drawn on a state government or unit of general local government that is not payable through or at a bank;
- (5) A United States Postal Service money order; or
- (6) A traveler's check drawn on or payable through or at a bank.

The term "check" does not include a noncash item or an item payable in a medium other than United States money. A draft may be a check even though it is described on its face by another term, such as "money order." For purposes of subpart C, and in connection therewith, subpart A, of this part, the term "check" also includes a demand draft of the type described above that is nonnegotiable.

Check-processing region

The geographical area served by an office of a Federal Reserve Bank for purposes of its check processing activities.

Consumer account

Any account used primarily for personal, family, or household purposes.

Depository bank

means the first bank to which a check is transferred even though it is also the paying bank or the payee. A check deposited in an account is deemed to be transferred to the bank holding the account into which the check is deposited, even though the check is physically received and indorsed first by another bank.

Electronic payment

A wire transfer or an ACH credit transfer.

Forward collection

The process by which a bank sends a check on a cash basis to the paying bank for payment.

Local check

A check payable by or at a local paying bank, or a check payable by a nonbank payor and payable through a local paying bank.

Local paying bank

A paying bank that is located in the same check-processing region as the physical location of the branch, contractual branch, or proprietary ATM of the depository bank in which that check was deposited.

Merger transaction

- (1) A merger or consolidation of two or more banks; or
- (2) The transfer of substantially all of the assets of one or more banks or branches to another bank in consideration of the assumption by the acquiring bank of substantially all of the liabilities of the transferring banks, including the deposit liabilities.

Noncash item

An item that would otherwise be a check, except that:

- (1) A passbook, certificate, or other document is attached;
- (2) It is accompanied by special instructions, such as a request for special advice of payment or dishonor;
- (3) It consists of more than a single thickness of paper, except a check that qualifies for handling by automated check-processing equipment; or
- (4) It has not been preprinted or post-encoded in magnetic ink with the routing number of the paying bank.

Nonlocal check

A check payable by, through, or at a nonlocal paying bank.

Nonlocal paying bank

A paying bank that is not a local paying bank with respect to the depository bank.

Nonproprietary ATM

An ATM that is not a proprietary ATM.

Paying bank

- (1) The bank by which a check is payable, unless the check is payable at another bank and is sent to the other bank for payment or collection;
- (2) The bank at which a check is payable and to which it is sent for payment or collection;

- (3) The Federal Reserve Bank or Federal Home Loan Bank by which a check is payable;
- (4) The bank through which a check is payable and to which it is sent for payment or collection, if the check is not payable by a bank; or
- (5) The state or unit of general local government on which a check is drawn and to which it is sent for payment or collection. For purposes of subpart C, and in connection therewith, subpart A, "paying bank" includes the bank through which a check is payable and to which the check is sent for payment or collection, regardless of whether the check is payable by another bank, and the bank whose routing number appears on a check in fractional or magnetic form and to which the check is sent for payment or collection.

Proprietary ATM

An ATM that is:

- (1) Owned or operated by, or operated exclusively for, the depository bank;
- (2) Located on the premises (including the outside wall) of the depository bank; or
- (3) Located within 50 feet of the premises of the depository bank, and not identified as being owned or operated by another entity. If more than one bank meets the owned-operated criterion of paragraph (1) of this definition, the ATM is considered proprietary to the bank that operates it.

Qualified returned check

A returned check that is prepared for automated return to the depository bank by placing the check in a carrier envelope or placing a strip on the check and encoding the strip or envelope in magnetic ink. A qualified returned check need not contain other elements of a check drawn on the depository bank, such as the name of the depository bank.

Returning bank

A bank (other than the paying or depository bank) handling a returned check or notice in lieu of return. A returning bank is also a collecting bank for purposes of UCC 4-202(b).

Routing number

- (1) The number printed on the face of a check in fractional form or in nine-digit form; or
- (2) The number in a bank's endorsement in fractional or nine-digit form.

Similarly situated bank

A bank of similar size, located in the same community, and with similar check-handling activities as the paying bank or returning bank.

State

A state, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands.

Teller's check

A check provided to a customer of a bank or acquired from a bank for remittance purposes, that is drawn by the bank, and drawn on another bank or payable through or at a bank.

Traveler's check

An instrument for the payment of money that:

- (1) Is drawn on or payable through or at a bank;
- (2) Is designated on its face by the term "traveler's check" or by any substantially similar term or is commonly known and marketed as a traveler's check by a corporation or bank that is an issuer of traveler's checks;
- (3) Provides for a specimen signature of the purchaser to be completed at the time of purchase; and
- (4) Provides for a countersignature of the purchaser to be completed at the time of negotiation.

Uniform Commercial Code, Code, or UCC

The Uniform Commercial Code as adopted in a state.

United States

The states, including the District of Columbia, the U.S. Virgin Islands, and Puerto Rico.

Unit of general local government

Any city, county, parish, town, township, village, or other general-purpose political subdivision of a state. The term does not include special-purpose units of government, such as school districts or water districts.

Wire transfer

An unconditional order to a bank to pay a fixed or determinable amount of money to a beneficiary upon receipt or on a day stated in the order, that is transmitted by electronic or other means through the Fedwire, the Clearing House Interbank Payments System, other similar network, between banks, or on the books of a bank. "Wire transfer" does not include an electronic fund transfer as defined in section 903(6) of the Electronic Fund Transfer Act (15 USC 1693a(6)).

Fedwire

The same meaning as in §210.6.

Good faith

Honesty in fact and observance of reasonable commercial standards of fair dealing.

Interest compensation

An amount of money calculated at the average of the Federal Funds rates published by the Federal Reserve Bank of New York for each of the days for which interest compensation is payable, divided by 360. The Federal Funds rate for any day on which a published rate is not available is the same as the published rate for the last preceding day for which there is a published rate.

Contractual branch

With respect to a bank, means a branch of another bank that accepts a deposit on behalf of the first bank.

Unless the context requires otherwise, the terms not defined in this section have the meanings set forth in the UCC:

Funds Availability Schedule (Existing Accounts)

Existing Accounts	Monday Day 0 B Day 0	Tuesday Day 1 B Day 1	Wednesday Day 2 B Day 2	Thursday Day 3 B Day 3	Friday Day 4 B Day 4	Monday Day 7 B Day 5	Tuesday Day 8 B Day 6	Wednesday Day 9 B Day 7	Thursday Day 10 B Day 8	Friday Day 11 B Day 9	Monday Day 14 B Day 10	Tuesday Day 15 B Day 11
Cash (1)	\$2,000	\$2,000										
Electronic Payment	\$2,000	\$2,000										
--US Treasury Check --US Postal Service Money Order (1) --Federal Reserve Bank check (1) --Federal Home Loan Bank (1) --State or local Govt Check (1) --Cashier's Check (1) --Certified Check (1) --Teller's Check (1)	\$2,000	\$2,000										
On Us Check	\$2,000	\$2,000										
Local Check (Alternative 1)	\$2,000	\$100	\$1,900									
Local Check (Alternative 2)	\$2,000	\$100	\$400 (2)	\$1,500								
Non-local Check (Alternative 1)	\$2,000	\$100				\$1,900						
Non-local Check (Alternative 2)	\$2,000	\$100				\$400 (2)	\$1,500					
Non-proprietary ATM (cash or check)	\$2,000					\$2,000						

B Day = Business Day

(1) This chart assumes the deposits were made in person to an employee of the credit union. For deposits not made in person (night deposit, proprietary ATM, etc.), the credit union may hold funds until the second business day.

(2) Must be available for withdrawal by cash or similar means, however, the entire amount (\$1,900) must be available to pay items presented for payment. Similar means includes electronic payment, issuance of a cashier's or teller's check, or certification of a check, or other irrevocable commitment to pay.

Funds Availability Schedule (Large Deposits Exception Hold)

Existing Accounts	Monday Day 0 B Day 0	Tuesday Day 1 B Day 1	Wednesday Day 2 B Day 2	Thursday Day 3 B Day 3	Friday Day 4 B Day 4	Monday Day 7 B Day 5	Tuesday Day 8 B Day 6	Wednesday Day 9 B Day 7	Thursday Day 10 B Day 8	Friday Day 11 B Day 9	Monday Day 14 B Day 10	Tuesday Day 15 B Day 11
Cash (1)	\$7,000	\$7,000										
Electronic Payment	\$7,000	\$7,000										
US Treasury Check	\$7,000	\$5,000						\$2,000				
US Postal Service Money Order (1)	\$7,000	\$5,000						\$2,000				
LOCAL --Federal Reserve Bank check (1) --Federal Home Loan Bank Check (1) --State or local Govt Check (1) ---Cashier's Check (1) --Certified Check (1) --Teller's Check (1)	\$7,000	\$5,000						\$2,000				
NON LOCAL --Federal Reserve Bank check (1) --Federal Home Loan Bank Check (1) --State or local Govt Check (1) --Cashier's Check (1) --Certified Check (1) --Teller's Check (1)	\$7,000	\$5,000										\$2,000
On Us Check	\$7,000	\$5,000	\$2,000									
Local Check	\$7,000	\$100	\$5,000					\$1,900				
Non-local Check	\$7,000	\$100				\$5,000						\$1,900

B Day = Business Day

(1) This chart assumes the deposits were made in person to an employee of the credit union. For deposits not made in person (night deposit, proprietary ATM, etc.), the credit union may hold funds until the second business day.

(2) A large deposit exceeds \$5,000 and includes aggregate deposits to all accounts held by the member in one banking day.

Funds Availability Schedule (Other Exception Holds)

Existing Accounts	Monday Day 0 B Day 0	Tuesday Day 1 B Day 1	Wednesday Day 2 B Day 2	Thursday Day 3 B Day 3	Friday Day 4 B Day 4	Monday Day 7 B Day 5	Tuesday Day 8 B Day 6	Wednesday Day 9 B Day 7	Thursday Day 10 B Day 8	Friday Day 11 B Day 9	Monday Day 14 B Day 10	Tuesday Day 15 B Day 11
Cash (1)	\$2,000	\$2,000										
Electronic Payment	\$2,000	\$2,000										
US Treasury Check	\$2,000							\$2,000				
US Postal Service Money Order (1)	\$2,000							\$2,000				
LOCAL --Federal Reserve Bank check (1) --Federal Home Loan Bank Check (1) --State or local Govt Check (1) ---Cashier's Check (1) --Certified Check (1) --Teller's Check (1)	\$2,000							\$2,000				
NON LOCAL --Federal Reserve Bank check (1) --Federal Home Loan Bank Check (1) --State or local Govt Check (1) --Cashier's Check (1) --Certified Check (1) --Teller's Check (1)	\$2,000											\$2,000
On Us Check	\$2,000		\$2,000									
Local Check	\$2,000							\$2,000				
Non-local Check	\$2,000											\$2,000

B Day = Business Day

(1) This chart assumes the deposits were made in person to an employee of the credit union. For deposits not made in person (night deposit, proprietary ATM, etc.), the credit union may hold funds until the second business day.

(2) A redeposited check does not include a check that has been returned due to a missing endorsement or because it was postdated.

(3) An account is considered repeatedly overdrawn if on six or more banking days within the preceding six months the account balance was negative or would have become negative had checks or other charges to the account had been paid. An account is also considered to be repeatedly overdrawn if on two or more banking days within the preceding six months the account balance is negative or would have become negative, in the amount of \$5,000 or more, if checks or other charges to the account had been paid.

(4) Reasonable cause to believe a check is uncollectible requires the existence of facts that would cause a well-grounded belief in the mind of a reasonable person. Such belief shall not be based on the fact that the check is of a particular class or is deposited by a particular class of persons. The reason for the credit union's belief that the check is uncollectible shall be included in the hold notice.

Funds Availability Schedule (New Accounts Exception Hold)

Existing Accounts	Monday Day 0 B Day 0	Tuesday Day 1 B Day 1	Wednesday Day 2 B Day 2	Thursday Day 3 B Day 3	Friday Day 4 B Day 4	Monday Day 7 B Day 5	Tuesday Day 8 B Day 6	Wednesday Day 9 B Day 7	Thursday Day 10 B Day 8	Friday Day 11 B Day 9	Monday Day 14 B Day 10	Tuesday Day 15 B Day 11
Cash (1)	\$2,000	\$2,000										
Electronic Payment	\$2,000	\$2,000										
--US Treasury Check --US Postal Service Money Order (1) --Federal Reserve Bank check (1) --Federal Home Loan Bank Check (1) --State or local Govt Check (1) ---Cashier's Check (1) --Certified Check (1) --Teller's Check (1)	\$2,000	\$2,000										
--US Treasury Check (1) --US Postal Service Money Order (1) --Federal Reserve Bank check (1) --Federal Home Loan Bank Check (1) --State or local Govt Check (1) --Cashier's Check (1) --Certified Check (1) --Teller's Check (1)	\$7,000	\$5,000								\$2,000		

B Day = Business Day

(1) This chart assumes the deposits were made in person to an employee of the credit union. For deposits not made in person (night deposit, proprietary ATM, etc.), the credit union may hold funds until the second business day.

(2) An account is considered a new account during the first 30 calendar days after the account is established. An account is not considered a new account if each member on the account has had, within 30 calendar days before the account is established, another account at the depository credit union for at least 30 calendar days.

NOTE: The "new account" exception does not provide the bank with any hold limitations for on-us, local, and non local checks.

TRUTH IN SAVINGS ACT

(NCUA RULES AND REGULATIONS PART 707)

OVERVIEW

Overview

The Truth in Savings Act (TISA), implemented by Part 707 of NCUA's Rules and Regulations, covers deposit accounts held by members at credit unions. The regulation requires that credit unions provide members with uniform disclosures about fees, interest rates, annual percentage yields (APY), and other terms of deposit accounts. The disclosures enable a member to make meaningful comparisons of deposit products among financial institutions.

Accounts include share and deposit accounts such as shares, share drafts, and term share (certificate) accounts held by, or offered to, a natural person member or potential member primarily for a personal, family or household purpose.

Credit unions must provide members or potential members with account disclosure information:

- Before an account is opened or a service is provided, whichever is earlier;
- Upon request;
- When the terms change (with a few exceptions), if the change adversely affects the member;
- On most term share accounts that renew or mature (depending on maturity date);
- On periodic statements; and
- On advertisements.

The regulation also imposes substantive requirements on the method of calculating interest in order to ensure that interest is paid on the full principal balance for each calculation period. Finally, the regulation contains detailed rules covering the advertising of deposit accounts by credit unions.

Coverage [§ 707.1(c)]

Part 707 applies to all credit unions whose accounts are either insured by, or eligible to be insured by, the National Credit Union Share Insurance Fund. It does not apply to corporate credit unions and credit unions that have \$2 million or less in assets, after subtracting any nonmember deposits, and are determined to be non-automated. In addition, the advertising rules in § 707.8 apply to any person who advertises an account

offered by a credit union, including any person who solicits any amount from any other person for placement in a credit union.

Payment of Dividends

Payment of Dividends [§ 707.7]

On dividend and interest-bearing accounts, Part 707 requires credit unions to pay dividends or interest based on the full amount of principal in an account once the member meets the minimum balance to earn dividends.

The dividend rate is the annual rate the credit union pays on an account (not reflecting compounding.) When a credit union pays dividends, it applies a periodic dividend rate to an account balance. Dividends do not include the absorption of expenses, forbearance in charging fees, non-dividend membership benefits, extraordinary dividends, or the payment of bonuses. If a credit union chooses to pay dividends for the use of funds, Part 707 mandates:

- Each day the credit union must pay dividends equal to at least $1/365$ (or $1/366$ in a leap year) of the dividend rate on the full amount of principal in the account. A credit union may apply a daily periodic rate greater than $1/365$ of the dividend rate (e.g., a daily periodic rate of $1/360$) as long as the credit union applies that rate 365 days a year;
- The credit union must calculate the account balance on which it pays dividends using either:
 - (a) The daily balance method, which applies a daily periodic rate to the full amount of principal in the account every day; or
 - (b) The average daily balance method, which applies a periodic rate to the average daily balance (the sum of the full amount of principal in the account for each day of the period, divided by the number of days in the period);
- Credit unions with a minimum balance requirement to earn dividends may choose not to pay a dividend for those days when balances fall below the required minimum. Credit unions using the average daily balance method may choose not to pay a dividend if the average balance for the period falls below the minimum. If a credit union imposes a minimum balance to earn a dividend, it must use the same calculation method to determine whether the member meets the minimum balance as it uses to calculate dividends. If members would benefit, the credit union can use an additional method to determine if the members meet the minimum balance requirement;
- Credit unions must choose how often they will compound and credit dividends. If previously disclosed in writing, credit unions may require members that close accounts between crediting dates to forfeit accrued but uncredited dividends; and

- Dividends begin to accrue not later than the business day the funds are deposited in an account, unless the credit union provides notice of a later time in its policy disclosures under §606 of the Expedited Funds Availability Act and Regulation CC. Once started, dividends must continue to accrue until the member withdraws the funds. However, a credit union need not pay dividends (1) during a grace period for automatically renewable term share accounts if the member decides during the grace period not to renew the account, or (2) after a nonautomatically renewable term share account matures.

A term share account is a share certificate, interest-bearing certificate of deposit account, or other account (e.g., club account) with a maturity of at least seven days, and members generally may not make withdrawals for six days after opening the account unless an early withdrawal penalty of at least seven days' dividends on the amounts withdrawn exists.

Oral Responses to Inquiries

Oral Responses to Inquiries [§ 707.3(e)]

In an oral response to a member or potential member's inquiry about dividend rates payable on its accounts, the credit union must state the annual percentage yield. The dividend rate may be stated in addition to the annual percentage yield. No other rate may be stated. In stating a dividend rate and annual percentage yield, a credit union must:

- For dividend-bearing accounts other than term share accounts, specify a dividend rate and annual percentage yield as of the last dividend declaration date. In the event that disclosures of a dividend rate and annual percentage yield as of the last dividend declaration date might be inaccurate because of known or contemplated dividend rate changes, the credit union may disclose the prospective dividend rate and prospective annual percentage yield. Such prospective dividend rate and prospective annual percentage yield may be disclosed either in lieu of, or in addition to, the dividend rate and annual percentage yield as of the last dividend declaration date.
- For interest-bearing accounts and for dividend-bearing term share accounts, specify an interest (dividend) rate and annual percentage yield that were offered within the most recent seven calendar days; state that the rate and yield are accurate as of an identified date; and provide a telephone number members may call to obtain current rate information.

Associated Risks

Compliance risk can occur when the credit union fails to implement the necessary controls to comply with TISA and Part 707.

Reputation risk can occur when the credit union incurs fines and penalties as a result of failure to comply with TISA and Part 707.

Strategic risk can occur when the board of directors fails to perform necessary due diligence in reviewing existing and prospective products and services for compliance with TISA and Part 707.

Additional Information

A copy of the Rules and Regulations is available on NCUA's website at <http://www.ncua.gov/> in the Reference Information section.

TRUTH IN SAVINGS ACT
(NCUA RULES AND REGULATIONS PART 707)
OPERATIONAL REQUIREMENTS

Disclosures / Notices

General Disclosure [§ 707.3]

Account disclosures, containing the information required by § 707.4(b), must be provided to members before an account is opened or a service provided, whichever occurs first. The disclosures are required to be mailed or delivered no later than 10 business days after an account is opened (or a service provided) if the member is not present at such time. Account disclosures must also be provided to members on request; if the member is not present, the disclosures must be mailed or delivered within a reasonable time after the request is made.

The written account disclosures must reflect the legal obligation between the parties, contain clear and conspicuous information so that members may readily understand the terms of their accounts, and present the information in a form that the member or potential member can permanently retain. Credit unions may deliver periodic statement disclosures in electronic form if the member agrees to this form of delivery. A credit union may have a separate disclosure for each account or it may combine Part 707 disclosures for several accounts in a single document, such as a brochure for all savings accounts.

Credit unions must use the following specific terminology for Part 707:

- “Annual percentage yield” (APY) in account disclosures and advertisements;
- “Dividend rate” in account disclosures and advertisements (credit unions may also use “annual percentage rate” in account disclosures in addition to the term “dividend rate”); and
- “Annual percentage yield earned” (APYE) on periodic statements.

The credit union must show APY and APYE to two decimal places and rounded to the nearest one-hundredth of one percent (.01%). The same rule applies to dividend rates, except that account disclosures may show the dividend rate at more than two decimals.

Part 707 considers the APY or APYE accurate if it is within 1/20 of one percentage point (.05%) above or below the actual percentage yield as determined in Appendix A of Part 707. Credit unions may not intentionally incorporate the tolerance as part of their calculations. There is no corresponding tolerance for the accuracy of the dividend rate; it must be precise.

Credit unions must disclose the following information in account disclosures (as applicable):

- Rate information:
 - (a) APYs and dividend rates using the terms "annual percentage yield" and "dividend rate" (credit unions may disclose a periodic rate corresponding to the dividend rate);
 - (b) Time period the dividend rate will remain in effect after a member opens a fixed-rate account;
 - (c) Each dividend rate, along with corresponding APYs for each specified balance level for tiered-rate accounts;
 - (d) A single composite APY, all dividend rates, and period of time the rate will be in effect for each step for stepped-rate accounts (has two or more dividend rates that take effect in succeeding periods and are known at account opening); and
 - (e) Information on variable-rate accounts (those where the dividend rate may change after the member opens the account, unless the credit union contracts to give at least 30 calendar days advance written notice of rate decreases.) The credit union must disclose the following information:
 - (1) A statement that the dividend rate and APY may change;
 - (2) The method by which the credit union determines the dividend rate. If the credit union reserves the right to change rates and does not tie changes to an index, it must disclose that rate changes are within the credit union's discretion;
 - (3) Limitations on the amount the dividend rate may change; and
 - (4) The frequency with which the dividend rate may change. Credit unions that reserve the right to change rates at any time must state that fact.

- Compounding and crediting information:
 - (a) The frequency with which the credit union compounds and credits dividends (e.g., daily, monthly, quarterly, etc.);
 - (b) The dividend period (for dividend-bearing accounts); and
 - (c) The effect of closing an account when the account contract provides that the credit union will not pay accrued but uncredited dividends if the member closes the account before the credit union credits the dividends.

- Balance information:
 - (a) Any minimum balance requirements to:
 - (1) Open an account;
 - (2) Avoid the imposition of fees; or
 - (3) Obtain the APY.

(A credit union must also state how it determines account balances for these purposes.)

- (b) The balance computation method (i.e., the daily or average daily balance method) used to calculate dividends on the account;
 - (c) The par value of a share necessary to become a member and maintain accounts at the credit union; and
 - (d) When dividends begin to accrue on non-cash deposits.
- Fee information (amounts and types of all fees that may be assessed), including:
 - (a) Maintenance fees;
 - (b) Fees related to deposits or withdrawals, whether by check or electronic transfer;
 - (c) Fees for special account services (credit unions need not disclose fees for services unrelated to accounts, e.g., money order fees, traveler check fees, etc.); and
 - (d) Fees to open or close accounts.
 - Transaction information including:
 - (a) Limitations on the number or dollar amount of deposits to, withdrawals from, or checks written on an account for any time period.
 - Term share information:
 - (a) Time requirements including the term (for generic disclosure requests), otherwise, the credit union must state the maturity date;
 - (b) Early withdrawal penalties including how the credit union calculates them and the conditions under which it assesses them;
 - (c) Withdrawal of dividends prior to maturity requirements (i.e., on a term share account that compounds dividends, if a member may withdraw accrued dividends prior to maturity, the credit union must disclose the resulting reduction in account earnings.) The APY assumes that dividends remain in the account until maturity. Credit unions that do not compound dividends on an annual or more frequent basis, and that require the dividend payouts at least annually, and that disclose the APY in accordance with Section E of Appendix A, must state that dividends cannot remain on account and that payout of dividends is mandatory; and
 - (d) Renewal policies including:
 - (1) Whether a term share account automatically renews at maturity; and
 - (2) Whether the credit union provides a grace period and, if so, its length. For nonautomatically renewable term share accounts, a credit union must disclose whether it will pay dividends after maturity if the member does not renew the account.
 - Bonus information:

- (a) The amount and type of bonuses the credit union offers;
 - (b) The timeframe in which the credit union will pay the bonus; and
 - (c) The minimum balance or time requirements necessary to obtain the bonus.
- Nature of Dividends (i.e., credit union pays dividends at the end of a dividend period from current income and available earnings after required reserve transfers.) Credit unions need not make this dividend statement for dividend-bearing term share accounts or interest-bearing accounts. However, if the credit union requires a member to open a share account in order to open a dividend-bearing term share or interest-bearing account, the credit union must disclose the "nature of dividends" for the share account. The credit union need not make the disclosure in advertising and oral responses to rate inquiries.

Subsequent Disclosures for Changes in Terms [§ 707.5]

Advance notice must be provided to affected members concerning changes in account terms or the APY that adversely affect the member. The notice is required to be mailed or delivered at least 30 calendar days before the effective date of the change and should include the effective date of the change.

- Change in terms
 - (a) Advance notice required. A credit union must give advance notice to affected members of any change in a term required to be disclosed under § 707.4(b) of this part if the change may reduce the annual percentage yield or adversely affect the member. The notice must include the effective date of the change. The notice must be mailed or delivered at least 30 calendar days before the effective date of the change.
 - (b) No notice under this section is required for:
 - (1) Changes in the interest rate and corresponding changes in the annual percentage yield in variable-rate accounts.
 - (2) Changes in fees assessed for check printing.
 - (3) Changes in any term for time accounts with maturities of one month or less.
- Credit unions shall provide the disclosures described below before maturity for term share accounts with maturities longer than one month that renew automatically at maturity. The disclosures must be mailed or delivered at least 30 calendar days before maturity of the existing account. Alternatively, the disclosures may be mailed or delivered at least 20 calendar days before the end of the grace period on the existing account, provided a grace period of at least five calendar days is allowed.
- Notice before maturity for term share accounts longer than one year that do not renew automatically. For time accounts with a maturity longer than one year that do not renew automatically at maturity, credit unions must disclose to members the maturity

date and whether interest will be paid after maturity. The disclosures must be mailed or delivered at least 10 calendar days before maturity of the existing account.

Notices of Maturity of Term Share Account [§ 707.5(b) and (c)]

Credit unions must provide notice of maturity of the following types of term share accounts:

- For term share accounts with a maturity longer than one month that renew automatically, the notice must be mailed or delivered at least 30 calendar days before maturity (or at least 20 calendar days before the end of a grace period lasting at least 5 calendar days). The content of the notice must meet the requirements described in § 707.5(b).
- For term share accounts with a maturity of one year or less but longer than one month, the credit union shall either:
 1. Provide disclosures as noted in the “longer than one month” bullet above; or
 2. Disclose to the member:
 - The date the account matures and the new maturity date if the account is renewed;
 - The dividend rate and the APY for the new account if they are known; and
 - Any difference in the terms of the new account.
- For term share accounts with a maturity of longer than one year that do not renew automatically, the notice must be mailed or delivered at least 10 calendar days before maturity. The content of the notice must meet the requirements of § 707.5(c).

Periodic Statements [§ 707.6]

- If a credit union provides a periodic statement in connection with an account, the statement must include the following disclosures:
 - (a) Annual percentage yield earned. The “annual percentage yield earned” during the statement period, using that term; and
 - (b) Amount of interest. The dollar amount of dividends earned (accrued or paid and credited) during the statement period; and
 - (c) Fees imposed. Fees required to be disclosed under § 707.4(b)(4) of this part that were debited to the account during the statement period. The fees must be itemized by type and dollar amounts; and
 - (d) Length of period. The total number of days in the statement period, or the beginning and ending dates of the period.

- Special rule for average daily balance method. In making the disclosures described above, credit unions that use the average daily balance method and calculate dividends for a period other than the statement period may calculate and disclose the annual percentage yield earned and amount of dividends earned based on that period rather than the statement period. The information required above must be stated for that period as well as for the statement period.

Recordkeeping

Record Retention [§ 707.9]

Credit unions must retain records of compliance with Part 707 for a minimum of two years after the date disclosures are required to be made or action is required to be taken. Although they need not retain a copy of each disclosure, credit unions desiring to establish compliance should establish and maintain procedures for paying dividends and providing the various disclosures and retain sample disclosures for the types of accounts offered. Credit unions must keep sufficient rate and balance information to enable examiners to verify dividends paid on the account.

Advertising

Advertising Requirements [§ 707.8]

Advertisements, defined as commercial messages in any medium that directly or indirectly promote the availability of, or a deposit in, an account, must meet certain regulatory requirements. Specifically, an advertisement: (i) may not be misleading or inaccurate; (ii) if it states a rate of return, it must state the rate of return as an APY; (iii) must include additional disclosures if APY is stated; (iv) must provide additional information if a bonus is stated; and (v) may utilize abbreviated disclosure rules if advertisement is made through certain types of media. In addition, the word “profit” may not be used in referring to interest paid on an account, and advertisements are not permitted to refer to or describe an account as “free” or “no cost” if any maintenance or activity fee may be imposed on the account.

Since credit unions usually consider automated teller machines (ATMs) a service that does not require a user to open or maintain an account, ATM fees associated with such accounts would not restrict a credit union from advertising the accounts as "free". Credit unions may advertise free transactions at ATMs as "free"; however, the credit unions must disclose time limits placed on a free service.

Credit unions must provide the following additional disclosure information if they state the APY in an advertisement:

- Variable rates – a statement that the rate may change after account opening;
- Time period - how long the credit union will offer advertised APYs (e.g., "from March 7 through March 13" or "annual percentage yield effective as of March 7");

- Accuracy of APY - for dividend-bearing accounts other than term share accounts, a statement that APY is accurate as of the last declaration date or, if inaccurate, the prospective APY;
- Minimum balance – the minimum balance required to obtain the advertised APY;
- Minimum opening deposit – the minimum deposit required to open the account;
- Fees - a statement that fees could reduce earnings on the account;
- Features of term share accounts – a statement specifying the term (e.g., three months) and early withdrawal penalties;
- Advertisement - if an advertisement for a noncompounding multi-year account that requires dividend payouts at least annually states an APY, then it must state that dividend payouts are mandatory and cannot remain in the account;
- Tiered-rate accounts – a statement of all APYs (including APY ranges), all dividend rates, and any minimum balance required to obtain the APYs for each tier;
- Stepped-rate accounts – a statement of all dividend rates and the time period for each; and
- Bonus - if a bonus is displayed in an advertisement, it must disclose the following:
 - (a) The APY;
 - (b) Time restrictions to obtain the bonus;
 - (c) When the credit union will provide the bonus; and
 - (d) Required minimum balance to open the account, if it is greater than the minimum balance necessary to obtain the bonus.

Exemptions from Advertising Requirements [§ 707.8(e)]

NCUA's Rules and Regulations permit abbreviated disclosure requirements for advertisements made through:

- Broadcast or electronic media (such as radio and television);
- Outdoor media (billboards);
- Telephone response machines;
- Indoor signs; and
- Newsletters distributed only to existing members.

If the credit union discloses a rate of return or bonus on one of the first three media listed above, the advertisement need not contain information concerning:

- Variable rates;
- Time the annual percentage yield is offered;
- Minimum opening deposit;
- Effect of fees;
- Early withdrawal penalties for term share accounts;
- Minimum balance required to open the account, if it is greater than the minimum balance necessary to obtain the bonus; and
- When the bonus will be provided.

Credit union newsletters are exempt from many of the advertising requirements if the credit union distributes the newsletter to existing members only and does not intend it as a promotional piece for potential members. Exercising care to reach only existing members demonstrates compliance with the requirement for the exemption (e.g., credit unions should not leave newsletters in the lunch room of the sponsor.)

If the credit union discloses a rate of return on an indoor sign or sends a newsletter to existing members only, the advertising requirements specify that the sign or newsletter must:

- State the rate as an “annual percentage yield”, using that term or the term “APY”; and
- Contain a statement advising members to contact an employee for further information about applicable fees and terms.

Enforcement / Liability

Administrative enforcement [§ 707.9(a)]

Section 270 of TISA (12 U.S.C. 4309) contains the provisions relating to administrative sanctions for failure to comply with the requirements of TISA and Part 707.

Compliance with the requirements imposed on credit unions under this subtitle shall be enforced by the National Credit Union Administration.

Civil Liability [§ 707.9(b)]

The civil liability provisions of the Truth in Savings Act were repealed effective September 30, 2001.

TRUTH IN SAVINGS ACT
(NCUA RULES AND REGULATIONS PART 707)
REVIEW CONSIDERATIONS

Review Considerations

Review Area	Requirements / Recommendations
Policies / Procedures	Adopt policy for implementing Part 707 and establish procedures addressing relevant activities including: (i) account opening disclosures, (ii) dividend calculations, (iii) subsequent disclosures, (iv) member inquiries, (v) training, (vi) record retention, (vii) advertising and (viii) monitoring.
Content of Account Disclosures	Ensure that account disclosures include appropriate information relating to: (1) rate information, (2) compounding and crediting features, (3) balance information, (4) fees imposed, (5) transaction limitations, (6) time account features, and (7) bonus information. Also ensure that: (i) the disclosures reflect the terms of the account agreement with the member and (ii) the rate information and fees are current and accurate.
Providing Account Disclosures	Provide account disclosures to members prior to opening an account or upon the assessment of a fee, whichever is earlier. Account disclosures must also be provided to members upon request.
Oral Quotes on Rates	Ensure that the APY is stated when providing oral quotes on rates.
Subsequent Disclosures	Provide subsequent disclosures to members concerning changes in account terms or the annual percentage yield (APY) which adversely affect the member. Be sure to disclose the effective date of the change.
Notices of Maturity for Time Accounts	Provide notices of maturity for time accounts in the manner described in the regulation. <ol style="list-style-type: none"> 1. Time accounts longer than one month that renew automatically. 2. Time accounts one month or less that renew automatically. 3. Time accounts longer than one year that do not renew automatically.

	<p>The content of the maturity notices referenced above is described in Section 707.5(a), (b), and (c).</p>
<p>Periodic Statements</p>	<p>Periodic statements, if delivered by a credit union, must include certain specific disclosures including:</p> <ol style="list-style-type: none"> (1) Annual percentage-yield earned; (2) Amount of interest; (3) Fees imposed; and (4) Length of period.
<p>Payment of Dividends</p>	<p>Dividend payments on accounts must be calculated on the full amount of principal in the account once the member meets the minimum balance to earn dividends.</p> <p>Each day the credit union must pay dividends equal to at least $1/365$ ($1/366$ in a leap year) of the dividend rate on the full amount of principal in the account. A credit union may apply a daily periodic rate greater than $1/365$ of the dividend rate (e.g., a daily periodic rate of $1/360$) as long as the credit union applies that rate 365 days a year.</p> <p>The credit union must calculate the account balance on which it pays dividends using either:</p> <ul style="list-style-type: none"> • The daily balance method, which applies a daily periodic rate to the full amount of principal in the account every day; or • The average daily balance method, which applies a periodic rate to the average daily balance (the sum of the full amount of principal in the account for each day of the period, divided by the number of days in the period). <p>Credit unions with a minimum balance requirement to earn dividends may choose not to pay a dividend for those days when balances fall below the required minimum. Credit unions using the average daily balance method may choose not to pay a dividend if the average balance for the period falls below the minimum. If a credit union imposes a minimum balance to earn a dividend, it must use the same calculation method to determine whether a member meets the</p>

	<p>minimum balance as it uses to calculate dividends. If members would benefit, the credit union can use an additional method to determine if the members meet the minimum balance requirements.</p> <p>Credit unions must choose how often they will compound and credit dividends. If previously disclosed in writing, credit unions may require members that close accounts between crediting dates to forfeit accrued but uncredited dividends.</p> <p>Dividends must begin to accrue on funds deposited not later than the day specified in Section 606 of the Expedited Funds, Availability Act and Regulation CC.</p>
<p>Advertisements</p>	<p>Advertisements of share accounts: (i) may not be misleading or inaccurate; (ii) may not refer to accounts as “free” or “no cost” if any maintenance or activity fee may be imposed; and (iii) must state rate of return as an “annual percentage yield” using that term if it states a rate. If an annual percentage yield is stated in an advertisement, the following additional disclosures are required, as described in Section 707.8 (c):</p> <ol style="list-style-type: none"> (1) Variable rate information; (2) Time APY is offered; (3) Minimum balance; (4) Minimum opening deposit; (5) Effect of fee; and (6) Features of term share accounts such as: <ol style="list-style-type: none"> a) Time requirements; b) Early withdrawal penalties; and c) Required dividend payouts. <p>Note: additional information must be provided where a bonus is stated in an advertisement (Section 707.8(d)), and be aware of exemptions for certain types of advertisements (Section 707.8(e)).</p>
<p>Record Retention</p>	<p>Retain evidence of compliance with the regulation.</p>
<p>APY Calculations</p>	<p>Ensure that APY for account disclosures and advertisements and APY earned for periodic statements conform to calculation formulas in</p>

	Appendix A of Part 707.
Training	Provide training to employees whose duties are affected by the requirements of the regulation.
Update	Update policies, procedures, disclosures, and notices as necessary to reflect changes in the regulation or changes in equipment or internal operations/processes as appropriate.
Internal Review	Conduct an internal review at least annually to assess compliance with the regulation and conformity of the credit union's practices with its policies and procedures. Review should include an accuracy check of APY calculations, dividend rates/payments, fees, and balance-computation methods reflected on disclosures, notices, and/or statements.

**TRUTH IN SAVINGS ACT
(NCUA RULES AND REGULATIONS PART 707)
CHECKLIST**

	Yes	No
1. Does the credit union make the required disclosures clearly and conspicuously in writing and in a form the member may keep? [§707.3(a)]	_____	_____
b. If the disclosures required by the regulation are combined with the credit union's other accounts, is it clear which disclosures are applicable to the member's account? [§707.3(a)]	_____	_____
2. Do the disclosures reflect the terms of the legal obligation between the member and the credit union? [§707.3(b)]	_____	_____
3. When orally responding to a member's inquiry about dividend rates, does the credit union state the annual percentage yield? [§707.3(e)].	_____	_____
4. Are all annual percentage yields accurate to within .05% above or below the annual percentage yield determined in accordance with Appendix A of the regulation? §707.3(f)(2)]	_____	_____
<u>Account Disclosures [§707.4]</u>		
5. Does the credit union provide initial disclosures before an account is opened or a service is provided, whichever is earlier? [§707.4(a)(1)]	_____	_____
b. If the member is not present, does the credit union mail or deliver the disclosures no later than 10 business days after the account is opened or a service is provided? [§707.4(a)(1)]	_____	_____
6. Does the credit union provide account disclosures to members upon request? [§707.4(a)(2)(i)]	_____	_____

a. If the member's request is not made in person, does the credit union mail or deliver the account disclosures within a reasonable time after it receives the request? [§707.4(a)(2)(i)]

b. In providing disclosures upon request, does the credit union:

specify an interest rate and APY that were offered within the most recent seven calendar days?

state that the rate and yield are accurate as of an identified date?

provide a telephone number members may call to obtain current rate information? [§707.4(a)(2)(ii)(A)]

7. Do account disclosures include the following rate information (a applicable): [§707.4(b)(1)(i)]

a. The "annual percentage yield" and "interest rate," using those terms?

b. The period of time the interest rate will be in effect for fixed-rate accounts?

8. Do disclosures for variable-rate accounts include the following: [§707.4(b)(1)(ii)]

a. The fact that the interest rate and APY may change?

b. How the interest rate is determined?

c. The frequency with which the interest rate may change?

d. Any limitation on the amount the interest rate may change?

9. Do the account disclosures describe the frequency with which interest is compounded and credited?

10. Do the account disclosures include a statement that interest will not be paid if members close an account before accrued interest is credited?

[\$707.4(b)(2)(ii)]

11. Do the account disclosures describe the minimum balance requirements necessary to open an account, avoid the imposition of a fee, or obtain the APY disclosed?

b. Do the account disclosures state how the minimum balance requirement is determined for these purposes (except for the balance to open the account)? [\$707.4(b)(3)(i)]

12. Do the account disclosures include an explanation of the balance computation method used to calculate interest on the account?

[\$707.4(b)(3)(ii)]

13. Do the account disclosures state when dividends begins to accrue on non-cash deposits? [\$707.4(b)(3)(iii)]

14. Do the account disclosures disclose the amount of any fee that may be imposed in connection with the account (or how the fee will be determined) and the conditions under which the fee may be imposed? [\$707.4(b)(4)]

15. Do the account disclosures include any limitations on the number or dollar amount of withdrawals or deposits? [\$707.4(b)(5)]

16. For time accounts, do the account disclosures include the following:

a. The maturity date? [\$707.4(b)(6)(i)]

b. Early withdrawal penalties? [\$707.4(b)(6)(ii)]

c. If compounding occurs and dividends may be withdrawn during the term, a statement that the APY assumes dividends remains on deposit and

that a withdrawal will reduce earnings?
[§707.4(b)(6)(iii)]

d. Information regarding renewal policies
[§707.4(b)(6)(iv)]

whether the account will renew
automatically?

if it renews automatically, if a grace
period exists and the length?

If not renewed automatically, whether
dividends will be paid after maturity?

17. Do account disclosures state the amount or
type of bonus and the conditions under which
the bonus will be paid? [§707.4(b)(7)]

18. Was the notice of availability of disclosures
to existing account holders included on or with
the first periodic statement sent beginning on or
after January 1, 1995 (or first periodic statement
for a statement cycle beginning on or after that
date)? [§707.4(c)]

Subsequent Disclosures §707.5

19. Does the credit union provide advance
notification to depositors of any change in a
term required to be disclosed under §707.4

a. if the change may reduce the APY or
adversely affect the member does the notice
include the effective date of the change?

b. Is the notice mailed or delivered at least 30
days before the effective date of the change?
[§707.5(a)(1)].

20. Are exceptions to the notice requirements
limited to:

a. variable-rate changes?
[§707.5(a)(2)(i)]

b. check printing fees? [§707.5(a)(2)(ii)] _____

c. short-term time accounts (one month or less)?
[§707.5(a)(2)(iii)] _____

21. Are the proper subsequent disclosures
provided for the following time accounts:

a. that renew automatically with maturities
longer than one year? [§707.5(b)(1)] _____

b. that renew automatically with maturities one
year or less but longer than one month?
[§707.5(b)(2)] _____

c. that renew automatically with maturities one
month or less? [§707.5(a)(2)(iii)] _____

d. that do not renew automatically with
maturities longer than one year? _____

Periodic Statement Disclosures [§707.6]

22. Is the annual percentage yield earned, using
that term, disclosed on the periodic statement? _____

a. Is the APY earned calculated in accordance
with Appendix A? [§707.6(b)(1)] _____

23. Is the amount of dividends earned during
the statement period accurately disclosed?
[§707.6(b)(2)] _____

24. Are fees required to be disclosed under
§707.4(b) (that were debited to the account
during the statement period) itemized by dollar
and type? [§707.6(b)(3)] _____

25. Is the total number of days in the
statement period, or the beginning and ending
dates of the period disclosed? [§707.6(b)(4)] _____

Payment Of Dividends [§707.7]

26. If the credit union uses the average daily
balance method, and calculates dividends for a

period other than the statement period, was the APY earned and the amount of dividends earned based on that period rather than the statement period? [§707.6(a)]

27. Does the credit union calculate dividends on the full amount of principal in the account each day by use of either the daily balance method or the average daily balance method? [§707.7(a)(1)]

28. Does the credit union use the same method to determine any minimum balance required to earn dividends as it uses to determine the balance on which dividends are calculated? [§707.7(a)(2)]

29. Do dividends begin to accrue not later than the business day specified for interest bearing accounts in section 606 of the Expedited Funds Availability Act?

a. Do dividends accrue until the day the funds are withdrawn? [§707.7(c)]

30. Do the advertisements refrain from misleading or inaccurate statements and do they accurately represent the deposit contract?

a. Do the advertisements refrain from using the terms “free” or “no cost” if any maintenance or activity fee may be imposed?

b. Do the advertisements refrain from using the word “profit” when referring to interest paid on an account? [§707.8(a)]

31. If the credit union advertises rates on accounts, are the rates stated as an “annual percentage yield”?

a. If the credit union uses the abbreviation “APY”, has the term annual percentage yield” been stated at least once in the advertisement?

b. If the credit union states the dividend rate,

using that term, in conjunction with the APY, is it not more conspicuous than the APY?

[\$707.8(b)]

c. Are the annual percentage yields and dividend rates rounded to the nearest one-hundredth of one percentage point (.01%) and expressed to two decimal places? [§707.3(f)(1)]

32. If the credit union advertises “tiered rate” accounts, does the credit union state all of the APYs, including ranges where applicable, as well as the corresponding minimum balance requirements? [§707.8(c)(3)]

Advertising Requirements [§707.8]

33. If the credit union advertises “stepped rate” accounts, does the credit union accurately disclose the APY? [§707.8(b)]

34. If the deposit advertisements placed by the credit union state the APY, are the following disclosures stated clearly and conspicuously to the extent applicable?

a. variable rate notice [§707.8(c)(1)]

b. time APY is offered [§707.8(c)(2)]

c. minimum balance to obtain the APY [§707.8(c)(3)]

d. minimum opening deposit [§707.8(c)(4)]

e. effect of fees [§707.8(c)(5)]

f. the following features of time accounts [§707.8(c)(6)]:

time requirements [§707.8(c)(6)(i)]

notice of early withdrawal penalties [§707.8(c)(6)(ii)]

35. If a bonus is stated in an advertisement, does the advertisement state the following information, as applicable:

a. the “annual percentage yield,” using that term? [§707.8(d)(1)]

b. time requirement to obtain the bonus [§707.8(d)(2)]

c. minimum balance required to obtain the bonus [§707.8(d)(3)]

d. minimum balance required to open the account (if it is greater than the minimum balance necessary to obtain the bonus) [§707.8(d)(4)];

e. when the bonus will be provided. [§707.8(d)(5)]

36. Are exemptions to the requirements made for those media set forth under §707.8(e)?

Record Retention Requirements

37. Has the credit union maintained evidence of compliance for a minimum of 2 years after the date disclosures are required to be made or action is required to be taken? [§707.9(c)]

Comments

TRUTH IN SAVINGS ACT
(NCUA RULES AND REGULATIONS PART 707)
DEFINITIONS

Definitions (§ 707.2)

For purposes Part 707, the following definitions apply:

Account

A share or deposit account at a credit union held by or offered to a member or potential member. It includes, but is not limited to, accounts such as share, share draft, checking and term share accounts. For purposes of the advertising regulations in § 707.8, the term also includes an account at a credit union that is held by or offered by a share or deposit broker.

Advertisement

A commercial message, appearing in any medium that promotes directly or indirectly the availability of, or a deposit in, an account.

Annual percentage yield

A percentage rate reflecting the total amount of dividends paid on an account, based on the dividend rate and the frequency of compounding for a 365-day period and calculated according to the rules in Appendix A of this part.

Average daily balance method

The application of a periodic rate to the average daily balance in the account for the period. The average daily balance is determined by adding the full amount of principal in the account for each day of the period and dividing that figure by the number of days in the period.

Board

The National Credit Union Administration Board.

Bonus

A premium, gift, award, or other consideration worth more than \$10 (whether in the form of cash, credit, merchandise, or any equivalent) given or offered to a member during a year in exchange for opening, maintaining, or renewing an account, or increasing an account balance. The term does not include dividends, other consideration worth \$10 or less given during a year, the waiver or reduction of a fee, the absorption of expenses, non-dividend membership benefits, or extraordinary dividends

Credit union

A federal or state-chartered credit union that is either insured by, or is eligible to apply for insurance from, the National Credit Union Share Insurance Fund.

Daily balance method

The application of a daily periodic rate to the full amount of principal in the account each day.

Dividend and dividends

Any declared or prospective earnings on a member's shares in a credit union to be paid to a member or to the member's account. For purposes of this part, the term does not include the payment of a bonus or other consideration worth \$10 or less given during a year, the waiver or reduction of a fee, the absorption of expenses, non-dividend membership benefits, or extraordinary dividends.

Dividend declaration date

The date that the board of directors of a credit union declares a dividend for the preceding dividend period.

Dividend period

The span of time established by the board of directors of a credit union by the end of which shares in a member account earn dividend credit. The dividend period may be different for each type of account.

Dividend rate

The declared or prospective annual dividend rate paid on an account, which does not reflect compounding. For purposes of the account disclosures in § 707.4(b)(1)(i), the rate may, but need not, be referred to as the "annual percentage rate" in addition to being referred to as the "dividend rate."

Extraordinary dividends

A non-repetitive dividend paid at an irregular time from funds legally available for such distribution.

Fixed-rate account

An account that is not a variable rate account as defined in paragraph (z) of this section.

Grace period

A period following the maturity of an automatically renewing term share account during which the member may withdraw funds without being assessed a penalty.

Interest

Any payment to a member or to a member's account for the use of funds in a non-dividend-bearing account at a state-chartered credit union offered pursuant to state law, calculated by application of a periodic rate to the balance. For purposes of this regulation, the term does not include the payment of a bonus or other consideration worth \$10 or less

given during a year, the waiver or reduction of a fee, the absorption of expenses, non-dividend membership benefits, or extraordinary dividends. Except as is specifically otherwise provided in this part, in the case of an interest-bearing account held in or offered by a state-chartered credit union pursuant to state law, the word “interest” shall be substituted for all references to “dividend” or “dividends” in this part.

Member

(1) A natural person member of the credit union who holds an account primarily for personal, family, or household purposes;

(2) A natural person nonmember who holds an account primarily for personal, family, or household purposes, either jointly with a natural person member or in a credit union designated as a low-income credit union, or to whom such an account is offered; and

(3) A natural person nonmember who holds a deposit account in a state-chartered credit union pursuant to state law, or to whom such deposit account is offered. The term does not include a natural person who holds an account for another in a professional capacity or an unincorporated non-business association of natural person members.

Non-dividend membership benefits

Any property or service provided by a credit union to its members, the nature of which makes its valuation unreasonable and administratively impracticable.

Passbook account

An account in which the member retains a book or other document in which the credit union records transactions on the account.

Periodic statement

A statement setting forth information about an account (other than a term share account or passbook account) that is provided to a member on a regular basis four or more times a year.

Potential member

A natural person within the credit union’s field of membership (or an unincorporated non-business association of such persons) or otherwise eligible to become a member as defined in paragraph (q) of this section.

State

A state, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

Stepped-rate account

An account that has two or more dividend rates that take effect in succeeding periods and are known when the account is opened.

Term share account

Any share certificate, interest-bearing certificate of deposit account, or other account with a maturity of at least seven days in which the member generally does not have a right to make withdrawals for six days after the account is opened, unless the account is subject to an early withdrawal penalty of at least seven days' dividends on amounts withdrawn, offered by a credit union to a member or potential member.

Tiered-rate account

An account that has two or more dividend rates that are applicable to specified balance levels.

Variable-rate account

A share, share draft, checking, or term share account in which the simple dividend rate may change after the account is opened, unless the credit union contracts to give at least thirty days advance written notice of rate decreases.